May 24, 2013

Administration for Children and Families
U.S. Department of Health and Human Services
ATTN: Karen Fears
901 D Street, SW
6th Floor West
Washington, DC 20447

Re: Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States

Dear Ms. Fears:

On behalf of the American Bar Association (ABA), I am submitting these comments in response to the notice inviting informal public comment on the “Coordination, Collaboration, Capacity: Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States, 2013-2017 (the Plan).”

The ABA has long-supported efforts to improve trafficking prevention measures and to increase protection and assistance for victims of trafficking in the United States. In 2011 the ABA adopted a resolution that specifically addressed issues related to child trafficking and that is the focus of our comments here. Our policy, among other provisions, urges state, tribal, and territorial legislatures to aid minor victims of human trafficking by:

- permitting immediate protective custody for minors as dependent children;
- amending juvenile dependency laws by making suspicion of trafficking victimization a basis for mandatory reporting to child protective services agencies;
- requiring screening and risk assessment for trafficking victimization whenever a youth enters the child welfare system;
- requiring immediate reporting when children go missing from care; and
- authorizing courts to issue and enforce protective orders prohibiting harassment or intimidation of child trafficking victims.

To help accomplish these and other child trafficking-related goals, the ABA also urged the education of lawyers, judges and other justice system professionals regarding legal issues pertaining to child trafficking. And it called upon state, tribal, and territorial legislatures and bar associations to improve their related laws, including development and adoption of model or uniform anti-trafficking laws.
The 2010 U.S. State Department’s Annual Trafficking in Persons Report noted that: “It is not clear to what extent [U.S. child welfare] programs identify and assist child trafficking victims among the children they serve [but] … these agencies require training to better identify and work with trafficking victims.” We recognize that most lawyers who represent children, or who represent child welfare agencies and their staff, unfortunately know little about either sexual or forced-labor trafficking of children, or the important role that child welfare agencies and juvenile courts could be playing in addressing these issues. The ABA recommends that the Department of Health and Human Services, on its own as well as in collaboration with the Department of Justice, address this education gap.

Several years ago, Shared Hope International, a leader on child trafficking issues, issued Child Sex Trafficking Policy Recommendations that called upon each state to review its child protection services statutes and regulations to ensure that specific protections are included for children – both citizens and noncitizen immigrants – who are sex-trafficked. Several states, including Connecticut, Florida, and New York, were suggested by Shared Hope as models for this kind of change. These are still among state models today.

In 2011, the Massachusetts legislature enacted a law requiring their state’s child welfare agency to “provide for the child welfare services needs of sexually exploited children including, but not limited to, services at the time they are taken into custody by police or identified by the Department as sexually exploited, for the duration of any legal or administrative proceeding in which they are either the complaining witness, defendant or the subject child; and provide appropriate services in order to safeguard the child's welfare.” Other states, such as Alabama, Ohio, Vermont, and Washington have model laws that authorize child welfare agencies to petition courts for care and custody of sex trafficked children as “dependent children” or as “children in need of services.” We know of no state child welfare laws addressing child labor trafficking.

The ABA supports measures to aid the states to improve their child welfare systems’ identification of and response to child trafficking victims; these should include assessing and disseminating the relevant law and policy reforms of those exemplary states mentioned above. We also hope that there will be technical assistance readily available to, among others, prosecutors and agency lawyers, juvenile court judges, and attorneys with child law centers and juvenile defender programs, including developing and disseminating guidelines and other materials on:

- Methods of recruitment and appointment, and practice standards, for independent legal counsel for child trafficking victims whose cases occur in juvenile or criminal courts – with special emphasis on increasing access to comprehensive legal services for domestic minor sex trafficking victims;
- Handling cross-jurisdictional (crossover) youth cases, where youth in the care/custody of child welfare agencies are arrested and charged for prostitution-related offenses, as well as guidelines for how child welfare agencies and courts should immediately respond when children go missing from foster care, group care, or other placements;
• Revising state laws and agency policies that make clear the jurisdictional authority of child welfare agencies to handle cases of child trafficking victims, including investigations, family assessments, child victim services, foster care placement, etc. including promotion of safe harbor laws and related practices that lead to decriminalization of juveniles who are sex trafficked;

• Aiding states in understanding the child trafficking-related provisions of the National Conference of Commissioners on Uniform State Laws Prevention of and Remedies for Human Trafficking Act (due to be completed in the summer of 2013); and

• Understanding federal laws and policies that impact on noncitizen child victims of trafficking, including best practices in helping such children obtain T Visas or other appropriate immigration relief and on safe repatriation of trafficked children where appropriate.

We also hope that conference presentations and webinars on these and other relevant topics could be planned and conducted to bring evidence-based training to judges, attorneys, guardians ad litem, and court-appointed special advocates who are likely to come into contact with child victims of human trafficking.

Finally, we believe that it is particularly important to aid the lawyers who represent state and county child welfare agencies in dependency proceedings, or who counsel child welfare agency directors, by, for example, developing a position description for one attorney at every child welfare agency designated as a lead agency child trafficking resource. Having such a designated individual would be helpful to state and county agencies in crafting new policies, protocols, and practices that set forth appropriate agency responses to trafficked children, and then sharing them with lawyers and judges who hear juvenile dependency, status offender, and delinquency cases.

We hope these comments are helpful as the Administration moves forward with implementation of the Plan and with other efforts to combat human trafficking and provide much-needed services to trafficking victims.

Thank you for the opportunity to share our views.

Sincerely,

Thomas M. Susman