

D R A F T
FOR DISCUSSION ONLY

PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

April 2012 Draft for Conference Calls

(Without Prefatory Note)

Copyright 2012
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

March 30, 2012

**DRAFTING COMMITTEE ON PREVENTION OF AND REMEDIES
FOR HUMAN TRAFFICKING**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

STEVE WILBORN, 306 Tower Dr., Shelbyville, KY 40065, *Chair*

ANITA RAMASASTRY, University of Washington School of Law, William H. Gates Hall, Box 353020, Seattle, WA 98195-3020, *Vice-Chair*

STEPHEN Y. CHOW, 125 Summer St., Boston, MA 02110-1624

SUE ANN DERR, Oklahoma House of Representatives, State Capitol Bldg., 2300 N. Lincoln, Room 109, Oklahoma City, OK 73105

NORMAN L. GREENE, 60 E. 42nd St., 39th Floor, New York, NY 10165-0006

H. LANE KNEEDLER, 901 E. Byrd St., Suite 1700, Richmond, VA 23219

ESSON McKENZIE MILLER, JR., 1503 Confederate Ave., Richmond, VA 23227

MARIA DEL MAR ORTIZ-RIVERA, Office of Legislative Services, Legislative Assembly de Puerto Rico, P.O. Box 6341, San Juan, PR 00902-3986

ROBERT J. TENNESSEN, 2522 Thomas Ave. S, Minneapolis, MN 55405

NORA WINKELMAN, Office of Chief Counsel, Room 620 Main Capitol, Harrisburg, PA 17120

SUSAN DELLER ROSS, Georgetown University Law Center, 600 New Jersey Ave. NW, Washington, DC 20001, *Reporter*

EX OFFICIO

MICHAEL HOUGHTON, P.O. Box 1347, 1201 N. Market St., 18th Floor, Wilmington, DE 19899, *President*

STEVE WILBORN, 306 Tower Dr., Shelbyville, KY 40065, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

MARKUS FUNK, 1900 16th St., Suite 1400, Denver, CO 80202-5255, *ABA Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

Primary support of the ULC Drafting Committee on the Prevention of and Remedies for Human Trafficking has been provided by a generous grant from LexisNexis. The positions taken in the draft are those of the ULC drafting committee and do not necessarily reflect the views of LexisNexis.

PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

TABLE OF CONTENTS

SECTION 1. SHORT TITLE.	1
SECTION 2. DEFINITIONS.	1
SECTION 3. HUMAN TRAFFICKING.	5
SECTION 4. FORCED LABOR OR SERVITUDE.	6
SECTION 5. SEXUAL SERVITUDE OF ADULT.	7
SECTION 6. SEXUAL SERVITUDE OF MINOR.	7
SECTION 7. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.	8
SECTION 8. DEBT BONDAGE.	9
SECTION 9. MISUSE OF AN IDENTIFICATION DOCUMENT.	10
SECTION 10. BENEFITING FROM TRAFFICKING OFFENSE.	10
SECTION 11. BUSINESS LIABILITY.	11
[SECTION 12. VICTIM'S SEXUAL BEHAVIOR OR PREDISPOSITION.	13
SECTION 14. SECTION 14. MOTION TO VACATE ONVICTION.	14
SECTION 13. VICTIM DEFENSES.	13
SECTION 15. RESTITUTION.	14
SECTION 16. FORFEITURE.	15
SECTION 17. AGGRAVATING CIRCUMSTANCES.	18
SECTION 18. STATUTE OF LIMITATIONS FOR CRIMINAL PROSECUTION.	20
SECTION 19. VICTIM CONFIDENTIALITY.	20
SECTION 20. CIVIL ACTION.	21
SECTION 21. ESTABLISHMENT OF ANTI-HUMAN TRAFFICKING [TASK FORCE, COUNCIL, OR COORDINATOR].	21
SECTION 22. DUTIES.	22
SECTION 23. TRAINING.	23
SECTION 24. DISSEMINATION OF HOTLINE INFORMATION.	23
SECTION 25. VICTIM SERVICES.	25
SECTION 26. VICTIM ELIGIBILITY FOR SERVICES.	26
SECTION 27. STATE LAW ENFORCEMENT AGENCY PROTOCOL.	28
SECTION 28. STATE GRANTS TO SERVICE PROVIDERS.	29
SECTION 29. UNIFORMITY OF APPLICATION AND CONSTRUCTION.	30
[SECTION 30. SEVERABILITY.	30
SECTION 31. EFFECTIVE DATE.	30

1 **PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Prevention of and
3 Remedies for Human Trafficking Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Abuse of the law or legal process” means the use or threatened use of a law or legal
6 process, whether administrative, civil, or criminal, in a manner or for a purpose for which the law
7 or process was not designed, to exert pressure on an individual to cause the individual to take
8 some action or refrain from taking some action.

9 (2) “Benefit” means anything of value.

10 (3) “Business entity” means a corporation, business trust, estate, trust, partnership,
11 limited liability company, association, joint venture, or any other legal or commercial entity; it
12 does not include a public corporation, government or governmental subdivision, agency, or
13 instrumentality.

14 (4) “Coercion” includes:

15 (A) the use or threat of force, abduction, serious harm to, or physical restraint
16 against an individual;

17 (B) the use of a plan, pattern, or fraudulent statement with intent to cause an
18 individual to believe that failure to perform an act will result in serious harm to or physical
19 restraint against an individual;

20 (C) the abuse or threatened abuse of the law or legal process;(D) the abuse of a
21 position of power;

22 (D) taking advantage of a position of vulnerability;

23 (E) providing to an individual or controlling an individual’s access to a controlled

1 substance;

2 (F) the destruction of, taking of, or the threat to destroy or take an individual's
3 identification document; and

4 (G) the use of an individual's personal services as payment or satisfaction for a
5 real or purported debt if:

6 (i) the reasonable value of the services is not applied toward the
7 liquidation of the debt;

8 (ii) the length of the services is not limited and their nature is not defined;

9 (iii) the principal amount of the debt does not reasonably reflect the value
10 of the items or services for which the debt was incurred; or

11 (iv) the individual is prevented from acquiring accurate and timely
12 information about the disposition of the debt.

13 (5) "Commercial sexual services" includes sexual services for which anything of value is
14 given to, promised, or received by a person.

15 (6) "Deception" includes:

16 (A) a person's creation or confirmation of an individual's impression of a material
17 fact or event which is false and which the person knows or has reason to believe is false,

18 including:

19 (i) the nature of labor or services to be provided;

20 (ii) the fundamental conditions of labor; or

21 (iii) the extent to which the individual will be free to leave the individual's
22 place of residence; and

23 (B) the promise of a benefit to or performance of a service to an individual which

1 the person does not intend to be delivered or performed.

2 (7) “Interagency task force on human trafficking, human trafficking council, or human
3 trafficking coordinator in an existing state agency” means the entity established in Section 21,
4 with the duties established in Section 22.

5 (8) “Identification document” includes a passport, driver’s license, immigration
6 document, travel document, and any other government-issued identification document, including
7 a document issued by a foreign government.

8 (9) “Labor or services” means activity having economic value.

9 (10) “Person” means an individual, corporation, business trust, estate, trust, partnership,
10 limited liability company, association, joint venture, or any other legal or commercial entity; it
11 does not include a public corporation, government or governmental subdivision, agency, or
12 instrumentality.

13 **Alternative A (Drafting Committee decision with minor Style Committee changes)**

14 (11) “Serious harm” means any harm, whether physical or nonphysical, including
15 psychological, economic, or reputational, that would compel a reasonable person of the same
16 background and in the same circumstances as the individual to perform or continue performing
17 labor or services or sexual services to avoid incurring the harm.

18 **Alternative B (Style Committee suggestion before DC meeting)**

19 (11) “Serious harm” means harm the threat of which to an individual is sufficiently
20 serious, under all the circumstances, to compel a reasonable person of the same background and
21 in the same circumstances as the individual to perform or continue performing labor or services
22 or sexual services to avoid incurring the harm.

1 **Comment**

2 The Style Committee recommends stating that harm can be physical or nonphysical, including
3 psychological, economic, or reputational, in the Comments, not in the Act.
4

5 **End of Alternatives**

6 (12) “Sexual activity” includes [sexual intercourse, cunnilingus, fellatio, anal intercourse,
7 intrusion by any object into the genital or anal opening of another individual’s body, and the
8 stimulation by hand or an object of another individual’s genitals or breasts, for the purpose of
9 arousing or gratifying the sexual desire of any individual] [the acts set forth in [citation to
10 sections of state law defining unlawful sexual activity]].

11 (13) “Sexual services” include sexual activity and sexually-explicit performances, such as
12 erotic dancing and participation in the production of pornographic images.

13 (14) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
14 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
15 the United States.

16 (15) “Victim” means an individual who has been subjected to an offense that violates
17 this [act], regardless of whether a perpetrator is identified, apprehended, prosecuted, or
18 convicted.

19 **Comment**

20 [Reserved] Subsections 2(4)(D) (coercion by abuse of a position of power) and 2(4)(E)
21 (coercion by abuse of a position of vulnerability) refer to taking advantage of an individual’s
22 belief that there is no alternative to submitting to the will of a person. This belief may be the
23 result of:

- 24 (1) the individual’s having entered the country illegally or without proper documentation;
25 (2) the individual’s pregnancy;
26 (3) the individual’s physical or mental disease or disability;
27 (4) the individual’s reduced capacity to form judgment by virtue of being a minor,
28 illness, infirmity, or physical or mental disability;
29 (5) a promise or the giving of a payment or benefit to a person having authority over the
30 individual; or

1 (6) the abuse of a position of trust with respect to the individual.

2
3 **SECTION 3. HUMAN TRAFFICKING.**

4 (a) A person is guilty of human trafficking in the first degree when the person
5 intentionally recruits, transports, transfers, harbors, receives, provides, obtains, isolates,
6 maintains, or entices an individual for the purpose of:

7 (1) forced labor or servitude in violation of Section 4;

8 (2) sexual servitude in violation of Section 5; or

9 (3) sexual servitude of an individual under eighteen years old in violation of
10 Section 6.

11 (b) Human trafficking in the first degree is a [class b felony] unless the victim is under
12 eighteen years old in which case it is a [class a felony].

13 (c) A person is guilty of human trafficking in the second degree when the person
14 knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains,
15 or entices an individual for the purpose of:

16 (1) forced labor or servitude in violation of Section 4;

17 (2) sexual servitude in violation of Section 5; or

18 (3) sexual servitude of an individual under eighteen years old in violation of
19 Section 6.

20 (d) Human trafficking in the second degree is a [class c felony] unless the victim is under
21 eighteen years old in which case it is a [class b felony].

22 (e) A person is guilty of human trafficking in the third degree when the person wantonly
23 or recklessly recruits, transports, transfers, harbors, receives, provides, obtains, isolates,
24 maintains, or entices an individual for the purpose of:

(1) forced labor or servitude in violation of Section 4;

(2) sexual servitude in violation of Section 5; or

(3) sexual servitude of an individual under 18 years old in violation of Section 6.

(f) Human trafficking in the third degree is a [class d felony] unless the victim is under eighteen years old in which case it is a [class c felony].

Legislative Note: Some states have amended existing racketeering (RICO) statutes to include the offense of human trafficking as a predicate offense. It is recommended that a state add human trafficking as a predicate racketeering offense if it has not already done so.

Comment

[Reserved]

SECTION 4. FORCED LABOR OR SERVITUDE.

(a) A person is guilty of forced labor or servitude in the first degree when the person intentionally uses coercion, deception, or fraud to compel an individual to provide labor or services.

(b) Forced labor or servitude in the first degree is a [class b felony] unless the victim is under eighteen years old in which case it is a [class a felony].

(c) A person is guilty of forced labor or servitude in the second degree when the person knowingly uses coercion, deception, or fraud to compel an individual to provide labor or services.

(d) Forced labor or servitude in the second degree is a [class c felony] unless the victim is under eighteen years old in which case it is a [class b felony].

(e) A person is guilty of forced labor or servitude in the third degree when the person wantonly or recklessly uses coercion, deception, or fraud to compel an individual to provide labor or services.

(f) Forced labor or servitude in the third degree is a [class d felony] unless the victim is under eighteen years old in which case it is a [class c felony].

Comment

[Reserved]

SECTION 5. SEXUAL SERVITUDE OF ADULT.

(a) A person is guilty of sexual servitude of an adult in the first degree when the person intentionally uses coercion, deception, or fraud to compel an individual eighteen years of age or older to engage in commercial sexual services.

(b) Sexual servitude of an adult in the first degree is a [class b felony].

(c) A person is guilty of sexual servitude of an adult in the second degree when the person knowingly uses coercion, deception, or fraud to compel an individual eighteen years of age or older to engage in commercial sexual services.

(d) Sexual servitude of an adult in the second degree is a [class c felony].

(e) A person is guilty of sexual servitude of an adult in the third degree when the person wantonly or recklessly uses coercion, deception, or fraud to compel an individual eighteen years of age or older to provide commercial sexual services.

(f) Sexual servitude of an adult in the third degree is a [class d felony].

Comment

[Reserved]

SECTION 6. SEXUAL SERVITUDE OF MINOR.

(a) A person is guilty of sexual servitude of a minor in the first degree when the person intentionally offers, obtains, procures, or provides an individual less than eighteen years of age to engage in commercial sexual services.

1 (b) Sexual servitude of a minor in the first degree is a [class a felony].

2 (c) A person is guilty of sexual servitude of a minor in the second degree when the person
3 knowingly offers, obtains, procures, or provides an individual less than eighteen years of age to
4 engage in commercial sexual services.

5 (d) Sexual servitude of a minor in the second degree is a [class b felony].

6 (e) A person is guilty of sexual servitude of a minor in the third degree when the person
7 wantonly or recklessly offers, obtains, procures, or provides an individual less than eighteen
8 years of age to engage in commercial sexual services.

9 (f) Sexual servitude of a minor in the third degree is a [class c felony].

10 (g) It is not a defense in a prosecution under this section that the individual consented to
11 engage in commercial sexual services or that the defendant reasonably believed the individual
12 was at least 18 years of age.

13 **Comment**

14 [Reserved]

15 **SECTION 7. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.**

16 (a) A person is guilty of patronizing a victim of sexual servitude in the first degree when
17 the person pays, agrees to pay, or offers to pay anything of value so that the person or another
18 may engage in sexual activity with an individual when the person knows that the individual is a
19 victim of sexual servitude in violation of Sections 5 or 6.

20 (b) Patronizing a victim of sexual servitude in the first degree is a [class d felony] unless
21 the victim is under eighteen years of age in which case it is a [class c felony].

22 (c) A person is guilty of patronizing a victim of sexual servitude in the second degree
23 when the person pays, agrees to pay, or offers to pay anything of value so that the person or

1 another may engage in sexual activity with an individual when the person wantonly or recklessly
2 disregards that the individual is a victim of sexual servitude in violation of Sections 5 or 6.

3 (d) Patronizing a victim of sexual servitude in the second degree is a [class a
4 misdemeanor] unless the victim is under eighteen years of age in which case it is a [class d
5 felony].

6 **Comment**

7
8 [Reserved] This section does not preclude a prosecution under [state statutory rape law].
9 [The Style Committee recommends putting former subsection (c) in a Comment.]

10 **SECTION 8. DEBT BONDAGE.**

11
12 (a) A person is guilty of debt bondage in the first degree when the person knowingly uses
13 an individual's personal services in payment or satisfaction for a debt, whether real or purported,
14 if the reasonable value of the services is not applied toward the liquidation of the debt; the length
15 of the services is not limited and their nature is not defined; the principal amount of the debt does
16 not reasonably reflect the value of the items or services for which the debt was incurred; or the
17 individual is prevented from acquiring accurate and timely information about the disposition of
18 the debt.

19 (b) Debt bondage in the first degree is a [class felony] unless the victim is under eighteen
20 years of age in which case it is a [class felony].

21 (c) A person is guilty of debt bondage in the second degree when the person wantonly or
22 recklessly uses an individual's personal services in payment or satisfaction for a debt, whether
23 real or purported, if the reasonable value of the services is not applied toward the liquidation of
24 the debt; the length of the services is not limited and their nature is not defined; the principal
25 amount of the debt does not reasonably reflect the value of the items or services for which the
26 debt was incurred; or the individual is prevented from acquiring accurate and timely information

about the disposition of the debt.

(d) Debt bondage in the second degree is a [class misdemeanor] unless the victim is under eighteen years of age in which case it is a [class felony].

Comment

[Reserved]

SECTION 9. MISUSE OF AN IDENTIFICATION DOCUMENT.

(a) A person is guilty of misuse of an identification document when the person, while committing, or with intent to commit, an offense under this [act]:

(1) knowingly destroys, takes, possesses, or threatens to destroy, take, or possess an identification document, whether real or purported;

(2) uses coercion, deception, or fraud to induce an individual to use a false or altered identification document; or

(3) without lawful authority makes or alters an identification document.

(b) Misuse of an identification document is a [class __felony].

Comment

[Reserved]

SECTION 10. BENEFITING FROM TRAFFICKING OFFENSE.

(a) A person is guilty of benefiting from a trafficking offense if the person receives a benefit from participation in a venture which has violated Sections 3 through 11.

(b) Benefiting from a trafficking offense is a [class felony].

Comment

[Reserved]

1 **SECTION 11. BUSINESS LIABILITY.**

2 (a) In this section, “agent” means a person that is authorized to act on behalf of a business
3 entity.

4 (b) A business entity may be prosecuted for an offense under this [act] if:

5 (1) an agent knowingly engages in conduct that constitutes an offense under this
6 [act] while acting within the scope of employment and for the benefit of the business entity; or

7 (2) an employee of the entity engages in conduct that constitutes an offense under
8 this [act] and the commission of the offense was part of a pattern of illegal activity for the
9 benefit of the entity which an agent knew was occurring, or recklessly disregarded, and failed to
10 take effective action to stop.

11 (c) It is an affirmative defense to a prosecution of a business entity under subsection

12 (b)(2) if the entity proves by a preponderance of the evidence that the entity had in place
13 adequate procedures, including an effective complaint procedure, designed to prevent persons
14 associated with the business entity from undertaking the conduct and to correct promptly a
15 violation of this [act].

16 (d) The court may consider the severity of the business entity’s offense and order
17 enhanced penalties in addition, including:

18 (1) a fine of not more than [\$1,000,000];

19 (2) disgorgement of profit; or

20 (3) debarment from government contracts.

21 **Alternative A**

22 [Add the following Comment, without a subsection (e)]

1 **Comment**

2 [Reserved] In considering whether a business entity has “adequate procedures” under subsection
3 (c), prosecutors and courts should consider the following kinds of fact-specific issues:

- 4 • Are the company’s procedures proportionate to the exploitation risks it faces and
5 the nature, scale, and complexity of the company’s business?
- 6 • Are the procedures practical, clear, and accessible?
- 7 • Are the procedures effectively implemented and enforced?
- 8 • Has the company, through trainings or otherwise, promoted a meaningful, top-
9 down culture of compliance, and is the anti-exploitation policy communicated clearly to
10 all levels of management, the employees, and transaction partners (namely, agents,
11 intermediaries, joint venture partners, etc.)?
- 12 • Does the company engage in regular and comprehensive assessments of the
13 [supply chain] risks it is facing and of its anti-exploitation policies and procedures? Does
14 the company engage in appropriate due diligence relating to its actual and potential
15 transaction partners?

16 **Alternative B**

17 [Add a new subsection (e), with the same Comment as above.]

18
19 (e) The [appropriate state agency] shall publish guidelines concerning the factors a
20 business entity should consider in developing adequate procedures to comply with subsection
21 (c).

22 **Comment**

23 [Reserved In considering whether a business entity has “adequate procedures” under subsection
24 (c), prosecutors and courts should consider the following kinds of fact-specific issues:

- 25 • Are the company’s procedures proportionate to the exploitation risks it faces and
26 the nature, scale, and complexity of the company’s business?
- 27 • Are the procedures practical, clear, and accessible?
- 28 • Are the procedures effectively implemented and enforced?
- 29 • Has the company, through trainings or otherwise, promoted a meaningful, top-
30 down culture of compliance, and is the anti-exploitation policy communicated clearly to
31 all levels of management, the employees, and transaction partners (namely, agents,
32 intermediaries, joint venture partners, etc.)?
- 33 • Does the company engage in regular and comprehensive assessments of the
34 [supply chain] risks it is facing and of its anti-exploitation policies and procedures? Does
35 the company engage in appropriate due diligence relating to its actual and potential
36 transaction partners?

37 Subsection (e) and these questions are drawn from those developed under the U.K. Bribery Act,
38 2010. Section 9 of that Act states that “(1) The Secretary of State must publish guidance about
39 procedures that relevant commercial organisations can put in place to prevent persons associated
40
41
42

1 with them from bribing as mentioned in section 7(1).” For relevant questions under that Act, see
2 the Ministry of Justice “Guidance” on the UK Bribery Act, 2010, at
3 <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf> .
4

5 **End of Alternatives**

6
7 **[SECTION 12. VICTIM'S SEXUAL BEHAVIOR OR PREDISPOSITION.** In a
8 prosecution, or a civil action for damages, for an offense under this [act], either of which
9 involves evidence about subjecting the alleged victim to sexual servitude, reputation or opinion
10 evidence of the past sexual behavior of the alleged victim is not admissible. Evidence of an
11 alleged victim's past sexual behavior other than reputation or opinion evidence also is not
12 admissible, unless such evidence other than reputation or opinion evidence is admitted in
13 accordance with [state rape shield evidence rule] and is constitutionally required to be admitted.]

14 **Comment**

15 [Reserved] [Section 12 is a new draft to replace the long draft Section 214, which was
16 designed to reflect the state rape shield law. The Committee asked for a way to say that the state
17 rape shield law applies. This version is drawn from the D.C. human trafficking provision on this
18 issue.]
19

20 **SECTION 13. VICTIM DEFENSES.**

21 (a) A victim is not criminally liable for illegal sexual activity committed as a direct result
22 of being a victim.

23 (b) It is an affirmative defense in a prosecution for an offense that the defendant:

24 (1) is a victim; and

25 (2) committed the offense under a reasonable apprehension created by another
26 person that if the defendant did not commit the act, the person would inflict serious harm on the
27 defendant, a member of the defendant’s family, or a close associate.

28 (c) If a victim who is not criminally liable because of subsection (a) is less than [18]
29 years of age, the victim must be [presumed a Child in Need of Protection to be] treated in

1 accordance with [applicable state juvenile program].

2 **Comment**

3 [Reserved]

4 **SECTION 14. MOTION TO VACATE CONVICTION.** At any time after the entry
5 of a conviction, the court in which it was entered may vacate such conviction if the defendant's
6 participation in the offense is found to have been the result of having been a victim. Official
7 documentation of the defendant's status as a victim at the time of the offense from a federal,
8 state, or local government agency shall create a presumption that the defendant's participation in
9 the offense was a result of having been a victim, but shall not be required for granting a motion
10 under this section.

11 **Comment**

12 [Reserved] [Section 14 reinstates the long draft Section 217.]

13 **SECTION 15. RESTITUTION.**

14 (a) The court shall order a person convicted of an offense under Sections 3 through 11 to
15 pay restitution to any victim including:

16 (1) except as otherwise provided in paragraph (2), an amount equal to the greater
17 of:

18 (A) the gross income or value to the defendant of the victim's labor or
19 services, including sexual services, not reduced by expenses the defendant incurred as a result of
20 maintaining the victim; or

21 (B) the value of the victim's labor or services calculated under the
22 minimum wage and overtime provisions of applicable state and federal law.

23 (2) if it is not possible or in the best interest of the victim to compute the values

under paragraph (1), the equivalent of the value of the victim's labor or services if the victim had provided labor or services that were subject to the minimum wage and overtime provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., or [state minimum wage and overtime provisions]; and

(3) costs and expenses actually incurred by the victim as a result of the offense for:

- (A) medical services;
- (B) therapy or psychological counseling;
- (C) temporary housing;
- (D) transportation;
- (E) childcare;
- (F) physical and occupational therapy or rehabilitation;
- (G) funeral, interment, and burial services in the case of an offense resulting in death or in bodily injury that leads to death;
- (H) attorney's fees and other legal costs; and
- (I) any other costs the victim incurred.

(b) The court may order restitution under subsection (a) even if the victim is absent from the jurisdiction.

Comment

[Reserved]

SECTION 16. FORFEITURE.

(a) The court shall order a person convicted of an offense under Sections 3 through 11 to forfeit:

1 (1) any interest in real or personal property that was used or intended to be used to
2 commit or to facilitate the commission of the offense; and

3 (2) any interest in real or personal property constituting or derived from proceeds
4 that the person obtained, directly or indirectly, as a result of the offense.

5 (b) Proceeds of a public sale or auction of property forfeited under subsection (a) must be
6 distributed in the following order:

7 (1) the amount necessary to pay court-ordered restitution must be applied to pay
8 that restitution;

9 (2) the amount necessary to pay a civil award to a victim entered against the
10 person by the time the forfeiture occurs must be applied to pay the civil award;

11 (3) if a remainder exists, of the remainder:

12 (A) twenty percent to the [state's crime victims compensation fund];

13 (B) forty percent to providers of free or low-cost services to human
14 trafficking victims in the [county, parish, city, town, or municipality] where the conviction took
15 place; and

16 (C) forty percent to the law enforcement and prosecuting agencies that
17 obtained the conviction.

18 **Comment**

19 [Reserved]

20 **Alternative A**

21 **SECTION 17. SENTENCE ENHANCEMENT.** Except as otherwise provided by the
22 law of this state other than this [act], in imposing a sentence for an offense under Sections 3
23 through 11 the court may impose an enhanced penalty of:

1 (1) up to five years imprisonment if:

2 (A) the victim is at least fourteen and less than eighteen years of age at any time
3 during the course of the offense;

4 (B) in the course of committing the offense for which the defendant was
5 convicted, the defendant also:

6 (i) committed an assault in violation of [state law on assault]; or

7 (ii) committed an battery in violation of [state law on battery]; or

8 (iii) abused a position of trust to facilitate the offense.

9 (2) up to 10 years imprisonment if:

10 (A) the victim is less than eighteen years of age at any time during the course of
11 the offense;

12 (B) the defendant knew or should have known that the victim was particularly
13 vulnerable due to the victim's physical or mental condition or otherwise particularly susceptible
14 to the criminal conduct;

15 (C) in the course of committing the offense for which the defendant was
16 convicted, the defendant also committed:

17 (i) sexual assault in violation of [state law on sexual assault]; or

18 (ii) child abuse, neglect, or endangerment in violation of [state laws on
19 child abuse, neglect, or endangerment];

20 (D) the defendant used a weapon in the commission of the offense;

21 (E) the defendant transported the victim across state or national borders;

22 (F) the defendant subjected the victim to the offense for more than 180 days;

23 (G) the defendant subjected more than one victim to the same or similar offense;

1 (H) the defendant recruited, enticed, or obtained the victim from a shelter
2 designed to serve victims of human trafficking, victims of domestic violence, victims of sexual
3 assault, runaway youth, foster children, or the homeless;

4 (I) the defendant organized or directed another person to commit the offense; or

5 (J) the defendant was previously convicted for the same or a similar offense; and

6 (3) ten years up to life imprisonment if in the course of committing the offense for which
7 the defendant was convicted, the defendant also committed:

8 (A) rape or aggravated sexual assault in violation of [state law on rape or
9 aggravated sexual assault];

10 (B) homicide in violation of [state laws on homicide];

11 (C) sexual abuse of a minor in violation of [state law on sexual abuse of a minor];

12 or

13 (D) kidnapping or abduction in violation of [state law on kidnapping or
14 abduction].

15 **Alternative B**

16 **SECTION 17. AGGRAVATING CIRCUMSTANCES.**

17 (1) For the purposes of the [act], aggravating circumstances are any one or more of the
18 following that occur during the course of committing an offense under Sections 3 through 11 of
19 this [act]:

20 (A) the victim is at least fourteen years but less than eighteen years of age at any
21 time;

22 (B) the defendant also committed an assault or battery in violation of [state law
23 reference];

- 1 (C) the defendant abused a position of trust to facilitate the offense;
- 2 (D) the victim is less than fourteen years of age;
- 3 (E) the defendant knew or should have known that the victim was particularly
4 vulnerable due to the victim's physical or mental condition or otherwise particularly susceptible
5 to the criminal conduct;
- 6 (F) the defendant also committed a sexual assault in violation of [state law
7 reference];
- 8 (G) the defendant also committed child abuse, neglect, or endangerment in
9 violation of [state laws on child abuse, neglect, or endangerment];
- 10 (H) the defendant used a weapon in the commission of the offense;
- 11 (I) the defendant transported the victim across state or national borders;
- 12 (J) the defendant subjected the victim to the offense for more than 180 days;
- 13 (K) the defendant subjected more than one victim to the same or a similar offense;
- 14 (L) the defendant recruited, enticed, or obtained the victim from a shelter
15 designed to serve victims of human trafficking, victims of domestic violence, victims of sexual
16 assault, runaway youth, foster children, or the homeless;
- 17 (M) the defendant organized or directed another person to commit the offense;
- 18 (N) the defendant was previously convicted for the same or a similar offense;
- 19 (O) the defendant also committed rape or aggravated sexual assault in violation of
20 [state law on rape or aggravated sexual assault];
- 21 (P) the defendant also committed homicide in violation of [state laws on
22 homicide];
- 23 (Q) the defendant also committed sexual abuse of a minor in violation of [state

1 law on sexual abuse of a minor]; or

2 (R) the defendant also committed kidnapping or abduction in violation of [state
3 law on kidnapping or abduction].

4 (2) If any of the aggravating circumstances listed in Subsections (A) through (C) are
5 present, the defendant may be imprisoned for an additional period of up to five years.

6 (3) If any of the aggravating circumstances listed in Subsections (D) through (N) are
7 present, the defendant may be imprisoned for an additional period of up to ten years.

8 (4) If any of the aggravating circumstances listed in Subsections (O) through (R) are
9 present, the defendant may be imprisoned for an additional period of ten years to life.

10 **End of Alternatives**

11 **Comment**

12 [Reserved]

13 **SECTION 18. STATUTE OF LIMITATIONS FOR CRIMINAL PROSECUTION.**

14 There is no statute of limitations on criminal prosecution for an offense under Sections 3 through
15 11.

16 **Comment**

17 [Reserved]

18 **SECTION 19. VICTIM CONFIDENTIALITY.** In a prosecution for an offense under
19 this [act], [police and prosecuting agencies] shall keep the identity of the victim and the victim's
20 family confidential.

21 **Comment**

22 [Reserved] [The Committee decided to delete former Section 216 and substitute the long
23 draft Section 306, renamed as "Victim Confidentiality".]
24

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

(a) A victim may bring a civil action against a person for damages incurred as a consequence of the person's alleged offenses under Sections 3 through 11 of this [act].

(b) In an action under this section, the court may award actual damages, general damages, punitive damages, and litigation expenses reasonably incurred. The court also may award treble damages on proof of actual damage if the person's act is willful and malicious. The court also may award a prevailing victim attorney's fees.

(c) The court may stay a civil action filed under this section during the pendency of a criminal prosecution arising out of the same act as the civil action.

(d) An action under this section must be commenced not later than 10 years after the later date on which the victim was freed from the trafficking situation that is the basis of the action or the date on which the victim attains 18 years of age.

Comment

[Reserved] [For the Drafting Committee: there should be further discussion about how many state laws require awarding attorney's fees against a losing plaintiff, and whether these plaintiffs might be judgment proof in any event.]

**SECTION 21. ESTABLISHMENT OF ANTI-HUMAN TRAFFICKING [TASK
E, COUNCIL, OR COORDINATOR].**

(a) There is established [an interagency task force on human trafficking, human trafficking council, or human trafficking coordinator in an existing state agency].

(b) The [Governor] shall appoint the Chairperson and the [members of or consultants to] interagency agency task force on human trafficking, human trafficking council, or human trafficking coordinator in an existing state agency], which may include department representatives from justice, law enforcement, labor, health and human services, child welfare,

1 juvenile justice, transportation, education, agriculture, housing, nongovernmental agencies,
2 service providers, and such other representatives as may be designated by the [Governor]. The
3 departments and agencies represented on the [interagency task force or council, or delegated to
4 the designated agency and coordinator] are authorized to provide staff to the [interagency task
5 force, council, or designated agency and coordinator] on a non-reimbursable basis.

6 **Comment**

7 [Reserved] [Section 21(b) reinserts long draft Section 401(b).]

8 **SECTION 22. DUTIES.** The [interagency task force on human trafficking, human
9 trafficking council, or human trafficking coordinator] established under Section 21 shall:

10 (1) coordinate the implementation of this act, including establishing protocols where
11 appropriate, in accordance with Sections 26 (Victim Services), 27 (Victim Eligibility for
12 Services), 23 (Training), and subsections 22(3) (Data Collection), and 22(5) (Public Awareness;

13 (2) evaluate state efforts to combat human trafficking;

14 (3) collect data on human trafficking activity within the state on an ongoing basis,
15 including types of activities reported, efforts to combat human trafficking, and impacts on
16 victims and on the states;

17 (4) exclude from the data collected under paragraph (3) the identity of any victim;(
18 (5) promote public awareness about human trafficking, remedies and services for victims,

19 and prevention efforts, including in schools;

20 (6) create and maintain a website to publicize the [interagency task force, council, or
21 coordinator]'s research, contact information, directory of resources and services, protocols,
22 partnerships with other organizations and agencies, and National Hotline information;

23 (7) submit an annual report of its evaluation, including any recommendations, and a

summary of the data collected under paragraph (3) to the [state legislative body];

(8) conduct such other activities to combat human trafficking within the state as may be appropriate.

Comment

[Reserved] [Subsections 22(1)(coordination of implementation) and 22(6)(website) reinstate long draft subsections 401(c)(1) and 401(c)(5). Subsection 22(5) adds a function about promoting public awareness, including in schools. Concerning Section 22(3)(data collection), Mary Ellison is to report on whether the new federal reporting requirements for human trafficking will require rewording this language. Prosecutors, but not judges, can be required to collect the information.]

SECTION 23. TRAINING. State [and local] agencies shall include appropriate training in recognition and prevention of human trafficking in annual training for all state [and local] officers and employees who reasonably may be expected to come into contact in the course of their duties with a victim or perpetrator of human trafficking activity. Training must include victim awareness and protection, sources for victim services, and protocols for how to proceed, as needed.

Comment

[Reserved]

SECTION 24. DISSEMINATION OF HOTLINE INFORMATION.

Alternative A

(a) The [relevant state department] shall create an informational sign on human trafficking that includes the hotline number for the National Human Trafficking Resource Center and the contact information for at least one local law enforcement agency.

(b) The [state's transportation department] shall display the sign in all public rest areas, welcome centers, and transportation stations within the state.

(c) All employers of five employees or more shall display the sign in a manner clearly

1 visible to employees within the establishment.

2 (d) The [state's labor department and any other relevant state department] shall display
3 the sign on its Internet web site for business entities to print as needed.

4 (e) The [state's labor department] shall fine an employer who willfully does not comply
5 with this section not less than \$300.

6 **Alternative B**

7 The [relevant state department] shall make reasonable efforts to distribute information to enable
8 all state agencies to publicize the National Human Trafficking Resource Center Hotline on their
9 websites, in all headquarters offices, and in all field offices throughout the state.

10 **Alternative C**

11 (a) Every [targeted establishment, including any of the following: massage parlor, spa, or
12 any similar establishment that does or does not require a license; any establishment that receives
13 a liquor license; every strip club and other sexually-oriented business; restaurant; airport; train
14 station; bus station; highway truck stop; highway rest stop; hospital, HMO, and urgent care
15 center; farm [over a certain size]; high school; and job recruitment center] shall post in a
16 conspicuous place near the entrance of the business or where such posters and notices are
17 customarily posted, a poster of no smaller than 8½ by 11 inches in size that states the following:

18 "If you or someone you know is being forced to engage in any activity and cannot leave –
19 whether it is commercial sex, housework, farm work, or any other activity – call the
20 National Human Trafficking Resource Center Hotline at **1-888-373-7888** to access help
21 and services.

22 Victims of human trafficking are protected under U.S. and [State] law.

23 The Hotline is:

- Available 24 hours a day, 7 days a week
- Toll-free
- Operated by a non-profit, non-governmental organization
- Anonymous & Confidential
- Accessible in 170 languages
- Able to provide help, referral to services, training, and general information.”

(b) The poster referred to in subsection (a) shall be printed in English, Spanish, and any other languages mandated by the Voting Rights Act in the county where the poster will be posted.

(c) The licensing authority shall provide each establishment with notice of this section and with the required poster upon licensing and shall place the poster described in subsection (a) on its public website for mandated establishments to print as needed.

End of Alternatives

Comment

[Reserved] [Alternative A is a shortened version of the long draft Section 404. It omits the text for what the sign must state, its size, and the languages to use. Alternative B is a bare bones version provided by Mary Ellison. Mary states, however, that Polaris Project recommends a comprehensive version, and it is included here as Alternative C. At least five states now have some version of this requirement, including Maryland, Tennessee, Texas, Vermont, and Washington. Mary notes that twelve other states currently have such bills pending.]

SECTION 25. VICTIM SERVICES.

(a) The [interagency task force, council, or coordinator] shall develop a plan for a coordinated response system, in consultation with non-governmental organizations and other elements of civil society, to provide victims with the following services and information regarding accessing those services, including, but not limited to:

1 (1) appropriate housing, taking into account the victim's status as a victim of an
2 offense and including safe conditions for sleeping, food, and personal hygiene, ensuring to the
3 extent possible that the potential victim is not held in a detention facility;

4 (2) psychological counseling;

5 (3) medical assistance, including confidential testing for Sexually Transmitted
6 Diseases and the Human Immunodeficiency Virus;

7 (4) substance abuse counseling;

8 (5) childcare;

9 (6) access to employment, educational, and training opportunities;

10 (7) legal assistance and case management; and

11 (8) social case management, including information about and help with access to
12 victim services.

13 (b) Services enumerated in subsection (a) must be provided to the extent possible in a
14 language that the victim understands.

15 (c) To the extent that funds are appropriated for this purpose, the [task force] shall ensure
16 the services enumerated in subsection (a) are provided [to as many victims as can be served with
17 the available funds.] .

18 **Comment**

19 [Reserved] [Section 25 is the long draft Section 301. This is instead of the short draft
20 304.]

21 **SECTION 26. VICTIM ELIGIBILITY FOR SERVICES.**

22 **Alternative A**

23 (a) A victim shall be eligible for a benefit or service available through the state, including
24 forms of compensation under [applicable State Crime Victims' Compensation Fund], regardless
25

1 of immigration status.

2 (b) As soon as practicable after a first encounter with an individual who reasonably
3 appears to [the appropriate state or local agency] to be a victim, that agency shall notify the
4 [appropriate state agency, department, or non-governmental organization] in accordance with the
5 protocol established by the [interagency task force on human trafficking, human trafficking
6 council, or human trafficking coordinator] that the individual may be eligible for a benefit or
7 service under this [act].

8 **Alternative B**

9 A victim may not be denied a benefit or service, otherwise available through the state,
10 solely because of the victim's immigration status if the victim's status is a direct consequence of
11 human trafficking activity.

12 **Alternative C**

13 (a) A victim may not be denied a benefit or service, otherwise available through the state,
14 solely because of the victim's immigration status if the victim's status is a direct consequence of
15 human trafficking activity.

16 (b) If the victim has been convicted of a [serious offense], [the appropriate state agency]
17 may withhold a benefit or service that the victim would otherwise be eligible for under
18 subsection (a).

19 (c) As soon as practicable after a first encounter with an individual who reasonably
20 appears to [the appropriate state or local agency] to be a victim, that agency shall notify the
21 [appropriate state agency, department, or non-governmental organization] in accordance with the
22 protocol established by the [interagency task force on human trafficking, human trafficking
23 council, or human trafficking coordinator] that the individual may be eligible for a benefit or

1 service under this article.

2 **End of Alternatives**

3 **Comment**

4 [Reserved] [Alternative A is the long draft Section 302. Alternative B is the short draft Section
5 304, as modified by the Style Committee’s suggested edits. Alternative C is an attempt to
6 provide an Alternative somewhere between Alternative A and Alternative B. It uses the
7 Alternative B language for subsection (a), adds a subsection (b) permitting denial of a benefit or
8 service for conviction for a serious offense, and uses the Alternative A subsection (b) language
9 for subsection (c).]

10
11 **SECTION 27. STATE LAW ENFORCEMENT AGENCY PROTOCOL.**

12 (a) Upon the request of a foreign national victim or the victim’s legal representative, the
13 [relevant state or local law enforcement agency] shall:

14 (1) within ten days, sign and provide the person with:

15 (i) a completed United States Citizen and Immigration Services (USCIS)
16 Supplement B to Form I-914, Declaration of Law Enforcement Officer for Victims of
17 Trafficking in Persons (LEA Declaration), as part of a victim’s application for a T-Visa in
18 accordance with 8 C.F.R. § 214.11(f)(1);

19 (ii) a completed Supplement B to Form I-918, law enforcement U
20 Nonimmigrant Status Certification for victims of qualifying criminal activity, as part of a
21 victim’s application for a U-Visa in accordance with 8 C.F.R § 214.14(c); and

22 (2) request a federal law enforcement official to submit an application for
23 “continued presence” under the Victims of Trafficking and Violence Protection Act (22 U.S.C. §
24 7105(c)(3)(A)) for a victim within seventy-two hours of determining an individual is more likely
25 than not a victim.

26 (b) Where a state or local law enforcement agency finds the grant of an LEA Declaration,
27 a U Nonimmigrant Status Certification, or a request for “continued presence” to be inappropriate

1 for a victim, the agency shall within fifteen days of such determination provide the victim or the
2 victim’s legal representative with a letter explaining the grounds for denial. The victim may
3 submit additional evidence to the law enforcement agency, which must reconsider the denial
4 within ten days of the receipt of additional evidence.

5 **Comment**

6 [Reserved] [The revisions here reflect suggestions from Anita Ramasastry, Mary Ellison,
7 Stephanie Richard, and Susan Ross for providing simpler language; the aim is to make it seem
8 less onerous. This section is the long draft Section 303, but the title has been changed from
9 “Referral to Federal Services” to “State Law Enforcement Agency Protocol.” It also omits the
10 words, “aid victims in” obtaining federally funded services and substitutes “sign and provide a
11 person” with a completed form. The Committee thought someone should reach out to police to
12 see whether they object. At least seven states already have such a provision, including
13 California, Guam, Illinois, Iowa, New Jersey, New York, and Vermont.]

14
15 **SECTION 28. STATE GRANTS TO SERVICE PROVIDERS.**

16 (a) [Subject to the availability of appropriations,] The [appropriate state agency] is
17 authorized to make grants to units of state and local governments, Indian tribes, and non-
18 governmental victims’ service organizations to develop, expand, or strengthen victim service
19 programs for victims of human trafficking, and to ensure protection and rehabilitation for victims
20 of human trafficking.

21 (b) Recipients of grants pursuant to subsection (a) should

22 (1) be equipped to serve human trafficking victims; and

23 (2) report the number and demographic information of all trafficking victims

24 served to [the interagency task force on human trafficking, human trafficking council, or human
25 trafficking coordinator] and in accordance with subsections 403(a)(3) and (d).

26 **Comment**

27 [Reserved] [Section 28 is the long draft Section 304.]

1 **SECTION 29. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
2 applying and construing this uniform act, consideration must be given to the need to promote
3 uniformity of the law with respect to its subject matter among states that enact it.

4 **[SECTION 30. SEVERABILITY.** If any provision of this [act] or its application to
5 any person or circumstance is held invalid, the invalidity does not affect other provisions or
6 applications of this [act] which can be given effect without the invalid provision or application,
7 and to this end the provisions of this [act] are severable.]

8 ***Legislative Note:** Include this section only if this state lacks a general severability statute or a*
9 *decision by the highest court of this state stating a general rule of severability.*

10
11 **SECTION 31. EFFECTIVE DATE.** This [act] takes effect....