

D R A F T

FOR DISCUSSION ONLY

# PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

---

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAW

---

For April 5-7, 2013 Drafting Committee Meeting

## CRIMINAL SECTIONS ONLY

From Joe Colquitt, Associate Reporter:  
Sections 1, 2, 3, 4, 5, 6, new section, 7, 8, 9, 10, 11, 12, 13

From Sue Ross, Reporter:  
Sections 2, 14, 20, 21, 22, 23, 24, 25, 26, 27

Copyright 2013  
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 29, 2013

**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, 551 5th Ave., 14<sup>th</sup> Floor, New York, NY 10176

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, 2306 Calle Laurel, San Juan, PR 00913-4619

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

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

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

JOSEPH COLQUITT, University of Alabama School of Law, P.O. Box 870382, Tuscaloosa, AL 35487-0382, *Associate 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](http://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 2. DEFINITIONS. .... 4

SECTION 3. TRAFFICKING IN INDIVIDUALS. .... 5

SECTION 3. TRAFFICKING IN INDIVIDUALS. .... 6

SECTION 3. TRAFFICKING IN INDIVIDUALS. .... 6

SECTION 4. FORCED LABOR. .... 7

SECTION 4. FORCED LABOR. .... 7

SECTION 5. SEXUAL SERVITUDE. .... 7

SECTION 6. PATRONIZING A VICTIM OF SEXUAL SERVITUDE. .... 8

SECTION 6. PATRONIZING A VICTIM OF SEXUAL SERVITUDE. .... 8

[SECTION \_\_. PATRONIZING PROSTITUTION OF A MINOR. .... 9

SECTION 7. DEBT BONDAGE. .... 10

SECTION 8. ABUSE OF IDENTIFICATION DOCUMENT. .... 10

SECTION 9. BUSINESS LIABILITY. .... 11

[SECTION 10. PAST SEXUAL BEHAVIOR OF VICTIM. .... 12

SECTION 11. VICTIM DEFENSES. .... 12

SECTION 11. VICTIM DEFENSES. .... 13

SECTION 11. VICTIM DEFENSES. .... 14

SECTION 12. MOTION TO VACATE CONVICTION. .... 14

SECTION 12. MOTION TO VACATE CONVICTION. .... 15

SECTION 12. MOTION TO VACATE CONVICTION. .... 16

SECTION 13. AGGRAVATING CIRCUMSTANCES. .... 16

SECTION 13. AGGRAVATING CIRCUMSTANCES. .... 17

NOTE. STATUTE OF LIMITATIONS FOR CRIMINAL PROSECUTION. .... 18

SECTION 14. RESTITUTION. .... 18

SECTION 19. CIVIL ACTION. .... 20

SECTION 20. HUMAN TRAFFICKING [COUNCIL]. .... 20

SECTION 21. DISPLAY OF PUBLIC-AWARENESS SIGN; PENALTY FOR FAILURE TO  
DISPLAY. .... 21

SECTION 22. VICTIM ELIGIBILITY FOR SERVICES. .... 22

SECTION 23. STATE LAW ENFORCEMENT AGENCY PROTOCOL. .... 22

[SECTION 24. GRANTS TO SERVICE PROVIDERS. .... 23

SECTION 25. UNIFORMITY OF APPLICATION AND CONSTRUCTION. .... 24

[SECTION 26. SEVERABILITY. .... 24

SECTION 27. EFFECTIVE DATE. .... 24

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

2  
3                                   **Associate Reporter’s Comment**

4  
5                   **General – Classes of Offenses.** The Act utilizes four (4) grades of felonies (Classes A-  
6 D). The Drafting Committee might consider adding a Legislative Note (or at least a Comment)  
7 explaining the use of the degrees by enacting jurisdictions. In suggesting that possibility, it is  
8 noted that the commentary to the Act already states: “A class ‘a’ felony indicates the most  
9 serious felony other than one calling for the death penalty. The following felony levels of ‘b’,  
10 ‘c’, and ‘d’ denote lower levels of felony. This structure is used throughout the offenses created  
11 by this act.”

12  
13                   Because the actual meaning of a [class a/b/c/d felony] designation would vary greatly  
14 from state to state, that fact seemingly should be noted prominently in the commentary, and a  
15 Legislative Note possibly should be inserted at the end of each substantive crime provision  
16 (Sections 3-9). For example, such a note could state:

17  
18                   ***Legislative Note:** Enacting states will need to ensure that the offense classification [class a-d] in  
19 this Section are modified to correspond with the existing grading and punishment ranges of the  
20 enacting state. The 4 classes of felonies contained in the Act are not intended to unduly restrict  
21 legislative discretion in the classification of offenses.*

22  
23                   **SECTION 1. SHORT TITLE.** This [act] may be cited as the Act on Prevention of and  
24 Remedies for Human Trafficking.

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

26                   (1) “Adult” means an individual who is eighteen (18) years of age or older.

27                   (2) “Agent” means a person authorized to act on behalf of a business entity.

28                   (3) “Business entity” means a corporation, business trust, estate, trust, partnership,  
29 limited liability company, association, joint venture, or any other legal or commercial entity.

30                   The term does not include a wholly public corporation or government or governmental  
31 subdivision, agency, or instrumentality.

32                   [(4) “Coercion” means:

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

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

4 (C) the abuse of the law or legal process.]

5 [(4) “Coercion” means:

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

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

11 (C) the abuse of the law or legal process;

12 (D) providing to an individual or controlling an individual’s access to a controlled  
13 substance;

14 (E) the destruction of, taking of, or the threat to destroy or take an individual’s  
15 identification document.]

16 [(4) Coercion means:

17 (A) causing or threatening to cause physical injury or mental suffering to any  
18 person, physically restraining or confining any person, or threatening to physically restrain or  
19 confine any person, committing or threatening to commit a sexual assault, or otherwise causing  
20 the person performing or providing labor or services to believe that the person or another person  
21 will suffer physical injury or mental suffering;

22 (B) implementing any scheme, plan, or pattern intended to cause a person to  
23 believe that failure to perform an act would result in physical injury, mental suffering, or

1 physical restraint of any person;

2 (C) destroying, concealing, removing, confiscating, or withholding from the  
3 person or another person, or threatening to destroy, conceal, remove, confiscate, or withhold  
4 from the person or another person, the person's or any person's actual or purported government  
5 records, immigration documents, identifying information, or personal or real property;

6 (D) exposing or threatening to expose any fact or information that if revealed  
7 would tend to subject a person to criminal prosecution, criminal or immigration proceedings,  
8 hatred, contempt, or ridicule;

9 (E) threatening to report the person or another person to immigration officials or  
10 to other law enforcement officials or otherwise blackmailing or extorting the person or another  
11 person;

12 (F) controlling a person's access to a controlled substance, as the term is defined  
13 in [insert the appropriate state code section defining controlled substances].]

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

16 (6) "Human trafficking" means the offenses created by this [act]; the term does not mean  
17 any activity permitted by [state or federal employment or labor law] .

18 (7) "Identification document" means a passport, driver's license, immigration document,  
19 travel document, or any other government-issued identification document, including a document  
20 issued by a foreign government.

21 (8) "Labor or services" means activity having economic value.

22 (9) "Minor" means an individual who is less than eighteen (18) years of age.

23 (10) "Person" means an individual, corporation, business trust, estate, trust, partnership,

1 limited liability company, association, joint venture, or any other legal or commercial entity.  
2 The term does not include a public corporation or government or governmental subdivision,  
3 agency, or instrumentality.

4 (11) “Serious harm” means harm, whether physical or nonphysical, including  
5 psychological, economic, or reputational, to an individual which would compel a reasonable  
6 person of the same background and in the same circumstances as the individual to perform or  
7 continue to perform labor or services or sexual services to avoid incurring the harm.

8 (12) “Sexual activity” means the acts set forth in [citation to sections of state law defining  
9 unlawful sexual activity.

10 (13) “Sexual services” means sexual activity or sexually-explicit performances.

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

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

16 **Associate Reporter’s Comment**

17 Three versions of coercion are contained in bracketed provisions. The definition of  
18 “deception” has been deleted and the suggested definition of “fraud” has been omitted in keeping  
19 with Committee decisions at its February 2013 meeting.

20 Sexual services, as set forth in subsection 13, is intended to include such diverse activities  
21 as erotic dancing, participation in the production of pornographic images, and the creation or  
22 depiction of sexual images or activities on the internet whether consisting of simulated or live  
23 performances.

24  
25

**Alternative A (Sue Ross)**

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

27 (2) “Business entity” means a corporation, business trust, estate, trust, partnership,

1 limited liability company, association, joint venture, or any other legal or commercial entity.  
2 The term does not include a public corporation or government, or governmental subdivision,  
3 agency, or instrumentality.

4 ( ) [amended] “Person” means an individual, estate, business or nonprofit entity, or  
5 other legal entity. The term does not include a public corporation or government, or  
6 governmental subdivision, agency, or instrumentality.

7 ( ) [amended] “Victim means an individual who has been subjected to an offense that  
8 violates this [act], regardless of whether a perpetrator is identified, apprehended, prosecuted, or  
9 convicted.

10 **End of Alternative**

11 **SECTION 3. TRAFFICKING IN INDIVIDUALS.** A person commits trafficking in  
12 individuals if the person:

13 (a) recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains,  
14 or entices an individual, and the person knows that the individual will be subjected to:

15 (1) forced labor in violation of Section 4, or

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

17 [(b) knowingly requires an individual to provide labor or services in payment or  
18 satisfaction of a real or purported debt if:

19 (1) the reasonable value of the labor or services is not applied toward the  
20 liquidation of the debt; or

21 (2) the length of the labor or services is not limited and the nature of the labor or  
22 services is not defined.]

23 (c) Trafficking in individuals as provided in subsection (a) is [a class c felony], but if the

1 victim is a minor, it is a [class b felony].

2 (d) Trafficking in individuals as provided in subsection (b) is a [class d felony], but if the  
3 victim is a minor, it is a [class c felony].

4 **Alternative A**

5 **SECTION 3. TRAFFICKING IN INDIVIDUALS.**

6 (a) A person commits trafficking in individuals if the person [knowingly] recruits,  
7 transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an  
8 individual for the purpose of:

9 (1) forced labor in violation of Section 4, or

10 (2) sexual servitude in violation of Section 5.

11 (b) Trafficking in individuals is [a class c felony], but if the victim is a minor, it is a  
12 [class b felony].

13 **Alternative B**

14 **SECTION 3. TRAFFICKING IN INDIVIDUALS.**

15 (a) A person commits trafficking in individuals if the person recruits, transports,  
16 transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual, and  
17 the person knows that the individual will be subjected to:

18 (1) forced labor in violation of Section 4, or

19 (2) sexual servitude in violation of Section 5.

20 (b) Trafficking in individuals is [a class c felony], but if the victim is a minor, it is a  
21 [class b felony].

22 **End of Alternatives**



1 engaging the minor in commercial sexual services.

2 (2) uses coercion, deception, or fraud to compel an adult to engage in commercial  
3 sexual services.

4 (b) It is not a defense in a prosecution under subsection (a)(1) that the minor consented to  
5 engage in commercial sexual services or that the defendant believed the individual was an adult.

6 (c) Sexual servitude of a minor is [a class a felony].

7 (d) Sexual servitude of an adult is [a class b felony].

8 **SECTION 6. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.**

9 (a) A person commits patronizing a victim of sexual servitude if the person gives, agrees  
10 to give, or offers to give anything of value so that an individual may engage in sexual activity  
11 with another individual and the person

12 (1) knows that the other individual is a victim of sexual servitude in violation of  
13 Section 5.

14 (2) recklessly disregards the fact that the other individual is a victim of sexual  
15 servitude in violation of Section 5.

16 (b) The offense constitutes:

17 (1) Patronizing in the first degree, a [class d felony], if the person acts knowingly,  
18 but if the victim is a minor, it is a [class c felony].

19 (2) Patronizing in the second degree, a [class a misdemeanor], if the person acts  
20 recklessly, but if the victim is a minor, it is a [class d felony].

21 **Alternative**

22 **SECTION 6. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.**

23 (a) A person commits patronizing a victim of sexual servitude if the person knowingly

1 gives, agrees to give, or offers to give anything of value so that an individual may engage in  
2 sexual activity with another individual and the person

3 (1) knows that the other individual is a victim of sexual servitude in violation of  
4 Section 5; or

5 (2) knowingly disregards the fact that the other individual is a victim of sexual  
6 servitude in violation of Section 5.

7 (b) The offense constitutes:

8 (1) Patronizing in the first degree, as defined in subsection (a)(1) is a [class d  
9 felony], but if the victim is a minor, it is a [class c felony].

10 (2) Patronizing in the second degree, as defined in subsection (a)(2) is a [class a  
11 misdemeanor], but if the victim is a minor, it is a [class d felony].

12 **End of Alternative**

13 **[New Section]**

14 **[SECTION \_\_. PATRONIZING PROSTITUTION OF A MINOR.**

15 (a) A person commits patronizing prostitution of a minor if the person in return for  
16 another's prostitution, knowingly gives or agrees to give a [fee] [pecuniary benefit] either to the  
17 person whose prostitution is sought or to a third person, and the person whose prostitution is  
18 sought is a minor.

19 (b) Patronizing prostitution of a minor is a [class c felony].

20 **Associate Reporter's Comment**

21  
22 During the February 2013 Committee meeting, the Associate Reporter was directed to  
23 prepare a draft of a crime of promoting prostitution of a minor. This draft was prepared after  
24 reviewing Maine Code 7-A § 855, Illinois Stats. 720 ILCS § 5/11-18.1, and Wash. Code §  
25 9.68A.100.

26 The provision utilizes “knowingly” as the mens rea, which is defined in a newly proposed  
27 subsection (8) in Section 2, Definitions. No mens rea is used with regard to the age of the minor.

1 In other words, as to the age of the minor, the crime is strict liability and the knowledge or  
2 ignorance of the perpetrator of the minor's age is irrelevant.]

3  
4 **End of New Section**

5  
6 **SECTION 7. DEBT BONDAGE.**

7 (a) A person commits debt bondage if the person knowingly requires an individual to  
8 provide labor or services in payment or satisfaction of a real or purported debt if:

9 (1) the reasonable value of the labor or services is not applied toward the  
10 liquidation of the debt; or

11 (2) the length of the labor or services is not limited and the nature of the labor or  
12 services is not defined.

13 (b) Debt bondage is a [class d felony], but if the victim is a minor, it is a [class c felony].

14 **Associate Reporter's Comment**

15 This section should not be construed to make a parent or guardian liable for their  
16 interactions with their children or wards. Several states have similar statutes pertaining to their  
17 existing human trafficking laws. See, e.g., Ariz. Rev. Stat. Ann. § 13-1308(C)(1)(b); N.C. § 14-  
18 43.12(d); N.H. Rev. Stat. Ann. § 633:7(I)(b).

19  
20 **Alternative**

21  
22 Delete the Section and include the crime of debt bondage as a means of committing the  
23 crime of trafficking in individuals. (See Section 3, above).

24  
25 **Associate Reporter's Comment**

26 The Associate Reporter was directed to use debt bondage as a means of trafficking in  
27 individuals during the February 2013 Committee Meeting, which, if adopted by the Committee,  
28 would eliminate the need for Section 8, Debt Bondage.

29  
30 **End of Alternative**

31  
32 **SECTION 8. ABUSE OF IDENTIFICATION DOCUMENT.**

33 (a) A person commits abuse of an identification document if the person, while  
34 committing, or with intent to commit, an offense under this [act]:

1 (1) destroys, takes, possesses, or threatens to destroy, take, or possess a real or  
2 purported identification document;

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

5 (3) makes or alters an identification document.

6 (b) Abuse of an identification document is a [class d felony].

7 **Associate Reporter's Comment**

8 The mens rea requirement of "knowledge" has been removed. The Committee felt it was  
9 unnecessary because the acts addressed by the provision are perpetrated in furtherance of other  
10 offenses in the Act which already carry mens rea elements.

11

12 **SECTION 9. BUSINESS LIABILITY.**

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

14 (1) an agent of the entity knowingly engages in conduct constituting an offense  
15 under this [act] while acting within the scope of employment and for the benefit of the entity; or

16 (2) an employee of the entity engages in conduct constituting an offense under  
17 this [act] and the offense was part of a pattern of illegal activity for the benefit of the entity, and  
18 the agent of the entity knew the fact that the illegal activity was occurring, and the agent failed to  
19 take effective action to stop the illegal activity.

20 (b) It is an affirmative defense to a prosecution of a business entity under subsection

21 (b)(2) if the entity proves by a preponderance of the evidence that the entity had in place formal  
22 procedures, including an effective complaint procedure, designed to prevent persons associated  
23 with the entity from engaging in the conduct under subsection (b)(2) and to correct promptly a  
24 violation of this [act].

25 (c) The court may consider the severity of the business entity's offense and order

1 enhanced penalties in addition, including:

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

3 (2) disgorgement of profit; or

4 (3) debarment from government contracts.

5 **[SECTION 10. PAST SEXUAL BEHAVIOR OF VICTIM.** In a prosecution or civil  
6 action for damages for an offense under this [act] in which there is evidence that the alleged  
7 victim was subjected to sexual servitude, reputation or opinion evidence of past sexual behavior  
8 of the alleged victim is not admissible. Evidence of a specific instance of the alleged victim’s  
9 past sexual behavior is not admissible unless the evidence is admitted in accordance with [state  
10 rape shield evidence rule] or is constitutionally required to be admitted.]

11 **SECTION 11. VICTIM DEFENSES.**

12 [(a) Once an individual has been identified as victim of human trafficking, the victim is  
13 not criminally liable for prostitution or other non-violent offenses committed as a direct result of  
14 being a victim.]

15 [(a) A victim charged with prostitution-related offenses or other non-violent offenses that  
16 are a direct result of the victim being trafficked may assert an affirmative defense of being a  
17 human trafficking victim.]

18 (b) If a victim who is not criminally liable under subsection (a) is less than 18 years of  
19 age, the victim must be presumed to be a child in need of protection.

20 **Associate Reporter’s Comment**

21 Subdivision (a) is presented in alternative forms for the Committee’s consideration.

22 (1) The first version provides the immunity suggested by ABA Resolution 104F(a)  
23 [Revised] (2012). The immunity provided in this section applies to both minors and adults. ABA  
24 Resolution 104F(a) [Revised] states in pertinent part:

25 “RESOLVED, That the American Bar Association urges, federal, state, local, tribal and  
26 territorial governments to enact laws and regulations and to develop policies that assure that once

1 an individual has been identified as an adult or minor victim of human trafficking, that individual  
2 should:

3 (a) not be subjected to arrest, prosecution or punishment for crimes related to their  
4 prostitution or other non-violent crimes that are a direct result of their status as an adult or minor  
5 victim of human trafficking; . . . .”

6 (2) The second version of Subdivision (a) establishes the affirmative defense suggested in  
7 Resolution 104G [Revised] (2012). That Resolution provides:

8 “RESOLVED, That the American Bar Association urges local, state, territorial, tribal and  
9 federal governments to enact legislation allowing adult or minor human trafficking victims  
10 charged with prostitution related offenses or other non-violent offenses that are a direct result of  
11 their being trafficked to assert an affirmative defense of being a human trafficking victim.  
12

13

### **Alternative A**

#### **SECTION 11. VICTIM DEFENSES.**

14 (a) Once an individual has been identified as victim of human trafficking, the victim is  
15 not criminally liable for prostitution or other non-violent offenses committed as a direct result of  
16 being a victim.  
17

18 (b) It is an affirmative defense in a prosecution for prostitution or other non-violent  
19 offenses that the defendant:

20 (1) is a victim; and

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

24 (c) If a victim who is not criminally liable under subsection (a) is a minor, the victim  
25 must be presumed to be a child in need of protection.

#### **Associate Reporter’s Comment to Alternative A**

27 Subdivision (a) provides the immunity suggested by ABA Resolution 104F(a) [Revised]  
28 (2012) as quoted in the preceding comment.

29 This alternative retains the immunity provision and establishes a modified version of a  
30 duress defense as an affirmative defense. To corral the defense and eliminate unwanted or  
31 unforeseen outcomes, Subsection (b) limits duress defense to “commercial sexual services,”  
32 which is the primary focus of the Section. The current version of Subsection (b) would permit a

1 duress defense even to the crime of murder. Limiting the defense to “commercial sexual  
2 services” [which could be defined to clarify the provision] would limit the duress defense to  
3 crimes such as prostitution and lewd dancing.

4 The current draft of Subsection (b) is much broader than the duress defense as it exists in  
5 many states.

6  
7 **Alternative B**

8 **SECTION 11. VICTIM DEFENSES.**

9 (a) Once an individual has been identified as victim of human trafficking, the victim is  
10 not criminally liable for prostitution or other non-violent offenses committed as a direct result of  
11 being a victim.

12 (b) It is an affirmative defense in a prosecution for prostitution or other non-violent  
13 offenses that the defendant:

14 (1) is a victim; and

15 (2) committed the offense under coercion.

16 (b) If a victim who is not criminally liable under subsection (a) is a minor, the victim  
17 must be presumed to be a child in need of protection.

18 **Associate Reporter’s Comment to Alternative B**

19 This version substitutes “coercion” for the more laborious “committed the offense under  
20 a reasonable apprehension created by a person that, if the defendant did not commit the act, the  
21 person would inflict serious harm on the defendant, a member of the defendant’s family, or a  
22 close associate.”

23  
24 **End of Alternatives**

25 **SECTION 12. MOTION TO VACATE CONVICTION.**

26 (a) At any time after a conviction for prostitution or other non-violent offenses, the court  
27 in which the conviction was entered may vacate the conviction if the court finds the defendant’s  
28 participation in the offense was a direct result of being a victim.

29 (b) Official documentation from a federal, state, or local government agency of the

1 defendant’s status at the time of the offense as a victim creates a presumption that the  
2 defendant’s participation in the offense was a result of being a victim, but official documentation  
3 is not required to grant a motion under this section.

4 (c) The motion filed and the hearing, if any, conducted on the motion shall be governed  
5 by [insert the appropriate state code section governing post-conviction relief procedures].

6 **Associate Reporter’s Comment**

7 This section provides a post-conviction relief opportunity suggested by ABA Resolution  
8 104H(a) [Revised] (2012), which states in pertinent part:

9 “RESOLVED, That the American Bar Association urges federal, state, local, tribal and  
10 territorial governments to aid victims of human trafficking by:

11 a) Enacting and enforcing laws and policies that permit adult or minor victims of human  
12 trafficking to seek to vacate their criminal convictions, for crimes related to their prostitution or  
13 other non-violent crimes that are a direct result of their trafficking victimization . . . . “

14 Seven states have laws permitting motions to vacate, but it appears that none go beyond  
15 prostitution. This provision, in keeping with the ABA Resolution, is more robust and less defined  
16 existing provisions in the states.

17  
18 **Alternative A**

19  
20 **SECTION 12. MOTION TO VACATE CONVICTION.**

21 (a) A person convicted of prostitution or other non-violent offense or offenses who  
22 committed the offense or offenses as a direct result of being a victim of human trafficking may  
23 apply to the sentencing court for vacation of the applicant’s record of conviction for the offense  
24 or offenses.

25 (b) Official documentation from a federal, state, or local government agency of the  
26 defendant’s status at the time of the offense as a victim creates a presumption that the  
27 defendant’s participation in the offense was a result of being a victim, but official documentation  
28 is not required to grant a motion under this section.

29 (c) The motion filed and the hearing, if any, conducted on the motion shall be governed  
30 by [insert the appropriate state code section governing post-conviction relief procedures].

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  
26  
27  
28

**Associate Reporter’s Comment to Alternative A**

This provision is intended to present only a different wording of Section 12. It is provided for Committee perusal and consideration, and like the preceding version, it is limited in scope to a prior conviction for prostitution and/or other non-violent misdemeanors or crimes as provided for in ABA Resolution 104H [Revised] (2012), which is quoted in the preceding comment.

**Alternative B**

**SECTION 12. MOTION TO VACATE CONVICTION.**

(a) A person convicted of prostitution who committed the offense as a result of being a victim of human trafficking may apply to the sentencing court for vacation of the applicant’s record of conviction for the prostitution offense.

(b) The motion filed and the hearing, if any, conducted on the motion shall be governed by [insert the appropriate state code section governing post-conviction relief procedures.

**Associate Reporter’s Comment to Alternative B**

Alternative A is provided for Committee perusal and consideration, it is limited in scope to a prior conviction for prostitution.

**End of Alternatives**

**SECTION 13. AGGRAVATING CIRCUMSTANCES.**

(a) An aggravating circumstance is one or more of the following that occur during the commission of an offense under this [act]:

- (1) the defendant abused a position of trust to facilitate the offense;
- (2) the victim was less than 14 years of age, the victim was particularly vulnerable due to the victim’s physical or mental;
- (3) the defendant recruited, enticed, or obtained the victim from a shelter designed

to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless.

1 (b) If the trier of fact finds that an aggravating circumstance listed in subsection (a) is  
2 present, the defendant may be imprisoned for an additional period of up to five (5) years.

3 (c) Provisions (a)(1-3) are not cumulative.

4 **Alternative**

5 **SECTION 13. AGGRAVATING CIRCUMSTANCES.**

6 (a) An aggravating circumstance is one or more of the following that occur during the  
7 commission of an offense under this [act]:

8 (1) the defendant abused a position of trust to facilitate the offense;

9 (2) the defendant used a weapon in the commission of the offense;

10 (3) the defendant subjected more than one victim to the same or similar offense;

11 (4) the defendant was previously convicted for the same or similar offense;

12 (5) the victim was less than 14 years of age;

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

16 (7) the defendant transported the victim across state or national borders;

17 (8) the defendant subjected the victim to the offense for more than 180 days;

18 (9) the defendant recruited, enticed, or obtained the victim from a shelter designed  
19 to serve victims of human trafficking, victims of domestic violence, victims of sexual assault,  
20 runaway youth, foster children, or the homeless; or

21 (10) the defendant organized or directed another person to commit the offense.

22 (b) If the trier of fact finds that an aggravating circumstance listed in subsection (a)(1)  
23 through (4) is present, the defendant may be imprisoned for an additional period of up to five (5)

1 years.

2 (c) If the trier of fact finds that an aggravating circumstance listed in subsection (a)(5)  
3 through (10) is present, the defendant may be imprisoned for an additional period of up to ten  
4 (10) years.

5 (d) Provisions (a)(1-10) are not cumulative.

6 **End of Alternative**

7 **NOTE. STATUTE OF LIMITATIONS FOR CRIMINAL PROSECUTION.**

8 *Legislative Note: Enacting states will need to ensure that the statutes of limitations of the*  
9 *enacting state cover or are amended to cover the crimes set forth in this Act.*

10

11

12

**Associate Reporter's Comment**

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

States generally already have statutes of limitations for crimes. Except for murder and some other of the more egregious felonies, the time for bringing a prosecution usually is limited. Sometimes the limitations are located together in the existing comprehensive criminal code. Other times, they are spread through the code. Because most states have, and will continue to have, statutes of limitations for most crimes, it seems preferable that like-crimes be treated alike in a state's code. For example, if Class B crimes normally must be prosecuted within 7 years under an existing provision, so to should Class B crimes within this Act be prosecuted within 7 years. It is easier to remain consistent if the time limits for the crimes set forth in this Act are woven into existing statutes of limitations in the enacting states.

States should review their statutes for tolling provisions. Should a state not have a tolling provision in its existing statutes of limitations, the state might incorporate the following provision:

[( )] The period within which a prosecution must be commenced under this section does not include any period in which:

(1) The accused is continuously absent from the State or has no reasonably ascertainable place of abode or work within the State; or

(2) The person committing the crime is unknown or the crime is unknown.]

**SECTION 14. RESTITUTION.**

(a) The court shall order a person convicted of an offense under this [act] to pay

1 restitution to a victim, including:

2 (1) expenses incurred or reasonably certain to be incurred by the victim as a result  
3 of the offense for:

4 (A) medical services;

5 (B) psychological counseling;

6 (C) temporary housing;

7 (D) transportation;

8 (E) childcare;

9 (F) physical and occupational therapy ;

10 (G) funeral and burial services;

11 (H) reasonable attorney's fees and other legal costs; and

12 (I) other reasonable costs and expenses; and

13 (2) an amount equal to the greater of the following, with no reduction for  
14 expenses the defendant incurred to maintain the victim:

15 (A) the gross income to the defendant for, or the value to the defendant of,  
16 the victim's labor or services, or sexual services; or

17 (B) the amount the defendant contracted to pay the victim; or

18 (C) the value of the victim's labor or services, or sexual services,

19 calculated under the minimum wage and overtime provisions of the Fair Labor Standards Act,

20 [29 U.S.C. Section 201 et seq.], or [state minimum wage and overtime provisions], whichever is

21 higher, even if the provisions do not apply to the victim's labor or services, or sexual services.

22 (b) The court shall order restitution under subsection (a) even if the victim is unavailable.

23 (c) If the victim is unavailable, the restitution shall be paid to the [Human Trafficking

1 [Council] created under Section 20 for operational costs] [applicable state crime victims’  
2 compensation fund to help human trafficking victims].

3 **SECTION 19. CIVIL ACTION.**

4 (a) A victim may bring a civil action against a person that commits an offense under this  
5 [act] for actual damages, compensatory damages, punitive damages, injunctive relief, and any  
6 other appropriate relief.

7 [Tabled: whether to bracket treble and punitive so states can choose between them.]

8 (b) In an action under this section, the court shall award a prevailing victim reasonable  
9 attorney’s fees and costs.

10 (c) An action under this section must be commenced not later than 10 years after the later  
11 of the date on which the victim:

12 (1) was freed from the human trafficking situation; or

13 (2) attains 18 years of age.

14 (d) The statutes of limitation shall be tolled for any period during which the victim is  
15 incapacitated

16 (e) Restitution paid to a victim pursuant to Section 14 shall be offset from damages  
17 awarded under this section for the same item.

18 (f) A civil action under this section does not preclude any other remedy available to the  
19 victim under law of this state other than this [act].

20 **SECTION 20. HUMAN TRAFFICKING [COUNCIL].**

21 (a) The [Governor] shall appoint the Chair and members of a [council on human trafficking]  
22 within the [state department], including designees from [state, local, or tribal departments] that  
23 have contact with victims or offenders, nongovernmental organizations that represent or work

1 with victims, and other individuals and organizations whose expertise would benefit the charge  
2 of the [council].

3 (b) The [state departments] [represented on the [council] shall provide staff to the  
4 [council].

5 (c) The [council] shall meet on a regular basis and:

6 (1) develop a coordinated and comprehensive plan to provide victims with  
7 services;

8 (2) collect and evaluate state trafficking data, and submit an annual report to the  
9 Governor [and legislature];

10 (3) promote public awareness about human trafficking, victim remedies and  
11 services, and prevention, and recommend a public awareness sign that contains local and  
12 national hotline information;

13 (4) coordinate training on human trafficking prevention and victim services for  
14 state [or local] employees who may have recurring contact with victims or perpetrators;

15 (5) conduct other appropriate activities that will prevent human trafficking in this  
16 state.

17 **SECTION 21. DISPLAY OF PUBLIC-AWARENESS SIGN; PENALTY FOR**  
18 **FAILURE TO DISPLAY.**

19 (a) The [state transportation department] shall display the public-awareness sign created  
20 under Section 20(c)(3) in all state-operated public rest areas, welcome centers, and transportation  
21 stations.

22 (b) An employer of [five] or more employees shall display the public-awareness sign  
23 created under Section 20(c)(3) in a manner that is clearly visible to employees within the

1 employer's place of business.

2 (c) The [state labor department] shall impose a fine of [\$300] on an employer that  
3 willfully fails to comply with subsection (b), which is the exclusive remedy for failure to  
4 comply.

5 **SECTION 22. VICTIM ELIGIBILITY FOR SERVICES.**

6 (a) A victim is eligible for a benefit or service available through the state, including  
7 forms of compensation under the [applicable state crime victims' compensation fund], regardless  
8 of immigration status.

9 (b) As soon as practicable after a first encounter with an individual who reasonably  
10 appears to [the appropriate state or local agency] to be a victim, the [agency] shall notify the  
11 [state or local agency identified in the comprehensive plan developed under Section 20(c)(1)]  
12 that the individual may be eligible for a benefit or service under this [act].

13 **SECTION 23. STATE LAW ENFORCEMENT AGENCY PROTOCOL.**

14 **Alternative A**

15  
16 (a) On request from a victim whom a [qualified state or local official] reasonably  
17 believes was subject to an offense under this [act] who may qualify for a special immigrant visa  
18 [under 8 U.S.C. § 1101(a)(15)(T) or 8 U.S.C. § 1101(a)(15)(U)] or continued presence under [22  
19 U.S.C. § 7105(c)(3)], the [law enforcement officer] shall not later than [10] days after receiving  
20 the request:

21 (1) complete, sign, and give to the victim the [law enforcement officer] form  
22 provided by the United States Citizenship and Immigration Services on its website for a victim  
23 who has been subjected to a severe form of trafficking or crime listed on the form; and

24 (2) ask a federal [law enforcement officer] to request continued presence if the

1 victim has been subjected to a severe form of trafficking as defined by[ 22 U.S.C. § 7102(8)] .

2 (b) If the [law enforcement agency] determines that the victim does not meet the legal  
3 requirements for the [agency] to comply with subsection (a), the [agency] shall provide the  
4 victim with a letter explaining the grounds for the determination not later than [15] days after the  
5 determination and permit the victim to submit additional evidence to the [agency]. The [agency]  
6 must reconsider its determination not later than [10] days after receiving the evidence.

7 **Alternative B**

8 During the investigation of any criminal conduct under this or other criminal statutes of  
9 this state, the law enforcement officer in charge, or such other individual as may be designated  
10 for that purpose by the law enforcement agency, shall immediately issue a completed form  
11 (.....) to any individual reasonably believed to be a victim of the criminal conduct, who is or  
12 may be a non-citizen of the United States.

13 **End of Alternatives**

14 **[SECTION 24. GRANTS TO SERVICE PROVIDERS.]**

15 (a) [To the extent that funds are appropriated for this purpose, the] [The] [appropriate  
16 state agency] may [make grants to] [contract with] units of state and local government, [Indian  
17 tribes], and nongovernmental victims' service organizations to develop or expand victim service  
18 programs.

19 (b) A recipient of a [grant] [contract] under subsection (a) shall report annually to the  
20 [council] created by Section 20 the number and demographic information of all trafficking  
21 victims served.]

22 [Discuss whether to move Section 24 language to Comment and tell states to insert if  
23 needed to ensure possibility of making grants or contracting with government.]

1           **SECTION 25. 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 26. 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 27. EFFECTIVE DATE.** This [act] takes effect....