

A LOOK BACK: Building a Human Trafficking Legal Framework

For the last four years, Polaris has rated all 50 states and the District of Columbia based on 10 categories of laws that are critical to establishing a basic legal framework to effectively combat human trafficking, punish traffickers, and support survivors. In the final year of our State Ratings on Human Trafficking Laws, the following analysis highlights the tremendous improvement and innovation during this time. Yet, while criminal statutes have been enacted across the United States, there is still a significant absence of laws to assist and protect victims of human trafficking. In addition, the passage of dozens of new laws now requires that states work to provide proper funding and support to ensure that these laws can be effectively implemented.

THE IMPORTANCE OF STATE ANTI-HUMAN TRAFFICKING LAWS

Human trafficking is a form of modern-day slavery and is a crime against our common humanity. It does not discriminate between adult or child, male or female, U.S. citizen or foreign national. With an estimated 21 million victims globally, human trafficking is pervasive as well as highly profitable. The International Labor Organization (ILO) recently estimated that traffickers make over \$150 billion a year.

The scope and scale of human trafficking within the United States presents a daunting challenge to policymakers, service providers, law enforcement, and advocates. Originally, human trafficking was thought to be more of a problem in other countries, but now it is known to be happening in our own backyards. It is estimated that there are hundreds of thousands of victims of sex and labor trafficking inside our borders. The hidden and misunderstood nature of the crime, the trauma and fear that prevent victims from seeking assistance, and the wide range of sectors that are impacted by human trafficking make it an incredibly complex issue to address. Yet, in the last several years, federal and state lawmakers have tackled this issue with increasing urgency and sophistication.

Eradication is the ultimate goal of the growing global movement against human trafficking and modern slavery. However, efforts to disrupt, dismantle, and ultimately eradicate the criminal networks that engage in human trafficking are hindered when a foundational framework of strong laws is not present. Similarly, laws that provide protections to ensure that trafficking victims are not treated like criminals are also necessary.

Therefore, the construction of a comprehensive legal framework created through new anti-trafficking laws is an important foundational step in moving towards our ultimate collective goal of eradication.

FEDERAL RESPONSE

In 2000, Congress began to define the U.S. response to human trafficking with the passage of the Trafficking Victims Protection Act (TVPA). The TVPA defined severe forms of trafficking in persons, including sex trafficking and labor trafficking, as federal crimes and established the “3Ps” framework—punishment, protection, and prevention—to provide guidance on what a government response must include. The TVPA has been reauthorized four times (2003, 2005, 2008, and 2013). With each reauthorization, the federal response to human trafficking has expanded and improved, evolving based on new information about the nature of human trafficking in the U.S., the tools required to fight it, and the needs of those impacted by the crime.

STATE LEGISLATIVE RESPONSE

Despite the continuing improvement of the federal response, there was an early recognition that individual states have a significant role to play in combating human trafficking. There was also recognition that new laws at the state level were needed to provide the foundation for states’ anti-trafficking efforts to grow. Washington and Texas were the first states to respond legislatively and in 2003 passed the first state anti-trafficking laws.

Figure 1. Chronology of Passage of First State Criminal Statute Against Human Trafficking

2003 (2 states) Texas Washington	2005 (8 states) Arizona, Arkansas, California, Illinois, Kansas, Louisiana Nevada, New Jersey	2007 (7 states) Delaware, Kentucky, Maryland, Montana, New York, Rhode Island, Oregon	2009 (4 states) New Hampshire, North Dakota, Vermont, Virginia	2011 (2 states) Massachusetts, South Dakota	2013 (1 state) Wyoming
2004 (2 states) Florida Missouri	2006 (14 states) Alaska, Colorado, Connecticut Georgia, Idaho, Indiana, Iowa, Michigan, Minnesota, Mississippi, Nebraska, North Carolina, Pennsylvania, South Carolina	2008 (7 states) Hawaii, Maine, New Mexico, Oklahoma, Tennessee, Utah, Wisconsin	2010 (3 states) Alabama, District of Columbia, Ohio	2012 (1 state) West Virginia	

Since 2003, a number of tools have been developed to assist states in enacting anti-human trafficking laws. Polaris released the first edition of its Comprehensive Model State Law in 2004 and published subsequent editions in 2006 and in 2010. The Department of Justice also released a model law for states in 2004. Other groups released model laws or model legislative provisions for states, including the Freedom Network and the Center for Women's Policy Studies. In 2013, the Uniform Law Commission adopted a Uniform Act on the Prevention of and Remedies for Human Trafficking. The Uniform Act was officially endorsed by the American Bar Association soon after its adoption and represented a critical step forward in providing states with the comprehensive road map necessary to establish effective criminal penalties and victim protections to fight human trafficking.

In addition to the development of model laws, national associations have been helpful in building awareness of human trafficking in the states and with state policymakers. In 2011, the National Association of Attorneys General (NAAG) launched the Pillars of Hope Presidential Initiative, which focused on raising awareness in communities about human trafficking and developing strategies to hold offenders accountable. The following year, the American Bar Association (ABA) also made combating human trafficking a priority, and the ABA created a human trafficking task force to support efforts to identify victims and prosecute offenders. The National Conference of State Legislatures (NCSL) has also identified human trafficking as a priority and hosted presentations on human trafficking for its members and provides resources for legislators who are considering introducing new bills.

As a result of the efforts by national coalitions, non-profits, advocates, and policymakers, the awareness of human trafficking and the efforts to build an effective legal framework have grown exponentially. Since 2005,

Polaris has tracked the introduction of over a thousand human trafficking bills in all fifty states and in the District of Columbia.

Nationally, there was an increase in the number of bills introduced, but many states struggled to successfully pass legislation. Additionally, the types of laws that were passed tended to focus on prosecution and there was less success in passing laws designed to assist victims. A tool was needed to track the types of laws being enacted as well as to identify which states were developing a robust response to human trafficking and which were falling behind.

POLARIS'S ANNUAL STATE RATINGS

Polaris's annual State Ratings on Human Trafficking Laws tracks whether states have enacted ten categories of laws that are fundamental to combatting human trafficking. The types of laws tracked include: (1) sex trafficking; (2) labor trafficking; (3a) asset forfeiture for trafficking offenses, (3b) investigative tools such as including human trafficking in the state racketeering statute or authorization of interception of communications during investigations into trafficking; (4a) training for law enforcement, (4b) development of a task force; (5) lower burden of proof for the prosecution of child sex trafficking offenses; (6) posting information about a human trafficking hotline; (7) providing safe harbor to minor victims of trafficking; (8) victim assistance plans or services; (9) a civil remedy for human trafficking victims; and (10) vacating convictions. Based on the total points earned (up to twelve), each state is placed into one of four tiers. For category descriptions and the full 2014 State Ratings, please visit www.polarisproject.org/2014stateratings.

This consistent ratings process serves two primary purposes: it provides recommendations to state policymakers and advocates for the establishment of a basic legal response at the state level and also provides a

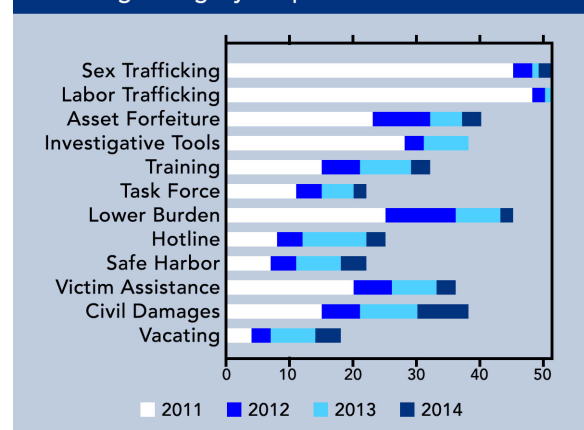
way for states to track their progress in building that response. The Ratings establish certain elements of what Polaris believes to be a minimum legal standard for states. These standards have allowed states to develop distinct and, in many cases, innovative approaches to combatting human trafficking while still ensuring that the fundamental elements of a state response are present. These new advances have become models for states that have not yet enacted legislation or are seeking to improve current statutes.

In 2011, when the Ratings were released in their current form, eleven states were already ranked in the top Tier 1 category for having passed meaningful laws to combat human trafficking. The Ratings acknowledged the legislative achievements of those states while also highlighting the states that were behind the curve. This was most evident in the categories reflecting whether a state has a basic sex trafficking statute and a basic labor trafficking statute. In 2011, five states lacked a sex trafficking statute and two lacked a labor trafficking statute.

In addition to these foundational anti-trafficking laws, the Ratings also included provisions that were new for states. For example, in 2011, only four states had enacted a vacating convictions statute and only eight had passed laws mandating posting of human trafficking hotlines. For these newer laws, the Ratings presented recommendations for states that would move the country forward and provide increased protection and assistance to victims.

The last four years have been marked by rapid enactment of all of the laws recommended by the State Ratings (see Figure 2). Since 2011, the number of states that have received the top Tier 1 rating has more than tripled from 11 states to 39 (see Figure 3). And today, there are no longer any states in the lowest Tier 4 category. To see how the State Ratings has changed over the years, see Figure 4.

Figure 2. Total States That Passed Laws Meeting Category Requirements



NEXT STEPS: VICTIMS' ASSISTANCE AND IMPLEMENTATION

The progress made over the last few years is a reflection of the passion, commitment, and hard work of advocates and policymakers alike. The rapid improvement of states' enactment of laws in the State Ratings has been exciting to track and celebrate. This success, however, does not mean that the job is done. As Polaris began work on the 2014 Ratings, one area that called for special attention was laws designed specifically to assist victims of trafficking.

Unfortunately, these types of laws are not enacted as frequently as criminal statutes. In some cases, states have made efforts in the right direction but have failed to meet the minimum standard established in the Ratings. As a result, in addition to the regular map, the 2014 State Ratings also spotlight whether a state has enacted laws for: posting of human trafficking hotline information, safe harbor (specific protections for sexually exploited minors), victim assistance, access to civil damages, and vacating convictions.

LIMITATIONS OF METHODOLOGY

We have prioritized maintaining a consistent standard of measurement for the four years from 2011 through 2014 to ensure fairness and equal treatment from year to year. Since the methodology of the Ratings was developed in 2011, new information and ideas have emerged that cannot be meaningfully incorporated without changing the original standards. One example of this is vacating convictions laws, which were originally limited to prostitution charges when the Ratings were first launched. There has been an increasing recognition of the necessity of expanding the protection beyond prostitution offenses to better protect sex trafficking victims as well as provide relief to victims of labor trafficking. It would be impossible to incorporate this information into the State Ratings

Figure 3. Number of States Per State Ratings Tier

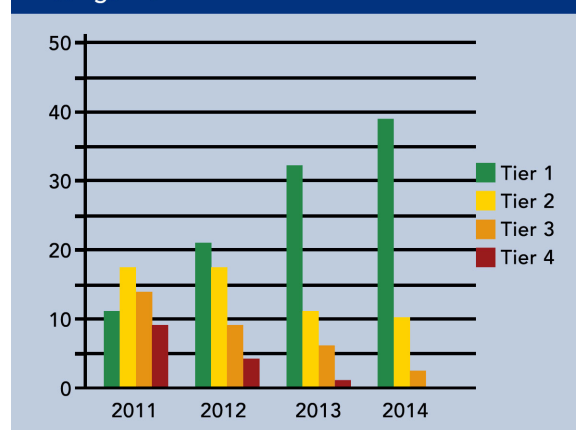
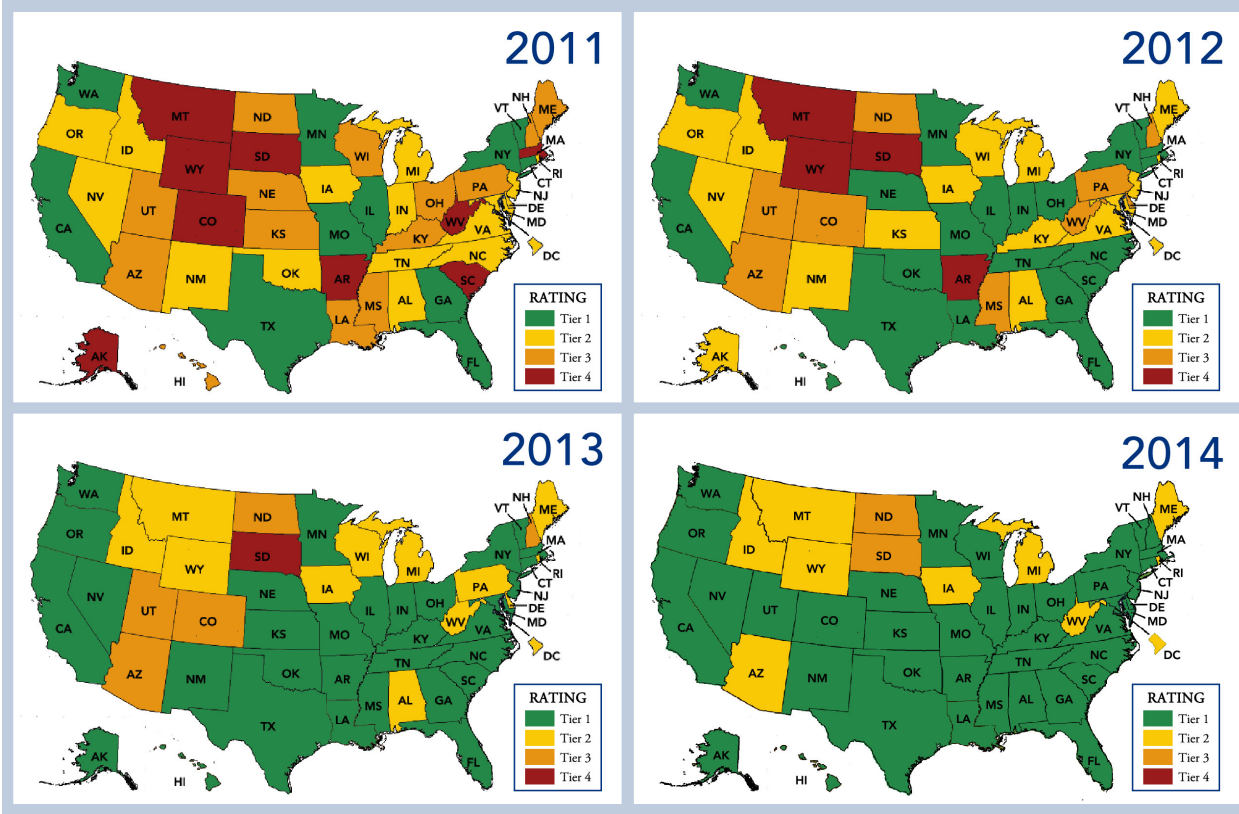


Figure 4. History of the State Ratings on Human Trafficking Laws



Report without significantly changing the current framework and jeopardizing the consistency of the Ratings from year to year. Additionally, states are implementing laws, such as affirmative defense for human trafficking victims, and establishing new tools and processes outside of a statutory mandate, such as task forces convened by state Attorneys General. These areas of work are also not reflected in the Ratings.

Another limitation of the Ratings is that they do not measure the impact of these laws. The State Ratings process only measures the presence or absence of these 10 categories of laws. It is obvious that laws must be effectively implemented—and programs funded—in order to have an impact. An evaluation of the use and effectiveness of state human trafficking laws is a necessary next step. Thus, given the incredible legislative achievement of the states and the limitations of the current Ratings to reflect implementation or new strategies, the decision was made to retire the State Ratings this year.

There is more to be done across the country to address this egregious form of exploitation and abuse. Polaris will continue to provide recommendations to advocates and policymakers based on its expertise on human

trafficking legislation, our work with survivors, and data from the field. Polaris will continue to work with stakeholders to ensure communities are equipped with a strong road map and tools to respond to, prevent, and eradicate human trafficking.

ABOUT POLARIS'S POLICY PROGRAM

Since 2004, Polaris's U.S. Policy Program has advanced state and federal policy related to human trafficking by creating protections for victims while seeking accountability for traffickers and others that contribute to human trafficking. Our efforts have been instrumental in the passage of over 100 anti-trafficking laws. Contact us at policy@polarisproject.org for information on how we can help you pass strong anti-trafficking laws in your state.

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