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## STATE CRIMINAL LAWS COULD BE A LIGHT IN THE DARK FOR THE HIDDEN VICTIMS OF FORCED MARRIAGE

REBEKAH MARCARELLI\*

### INTRODUCTION

“There’s something you need to know about me . . . I am dead,” said Fraidy Reiss, a survivor of an abusive forced marriage, as she stood alone on a stage, speaking to a crowd.<sup>1</sup> “I know what you’re thinking, [I don’t] look particularly dead . . . you might want to tell that to my family [because] they declared me dead almost thirteen years ago.”<sup>2</sup>

Reiss, who founded the organization Unchained at Last to help forced marriage victims like herself, grew up in an ultra-Orthodox Jewish community in Brooklyn.<sup>3</sup> Right after finishing high school, Reiss was asked to choose a husband from a small pool of suitors.<sup>4</sup> Reiss described her then-self as a “clueless teenage virgin who had never before been allowed to talk to a boy.”<sup>5</sup> She recalled her family “tapping their feet” waiting for her to choose a husband

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<sup>1</sup> TEDx Talks, *America’s Forced Marriage Problem*, Fraidy Reiss, *TEDxFoggyBottom*, YOUTUBE (May 22, 2018), <https://www.youtube.com/watch?v=1X1MNvuRpdg> [<https://perma.cc/BB46-VFVS>]. Reiss spoke during a TEDx event organized by a local community titled “Fear Itself.” *Id.*

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* Reiss was presented with a handful of potential matches provided to her family by a matchmaker and went on a “limited number of so-called ‘dates,’” during which she was not allowed to be alone with her potential husband. *Id.*

<sup>5</sup> *Id.*

after giving her “a matter of hours over a period of weeks” to make the life-changing decision.<sup>6</sup>

Reiss recalled feeling afraid that, by the age of twenty, she would be the only one of her friends “damned to a lifetime of singlehood in a community where being single is considered very shameful.”<sup>7</sup> Only a week after walking down the aisle to what she called her “execution,” Reiss cowered in fear as her husband punched his fist through a wall in a “blind rage.”<sup>8</sup> He threatened to kill her a few days later.<sup>9</sup> She was forbidden from using birth control and forced to have intercourse with him, resulting in the birth of her first child eleven months after their wedding.<sup>10</sup> She had limited financial and legal rights and remained trapped in the marriage for twelve years.<sup>11</sup> After finally escaping with her two children, Reiss was shunned by her family.<sup>12</sup>

Although Reiss expressed that she was “born and bred” in Brooklyn, she experienced abuse that “people assume doesn’t happen in America.”<sup>13</sup> Indeed, widespread perceptions that forced marriage does not occur in the United States are seriously misguided and likely a result of researchers, policymakers, and the media ignoring the issue.<sup>14</sup> In 2011, the Tahirih Justice

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* Reiss described this type of shunning as a form of “honor violence.” *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> MARIEKE BROCK & EMMA BUCKTHAL, HISTORICAL OVERVIEW OF U.S. POLICY AND LEGISLATIVE RESPONSES TO HONOR-BASED VIOLENCE, FORCED MARRIAGE, AND FEMALE GENITAL MUTILATION/CUTTING, NAT’L INST. OF JUST., 20 (Sept. 2018), <https://www.ojp.gov/pdffiles1/nij/252841.pdf> [<https://perma.cc/EH4B-FHN8>]. “Unlike Europe, research on forced marriage in the United States has been limited to efforts by several small nonprofit foundations,” and there are few laws addressing the issue. *Id.* at 20–22. Researchers at the Tahirih Justice Center, in conducting its national survey on forced marriage in the U.S., were “struck by how few resources and legal options exist in the United States to assist individuals facing forced marriages, as well as how little awareness or understanding there is nationwide about the unique dynamics and challenges in forced marriage situations.” HEATHER HEIMAN & JEANNE SMOOT, TAHIRIH JUST. CTR., FORCED MARRIAGE IN IMMIGRANT COMMUNITIES IN THE U.S.: 2011 NAT’L SURVEY RESULTS 2 (Layli Miller-Muro ed., 2011). Media coverage has tended to focus on child victims and ignore adults. KATHY BONK & ANDREA SYBINSKY, MEDIA TREND ANALYSIS ON CHILD, EARLY, AND FORCED MARRIAGE 15 (2019), [https://kendedafund.org/wp-content/uploads/2019/03/Media-Analysis-of-Child-Marriage-Coverage\\_March-2019.pdf](https://kendedafund.org/wp-content/uploads/2019/03/Media-Analysis-of-Child-Marriage-Coverage_March-2019.pdf) [<https://perma.cc/2EVF-SJKW>]. When the media does report on instances of forced marriage in the United States, it tends to relate to other crimes such as “honor killings” and may contain language that suggests forced marriage is a problem exclusive to non-

Center (Tahirih) produced the only national prevalence statistics on forced marriage to date and identified as many as 3,000 cases of forced marriage.<sup>15</sup> Notably, two out of three respondents to the study felt there were cases of forced marriage that were not being identified.<sup>16</sup> While the Tahirih survey focused on immigrant communities, forced marriage is not an abuse experienced exclusively by immigrants.<sup>17</sup> In addition to ultra-Orthodox Jewish communities, forced marriage escape stories have come out of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS) and other U.S. religious organizations.<sup>18</sup>

The issue of forced marriage is likewise not exclusive to women and children. Tahirih stressed that forced marriage can “happen to either gender, at any age.”<sup>19</sup> According to the United States Department of State, about fifteen percent of forced marriage victims are men.<sup>20</sup> For example, the “shotgun wedding,” in which either party, regardless of gender, is forced to enter a marriage by their family members because of an unplanned pregnancy, has been seen in the U.S. for generations and across nearly all heritages and religions.<sup>21</sup>

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American cultures. *E.g.*, Abigail Pesta, *An American Honor Killing*, MARIE CLAIRE (July 8, 2010), <https://www.marieclaire.com/sex-love/news/a4986/honor-killings-in-america/> [<https://perma.cc/2498-Z64E>] (“Yes, honor crimes have washed up on our shores.”).

<sup>15</sup> HEIMAN & SMOOT, *supra* note 14, at 2. Founded in 1997, Tahirih is “one of the nation’s foremost legal defense organizations protecting women and girls fleeing human rights abuses” including forced marriage, and also leads national advocacy campaigns pressing for changes in laws and policies to better protect women from such abuses. *Id.* at 1. The study was based on a web-based survey that was distributed to thousands of organizations and agencies that may have encountered forced marriage cases, including “legal and social services providers, advocates, community and religious leaders, educators, law enforcement officers, and other professionals.” *Id.* at 4. Over 500 agencies in forty-seven U.S. states and Guam responded to the survey. *Id.*

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.* at 2–3.

<sup>18</sup> For example, Briell Decker, who was married to FLDS leader Warren Jeffs at the age of 18, worked with an organization to turn his mansion into a refuge for FLDS escapees following his conviction for forcing an underage marriage. Alex Hannaford, *The Woman Who Escaped a Polygamous Cult – and Turned its HQ into a Refuge*, THE GUARDIAN (Oct. 13, 2018, 3:00 PM), <https://www.theguardian.com/world/2018/oct/13/woman-escaped-cult-hq-flds-refuge> [<https://perma.cc/AUG4-5GC4>].

<sup>19</sup> See HEIMAN & SMOOT, *supra* note 14, at 2.

<sup>20</sup> U.S. Dep’t of State, *Forced Marriage*, <https://travel.state.gov/content/travel/en/international-travel.html> (follow the “Emergencies” hyperlink; then click on “Forced Marriage”) [<https://perma.cc/Y3FW-NNL3>] (last visited Feb. 27, 2021). The statement does not specify whether these statistics are exclusive to cases of forced marriage in the U.S. *Id.* The Tahirih study identified a “small minority” of male forced marriage victims. HEIMAN & SMOOT, *supra* note 14, at 3.

<sup>21</sup> Julia Alanen, *Custom or Crime? Part I of IV: Catalysts and Consequences of Forced Marriage*, 29 FAM. L. J. 227, 229 (2016), <https://globaljusticeinitiative>

Domestic law has turned a blind eye to forced marriage and lags behind other Western countries.<sup>22</sup> Forced marriage is not mentioned in U.S. law.<sup>23</sup> Only nine U.S. states have criminal laws applicable to forced marriage, and they are not tailored to the intimate and nuanced details of the crime.<sup>24</sup> It also appears there has not been a modern prosecution of forced marriage under any of these laws.<sup>25</sup> Further, civil remedies such as divorce and protection orders require revision to meet the circumstances unique to forced marriage.<sup>26</sup> As such, forced marriage victims in the U.S. are essentially left in a legal limbo in which they have little legal recourse against the individuals who are causing them to marry against their will.

Criminalizing forced marriage has been met with staunch criticism.<sup>27</sup> Opponents of criminalization argue that it has yielded minimal prosecutions in countries that have passed criminal legislation. Enacting criminal laws will discourage victims from coming forward because they would not want their family

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.files.wordpress.com/2015/12/alanen-custom-orcrime-part-i-ajfl.pdf [https://perma.cc/LQD4-BQ69]. A “shotgun wedding” is defined in Ballentine’s Law Dictionary as “[a] slang term for a wedding under duress of threatened prosecution for seduction or bastardy.” *Shotgun Wedding*, BALLENTINE’S LAW DICTIONARY (LexisNexis 2010). The phrase likely comes from instances in the Nineteenth Century and beyond in which a man would be forced to marry a woman at gunpoint after impregnating her. See Pascal Tréguer, *Origin and Meanings of ‘Shotgun Wedding,’ or ‘Shotgun Marriage,’* WORD HISTORIES, <https://wordhistories.net/author/pascaltreguer/> [https://perma.cc/MMP3-AJ8U] (last visited Sept. 2, 2022).

<sup>22</sup> See GOV.UK, *Forced Marriage*, <https://www.gov.uk/guidance/forced-marriage> (last visited Sept. 2, 2022). For example, the U.K. has created civil remedies specific to forced marriage such as Forced Marriage Protection Orders and, more recently, criminalized forced marriage. See *id.* Australia and Germany have also enacted criminal legislation specific to forced marriage. See Chapter 5: Forced Marriage, PARLIAMENT OF AUSTRALIA, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Law\\_Enforcement/Humantrafficking45/Report/c05](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Humantrafficking45/Report/c05) [https://perma.cc/WBN2-993A] (last visited Sept. 2, 2022); see also Section 237 of the Criminal Code - Combatting Forced Marriage, UN WOMEN, <https://evaw-global-database.unwomen.org/fr/countries/europe/germany/2011/section-237-of-the-criminal-code---combatting-force-marriage> [https://perma.cc/8XXN-V5JX] (last visited Sept. 2, 2022).

<sup>23</sup> See generally Council of Europe, *Chart of Signatures and Ratifications of Treaty 210*, <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=210> [https://perma.cc/6AXU-3JVM] (last visited Sept. 2, 2022); Tahirih Justice Ctr., *Forced Marriage in the U.S.*, <https://preventforcedmarriage.org/forced-marriage-in-the-u-s/> [https://perma.cc/G6B2-KQEZ] (last visited Sept. 2, 2022).

<sup>24</sup> See Alanen, *infra* note 27, at 1.

<sup>25</sup> HEIMAN & SMOOT, *supra* note 14, at 1.

<sup>26</sup> See Elizabeth M. Landau, *Custom or Crime?: Part II of IV: Legal Remedies for Forced Marriage Victims and Survivors*, 30 AM. J. FAM. L. 46, 51 (2016).

<sup>27</sup> See, e.g., Julia Alanen, *Custom or Crime?: Part III of IV: Crafting a Competent Framework to Combat Forced Marriage*, 30 AM. J. FAM. L. 121, 125–27 (2016).

members to be prosecuted, they say.<sup>28</sup> However, victims in the U.S. have virtually no legal remedy.<sup>29</sup> In a study conducted by the Sauti Yetu Center for African Women and Families that included insight from thirty young African immigrant women in New York City who had experienced early or forced marriage, respondents reported they had entered forced marriages because they did not believe there were other options available to them.<sup>30</sup> A respondent to the Tahirih study stated, “young women do not even realize that they have the right to say no under [U.S.] laws, so they just accept [forced marriage] as their fate.”<sup>31</sup> In the lead-up to England criminalizing forced marriage in 2014, the U.K. government sought feedback from the community and learned that some forced marriage victims believed they would have come forward sooner if a criminal offense had been in place.<sup>32</sup> There have also been reports of forced marriage victims reaching out for help and being ignored by law enforcement and other influential figures.<sup>33</sup> These victims deserve the option to seek help through criminal laws.<sup>34</sup>

<sup>28</sup> Heli Askola, *Responding to Vulnerability? Forced Marriage and the Law*, 41UNSW L. J. 977, 983 (2018), <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2018/09/Askola.pdf> [<https://perma.cc/BUM9-KW97>]; Alanen, *supra* note 27, at 123–24.

<sup>29</sup> See Landau, *supra* note 26, at 51 (noting that there is a dearth of legislation around forced marriage in the United States and no federal forced-marriage laws).

<sup>30</sup> See generally SAUTI YETU, A CLOSER LOOK AT FORCED AND EARLY MARRIAGE IN AFRICAN IMMIGRANT COMMUNITIES IN NEW YORK CITY, SAUTI YETI OCCASIONAL REPORT, 2012; VIDYA SRI & DARAKSHAN RAJA, VOICES FROM THE FRONTLINE: ADDRESSING FORCED MARRIAGE WITHIN THE UNITED STATES, 3 (2013), [https://projects.iq.harvard.edu/files/violenceagainstwomen/files/vidyasri\\_voicesfromthefrontline.pdf](https://projects.iq.harvard.edu/files/violenceagainstwomen/files/vidyasri_voicesfromthefrontline.pdf) [<https://perma.cc/T2FU-SXL4>].

<sup>31</sup> HEIMAN & SMOOT, *supra* note 14, at 6.

<sup>32</sup> FORCED MARRIAGE – A CONSULTATION SUMMARY OF RESPONSES, UNITED KINGDOM HOME OFFICE 11 (2012), <http://data.parliament.uk/DepositedPapers/Files/DEP2012-0897/ForcedMarriageconsultation-summaryofresponsesv3.pdf> [<https://perma.cc/3YP6-7D5G>].

<sup>33</sup> Popy Begum, *Should ‘Forced Marriage’ be Criminalized?* 1, 33 (John Sunley Prize winner masters dissertation), <https://howardleague.org/wp-content/uploads/2016/09/Should-forced-marriage-be-criminalised.pdf> [<https://perma.cc/W7H9-829E>]. One forced marriage victim interviewed by Begum stated, “I don’t know who to blame, should I blame the culture? My brother and mom? Should I blame my grandmother, should I blame [my] grandfather? I asked my sisters, my husband’s aunt, whoever I trusted, I asked for help. I did not want to get married. They did nothing. My school teacher knew. My friends called the cops and they did nothing.” *Id.* Further, most respondents to the Tahirih study said that their agencies “do not have policies and procedures (or resources) in place to assist victims, and that staff often lacked training and/or “appropriate cultural competence” on the issue of forced marriage, impacting their ability to help.”

<sup>34</sup> See Alanen, *supra* note 27, at 126. Another concern is that criminalizing forced marriage will stigmatize communities that are believed to engage in forced marriage. *Id.* However, legislation could be crafted in a way that makes it clear that forced marriage is a legal, rather than a cultural, issue. See *infra* Section IV, preamble to Model Statute.

Conversely, supporters of forced marriage criminalization believe criminal laws could have a deterrent effect and send a strong message to potential perpetrators that forcing someone into marriage is intolerable behavior under the law.<sup>35</sup> Further, criminal legislation could inspire government agencies to provide additional resources to forced marriage victims. For example, Tahirih points out that after female genital mutilation was criminalized, the Department of Health and Human Services “designated funding and a number to call for information, . . . the Department of Justice hosted community roundtables, and reports were issued by the Centers for Disease Control and Prevention and the U.S. Government Accountability Office.<sup>36</sup> Further, there was a “surge” in the number of victims who reported forced marriage after it was criminalized in Denmark.<sup>37</sup>

This Note embraces the idea that helping even one victim avoid or escape a forced marriage through the U.S. criminal justice system would provide a remedy to a victim ignored under the current laws and a voice to a virtually unrecognized population. In Part I of this Note, I provide background on the root causes of forced marriage and highlight its potentially devastating effect on victims. This section aims to inform legislators of the unique aspects of the crime that must be considered when drafting remedial criminal laws. In Part II, I review how forced marriage is currently addressed under U.S. and international law. In Part III, I guide how legislators could approach specific elements of forced marriage crimes. Finally, in Part IV, I present a model statute crafted from the insight gained during my research.

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<sup>35</sup> ADDRESSING FORCED MARRIAGE IN THE EU: LEGAL PROVISIONS AND PROMISING PRACTICES, EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS 19 (2014), [https://fra.europa.eu/sites/default/files/fra-2014-forced-marriage-eu\\_en.pdf.pdf](https://fra.europa.eu/sites/default/files/fra-2014-forced-marriage-eu_en.pdf.pdf) [<https://perma.cc/9J95-F776>].

<sup>36</sup> NATIONAL CONSULTATION: SHOULD FORCED MARRIAGE BE A CRIME IN THE UNITED STATES?, TAHIRIH JUSTICE CENTER (2016), [https://www.tahirih.org/wp-content/uploads/2016/11/Consultation-Summary-Report\\_Final.pdf](https://www.tahirih.org/wp-content/uploads/2016/11/Consultation-Summary-Report_Final.pdf) [<https://perma.cc/4U39-BGRQ>].

<sup>37</sup> Ruth Gaffney-Rhys, *The Development of the Law Relating to Forced Marriage: Does the Law Reflect the Interests of the Victim?*, 16 CRIME PREVENTION AND COMM. SAFETY 269, 287 (2014).

## I. WHAT DOES FORCED MARRIAGE LOOK LIKE?

Although victims are sometimes forced into marriage for more insidious reasons, such as achieving financial gain, fulfilling citizenship needs, or controlling women's sexuality, the typical motivator behind a person forcing a marriage is much more complicated.<sup>38</sup> Perpetrators of forced marriage are often close family members, and their motivations may be steeped in deeply rooted cultural traditions or spurred by community pressures.<sup>39</sup>

A major motivator is perceived threats to family honor, which can elicit deep feelings of shame.<sup>40</sup> For example, forced marriages can be a tactic to conceal the fact that the victim is a member of the LGBTQIA+ community, had a child out of wedlock, or disclosed sexual abuse or rape.<sup>41</sup> In one case, a survivor from the U.K.'s parents discovered that she was gay; upon that discovery, they gave her the option between marrying and being subjected to repeated violence, such as having her hand burned on a stove.<sup>42</sup> Even Western behavior like wearing makeup may threaten a family's honor.<sup>43</sup>

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<sup>38</sup> Julia Alanen, *Shattering the Silence Surrounding Forced and Early Marriage in the United States*, 32 CHILDREN'S L. RIGHTS J. 1, 7 (2012).

<sup>39</sup> *Id.* In the Sauti Yetu study, which included 30, young, female African immigrant respondents from New York City, cultural tradition" was the most common reason cited for a family forcing a marriage. SAUTI YETU, *supra* note 30, at 8.

<sup>40</sup> HEIMAN & SMOOT, *supra* note 14, at 8.

<sup>41</sup> Debjani Roy, *An Introduction to Forced Marriage in the South Asian Community in the United States*, MANAVI OCCASIONAL PAPER No. 9 at 17 (2011). The Manavi study was based on a web-based survey distributed in 2010. *Id.* at 2. FRAMEWORK FOR ADDRESSING FORCED AND CHILD MARRIAGE IN THE U.S. NATIONAL ACTION PLAN TO END GENDER-BASED VIOLENCE, TAHIRIH JUSTICE CENTER (2016), [https://www.tahirih.org/wp-content/uploads/2021/11/Framework-for-Addressing-Forced-Marriage-in-the-U.S.-National-Action-Plan-to-End-Gender-Based-Violence\\_FMVG-Reccomendations\\_Nov.pdf](https://www.tahirih.org/wp-content/uploads/2021/11/Framework-for-Addressing-Forced-Marriage-in-the-U.S.-National-Action-Plan-to-End-Gender-Based-Violence_FMVG-Reccomendations_Nov.pdf) [<https://perma.cc/RL3Q-NV8K>]. "A survivor who discloses sexual abuse or rape may be at heightened risk for a forced marriage due to the belief that this is the only way to avoid having the survivor and the family reputation 'ruined' as such abuse can, paradoxically, bring shame upon the victim and their family." *Id.*

<sup>42</sup> Alanen, *supra* note 21, at 4.

<sup>43</sup> BROCK & BUCKTHAL, *supra* note 14, at 17. A report on forced marriage conducted by the Australian government identified a case in which "a teenage girl who was allegedly 'not dressing properly . . . not talking properly, being too Westernised' was repatriated to her family's home country 'to make sure she played the game . . . so that she was a good girl.'" Samantha Lyneham & Samantha Bricknell, WHEN SAYING NO IS NOT AN OPTION: FORCED MARRIAGE IN AUSTRALIA AND NEW ZEALAND 6, AUSTRALIAN GOVERNMENT: AUSTRALIAN INST. OF CRIM. (2018). The study included twenty-four interviews with thirty-eight stakeholder-participants, five focus groups with forty-seven participants who were both stakeholders and community members, and six interviews with forced marriage survivors. *Id.* at vi.



Another motivation may be immigrant families' desire to cling to the traditions of their home country and maintain control in an unfamiliar environment.<sup>44</sup> According to Julia Alanen, who served as director of the Global Justice Initiative's forced marriage initiative and is now a program manager at the Department of Justice's Office of Juvenile Justice and Delinquency Prevention, "marriage was and often still is seen as a union of not only individuals but of families."<sup>45</sup> Further, family members who force a marriage may simply not understand they are harming the victim.<sup>46</sup> Evidence from the U.K. suggests that "families of a victim are often unable to accept or understand why a victim would refuse to marry, or choose to leave a forced marriage."<sup>47</sup>

A range of pressures may cause the victim to enter the marriage. The United States Citizenship and Immigration Services (USCIS) lists the following pressures that may play a role:

threats of "abandonment, isolation, or physical or emotional abuse;" fear of suffering physical harm or being cut off from one's family; close monitoring to prevent one from speaking about the pressures they are facing; fear of causing the family shame or harm; fear of physical harm or being killed; believing family members and friends will be hurt or killed; and having travel documents, identification, communication devices, or money taken away until marriage.<sup>48</sup>

Additionally, the pressures that caused the victim to enter the marriage typically persist throughout the marriage and prevent

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<sup>44</sup> Roy, *supra* note 41, at 17 (stating that because South Asian societies generally value the communal or group over the individual, an individual's actions are often perceived as a reflection of the family they come from or how they were raised); Alanen, *supra* note 29, at 4.

<sup>45</sup> See Alanen, *supra* note 29, at 4. Alanen added, "One reason for this is because the joint family, where generations of family members live in the same household, used to be the standard living arrangement." *Id.*

<sup>46</sup> Roy, *supra* note 41, at 2.

<sup>47</sup> DISCUSSION PAPER: FORCED AND SERVILE MARRIAGE, AUSTRALIAN GOVERNMENT: ATTORNEY-GENERAL'S OFFICE 5 (2011), <https://www.homeaffairs.gov.au/criminal-justice/files/discussion-paper-public-release-forced-servile-marriage.pdf> [<https://perma.cc/3V4M-FJYJ>].

<sup>48</sup> U.S. Citizenship and Immigr. Services, *Forced Marriage* (last visited Sept. 5, 2022), <https://www.uscis.gov/humanitarian> (click "Forced Marriage") [<https://perma.cc/94LK-HRD2>].

the victim from leaving.<sup>49</sup> In a similar issue to how people who ask why a victim of domestic violence did not leave their abuser tend to misunderstand the complicated dynamics of these relationships, society must understand that forced marriage victims experience obstacles to escaping the marriage that are not always visible to the public eye.<sup>50</sup>

Although this Note does not advocate for forced marriage to be treated as a domestic violence crime, some parallels are important, such as threatening behavior, isolation, psychological and social pressures, and other demeaning or controlling behavior.<sup>51</sup> Additionally, some forced marriage victims, like domestic violence victims, may not know they are being abused either because they are uneducated about the warning signs of forced marriage or are unable to accept that their loved one is abusing them.<sup>52</sup>

Some respondents to the U.K.'s Home Office consultation believed criminalization would "enable victims to obtain recognition of the abuse inflicted upon them."<sup>53</sup> Although there are parallels between domestic violence and forced marriage, victims of forced marriage often face issues that differentiate the crime, for example, pressures imposed by a larger family unit and the absence of abusive behavior from the forced partner. For this reason, grouping forced marriage crimes with trafficking and domestic violence crimes may make it more difficult for forced

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<sup>49</sup> See HEIMAN & SMOOT, *supra* note 14, at 6.

<sup>50</sup> In addition to psychological factors, there are tangible roadblocks to getting out of forced marriages, such as being threatened with violence for seeking help. *Id.*; Roy, *supra* note 41, at 25 (noting that women who are forced to marry may be exposed to domestic violence, emotional abuse, and financial abuse).

<sup>51</sup> Alanen, *supra* note 21, at 233.

<sup>52</sup> See Gaffney-Rhys, *supra* note 37, at 278 (explaining that persons at risk of forced marriages may be too young, vulnerable, or mentally incapable to understand when an application for a forced marriage protection order may be made). A Scottish forced marriage victim stated, "[a]t that time, I thought that's what was expected of me and that was the norm. It's just that I didn't fit into that norm. But now I see it as, with more information, that it was a forced marriage. I was forced emotionally and blackmailed constantly . . ." Khatidja Chantler & Melanie McCarry, *Forced Marriage, Coercive Control, and Conducive Contexts: The Experiences of Women in Scotland*, 26 VIOLENCE AGAINST WOMEN, 89, 94 (2020), available at <https://journals.sagepub.com/doi/pdf/10.1177/1077801219830234> [<https://perma.cc/FU4C-CH6Y>].

<sup>53</sup> HOME OFFICE, FORCED MARRIAGE – A CONSULTATION: SUMMARY OF RESPONSES 1, 9 (2012). However, late anthropologist Sally Engle Merry observed that to "make use of the current legal avenues, women experiencing violence need to see themselves in a different way (as victims of criminal activity who can and should turn to the legal system for help) and that women often waver before accepting that identity (if they do)." Askola, *supra* note 28, at 986.

marriage victims to identify themselves as such and a distinct crime must be passed to help empower these victims to recognize that they have been wronged.

Individuals forced into a marriage may experience a range of emotional, psychological, and physical consequences. In a study conducted by victim advocate organization Gangashakti, fifteen percent of the sample reported knowing of forced marriage victims attempting suicide. In comparison, two percent said they had known a victim who committed suicide.<sup>54</sup> Additionally, the pressure and repeated shaming used to enforce a marriage can negatively impact victims' performance at school or work.<sup>55</sup>

While the psychological consequences of forced marriage may be present even where other abuses are not committed, forced marriage may leave victims vulnerable to other crimes. Of respondents who reported known cases of forced marriage, almost one-third (thirty-five percent) reported coming across financial and economic abuse, fifty-five percent saw emotional violence, fifty-four percent saw domestic violence, fifty-one percent saw physical violence, and one in four saw rape.<sup>56</sup>

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<sup>54</sup> SRI & RAJA, *supra* note 30, at 14. The multi-method research strategy utilized included 524 surveys, 52 case reviews, and 22 interviews. *Id.*

<sup>55</sup> *Id.* at 22.

<sup>56</sup> *Id.* at 13. These statistics excluded respondents who answered that they only suspected forced marriage. The DOJ Study revealed harrowing accounts of abuse in forced marriage cases, such as a victim who was pressured into sex she did not want by her forced fiancé prior to the wedding ceremony. Meredith Dank et al., *Exploratory Research into the Intersection of Forced Marriage, Intimate Partner Violence, and Sexual Violence*, OFFICE OF JUSTICE PROGRAMS 9 (2018), *available at* <https://www.ojp.gov/pdffiles1/nij/grants/251485.pdf> [<https://perma.cc/REA8-KH43>]. Another victim was told, “[y]ou’re going to be our slave” by her forced spouse’s family after the wedding and was physically abused by both her spouse and his family members. *Id.*

## II. FORCED MARRIAGE UNDER THE LAW

### A. Forced Marriage Under U.S. Federal Law

The U.S. considers forced marriage a “human rights abuse,”<sup>57</sup> and former President Barack Obama, in his 2014 International Day of the Girl Proclamation, condemned it as a form of “gender-based violence” akin to female genital mutilation.<sup>58</sup> However, forced marriage victims are provided with virtually no avenues for relief through U.S. federal and state law. Specifically, Federal law remains silent on forced marriage, and government efforts have focused on preventing early and forced marriage overseas.<sup>59</sup> While victim advocate organizations have argued federal trafficking laws may apply to forced marriage, these statutes are not tailored to fit forced marriage crimes.<sup>60</sup>

The statutes under the Trafficking Victims Protection Act of 2000 (“TVPA”) have been broken down into three elements, known as the Action-Means-Purpose (AMP) Model.<sup>61</sup> Crimes under the TVPA typically fall into two camps: sex trafficking and slavery.<sup>62</sup> Under the slavery branch of the TVPA, severe forms of trafficking in persons include the “recruitment, harboring, transportation,

<sup>57</sup> U.S. Dep’t of State, *supra* note 20.

<sup>58</sup> Alanen, *supra* note 27, at 122. Former President Barack Obama’s quote reads: “Gender-based violence – from domestic violence and human trafficking to genital cutting and early and forced marriage – condemns girls to cycles of dependence, fear, and abuse . . . .” *Id.*

<sup>59</sup> *Id.* The U.S. Agency for International Development (USAID) has contributed millions of dollars in foreign aid to fight child marriage abroad, and the Violence Against Women Act was reauthorized in 2013 with measures to “curb early marriage overseas.” *Id.*

<sup>60</sup> See Landau, *supra* note 26, at 47 (noting that these statutes address prostitution, pandering, or human trafficking more broadly); U.S. Dep’t of State, *About Human Trafficking*, <https://www.state.gov/humantrafficking-about-human-trafficking/> [https://perma.cc/W2XT-4L9R] (last visited Oct. 21, 2022) (“While some instances of forced marriage may meet the international or U.S. legal definition of human trafficking, not all cases do.”); but see Anita Teekah & William Sheehan, *Forced Marriage is Human Trafficking: We Explain How and Why*, SAFE HORIZONS (Dec. 11, 2019), <https://www.safehorizon.org/programs/forced-marriage-human-trafficking> [https://perma.cc/X4PH-Z6SR] (last visited Oct. 21, 2022).

<sup>61</sup> See generally UNDERSTANDING THE DEFINITION OF HUMAN TRAFFICKING, THE ACTION-MEANS-PURPOSE MODEL 1, 1 (2012), POLARIS PROJECT, <https://humantraffickinghotline.org/sites/default/files/AMP%20Model.pdf> [https://perma.cc/CN75-EVEW].

<sup>62</sup> See *id.*

provision, or obtaining<sup>63</sup> of a person for labor or services,<sup>64</sup> through the use of force, fraud, or coercion<sup>65</sup> for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”<sup>66</sup> Sex trafficking requires that the perpetrator engage in one of the proscribed actions,<sup>67</sup> such as obtaining the victim for the purpose of a commercial sex act.<sup>68</sup> There is also a severe form of trafficking in persons if the commercial sex act is “induced by force, fraud, or coercion.”<sup>69</sup>

The AMP Model Actions would require the perpetrator in a forced marriage prosecution to have engaged in transactional conduct such as obtaining or providing the victim.<sup>70</sup> However, the conduct that typically creates the harmful result of a forced marriage is the coercion itself.<sup>71</sup> While the actions might apply to certain forced marriage situations, the additional, unnecessary element will likely encumber prosecutors. Further, requiring an action other than coercion to have been completed would prevent the TVPA from being applied preventatively before the marriage has occurred.<sup>72</sup>

### *B. Forced Marriage Under U.S. State Law*

Marriage is an issue generally left up to the states, but forced marriage is largely unaddressed at the state level.<sup>73</sup> Most states

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> 22 U.S.C. § 7102(11)(B).

<sup>67</sup> § 7102(12). The actions include the “recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.” *Id.*

<sup>68</sup> POLARIS PROJECT, *supra* note 61, at 1.

<sup>69</sup> § 7102(11)(A). The “force, fraud, or coercion” is the Means under the AMP Model. *See* § 7102(11)(A). Sex trafficking may also be a severe form of trafficking in persons if the victim is under the age of 18. *See* § 7102(11)(A).

<sup>70</sup> *See* POLARIS PROJECT, *supra* note 61, at 1.

<sup>71</sup> *See infra* Section III.A.

<sup>72</sup> *See* POLARIS PROJECT, *supra* note 61, at 1 (noting that multiple elements must be present to establish human trafficking).

<sup>73</sup> *See* Alanen, *supra* note 38, at 7 (“Under the United States’ federal system of government, sex and marriage have traditionally been subject exclusively to state regulation without federal intervention.”).

do not criminalize forced marriage.<sup>74</sup> And while perpetrators may be prosecuted for ancillary crimes such as domestic violence and rape, Alanen points out that “the punishment is unlikely to suit the crime” and “proscribing ancillary acts may lack preventive and aiding/abetting language, thus precluding authorities from charging all complicit parties . . . .”<sup>75</sup> Alanen adds that an “effective forced marriage legal regime requires directed laws tailored to account for the unique cultural dynamics and practical circumstances surrounding harmful marriage practices.”<sup>76</sup>

### i. Common Law Abduction Statutes

Only nine states have criminal laws that address forced marriages, six of which were drawn from centuries-old English abduction laws such as the “Acte against taking awaye of women against their willes,” passed by Henry VII in 1487.<sup>77</sup> Because the statute applied only to women “of substance,” researchers have argued the statute was essentially a property crime, enacted to prevent men from abducting and forcibly marrying heiresses to obtain their wealth under the doctrine of coverture.<sup>78</sup> As such,

<sup>74</sup> BROCK & BUCKTHAL, *supra* note 14, at 22.

<sup>75</sup> Alanen, *supra* note 38, at 11.

<sup>76</sup> *Id.*

<sup>77</sup> 3 Henry VII, c. 2–4, at 512; see REPORT TO THE MAYOR’S COMMITTEE FOR THE STUDY OF SEX OFFENSES 5, 28–29 (1944), available at <https://floridaactioncommittee.org/report-mayors-committee-study-sex-offenses-1944/> [<https://perma.cc/4UWA-AA7R>]. The 1487 statute reads: “That what person or persons from henceforth that taketh any woman so against her will unlawfully . . . that such taking, procuring, and abetting to the same, and also receiving wittingly the same woman so taken against her will, and knowing the same, to be a felony.” See 2 JOEL PRENTISS BISHOP, COMMENTARIES ON THE CRIMINAL LAW 1, 1–3 (4th ed. 1868), available at [https://www.google.com/books/edition/Commentaries\\_on\\_the\\_Criminal\\_Law/Oxs-AAAIAAJ?hl=en&gbpv=0](https://www.google.com/books/edition/Commentaries_on_the_Criminal_Law/Oxs-AAAIAAJ?hl=en&gbpv=0) [<https://perma.cc/8WSQ-FS65>]; see also Alanen, *supra* note 38, at 11; cf. OKL. ST. tit. 21, § 1117 (LexisNexis 2022) (Oklahoma’s abduction statute reads, “Any person who takes any woman against her will, and by force, menace or duress, compels her to marry him or to marry any other person, shall be guilty of a felony . . . .”). Currently, the states that have retained “abduction” statutes are: California, Massachusetts, Minnesota, Mississippi, Oklahoma, and West Virginia. See CAL. PENAL CODE § 265 (Deering 2022) (California, enacted 1872); MASS. ANN. LAWS CH. 272, § 1 (LexisNexis 2022) (Massachusetts, enacted 1852); MINN. STAT. ANN. § 609.265 (LexisNexis 2022) (Minnesota, enacted 1963); MISS. CODE ANN. § 97-3-1 (LexisNexis 2022) (Mississippi, enacted 1848); OKLA. STAT. TIT. 21, § 1117 (LexisNexis 2022) (Oklahoma, enacted 1910); W. VA. CODE § 61-2-14 (LexisNexis 2022) (West Virginia, enacted 1849).

<sup>78</sup> See Maria Pracher, *The Marital Rape Exemption: A Violation of a Woman’s Right of Privacy*, 11 GOLDEN GATE U. L. REV. 717, 724–28 (1981); see also A. Cameron, *Complaint*

these statutes have been conflated with crimes of kidnapping and rape, drawing criticism that they are outdated and inadequate for the purpose of aiding modern forced marriage victims.<sup>79</sup>

California's statute, for example, applies to "Every person who takes any woman unlawfully, against her will, and by force, menace or duress, compels her to marry him, or to marry any other person, or to be defiled."<sup>80</sup> In addition to these laws containing outdated and sexual terms such as "defiled," the statute's phrasing suggests compelling the woman to marry is something that occurs after a forcible taking has occurred.<sup>81</sup> However, forced marriage victims are typically not taken against their will and compelled to marry, but instead compelled to marry against their will by family members.<sup>82</sup>

## ii. Forced Marriage as a Prostitution-Related Crime

Washington, D.C. has a prostitution-related crime on the books that uses language comparable to the abduction statutes.<sup>83</sup> Titled "Pandering; Inducing or Compelling an Individual to Engage in Prostitution," the statute lists a crime that resembles abduction alongside conduct such as compelling another to "reside with any other person for the purpose of prostitution."<sup>84</sup> Conflating forced marriage with prostitution, according to Elizabeth Landau, a

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*and Reform in Henry VII's Reign: the of the Statute of 3 Henry VII, c.2?*, 51 BULL. OF THE INST. OF HIST. RSCH. 83, 83–85 (1978), available at <https://academic.oup.com/histres/article-abstract/51/123/83/5670087?redirectedFrom=fulltext> [<https://perma.cc/74XM-NCM7>].

<sup>79</sup> See Pracher, *supra* note 78; see also Cameron, *supra* note 78; BROCK & BUCKTHAL, *supra* note 14, at 22. For these reasons, states such as Michigan have taken abduction laws off the books, arguing the statute was not utilized and the crime could be prosecuted under a kidnapping or sexual assault law "without having the burden of proving the additional elements of compelling the victim to marry or defiling her." STAFF OF MICH. S. FISCAL AGENCY, S.B. 760–67 (2009) FISCAL ANALYSIS 1, 1–3, available at <https://www.senate.michigan.gov/sfa/>.

<sup>80</sup> CAL. PENAL CODE § 265.

<sup>81</sup> *Id.*

<sup>82</sup> See PENAL § 265; *infra* Section I. The term "defiled" suggests the crime of Abduction may be completed by either compelling marriage or committing rape after the taking has occurred. See § 265. Equating forced marriage to the separate and distinct crimes of rape and kidnapping may make forced marriage victims reluctant to identify as this type of victim and come forward. Further, the statute applies only to female victims. See § 265.

<sup>83</sup> See D.C. CODE § 22-2705 (LexisNexis 2022).

<sup>84</sup> § 22-2705. Under the D.C. statute, a person may not "[t]ake or detain an individual against the individual's will, with intent to compel such individual by force, threats, menace, or duress to marry the abductor or to marry any other person." § 22-2705(3).

family law attorney who served as a fellow with the Global Justice Initiative, “can lead to blaming the victim for what has been done to her and cause feelings of shame that could make her less likely to seek help.”<sup>85</sup>

### iii. Forced Marriage Under U.S. State Human Trafficking Laws

Five states include forced marriage in human trafficking crimes.<sup>86</sup> In Florida, “[a]ny person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking . . . [u]sing coercion for labor or *services* . . .” is guilty under the statute.<sup>87</sup> The term “services,” means “any act committed at the behest of, under the supervision of, or for the benefit of another”<sup>88</sup> and includes explicitly “forced marriage, servitude, or the removal of organs.”<sup>89</sup>

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<sup>85</sup> Landau, *supra* note 26, at 4.

<sup>86</sup> See NEV. REV. STAT. ANN. § 201.300 (LexisNexis 2022). However, Virginia and Nevada’s statutes include the term “trafficking” in prostitution-related crimes and address the forced marriage element in language similar to that seen in the abduction statutes. *Id.* The Nevada statute, titled “Pandering and sex trafficking: Definitions; penalties; exception” was enacted in 1913 and reads, in part, “A person . . . is guilty of sex trafficking if the person: [t]akes or detains a person with the intent to compel the person by force, violence, threats or duress to marry him or her or any other person . . .” § 201.300(2)(a)(4); VA. CODE ANN. § 18.2-355 (LexisNexis 2022). The term “trafficking” was added in 2013, but the abduction-related language was present. NEV. REV. STAT. ANN. § 201.300. The Virginia statute, titled “Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking,” was enacted in 1950 and provides in part “Any person who . . . [t]akes or detains a person against his or her will with the intent to compel such person, by force, threats, persuasions, menace or duress, to marry him or her or to marry any other person, or to be defiled . . . is guilty of pandering.” VA. CODE ANN. § 18.2-355(2) & (4).

<sup>87</sup> FLA. STAT. ANN. § 787.06(3) (LexisNexis 2022) (emphasis added). The statute was enacted in 2006, and the term “forced marriage” was added in 2012. § 787.06(3).

<sup>88</sup> See § 787.06(3). Although a prosecutor could likely prove a defendant forced a marriage for the benefit of another person, such as the forced spouse, it is not a necessary element to forced marriage crimes and creates an additional barrier to relief. See HEIMAN & SMOOT, *supra* note 14. For example, a parent might force a marriage for their own benefit if they believe it will protect their reputation. See *id.*

<sup>89</sup> FLA. STAT. ANN. § 787.06(2)(h). Categorizing forced marriage with servitude and the removal of organs could discourage forced marriage victims from identifying with crimes of that nature. § 787.06(2)(h).



Human trafficking includes conduct such as providing a person for the purpose of exploitation.”<sup>90</sup>

Maryland is the only state to create a statute specifically written for forced marriage crimes and to allow for the prosecution of accessories to the crime.<sup>91</sup> Under the statute, which is entitled Marriage Trafficking, a person may not “knowingly . . . take or detain another with the intent to use force, threat, coercion, or fraud to compel the other to marry any person” or “aid, abet, or conspire with another . . . .”<sup>92</sup>

Maryland and Florida have improved upon the federal AMP Model by including elements such as attempts and molding the required purpose to be more inclusive of forced marriage victims.<sup>93</sup> They are also laudable for addressing often-ignored forced marriage victims. However, both statutes suffer similar pitfalls to the TVPA crimes, such as requiring a transactional actions that are unnecessary to create the result of a forced marriage and failing to address the victim’s mental state of consent or non-consent.<sup>94</sup>

### *C. Forced Marriage Under U.S. Civil Law*

The civil remedies available to forced marriage victims in the U.S. do little to supplement the shortcomings of the criminal justice system. Once married, there are few civil remedies

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<sup>90</sup> § 787.06(2)(d). The terms include, “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining . . . .” § 787.06(2)(d). The definition of coercion includes a laundry list of conduct such as using or threatening physical force, isolating a person against their will, and destroying documents like passports. § 787.06(2)(a). The Model Forced Marriage Statute set forth in Part IV of this Note declines to adopt a similar enumerated definition of coercion out of concern that it is too narrow of an approach to reach the vast range of coercive tactics used to force marriages.

<sup>91</sup> See MD. CODE ANN., CRIM. LAW § 3-1103 (LexisNexis 2022) (enacted 2021).

<sup>92</sup> CRIM. LAW § 3-1103(a)(3). Alanen commented that the statute “potentially [applies] to the groom, his parents, the wedding officiant, or any other third party who knows that the bride does not consent, but nonetheless aids, abets, or conspires to force her to marry.” Alanen, *supra* note 38, at 9.

<sup>93</sup> Unlike the TVPA which requires the purpose of either a commercial sex act in which something of value is exchanged or securing labor or services, Florida requires a broader purpose of exploitation. See 22 U.S.C. § 7102(12); § 7102(11)(B); FLA. STAT. ANN. § 787.06(2)(d). Maryland specifically requires the perpetrator to have the purpose of using coercion to compel a person to get married. See MD. CODE ANN., CRIM. LAW § 3-1103.

<sup>94</sup> See *infra*, Part II(A).

available outside of seeking a divorce or annulment.<sup>95</sup> This is often an inadequate solution for forced marriage victims, who are susceptible to roadblocks such as restricted access to finances and vital documents or religious prohibitions on divorce.<sup>96</sup> In some Orthodox Jewish communities, for example, women may not seek a divorce under Orthodox Jewish law.<sup>97</sup> Fraidy Reiss recalled feeling as if leaving her forced spouse was not an option because she lacked financial rights and independence when she was in a similar predicament.<sup>98</sup>

In some states, such as Ohio, a victim may be entitled to annulment if they were forced to get married, but not if they cohabitated with the forced spouse after the wedding or failed to file the annulment within two years.<sup>99</sup> Such restrictions particularly exclude forced marriage victims. Reiss, for example, was pressured into living with her forced spouse immediately after her wedding and could not escape for twelve years.<sup>100</sup> Seeking divorce or annulment may also cause victims to lose their right to property if it is returned to its pre-marital status or forego benefits

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<sup>95</sup> See Landau, *supra* note 26, at 6; see also Samuel G. Freedman, *Woman Breaks Through Chains of Forced Marriage, and Helps Others Do the Same*, NEW YORK TIMES (March 20, 2015), <https://www.nytimes.com/2015/03/21/us/woman-breaks-through-chains-of-forced-marriage-and-helps-others-do-the-same.html> [<https://perma.cc/RS89-8WJJ>].

<sup>96</sup> Landau, *supra* note 26, at 6.

<sup>97</sup> See TEDx Talks, *supra* note 1; see also *Arranged/Forced Marriages*, UNCHAINED AT LAST, <https://www.unchainedatlast.org/about-arranged-forced-marriage/> [<https://perma.cc/57YF-4JUK>] (last visited Oct. 24, 2022). Further, “most communities that practice arranged/forced marriage view divorce as shameful, and they tend to place the burden largely on women to avoid that shame and keep a marriage intact, even when that means women must sacrifice their safety or happiness.” *Id.*

<sup>98</sup> TEDx Talks, *supra* note 1.

<sup>99</sup> See Robert C. Wentz, *Marriages Are Annulled in Special Cases*, OHIO BAR (Oct. 31, 2016), <https://www.ohiobar.org/public-resources/commonly-asked-law-questions-results/family-relations/marriages-are-annulled-in-special-cases/> [<https://perma.cc/R87H-HZ9T>] (describing how a party to a shotgun wedding would be entitled to an annulment if they file for it within two years of the wedding and do not cohabit with their forced spouse once married).

<sup>100</sup> See TEDx Talks, *supra* note 1.

such as alimony or child support.<sup>101</sup> In severe cases, divorce may lead to other forms of violence, such as “honor killings.”<sup>102</sup>

Civil remedies such as protective orders provide similarly inadequate relief.<sup>103</sup> Unlike the forced marriage-specific protection orders such as those offered in England, U.S. protection orders are not crafted to apply to forced marriage situations.<sup>104</sup> In some states, the person that the victim wishes to seek a protection order against must have committed an additional offense, such as rape or threatening bodily harm.<sup>105</sup> Being in a forced marriage does not necessarily mean these additional crimes will occur. Certain states also require a particular familial or intimate relationship to exist between the petitioner and respondent before courts will grant a civil protection order.<sup>106</sup> This may disqualify a

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<sup>101</sup> Landau, *supra* note 26, at 7. In community property states, for example, certain assets and debts could lose their status as community property in the event of an annulment. *Id.* at 7. An annulment may also negate the legal presumption of parentage for children born during the marriage, which could prohibit the mother from seeking child support if paternity is not established by the courts. *Id.* at 6–7. In some cases, victims who escaped a forced marriage feel they must sever ties with their forced spouse completely and decline to seek child support. *Id.* at 7.

<sup>102</sup> For example, a Georgia man was convicted of malice murder after he strangled his daughter when she sought a divorce from a forced marriage. *Rashid v. State*, 737 S.E.2d 692, 695 (2013).

<sup>103</sup> Landau, *supra* note 26, at 51 (“[A] threat to force someone to marry, or acts or circumstances that commonly signal an imminent forced marriage, are unlikely to persuade most [U.S.] judges to issue a potential victim a protection order” and “even when they would be inclined to issue a protection order, [judges] may be precluded from doing so because protection order statutes are not designed with forced-marriage circumstances in mind.”).

<sup>104</sup> See GOV.UK, *Forced Marriage Protection Orders*, <https://www.gov.uk/government/publications/forced-marriage-protection-orders-fl701/forced-marriage-protection-orders> (last visited Sept. 26, 2022). In England, victims can apply for forced marriage protection orders and receive immediate emergency relief if they are being forced into a marriage or have already entered a forced marriage. *Id.* People who breach a civil protection order can be sentenced to a maximum of two years in prison. *Id.* However, the violation of a forced marriage protection order is a separate criminal offense that is subject to a prison sentence of up to five years. *Id.*

<sup>105</sup> See Maryland Judiciary, *How to File for a Peace or Protective Order* (Oct. 2016), <https://mdcourts.gov/sites/default/files/import/courtforms/joint/ccdedvpo001br.pdf> [https://perma.cc/46TL-68PC]; MD. CODE ANN., FAM. LAW § 4-501. In states such as New York, obtaining a protective order through criminal court is even more difficult than the family court route because it requires the individual against whom protection sought to have been charged with another crime or be engaged in a divorce proceeding with the victim. *Obtaining an Order of Protection*, NYCOURTS.GOV, <https://www.nycourts.gov/faq/orderofprotection.shtml> [https://perma.cc/5XED-AUAG] (last visited Sept. 26, 2022).

<sup>106</sup> See Maryland Judiciary, *How to File for a Peace or Protective Order* (Oct. 2016), <https://mdcourts.gov/sites/default/files/import/courtforms/joint/ccdedvpo001br.pdf>. For example, in Maryland, a petitioner for a protective order in family court must prove the respondent committed an act of “abuse” such as causing fear of “serious bodily harm,” rape and certain other sexual offenses, false imprisonment, stalking, or revenge porn. In states such as New York, obtaining a protective order through criminal court is even more difficult

victim who is not yet in an intimate or marital relationship with their forced spouse from being granted civil protection.

Even if remedies such as divorce, annulment, and protective orders were more accessible to forced marriage victims, seeking civil solutions could deprive survivors of the resources and protections that criminal courts can provide, such as “compensation funds, witness protection programs, shelters, child protective services, free counseling, and medical care, and other critical supports.”<sup>107</sup> Forced marriage survivors deserve specific criminal legislation that recognizes them as crime victims and provides them with a realistic avenue to freedom.<sup>108</sup>

#### *D. Compare Forced Marriage under Foreign Law*

England has taken significant steps to combat forced marriage. In 2005, it created its Forced Marriage Unit as a joint effort under the Foreign and Commonwealth Office and Home Office to advise victims and attorneys and gather data on forced marriage cases.<sup>109</sup> The Forced Marriage (Civil Protection) Act of 2007 created civil protection orders specifically for forced marriage victims.<sup>110</sup> Originally, breaches of these protection orders were not automatic criminal offenses but imposed a prison sentence of up to two years for contempt of court.<sup>111</sup> In 2011, breaching a forced marriage

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than through the family courts because it requires the individual against whom protection sought to have been charged with another crime or be engaged in a divorce proceeding with the victim). *See id.*; MD. CODE ANN. FAM. LAW § 4-501; *see also* New York State Unified Court System, *Obtaining an Order of Protection*, NYCourts.gov, <https://www.nycourts.gov/faq/orderofprotection.shtml> (last visited Feb. 27, 2021).

<sup>107</sup> BROCK & BUCKTHAL, *supra* note 14, at 22.

<sup>108</sup> *See id.*

<sup>109</sup> GOV.UK, *What is Forced Marriage?* [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/879929/What\\_Is\\_Forced\\_Marriage\\_leaflet.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879929/What_Is_Forced_Marriage_leaflet.pdf) [<https://perma.cc/4KQJ-YTKN>]; EMMA PSAILA ET AL., FORCED MARRIAGE FROM A GENDER PERSPECTIVE (2016), 59, [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/556926/IPOL\\_STU\(2016\)556926\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/556926/IPOL_STU(2016)556926_EN.pdf) [<https://perma.cc/NF9X-U7X5>].

<sup>110</sup> Ruth Gaffney-Rhys, *The Development of the Law Relating to Forced Marriage: Does the Law Reflect the Interests of the Victim?*, 16 CRIME PREVENTION AND COMMUNITY SAFETY 269, 277 (2014). The protection orders can be requested by the victim or certain third parties and may govern the behavior of both the person forcing the marriage and others indirectly involved. *Id.* at 278–79.

<sup>111</sup> *Id.* at 280. Discretionary criminalization had the dual aim of allowing a breach of a protection order to be taken seriously in the criminal court while also refraining from

protection order became a specific criminal offense with a maximum prison sentence of five years.<sup>112</sup>

Forced marriage became a criminal offense punishable by up to seven years in prison with the passage of the Anti-Social Behaviour, Crime and Policing Act [of] 2014.<sup>113</sup> A person is guilty under the criminal statute if

he or she (a) uses violence, threats or any other form of coercion for the purpose of causing another person to enter into a marriage, and (b) believes, or ought reasonably to believe, that the conduct may cause the other person to enter into the marriage without free and full consent.<sup>114</sup>

Australia also criminalized forced marriage in 2013 and expanded its legal definition in 2015.<sup>115</sup> Under the Australian law, a forced marriage is one in which either party entered into the marriage without fully and freely consenting because of the use of “coercion, threat, or deception.”<sup>116</sup> A person may commit a forced marriage offense if either their conduct, such as coercion, causes the victim to enter the marriage or the person is a party to a forced marriage and is not the victim.<sup>117</sup>

Unlike the few TVPA-affected criminal laws available to U.S. forced marriage victims,<sup>118</sup> the U.K. and Australian laws focus on both the coercive conduct of the perpetrator and the victim’s consent or non-consent.<sup>119</sup>

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discouraging victims from seeking protection because, for example, they did not want a family member to be prosecuted. *Id.*

<sup>112</sup> *Id.* at 283. The measure was likely a response to arguments that forced marriage was being treated as a lesser offense than domestic violence because the breach of non-molestation orders was an automatic criminal offense with a maximum prison sentence of five years. *Id.* at 280, 283.

<sup>113</sup> *Id.* at 289–90.

<sup>114</sup> Anti-Social Behaviour, Crime and Policing Act 2014, c. 10 § 121(1)(a) (Eng. & Wales).

<sup>115</sup> Askola *supra* note 28, at 5.

<sup>116</sup> Anti-Social Behaviour, Crime and Policing Act 2014, c. 10 § 121(Eng. & Wales).

<sup>117</sup> Anti-Social Behaviour, Crime and Policing Act 2014, c. 10 § 121(1)(a) (Eng. & Wales).

<sup>118</sup> *See infra*, Section II(B).

<sup>119</sup> Anti-Social Behaviour, Crime and Policing Act 2014, *supra* note 114.

### III. CRIMINALIZING FORCED MARRIAGE

Consent has been a fundamental requirement of marriage for centuries or more.<sup>120</sup> For example, Peter Lombard, a Twelfth-Century English theologian, once wrote that the “efficient cause of marriage is consent.”<sup>121</sup> According to Lombard, while words of consent were sufficient in effecting a marriage, the presence of “duress or deceit” would invalidate the marriage.<sup>122</sup> Modern debates about forced marriage criminalization continue to focus on the relationship between consent and duress or coercion.<sup>123</sup>

Forced marriage commentators have described consent as existing on a continuum of persuasion, with mild requests to marry sitting at one end of the line and severe methods of force such as physical abuse at the other.<sup>124</sup> Somewhere between these two points, referred to as the “gray area,” the external pressures overcome the victim’s ability to refuse the marriage, and consent disappears.<sup>125</sup> Deciding at which point on the line consent vanishes and, for example, a consensual arranged marriage becomes a forced marriage, is a difficult problem to address under the law.<sup>126</sup>

Another source of debate is how forced marriage should be treated under the law from a policy perspective. The freedom to marry is widely referred to as a human rights abuse but is also often classified as slavery, and thus is grouped among human trafficking crimes under the laws of several countries, including

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<sup>120</sup> See Conor McCarthy, *MARRIAGE IN MEDIEVAL ENGLAND: LAW LITERATURE AND PRACTICE* 4 (Boydell Press, 2004). Scholars have noted that Mary and Joseph were husband and wife even though they did not have intercourse. *Id.* at 24. However, the consummation of the marriage was typically required as an additional element to creating a marriage in the Twelfth Century. *Id.* at 22. Additionally, for example, when asked whether or not his daughter could be given for marriage against her will, English Canon law theologian, Gratian, responded, “it is evident [from Canon law] that no woman should be married to anyone except by her free will.” *Id.* at 22.

<sup>121</sup> *Id.* at 22–23.

<sup>122</sup> *Id.* at 23.

<sup>123</sup> See SRI & RAJA, *supra* note 30.

<sup>124</sup> *Id.* at 4.

<sup>125</sup> *Id.* at 17.

<sup>126</sup> *Id.* at 7. Dasgupta suggests this point might be found by considering both the degree of urging and the outcome of the victim’s resistance. *Id.* The difference between arranged and forced marriage has been described as follows: “Arranged marriage is a cultural practice where the consent of all parties involved is respected while in a forced marriage the basic fundamental right to consent is absent.” *Id.* at 5.

the U.S. and Australia.<sup>127</sup> However, the human rights-based definition of forced marriage is lack of consent at the initial ceremony, which has been criticized as “thin” and without consideration of the external forces imposed by other persons that result in the harm of a victim marrying without consent.<sup>128</sup> Conversely, slavery depends on “the exercise of powers attaching to the rights of ownership by one person over another,” which fails to address the victim’s consent.<sup>129</sup> Instead, the U.K. government considers forced marriage a form of family violence. However, forced marriage victims may be reluctant to view themselves as victims of violence and fail to seek help through the criminal justice system.<sup>130</sup>

Drafters of forced marriage legislation should consider the relationship between forced marriage and slavery offenses or domestic violence when deciding which types of resources would be most beneficial to victims.<sup>131</sup> However, forced marriage victims require a separate crime that addresses the unique nuances of

<sup>127</sup> All existing modern U.S. legislation addressing forced marriage includes it among human trafficking crimes. See MD. CODE, CRIM. CODE § 3-1103; FLA. STAT. ANN. § 787.06. Australia’s stand-alone forced marriage criminal statute was born out of its anti-trafficking laws and remains categorized under slavery offenses. See Office of Parliamentary Counsel, Canberra, *Criminal Code Act 1995* (Volume 2, April 6, 2019), available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/68678/134601/F-649519168/AUS68678%202019%20V2.pdf> [<https://perma.cc/576C-J2KQ>].

<sup>128</sup> Helen McCabe et al., *Forced Marriage and Modern Slavery: Analysing Marriage as a “Choiceless Choice,”* 7 J. OF MODERN SLAVERY 33, 44 (2022), [https://slavefreetoday.org/journal\\_of\\_modern\\_slavery/v7i2a3-Forced-Marriage-and-Modern-Slavery-Analysing-Marriage-as-a-Choiceless-Choice.pdf](https://slavefreetoday.org/journal_of_modern_slavery/v7i2a3-Forced-Marriage-and-Modern-Slavery-Analysing-Marriage-as-a-Choiceless-Choice.pdf) [<https://perma.cc/9M2P-7JNA>]. For example, the United Nations Declaration of Human Rights states, “[m]arriage shall be entered into only with the free and full consent of the intending spouses.” UNITED NATIONS, UNIVERSAL DECLARATION OF HUMAN RIGHTS: ARTICLE 16, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [<https://perma.cc/3XQY-XFEC>].

<sup>129</sup> McCabe et al., *supra* note 128 at 44.

<sup>130</sup> HOME OFFICE, WHAT IS FORCED MARRIAGE?, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/879929/WhatIsForcedMarriageleaflet.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879929/WhatIsForcedMarriageleaflet.pdf) [<https://perma.cc/BT6W-YSD4>]. One forced marriage victim said “I guess domestic violence would be like, I guess almost the obvious, like the physical, emotional abuse, things like, or just being under someone’s control constantly, like that kind of thing. Violence itself is a very strong word and I feel like it wasn’t physical at all but there was a lot of verbal abuse and a lot of emotional blackmail so I don’t know if that falls into the same sort of category but that was what it was.” Frances Simmons & Grace Wong, *Learning from Lived Experience: Australia’s Legal Response to Forced Marriage*, 44 UNSW L. J. 1619, 1642 (2021).

<sup>131</sup> See UN Women, *Rights of Victims*, <https://www.endvawnow.org/en/articles/632-rights-of-victims.html> [<https://perma.cc/L9BZ-ZZRZ>] (last visited Sept. 25, 2022) (explaining that “[b]y integrating forced marriage within a domestic violence framework, policymakers can ensure that victims of forced marriage are not excluded from existing support structures”).

their situations and signals to them that the law is behind them.<sup>132</sup> The following subsections will guide drafters in hopes that the U.S. can one day provide an informed legal remedy to forced marriage victims. This insight will also inform a model statute set forth in Part IV.

### A. *The Perpetrator*

#### i. Defining Coercion

The U.K. broadly defines coercion as conduct including threats, violence, emotional or psychological pressures such as shaming, financial abuse, isolation, and harassment.<sup>133</sup> Australia's statute also utilizes a broad definition that includes "force, duress, detention, psychological oppression, abuse of power; [or] taking advantage of a person's vulnerability."<sup>134</sup>

The U.S. takes a narrower approach. Under the TVPA, coercion is limited to threats of serious harm, physical restraint, or the abuse or threatened abuse of the using the legal process against the victim.<sup>135</sup> Florida's forced marriage statute provides an enumerated list specifying coercive conduct, including actual or threatened physical force, isolation, constraint, or financial harm; destroying or withholding government identification; enticing or luring a person by fraud or deceit; or providing controlled

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<sup>132</sup> "In the absence of adequate forced-marriage laws, practitioners sometimes turn to anti-trafficking laws for relief. Trafficking and forced marriage are both serious practices that should be addressed in a way that is sensitive to the nuances of each. When the two are conflated, this can diminish system actors' and the public's understanding of the unique dynamics and consequences that differentiate forced marriage from trafficking in persons." Landau, *supra* note 26, at 5.

<sup>133</sup> SCOTTISH GOVERNMENT, FORCED MARRIAGE PRACTITIONER GUIDANCE – UPDATE 2014 (Oct. 10, 2014), <https://www.gov.scot/publications/forced-marriage-practitioner-guidance-update-2014/pages/6/> [<https://perma.cc/WT2M-VKXA>].

<sup>134</sup> *Criminal Code Act 1995* § 270.1A. (Austl.); Anti-Social Behaviour, Crime and Policing Act 2014, c. 12 § 121(1)(a) (Eng. & Wales).

<sup>135</sup> 22 U.S.C. § 7102 (3). The definition also includes "any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person." § 7102(3)(B).



substances for the purpose of exploitation.<sup>136</sup> Coercion looks similar under Maryland law, except the definition includes “infliction of serious psychological harm to an individual.”<sup>137</sup>

Drafters of forced marriage criminal legislation must consider whether to criminalize only harmful acts used to force a victim to get married or to also prohibit more subtle coercive tactics that target the victim’s emotional or psychological state. For example, one forced marriage survivor recalled that after objecting to a marriage, her mother followed her around the house shouting and pounding on doors until the victim acquiesced.<sup>138</sup> This type of conduct would likely not fit under any of the U.S. definitions of coercion.<sup>139</sup> However, similar conduct would likely fit within the emotional or psychological parameters of coercion under the U.K. and Australian statutes.<sup>140</sup>

Forced marriage commentators have also advised that cultural norms, such as the expectation that women will get married by a certain age, impose such intense emotional pressure on some victims that they toe the line of the gray area on the continuum and may operate as coercion on their own.<sup>141</sup> Alanen explains, “[s]ocial and cultural dynamics can profoundly impact individuals’ decision-making and undermine the validity of consent.”<sup>142</sup> If the

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<sup>136</sup> FLA. STAT. ANN. § 787.06(2)(a). The definition also includes “Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined.” § 787.06(2)(a)(3).

<sup>137</sup> See MD. CODE, CRIM. CODE § 3-1201. A definition for coercion is not found in the human trafficking subsection of the Maryland Criminal Code but appears in the following Labor trafficking subsection. *Id.*

<sup>138</sup> Khatidja Chantler & Melanie McCarry, *Forced Marriage, Coercive Control, and Conducive Contexts: The Experiences of Women in Scotland*, 26(i) *Violence Against Women* 89–109, 97 (2020).

<sup>139</sup> See 22 U.S.C. § 7102(3); FLA. STAT. ANN. § 787.06(2)(a). The mother did not threaten or engage in any conduct that fit the Florida statute’s enumerated list. See *id.* Whether or not her conduct was coercion under the Maryland statute would depend on whether her conduct inflicted “serious” psychological harm. MD. CODE, CRIM. CODE § 3-1201.

<sup>140</sup> See *Criminal Code Act 1995* (Cth) § 270.1A (Austl.).

<sup>141</sup> TAHIRIH JUSTICE CENTER, NATIONAL CONSULTATION: SHOULD FORCED MARRIAGE BE A CRIME IN THE UNITED STATES? CONSULTATION REPORT, (June 1-2, 2016), <https://preventforcedmarriage.org/wp-content/uploads/2017/04/Consultation-Summary-ReportFinal.pdf> [<https://perma.cc/DV6G-YFB2>].

<sup>142</sup> Alanen, *supra* note 21, at 8. According to Alanen, this may occur in cases where the victim’s family hails from a country that generally has marginalizing views toward women even if the victim has integrated into Western culture. Similar norms have been imposed on non-immigrant women who live in isolated groups such as Warren Jeffs. *Id.*

victim's community exclusively imposes these norms, the pool of potential perpetrators who engaged in the coercive conduct would be too large to yield a prosecution.<sup>143</sup> In some cases, however, victims have reported grooming behaviors that could theoretically be punishable coercive conduct. For example, one victim said her parents started showing her photographs of men when she was a child in an alleged effort to condition her to accept a forced marriage.<sup>144</sup> This type of conduct could be comparable to coercive tactics like shaming, depending on how the law is drafted.

Because the primary pressures that overcome forced marriage victims' free will to oppose or refuse a marriage are often psychological and emotional, the Model Forced Marriage Statute will define coercion broadly to include such conduct.<sup>145</sup>

## ii. Fraud or Deception

Instead of applying coercive pressures such as threats or shaming, some perpetrators use deceptive tactics to trick the victim into getting married. For example, there have been reports of forced marriage victims being told their grandmother is on her deathbed and they must fly abroad to visit her, only to discover upon arrival that they are expected to get married, and their grandmother is healthy.<sup>146</sup> Alternatively, some victims have

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<sup>143</sup> *Id.* "In another scenario, the victim/survivor ostensibly chose her husband and consented to the marriage, based on a photograph she was provided of the man, but when she met him and his father, she changed her mind. In this case, she felt pressured to continue with the arrangements because of the coercion of the community and the threat of shame the family would face as a result of her refusing the marriage. In the above instances, it may appear as though the victim/survivors had a choice; however, this choice was superficial because of the emotional pressure placed on them." Samantha Lyneham & Samantha Bricknell, *When Saying No is Not an Option: Forced Marriage in Australia and New Zealand*, AUSTRALIAN GOVERNMENT 59, <https://www.aic.gov.au/sites/default/files/2020-05/rr11.pdf>.

<sup>144</sup> Chantler & McCarry, *supra* note 138, at 96.

<sup>145</sup> See HEIMAN AND SMOOT, *supra* note 14, at 2. Tahirih notes coercion takes forms such as manipulation and emotional blackmail. *Id.*

<sup>146</sup> SRI & RAJA, *supra* note 30, at 22. One forced marriage victim recalled that she only agreed to travel because she was told her grandmother was sick, but when she got there, she discovered she had been lied to and was told she would be married at the end of the week. MULTI-AGENCY PRACTICE GUIDELINES: PREVENTING AND RESPONDING TO FORCED MARRIAGE – UPDATE 2014 (2014), <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2014/10/forced-marriage-practitioner-guidance-update-2014/documents/multi-agency-practice-guidelines-preventing-responding-forced-marriage-update-2014/multi-agency-practice-guidelines-preventing-responding-forced->

reported agreeing to marry because they were promised benefits such as the opportunity to complete their educations, but those promises were never fulfilled.<sup>147</sup>

Under the U.S. federal, Maryland, and Australian laws, the perpetrator may engage in fraud or deception as alternative conduct to coercion.<sup>148</sup> Similarly, Florida includes luring or enticing a victim by fraud or deceit under its definition of coercion.<sup>149</sup> In the U.K., deception may only satisfy the required conduct if the perpetrator engages in such with the intent to cause the victim to leave the U.K. for a forced marriage.<sup>150</sup> This creates an additional intent requirement and would not apply to domestic forced marriages.<sup>151</sup> Australia's statute is the only sample that defines deception.<sup>152</sup> Under the law, deceive means to "mislead as to fact (including the intention of any person) or as to law, by words or other conduct."<sup>153</sup>

Drafters must consider, from both a policy and legal standpoint, whether a victim's non-consent because of an absence of knowledge about the marriage resulting from the perpetrator's trickery is comparable to a victim's ability to consent being overcome by coercive pressures imposed by a perpetrator. It appears that the U.K. drafters intended to prohibit only deceptive conduct designed to remove the victim from the U.K., but not deceptive conduct aimed at causing the victim to enter a domestic marriage.<sup>154</sup> Conversely, Australian drafters commented that deception was included to allow the statute to cover a "range of conduct (both physical and non-physical) that a person may use to cause a victim to enter a marriage without their full and free

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marriage-update-2014/govscot%3Adocument/00460555.pdf [https://perma.cc/5NB6-NLPL]. The victim believed the perpetrators knew she would be isolated once she arrived because she was deaf. *Id.*

<sup>147</sup> See U.S. DEP'T OF STATE, DIPLOMACY IN ACTION (2007) (stating that, "[s]ome families give children to adults, often relatives, who promise education and opportunity, but sell the children into exploitative situations instead").

<sup>148</sup> See 22 U.S.C. § 7102(11)(A); MD. CODE ANN., CRIM LAW § 3-1103(a)(1) (LexisNexis 2022); *Criminal Code Act 1995* (Cth) § 271.1 (Austl.).

<sup>149</sup> See FLA. STAT. ANN. § 787.06(2)(A)(6) (LexisNexis 2022).

<sup>150</sup> See Anti-Social Behaviour, Crime and Policing Act 2014, c. 12, § 121(3)(a) (Eng. & Wales).

<sup>151</sup> See *id.*

<sup>152</sup> See *Criminal Code Act 1995* (Cth) § 271.1 (Austl.).

<sup>153</sup> *Id.*

<sup>154</sup> See *supra* note 150.

consent.”<sup>155</sup> The model forced marriage statute I propose adopts Australia’s view under the reasoning that without knowledge, there is no consent to the marriage.

### iii. The Perpetrator’s Mental State

Three of the surveyed forced marriage statutes require the perpetrator to have a specific intent. Maryland’s statute requires the perpetrator to intend to use coercion or fraud to compel the victim to marry any person.<sup>156</sup> Similarly, in the U.K., the perpetrator must use the coercion for the purpose of causing the other person to enter the marriage and must also believe, or ought to reasonably believe, that the conduct is likely to cause the victim to enter the marriage without consent.<sup>157</sup> In Florida, the perpetrator must engage in the conduct for the purpose of exploiting that person. Exploitation is not defined under the statute, but it can be inferred that forced marriage itself is the intended exploitation of the victim.<sup>158</sup>

Interestingly, the Australian law does not specify a mental state. The Australian statute includes two forced marriage offenses: causing a person to enter a forced marriage and being a party to a forced marriage.<sup>159</sup> Under the statute, a perpetrator who is not a party to the marriage must engage in coercion or fraud that causes the victim to enter into a marriage without freely and

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<sup>155</sup> Explanatory Memorandum, Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Bill 2012 (Cth) 23 (Austl.).

<sup>156</sup> See MD. CODE ANN., CRIM LAW § 3-1103(a)(1) (LexisNexis 2022). A perpetrator also must knowingly take or detain the victim. See *id.*

<sup>157</sup> See Anti-Social Behaviour, Crime and Policing Act 2014, c. 12, § 121(1)(a-b) (Eng. & Wales). One commentator worried that under the U.K. statute, “it may be difficult to establish that the defendant engaged in conduct for the purpose of causing the victim to enter a marriage. Similarly, it may be difficult to prove that the defendant [practiced] deception with the intention of causing another person to leave the United Kingdom and that the defendant intended the other person to be subjected to conduct outside the United Kingdom that would be an [offense] if the victim were in England or Wales.” Gaffney-Rhys, *supra* note 37, at 290.

<sup>158</sup> See FLA. STAT. ANN. § 787.06(2)(d) (LexisNexis 2022). Florida’s statute applies to both intentional and reckless conduct, but the complicated structure of the statute and reliance on TVP-affected actions prevent these mental states from effectively applying to forced marriage crimes. See § 787.06(3).

<sup>159</sup> See *Criminal Code Act 1995* (Cth) § 270.7A-B (Austl.).

fully consenting.<sup>160</sup> A party to the forced marriage who is not the victim need only be in a marriage with a person who did not consent to it.<sup>161</sup>

How drafters choose to incorporate mental states into a forced marriage criminal law will depend on the structure of the surrounding statute. Suppose the mental state applies to the victim's consent as it does under the U.K. statute. In that case, an important consideration is the level of knowledge the perpetrator must have of the victim's objection to the marriage for their conduct to be punishable such as whether the perpetrator must have been informed that the victim did not consent, may have inferred it from the victim's behavior or surrounding circumstances and chose to proceed with the conduct, or may have been unaware of the victim's non-consent because of willful or conditioned ignorance.<sup>162</sup> One forced marriage victim said that she repeatedly expressed her objections to the marriage and believed her marriage was forced because her mother knew she didn't want to get married but instead proceeded with the conduct.<sup>163</sup> In another case, a victim was so upset about learning her family had decided it was time for her to get married that she started throwing up and visibly lost weight within three weeks.<sup>164</sup>

Requiring the perpetrator to intend that the victim marry without consent could make the statute inapplicable to family members who coerce the victim into marrying while remaining ambivalent about whether or not the victim consents, such as those in the latter example.<sup>165</sup> However, drafters must also consider whether family members who believe they are acting in the best interest of the victim or simply do not know what they are

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<sup>160</sup> See *id.* at 7A.

<sup>161</sup> See *id.* at 7B.

<sup>162</sup> See Anti-Social Behaviour, Crime and Policing Act 2014, c. 12, § 121(1)(b) (Eng. & Wales).

<sup>163</sup> See MEREDITH DANK ET AL., EXPLORATORY RESEARCH INTO THE INTERSECTION OF FORCED MARRIAGE, INTIMATE PARTNER VIOLENCE, AND SEXUAL VIOLENCE 8 (2018), <https://www.ojp.gov/pdffiles1/nij/grants/251485.pdf> [<https://perma.cc/8XGL-2HRP>].

<sup>164</sup> See *id.* at 10.

<sup>165</sup> See Aisha K. Gill & Heather Harvey, *Examining the Impact of Gender on Young People's Views of Forced Marriage in Britain*, 12(1) FEMINIST CRIMINOLOGY 72, 88 (2016). Research on forced marriage has indicated parents in certain affected communities do not believe it is morally wrong to force their children into marriage. See *id.* These individuals may also remain isolated in their communities, which prevents these views from being challenged. See *id.* at 93.

doing is wrong should be culpable.<sup>166</sup> Another critical consideration is family dynamics and cultural constructs. For example, in some cultures and communities, a mother's subordinate position to her husband might make her as powerless to object to her daughter's marriage as the daughter would be herself.

Alternatively, a strict liability crime could focus only on the perpetrator's coercive conduct and the victim's subjective absence of consent, but placing such a high burden of proof on the victim's mental state is likely to cause evidentiary issues.<sup>167</sup> Additionally, if the mental state applies to the use of coercion, requiring a purposeful mental state would mean the perpetrator would be required to intend such conduct to impose pressure on the victim that fits under the statute's definition of coercion. For example, under Maryland's statute, the perpetrator must intend to use coercion, which would require the prosecution to prove a defendant intended to engage in one of the enumerated methods of conduct, such as inflicting serious psychological harm.<sup>168</sup>

Mental states in forced marriage criminal law are arguably the most challenging problem to resolve because of the varying family structures and cultural influences that each come with unique considerations. The forced marriage model statute will require that perpetrators engage in coercion, *knowing* such conduct will likely result in the victim marrying without consent. Declining to include reckless or negligent mental states prevents the statute from punishing perpetrators who have been so strongly influenced by their backgrounds or societal norms that they are unable to understand that their conduct is causing harm. To avoid relying too heavily on subjective mental in a way that makes the burden of proof unworkable, the model statute allows the element of the

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<sup>166</sup> See Gaffney-Rhys, *supra* note 37, at 290. One commentator worried that under the U.K. statute, "it may be difficult to establish that the defendant engaged in conduct *for the purpose* of causing the victim to enter a marriage. Similarly, it may be difficult to prove that the defendant [practiced] deception *with the intention* of causing another person to leave the United Kingdom and that the defendant *intended* the other person to be subjected to conduct outside the United Kingdom that would be an [offense] if the victim were in England or Wales." *Id.* (emphasis added).

<sup>167</sup> See MD. CODE ANN., CRIM LAW § 3-1103 (LexisNexis 2022); *see also* MD. CODE ANN., CRIM LAW § 3-1201 (LexisNexis 2022). Professionals have worried that it may be difficult for prosecutors to prove evidence of harmful intent, especially if there is conflicting testimonial evidence from other family members. TAHIRIH JUSTICE CENTER, *supra* note 36.

<sup>168</sup> See MD. CODE ANN., CRIM LAW § 3-1103 (LexisNexis 2022); CRIM LAW § 3-1201.

coercive conduct itself to be proven without a mental state and requires only that the perpetrator be practically certain the conduct will result in a victim getting married, and that victim does not consent to that marriage.<sup>169</sup> As such, a prosecutor would not need to prove that, for example, the defendant's conduct inflicted emotional or psychological pressure on the victim.

#### iv. Who are the Perpetrators?

The next question drafters must ask is whether they wish to punish only those who engage in coercive conduct or if family or community members who indirectly assist in forcing the marriage are also to blame. The Australian statute applies to persons forcing a victim to marry or who are a party to a forced marriage.<sup>170</sup> The U.K. and Florida laws apply only to the person actually engaging in the coercive conduct.<sup>171</sup> However, forced marriage crimes often involve coercion from multiple family members, including extended family, and even the victim's broader community.<sup>172</sup>

For example, one forced marriage victim described how her uncles confiscated her passports, and later her aunt and grandmother told her that she was engaged to be married to a man in Pakistan.<sup>173</sup> While the uncles could likely be prosecuted under statutes such as Florida's, which expressly includes withholding government identification in its definition of coercion, it would be more difficult to charge the victim's aunt and grandmother unless the prosecution could prove the engagement announcement was emotional or psychological coercion under a statute that provides for it.<sup>174</sup>

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<sup>169</sup> See discussion *infra* Section IV.

<sup>170</sup> See *Criminal Code Act 1995* (Cth) § 270.7A-B (Austl.).

<sup>171</sup> See *Anti-Social Behaviour, Crime and Policing Act 2014*, c. 12, § 121(1)(a-b) (Eng. & Wales); *FLA. STAT. ANN.* § 787.06(2)(d) (LexisNexis 2022).

<sup>172</sup> See *SRI & RAJA*, *supra* note 30, at 24 (explaining that, in some cases, there are multiple abusers that can range from the immediate family, the extended family, and in some cases members of the community—hence further complicating the abuse).

<sup>173</sup> See *Roy*, *supra* note 41, at 20.

<sup>174</sup> See *FLA. STAT. ANN.* § 787.06(2)(A) (LexisNexis 2021).

Maryland is the only statute of the sample that applies to aiders and abettors. The U.S. Department of Justice's (DOJ) definition of aiding and abetting requires a person to have the specific intent to both facilitate the underlying crime by another and the intent of the substantive offense, assist or participate in the crime, and for the underlying offense to be completed.<sup>175</sup> Under this definition, the victim's aunt and grandmother could be prosecuted for assisting the more culpable family members with effectuating the marriage if they intended for the victim to get married and the marriage actually occurred.<sup>176</sup> Drafters may revise the DOJ's definition by, for example, eliminating the requirement that the crime be completed if they wish for the law to apply to third parties even if the law is applied preventatively before the marriage occurs.

The United Nations urges drafters to ensure forced marriage criminal legislation addresses the indirect or direct roles that may be played by multiple perpetrators. The model forced marriage statute adopts this sentiment and will apply to aiders and abettors but will leave the term undefined because prosecuting only actors who engage in the conduct may be sufficient to prevent a forced marriage from occurring.

### *B. The Victim*

#### i. Consent and the Victim's Mental State

Forced marriage laws both in the U.S. and abroad tend to focus on the perpetrator's intent.<sup>177</sup> In fact, Australia does not even allow a defendant to use the victim's consent to any element of the

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<sup>175</sup> U.S. DEPT' JUST., JUSTICE MANUAL: CRIMINAL RESOURCE MANUAL § 2474. ELEMENTS OF AIDING AND ABETTING (1998), <https://www.justice.gov/archives/jm/criminal-resource-manual-2474-elements-aiding-and-abetting> [<https://perma.cc/DWC5-CCDH>].

<sup>176</sup> See *id.*

<sup>177</sup> See discussion *infra*, Section III; see also MD. CODE ANN., CRIM LAW § 3-1103(a)(1) (LexisNexis 2022); Anti-Social Behaviour, Crime and Policing Act 2014, c. 12, § 121(1)(a-b) (Eng. & Wales).



crime as a defense.<sup>178</sup> Until the mid-1980s, courts in the U.K. interpreted coercion narrowly to mean immediate force or threatened force against “life, limb, or property” that undermines another person’s free will.<sup>179</sup> The coercion analysis later evolved to ask whether the coercion was such to “destroy the reality of consent and overbear the will of the individual.”<sup>180</sup> This evolution shifted the court’s focus from the perpetrator’s threatening conduct to whether the victim’s consent was absent as a result of the coercion.<sup>181</sup>

Commentators have warned that practitioners who attempt to apply a purely objective test for coercion instead of considering the subjective consent of the victim might find it difficult to determine whether the victim was able to exercise free will because coercive pressures may be imposed absent an explicit threat and “willful desire may range from implicit and internally-inhabited to obvious and ostentatious, and such signaling is profoundly mediated by intra-cultural communications and inter-cultural translations.”<sup>182</sup>

Another benefit of considering a subjective test for coercion is that requiring proof of the victim’s mental state might provide victims with more control over the prosecution. In U.S. states that have enforced controversial domestic violence frameworks such as no-drop policies and mandatory arrests, domestic violence victims have reported feeling that the system has substituted its judgment for their own.<sup>183</sup> Because of their tendency to shy away from legal intervention, victims of forced marriage require more control over the case’s outcome than has historically been awarded to victims of domestic violence.<sup>184</sup> For example, in the U.K., the Crown Prosecution Service considers factors such as if the available evidence is sufficient and whether the case will have an adverse

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<sup>178</sup> See *Criminal Code Act 1995* (Cth) § 270.11 (Austl.). The statute specifies that the purpose of this restriction is to “avoid doubt.” *Id.*

<sup>179</sup> Sundari Anitha & Aisha Gill, *Coercion, Consent and the Forced Marriage Debate in the UK*, 17 FEMINIST LEGAL STUD. 165, 169 (2009).

<sup>180</sup> *Id.* at 170.

<sup>181</sup> See *id.*

<sup>182</sup> WOMEN LIVING UNDER MUSLIM LAWS, CHILD, EARLY AND FORCED MARRIAGE: A MULTI-COUNTRY STUDY 8 (2013), <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/WLUML2.pdf> [<https://perma.cc/4R9S-RN7X>].

<sup>183</sup> See Deborah M. Weissman, *The Personal Is Political and Economic: Rethinking Domestic Violence*, 2007 BYU L. REV. 387, 397 (2007). A respondent to the DOJ study said forced marriage victims are scared and “would think their parents would go to jail” if they sought intervention.” Dank, *supra* note 163, at 13.

<sup>184</sup> See Weissman, *supra* note 183, at 397; see also Dank, *supra* note 163, at 13.

effect on the victim's mental health when deciding if the case should be prosecuted.<sup>185</sup> As such, it would be unlikely that a prosecution would go forward if the victim refused to testify or was distressed by the idea of going to court.<sup>186</sup>

In an effort to provide victims with as much control over the prosecution as possible, the Model Forced Marriage Statute will include the victim's subjective absence of consent as an element of the crime.

## ii. Preventative vs. Remedial Applications

This Note advocates for the primary purpose of forced marriage criminal legislation to be deterrence, and the Model Forced Marriage Statute does not incorporate a retributive influence because the majority of forced marriage victims wish to escape their situations without seeing their families prosecuted. However, drafters must also consider whether a forced marriage criminal statute may be used to help victims escape an already existing marriage and, if so, which parties are liable.

The U.K. and Maryland statutes apply only to those who engage in coercive conduct with the intent that the victim enters a marriage, but the marriage does not need to be completed.<sup>187</sup> Maryland's statute also applies to aiding and abetting.<sup>188</sup> Florida's statute includes attempts to commit the crime, so also may be applied either preventatively or remedially.<sup>189</sup> Conversely, Australia requires the marriage to have taken place, prohibiting it from being used to intervene in and impending forced marriage.<sup>190</sup> Once the marriage occurs, either the party who engaged in the coercive conduct that caused the marriage or the party to the marriage may be prosecuted.<sup>191</sup>

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<sup>185</sup> Gaffney-Rhys, *supra* note 37, at 275.

<sup>186</sup> *See id.*

<sup>187</sup> *See* Anti-Social Behaviour, Crime and Policing Act 2014, c. 12, § 121(1)(a) (Eng. & Wales); *see also* MD. CODE ANN., CRIM LAW § 3-1103 (LexisNexis 2022).

<sup>188</sup> *See* Anti-Social Behaviour, Crime and Policing Act 2014, c. 12, § 121(1)(a) (Eng. & Wales); *see also* MD. CODE ANN., CRIM LAW § 3-1103 (LexisNexis 2022).

<sup>189</sup> *See* FLA. STAT. ANN. § 787.06(3) (LexisNexis 2021).

<sup>190</sup> *See Criminal Code Act 1995* (Cth) § 270.7A-B (Austl.).

<sup>191</sup> *See id.*

The Model Forced Marriage Statute will apply both before and after the marriage has occurred and prohibited conduct includes aiding and abetting. The spouse of a forced marriage victim may be prosecuted if they assisted in causing the victim to get married, but the Model Statute does not seek to punish persons who were not involved in applying coercive pressures to the victim that removed their ability to decline the marriage.

### *C. Additional Considerations*

The following subsections discuss considerations that drafters of forced marriage criminal legislation are encouraged to consider. However, these subjects require further study and discussion that go beyond the Scope of this Note so will not be integrated into the Model Forced Marriage Statute.

#### *i. Non-Legal Marriage Ceremonies*

In some cases, victims are forced into marriage-like situations that are not legally binding.<sup>192</sup> These marriages often commence with a cultural or symbolic ceremony. The U.S. statutes do not account for non-legal marriages. However, the U.K. statute defined marriage as “any religious or civil ceremony of marriage (whether or not legally binding).” According to the Australian government, forced marriage crimes apply to “marriages and relationships [recognized] under Australian law, marriages and relationships [recognized] by the laws of other countries, religious marriages, and cultural and customary marriages.”<sup>193</sup> Drafters must weigh the prevalence of non-legal forced marriages against

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<sup>192</sup> See SAMANTHA LYNEHAM & SAMANTHA BRICKNELL, WHEN SAYING NO IS NOT AN OPTION: FORCED MARRIAGE IN AUSTRALIA AND NEW ZEALAND 59 (Australian Inst. of Criminology ed., 2018), <https://www.aic.gov.au/sites/default/files/2020-05/rr11.pdf>.

<sup>193</sup> *Id.* at 13. Florida’s forced marriage statute incorporates crimes of sex trafficking and forced labor, so its sentencing guidelines are not relevant to this discussion. See FLA. STAT. ANN. § 787.06(3) (LexisNexis 2021).

the danger of an overbroad law that prohibits, for example, forced cohabitation.<sup>194</sup>

## ii. Sentencing and Aggravated Offenses

When determining appropriate sentencing parameters for forced marriage crimes, drafters must balance the needs of both victims who would be deterred from coming forward if they believed a severe sentence would be imposed on their family members or loved ones and victims who require protection from those who committed a crime against them. For example, an Australian forced marriage victim said members of her family found her wherever she went and were undeterred by limited prison sentences.<sup>195</sup> Australia and the U.K. both impose a maximum sentence of seven years for forced marriage offenses.<sup>196</sup> Maryland has a maximum sentence of twenty-five years or a fine not exceeding \$15,000 or both.<sup>197</sup>

Drafters may also consider imposing more severe penalties for certain conduct or circumstances. For example, Australia raises its maximum prison sentence to nine years if the perpetrator during the commission of the crime subjected the victim to “cruel, inhuman or degrading treatment” or either engaged in conduct that put the victim in danger of death or serious harm or was reckless as to such.<sup>198</sup> Florida’s statute also includes an aggravated sentence if the perpetrator during the commission of the crime caused “great bodily harm, permanent disability, or permanent disfigurement to another person.”<sup>199</sup> Additionally, Australia considers a forced marriage crime to be an aggravated offense if the victim is under the age of eighteen.<sup>200</sup>

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<sup>194</sup> LYNEHAM & BRICKNELL, *supra* note 192, at 13. I refer to these potential statutes as overbroad because I assume that drafters do not wish to criminalize forced cohabitation. *Id.*

<sup>195</sup> *See id.* at 59.

<sup>196</sup> *See Criminal Code Act 1995* (Cth) § 270.7B (Austl.); *see also* Anti-Social Behaviour, Crime and Policing Act 2014, c. 12, § 121(9)(b) (Eng. & Wales).

<sup>197</sup> MD. CODE ANN., CRIM LAW § 3-1103(b) (LexisNexis 2022).

<sup>198</sup> *See Criminal Code Act 1995* (Cth) § 270.7B-8 (Austl.).

<sup>199</sup> FLA. STAT. ANN. § 787.06(8) (LexisNexis 2021).

<sup>200</sup> *See Criminal Code Act 1995* (Cth) § 270.7B-8 (Austl.).

#### IV. THE MODEL STATUTE

##### **Forced Marriage**

(1) Any person who coerces or defrauds, or attempts to coerce or defraud, another person to enter a marriage knowing the likely result will be a marriage entered into without that person's consent, and that person did not consent to the marriage, or aids and abets another to violate this provision, is guilty of forced marriage, whether or not the marriage has occurred.

a. Coercion means any conduct intended to cause the victim to enter into the marriage.

b. Consent means the victim's subjective desire to get married to a specific person, at a specific time, and under specific circumstances.

#### CONCLUSION

Complicated problems sometimes require simple solutions. Despite the potential apprehension of forced marriage victims to report their families to the authorities, U.S. states have the opportunity to amend the law so it recognizes the harm that victims endure. These laws could be a light in the dark for forced marriage victims who either do not believe there are legal solutions or are unaware that they are experiencing a form of abuse.

Valid arguments have been made that criminal laws are not enough to drive social change, and more research on forced marriage is needed before criminal sanctions are imposed.<sup>201</sup> While this Note proposes a criminal solution and calls for states to consider criminalization, U.S. states must take a multi-faceted approach to forced marriage, including a review of the gaps in current civil remedies, opportunities to improve victim resources,

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<sup>201</sup> Alanen, *supra* note 21, at 127.

and avenues to raising awareness on the issue.<sup>202</sup> States must also strongly consider providing an alternative remedy for victims who do not want to go through the criminal justice system.<sup>203</sup> Most importantly, states must ensure these solutions incorporate the input of forced marriage victims and their advocates to better address the nuances of the issue and provide tailored remedies.<sup>204</sup>

As such, this Note encourages state legislators to tirelessly consult with stakeholders and the community when drafting forced marriage laws and to make the utmost effort to ensure that input from the victims of forced marriage themselves is their guiding force.

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<sup>202</sup> *Id.* (“The key to effectively tackling and preventing forced marriage is to integrate a diverse range of activities and measures, such as support services, awareness raising, educational initiatives, training and campaigning. Prevention activities should address the different needs of victims in an accessible manner.”). For example, the U.K. Home Office has a Forced Marriage Unit that operates a public helpline and collects data on forced marriage cases. See GOV.UK, *Forced Marriage* (last updated Mar. 23, 2022), <https://www.gov.uk/guidance/forced-marriage>.

<sup>203</sup> For example, England provides protection orders specifically tailored to forced marriage victims. See GOV.UK, *Apply for a Forced Marriage Protection Order*, <https://www.gov.uk/apply-forced-marriage-protection-order> (last visited Sept. 5, 2022).

<sup>204</sup> TAHIRIH JUSTICE CENTER, POLICY RECOMMENDATIONS TO ADDRESS FORCED MARRIAGE IN THE UNITED STATES (2016), <https://1t1s613brjl37btxk4eg60v-wpengine.netdna-ssl.com/wp-content/uploads/2015/03/FMI-Policy-Recommendations.pdf>.