

**“The Necessity of Passing Human Trafficking Criminalization Legislation in Ohio:
Remedies Taken by Other States and the Implications of Not Passing ”**
Statement of Vanessa Bouché, Advocate and PhD Candidate/Researcher.

Ohio Senate Judiciary – Criminal Justice Committee Hearing on SB 235
April 13, 2010

Thank you, Mr. Chairman. I want to thank the Chairman and the other members of the Senate Criminal Justice Committee for holding this important hearing on the issue of human trafficking. My name is Vanessa Bouché and I am currently a PhD Candidate in Political Science at the Ohio State University who, with a colleague, has done extensive research on the issue of human trafficking across the United States.

Thank you for allowing me the opportunity to provide testimony in support of SB 235, a crucial piece of legislation that is necessary to the fight against modern day slavery in the State of Ohio. I sincerely thank you for your interest and effort in this cause, which is a cause that is fundamentally about human dignity and liberty, values that transcend ideology and party and for which people of all stripes have fought hard to protect.

This testimony is broken into three parts. The first part will discuss the variance in human trafficking laws in other states across the country. This will lay the groundwork for the second and third segments. Second, I will discuss some of the potential implications of not passing human trafficking criminalization legislation in Ohio. Finally, I will conclude by discussing future steps beyond this criminalization legislation.

I will begin by providing a brief overview of the legislative response we have seen in other states with respect to the issue of human trafficking.

The most common and, I believe, most fundamental aspect of states' response is criminalization of human trafficking. In 2003, Washington and Texas became the first states to criminalize trafficking, and since that time thirty-nine states have followed suit in making human trafficking a stand-alone felony. While over 80% of states have criminalized trafficking, there is significant variance between those forty-one criminal statutes. There are three primary ways these anti-trafficking statutes differ.

First is the issue of identifying the different purposes for which humans are trafficked. Some states differentiate between the two basic forms of trafficking: sex trafficking and labor trafficking. The more comprehensive anti-trafficking statutes distinguish sex from labor trafficking and specifically define each.

Second, some states have separated out the trafficking of minors from trafficking cases involving adult victims. Clearly, there is a strong argument that specifying the trafficking of minors as a separate offense with stiffer penalties is an important element of a law that effectively protects the most vulnerable among us.

Third is the minimum and maximum sentence levels for trafficking crimes. Some states have established a minimum sentence for human trafficking cases, while others have not. As an example, New York law calls for a minimum of a fifteen year sentence for individuals convicted of human trafficking. Maximum sentence levels are quite disparate. Six states have maximum sentences of 100 years, while one state has a maximum sentence of only eight years.

Other important elements of anti-trafficking statutes that are seen in some states but not others include provisions for restitution and asset forfeiture, civil penalties, and affirmative defenses. As of the end of 2008, twenty-three states had at least one of these provisions in their anti-trafficking legislation. Of these twenty-three states, only one state, Maine, allows for civil penalties to be sought against traffickers but does not have a stand-alone trafficking felony. More specifically, as of the end of 2008, sixteen states have restitution provisions, six states include asset forfeiture, nine states include a civil action provision, and five states allow for affirmative defenses.

Another area where there is great variation among anti-trafficking laws is that of state investment, and this is another very critical area. There are four areas a state can invest in the issue of human trafficking: victim assistance, I would like to begin by providing a brief overview of the legislative response we have seen in other states with respect to the issue of human trafficking.

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Another area where there is great variation among anti-trafficking laws is that of state investment. There are four areas a state can invest in the issue of human trafficking: victim assistance, task forces, reporting, and training. Thirteen states have made provisions in the law to assist victims of human trafficking, and these range from Wisconsin, which provides emergency services for 60 days, to California, which provides state funded social services for up to one year.

The second area of state investment is in a task force. Some state laws *require* that a task force be formed, usually under the auspices of the Attorney General. As you know, previous Ohio legislation suggested this, and Attorney General Cordray heeded this suggestion and convened the Ohio Human Trafficking Study Commission, whose first meeting took place in August of 2009, and which consists of more than 20 offices and agencies throughout the state as well as survivors of human trafficking.

The third area of state investment is reporting, which is usually a function of the task force, though not always (three states mandated a report on human trafficking but did not mandate a task force). As you know, the Ohio Human Trafficking Study Commission already published its first report on the *Prevalence of Human Trafficking in Ohio* and is very close to completing its second report on how to strengthen Ohio's laws to more effectively fight human trafficking in the state.

The final area of state investment, and among the most critical, is mandated training for first responders, and especially law enforcement officials. Many state reports and other studies have identified the lack of training of law enforcement and other first responders as the greatest barrier to identifying and investigating cases of human trafficking. The Cincinnati Human Trafficking Report found that those who learned about human trafficking through a training seminar were significantly more likely to rate their awareness of the problem as good or excellent than those who did not receive training or learned about human trafficking from the media or another source. Training is going to be a key variable in the enforcement side of the law.

After discussing the variance among state laws on human trafficking, two primary things should now be apparent. The first is that Ohio is significantly behind the rest of the country when it comes to tackling this 21st century human rights issue, despite the fact that Ohio has been named in numerous human trafficking reports as a strategic state for traffickers. Second, there are a myriad of ways to craft anti-trafficking legislation in a state. This is important because the content of the legislation often sets a tone and sends a signal about how serious the state is about the issue. Based on this understanding, what are some possible implications of Ohio *not* passing tough human trafficking legislation?

The first implication is that it could actually attract human traffickers to the state. Just like “safe haven” nations for terrorists, there are “safe haven” countries and states for human traffickers. When a country or state either does not have tough laws or does not enforce those laws, it makes for friendly and fertile ground from which traffickers can freely operate. Similar to welfare policy, whereby states are careful to craft legislation that is not too attractive to these populations so as to not create a “race to the bottom” effect, states ought to take care in crafting their human trafficking legislation such that it avoids a “race to the traffick” effect. Ohio does not want human traffickers operating within its borders. The best possible way to deter them from using Ohio as a base of operation is to craft tough law *and* to ensure that these laws are strongly enforced.

A second possible implication for not passing tough human trafficking legislation in Ohio is that Ohio is perceived by the rest of the country, and even by the federal government, as a “soft on crime” laggard state, and therefore not an attractive place to move, raise a family, or start a business. This perception could cost Ohio in terms of population growth, capital investments, and even federal grants. Ohio cannot afford to go on ignoring this issue much longer. There is an important window of opportunity this year to pass this legislation, and if this policy window passes, this perception may be detrimental. But it is not too late. It is very common in a federal system for there to be “policy entrepreneurial” lead states, and later adopter “lag” states. The positive thing about this phenomenon is that the “lag” states can learn from the earlier states and pass legislation that is either more effective or more comprehensive. This has, indeed, been the case with human trafficking legislation. My research with Dana Wittmer shows that later adopting states pass more comprehensive human trafficking legislation, or legislation that includes not just criminalization, but also aspects of state investment and other remedies. Thus, while not passing legislation can have severe implications for perceptions of Ohio and its priorities, Ohio can actually use this late adoption to its advantage by crafting legislation that is more comprehensive and will ultimately be more effective than other states. Ohio, therefore, actually has a unique opportunity to become a leader in the fight against human trafficking *if* we seize this window of opportunity and learn from what other states have done.

A final implication of not passing human trafficking legislation in Ohio relates to the “at risk” populations and those victimized by this disgusting criminal enterprise. A common misperception is that human trafficking victims in the United States are predominantly illegal immigrants. While many are, most are not. In fact, many of the instances of human trafficking in Ohio have included vulnerable youth populations. These individuals often come from broken homes, have been abused or neglected. They often have few places to turn, and thus are attracted to pimps who promise to care for their needs, but instead rape them physically and emotionally, and strip them of all dignity and worth. These victims need to know that someone is on their side. They need help, they need love, and they need to be defended. We have the resources to help, and so we must. The book of Proverbs rightly exhorts us to: “Open [our] mouth[s], judge righteously, and defend the rights of the afflicted and needy.”

So now that we know what other states are doing, what the implications are for Ohio not to do anything, it is not time to turn to future steps. Passing SB 235 as legislation that criminalizes human trafficking is an excellent first step, but we should all view it as the first step and not the end game. It is very common not to pass comprehensive laws the first time around, but to move

incrementally. As seen previously, there are many other aspects the law can (and perhaps should) include in the future—some of the most important being victim assistance and training. So while we are moving in the right direction, there is still room to grow.

My research suggests that the best way to craft the most effective human trafficking legislation is through a bi-partisan consensus with just the right number of enthusiastic supporters. I am very confident that Ohio is off to a great start in this regard. My hope is that you, as our elected representatives, will lead us into a future free of modern day slavery, and one in which the next generation does not need to ask, "Why did they not act?"

Thank you.