

DRAFT
FOR DISCUSSION ONLY

PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For October 12-13, 2012 Drafting Committee Meeting

Redline Draft

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October 8, 2012

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PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

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PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

Prefatory Note

Some states have comprehensive criminal laws on human trafficking that address all facets of human trafficking and all crimes that contribute to human trafficking and modern-day slavery. Others have only minimal criminal provisions. Some cover all forms of labor and sex trafficking and protect all children under 18. Others may cover only sex trafficking or fail to protect all children under 18. Some states cover all methods that traffickers use to keep their workers as virtual slaves. Others fail to cover crimes that traffickers use to ensure their workers remain under their control and unable to escape, such as threatening to hurt or kill the workers' loved ones, confiscating the workers' immigration papers, or ensnaring them in ever-rising and often-fictitious debt to be repaid through physical labor that is never enough to satisfy the debt.

A comprehensive set of criminal laws are needed to stop human trafficking and modern-day slavery. But criminal laws are not sufficient to end human trafficking. Coordinated and effective action by many different actors are needed to achieve successful identification of victims and prosecution of traffickers. Victims are often without resources of any kind and if they do not receive housing, counseling, and other forms of help, they may be forced back to the traffickers. Without knowing who the victims are and getting their testimony in court, police and prosecutors cannot enforce the criminal laws. State and local agencies and non-governmental service providers need to work in a coordinated way to insure that they know who the victims are, where to find them, what services they need, and how to cooperate so that there is a network of providers making these services available and helping prosecute the crimes. The general public and the different actors need to be trained in how to recognize human trafficking and get help for the victims. Without some kind of coordinating body to bring together these different actors on a regular basis to conduct the necessary planning and coordination, all these steps will not take place. In short, a comprehensive set of victim services and remedies and a coordinating body is needed to prevent future trafficking and bring an end to modern-day slavery.

Some states provide a comprehensive set of victim services and remedies, but the majority do not. Similarly, some states have an overall coordinating body, but the majority do not. This Act thus seeks to provide the three components necessary for ending human trafficking and modern-day slavery: comprehensive criminal provisions; victim services and remedies; and a coordinating body.

PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

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

SECTION 2. DEFINITIONS. In this [act]:

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

(2) “Business entity” means a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation or government or governmental subdivision, agency, or instrumentality.

(3) “Coercion” means:

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

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

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

(D) the abuse of a position of power;

(E) taking advantage of a position of vulnerability;

(F) providing to an individual or controlling an individual’s access to a controlled substance;

(G) the destruction of, taking of, or the threat to destroy or take an individual's identification document; or

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

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

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

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

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

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

(5) "Deception" means:

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

including:

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

(ii) the fundamental conditions of labor; or

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

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

the person does not intend to be delivered or performed.

(6) “Human trafficking” means the offenses created by this [act].

(7) “Identification document” means a passport, driver’s license, immigration document, travel document, or any other government-issued identification document, including a document issued by a foreign government.

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

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

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

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

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

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

the United States.

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

Comment

[Reserved]

Sources for Definitions

1. Introduction: All definitions are drawn from the state laws on human trafficking and the federal Victims of Trafficking and Violence Protection Act of 2000 and its subsequent amendments of 2003, 2005, and 2008. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in scattered sections of 18 U.S.C. and 22 U.S.C.) [hereinafter TVPA]. The definitions in paragraphs (1), (3), (5), and (10) concern abuse of the law, coercion, deception, and serious harm. These concepts are central to how traffickers control individuals. They concern the *means* used to force people to provide labor or services against their will.

2. “Coercion.” Virtually all states include some of the elements of this definition of coercion in their statutes, but they do so under definitions of different words and they range from a limited selection of means to a comprehensive one. This definition draws from states with expansive definitions (such as Alabama, Oklahoma, and Vermont) and from the TVPA in order to capture the broad range of techniques used by traffickers. See, e.g., ALA. CODE § 13A-6-151(1); VT. STAT. ANN. tit. 13 §§ 2652(a)(5), 2651(7), 2651(2); 18 U.S.C. §§ 1589(a)(1), 1591(a), 1591(e)(2) (2006). Coercion through access to drugs in (F) is covered by at least eight states (Alabama, Arizona, Washington, D.C., Georgia, Guam, North Carolina, Oklahoma, and Vermont). Coercion through control of identification documents in (G) uses language that mirrors that used by at least twenty states (Arizona, Colorado, Delaware, Guam, Illinois, Iowa, Kansas, Michigan, Mississippi, Nevada, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Tennessee, Rhode Island, Utah, Vermont). Many states (again including Alabama, Oklahoma, and Vermont) also address the coercion in (H) that someone must work to pay off a debt where either the work is not applied to actually pay off the debt or the debt is grossly inflated in value. See ALA. CODE § 13A-6-151(2)(b).

3. “Abuse of the law or legal process.” This term is used in the definition of “coercion” in paragraph (C), and so must be defined. It is taken from the Washington, D.C., law and the TVPA. See D.C. CODE § 22-1831(1); 18 U.S.C. §§ 1589(c)(1) (2006) (method of coercion in relation to forced labor) and § 1591(e)(1) (in relation to the “sex trafficking of children or by force, fraud, or coercion”). At least twenty-five states include the phrase in human trafficking statutes as a form of coercion or force, but without defining it.

4. “Serious harm.” The concept of “serious harm” is used twice in the definition of

“coercion” in subparagraphs (A) and (B), and so is defined in paragraph (10). The definition is from the TVPA. 18 U.S.C. § 1589(c)(2).

5. “Deception.” The definition is derived in part from provisions contained in the laws of Alabama, Georgia, and North Carolina. See ALA. CODE § 13A-6-151(2)(a); GA. CODE ANN. § 16-5-46; N.C. GEN. STAT. § 14-43.10(a)(2).

6. “Person.” The standard ULC definition is used in paragraph (9).

7. “Business entity.” The definition in paragraph (2) is the same as that for “person,” minus the word, “individual.”

8. “Sexual activity.” The paragraph (11) definition is modified from Rhode Island’s definition of “sex act.” R.I. GEN. LAWS § 11-67-6.

SECTION 3. TRAFFICKING.

(a) A person commits trafficking in the first degree if the person intentionally recruits, transports, transfers, harbors, receives, provides, obtains, isolates, 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 less than 18 years of age in violation of

Section 6.

(b) Trafficking in the first degree is a [class b felony] but if the victim is less than 18 years of age, it is a [class a felony].

(c) A person commits trafficking in the second degree if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, 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 less than 18 years of age in violation of Section 6.

(d) Trafficking in the second degree is a [class c felony] but if the victim is less than 18 years of age, it is a [class b felony].

(e) A person commits trafficking in the third degree if the person recklessly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, 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 less than 18 years of age in violation of Section 6.

(f) Trafficking in the third degree is a [class d felony] but if the victim is less than 18 years of age, it is a [class c felony].

Legislative Note: *Some states have amended 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

In typical state criminal laws dealing with trafficking, different levels of intent correspond to differing criminal penalties. In order to indicate different felony levels, one each for an intentional, knowing, and reckless state of mind (*mens rea*), subsections (a), (c), and (e) repeat the same language to define the offense except for inserting the different word for each state of mind. Subsections (b), (d), and (f) then state what the felony level should be for that state of mind. A class “a” felony indicates the most serious felony other than one calling for the death penalty. The following felony levels of “b”, “c”, and “d” denote lower levels of felony. This structure is used throughout the offenses created by this act.

Sources

Forty-six states have sex trafficking crimes and forty-nine states have labor trafficking crimes that address the *process* of trafficking by the ways the persons are recruited, moved, and

received into forced labor or sex work. The TVPA criminalizes both labor and sex trafficking. 18 U.S.C. §§ 1590(a), 1591(a)(1) (2006). Twenty-three states reach the same processes as the TVPA. This draft is comprehensive in addressing the many actions traffickers take to get their victims into the forced labor situation.

SECTION 4. SUBJECTING AN INDIVIDUAL TO INVOLUNTARY

SERVITUDE OR FORCED LABOR.

(a) A person commits involuntary servitude or forced labor in the first degree if the person intentionally uses coercion, deception, or fraud to compel an individual to provide labor or services.

(b) Involuntary servitude or forced labor in the first degree is a [class b felony] but if the victim is less than 18 years of age, it is a [class a felony].

(c) A person commits involuntary servitude or forced labor in the second degree if the person knowingly uses coercion, deception, or fraud to compel an individual to provide labor or services.

(d) Involuntary servitude or forced labor in the second degree is a [class c felony] but if the victim is less than 18 years of age, it is a [class b felony].

(e) A person commits involuntary servitude or forced labor in the third degree if the person recklessly uses coercion, deception, or fraud to compel an individual to provide labor or services.

(f) Involuntary servitude or forced labor in the third degree is a [class d felony] but if the victim is less than 18 years of age, it is a [class c felony].

Comment

[Reserved]

Sources

Twenty-five states currently have specific criminal provisions for forced labor or servitude as part of their human trafficking statutes, but distinct from the movement or *process* aspect of human trafficking. Delaware provides an example of a state law with comparable language. 11 DEL. CODE ANN. tit. 11 § 787(b)(1). This provision closely parallels the crime of forced labor created by the TVPA. See 18 U.S.C. § 1589(a) (2006) (criminalizing “whoever knowingly provides or obtains the labor or services of a person by any one of . . . the following means . . .,” including, e.g., the means of “force, threats of force. . .”).

SECTION 5. SUBJECTING AN ADULT TO SEXUAL SERVITUDE.

(a) A person commits sexual servitude of an adult in the first degree if the person intentionally uses coercion, deception, or fraud to compel an individual 18 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 commits sexual servitude of an adult in the second degree if the person knowingly uses coercion, deception, or fraud to compel an individual 18 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 commits sexual servitude of an adult in the third degree if the person recklessly uses coercion, deception, or fraud to compel an individual 18 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]

Sources

Thirteen states explicitly criminalize sexual servitude of adults separately from the process or movement of adults for the purpose of sexual servitude. Alabama provides an example: “(a) A person commits the crime of human trafficking in the first degree if: (1) He or she knowingly subjects another person to . . . sexual servitude through use of coercion or

deception.” ALA. CODE § 13A-6-152(a). The other states include Delaware, Georgia, Guam, Illinois, Kentucky, Michigan, Montana, Nebraska, New Hampshire, North Carolina, Rhode Island, and Tennessee.

SECTION 6. SUBJECTING A MINOR TO SEXUAL SERVITUDE.

(a) A person commits sexual servitude of a minor in the first degree if the person intentionally offers or procures an individual less than 18 years of age to engage in commercial sexual services.

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

(c) A person commits sexual servitude of a minor in the second degree if the person knowingly offers or procures an individual less than 18 years of age to engage in commercial sexual services.

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

(e) A person commits sexual servitude of a minor in the third degree when the person recklessly offers or procures an individual less than 18 years of age to engage in commercial sexual services.

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

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

Comment

[Reserved]

Sources

Several states make sexual servitude of a minor a separate offense, in addition to the offense of trafficking a minor for sexual servitude. Delaware provides an example: “A person is guilty of sexual servitude of a minor when the person knowingly . . . [c]auses a minor to engage

in commercial sexual activity or a sexually explicit performance. . . .” DEL. CODE ANN. tit. 11 § 787(b)(2)(b). Georgia, Mississippi, Missouri, Nebraska, the Northern Mariana Islands, Oregon, and Tennessee have a similar provision, while New Jersey and Florida prohibit procuring prostitution of a child under 18.

SECTION 7. PATRONIZING VICTIM OF SEXUAL SERVITUDE.

(a) A person commits patronizing a victim of sexual servitude in the first degree if the person gives, agrees to give, or offers to give anything of value so that an individual may engage in sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude in violation of Section 5 or 6.

(b) Patronizing a victim of sexual servitude in the first degree is a [class d felony] but if the victim is less than 18 years of age, it is a [class c felony].

(c) A person commits patronizing a victim of sexual servitude in the second degree if the person gives, agrees to give, or offer to give anything of value so that an individual may engage in sexual activity with another individual and the person recklessly disregards that the other individual is a victim of sexual servitude in violation of Section 5 or 6.

(d) Patronizing a victim of sexual servitude in the second degree is a [class a misdemeanor] but if the victim is under eighteen years of age, it is a [class d felony].

Comment

This section does not preclude a prosecution under [state statutory rape law]. It is designed to deal with the “demand” side of sex trafficking and to reduce the demand through criminal penalties for patrons of victims. The Committee seeks guidance on the level of penalty required to achieve an effective deterrent. The draft makes a *knowing violation a class d* felony offense and raises it to class c if the victim is a minor. Should it instead be a *class b* offense and raised to class a if the victim is a minor? The same question holds for a *reckless violation*. The draft sets the basic penalty as a *class a misdemeanor*, raised to a class d felony for a minor. Should it instead be a *class c* felony offense, raised to class b for a minor?

Sources

Section 7 is drawn from a Washington State law designed to reduce such demand for minors. WASH. REV. CODE ANN. § 9.68A.100(1). Vermont has a similar provision.

SECTION 8. DEBT BONDAGE.

(a) A person commits debt bondage in the first degree if the person knowingly uses an individual's labor or services in payment or satisfaction of a real or purported debt if:

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

(2) the length of the labor or services is not limited and the nature of the labor or services is not defined;

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

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

(b) Debt bondage in the first degree is a [class d felony] but if the victim is less than 18 years of age, it is a [class c felony].

(c) A person commits debt bondage in the second degree if the person recklessly uses an individual's labor or services in payment or satisfaction of a real or purported debt if:

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

(2) the length of the labor or services is not limited and the nature of the labor or services is not defined;

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

(4) 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 a misdemeanor] but if the victim is less than 18 years of age, it is a [class d felony].

Comment

Debt bondage essentially refers to requiring that an individual work to pay off a debt where either the work is not applied to actually pay off the debt or the debt is grossly inflated in value.

Sources

At least fifteen states have incorporated debt bondage into their servitude or trafficking statutes as either a means of coercing someone into forced labor, the form of exploitation to which trafficking is directed, or a separate crime like forced labor. The District of Columbia provides an example of making it a separate crime, as Section 8 proposes, in D.C. CODE § 22-1832(b): “It is unlawful for an individual or a business knowingly to place or keep a person in debt bondage.” The other states criminalizing debt bondage in one of these ways are Alabama, Arkansas, Florida, Guam, Hawaii, Idaho, Iowa, Kansas, Michigan, Missouri, New Hampshire, New York, North Carolina, and Utah. The federal law equivalent is the prohibition of peonage, 18 U.S.C. § 1581(a), whose penalty level was raised from 10 years to 20 years by the Victims of Trafficking and Violence Protection Act of 2000.

SECTION 9. ABUSE OF IDENTIFICATION DOCUMENT.

(a) A person commits abuse of an identification document if 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 a real or purported identification document;

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

Comment

[Reserved]

Sources

At least twenty states include misuse of an identification document as a method of coercion or deception within human trafficking statutes. Section 9 is modified from language in the TVPA which punishes unlawful conduct with respect to documents in furtherance of trafficking, peonage, involuntary servitude, or forced labor. 18 U.S.C. § 1592(a).

SECTION 10. BUSINESS LIABILITY.

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

Alternative A

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

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

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

(c) It is an affirmative defense to a prosecution of a business entity under subsection (b)(2) if the entity proves by a preponderance of the evidence that the entity had in place adequate procedures, including an effective complaint procedure, designed to prevent persons associated with the entity from engaging in the conduct under subsection (b)(2) and to correct promptly a violation of this [act].

Alternative B

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

(1) either

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

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

(2) the entity did not have in place adequate procedures, including an effective complaint procedure, designed to prevent persons associated with the entity from engaging in the conduct in paragraph (1) and to correct promptly a violation of this [act].

End of Alternatives

[(d)] [(c)] The court may consider the severity of the business entity's offense and order enhanced penalties in addition, including:

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

(2) disgorgement of profit; or

(3) debarment from government contracts.

Comment

Many states have provisions specifically addressing business liability for criminal trafficking offenses within their general human trafficking offense statutes. These fall into three categories: providing the liability standard for when a business may be found liable; naming additional penalties for businesses convicted of human trafficking; and specifying that both persons and businesses can commit the offenses. Section 10 draws on all three, by establishing the standard to be used in deciding whether a business entity is liable, naming additional penalties for business entities found criminally liable, and specifying that businesses can be

liable.

Section 10 also provides for a defense to business liability, drawing from the U.K. Bribery Act 2010. In considering whether a business entity has the “adequate procedures” needed to establish the affirmative defense (under subsection (c) of Alternative A) or that the prosecution has the burden to prove a lack thereof (under subsection (b)(2) of Alternative B), prosecutors and courts should consider certain kinds of fact-specific issues. This list of such issues was developed pursuant to the U.K. Bribery Act:

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

Sources

It is generally accepted that criminal statutes applying to the actions of a “person” reach business entities, but four states (the District of Columbia, Guam, Hawaii, and Rhode Island) specifically name businesses as subject to criminal liability within their trafficking offenses. For example, the District of Columbia specifies that forced labor, debt bondage, labor or sex trafficking, and sex trafficking of children are “unlawful for an individual or a business.” D.C. CODE §§ 22-1832—22-1836.

Three states (Alabama, Georgia, and Tennessee) specify the liability standard for businesses, and Section 10 draws on these statutes. See, e.g., GA. CODE ANN. § 16-5-46(j). Seven states (Guam, Hawaii, Massachusetts, Minnesota, Missouri, Vermont, and Wisconsin) provide that *in addition* to the sanctions provided within the trafficking offenses themselves, other sanctions may be imposed on businesses convicted of violating human trafficking criminal laws. See, e.g., MINN. STAT. § 609.284 (permitting dissolution, revocation of a state license, or surrender of a state charter). Massachusetts permits a fine of up to \$1,000,000 for both sex and labor trafficking. MASS. GEN. LAWS. ch. 265 §§ 50(c), 51(c).

[SECTION 11. PAST SEXUAL BEHAVIOR OF VICTIM. In a prosecution or civil action for damages for an offense under this [act] in which there is evidence that the alleged victim was subjected to sexual servitude, reputation or opinion evidence of past sexual behavior

of the alleged victim is not admissible. Evidence of a specific instance of the alleged victim's past sexual behavior is not admissible unless the evidence is admitted in accordance with [state rape shield evidence rule] or is constitutionally required to be admitted.]

Comment

Section 112 is designed to ensure that the state rape shield law applies in prosecutions and civil actions under this act.

Sources

During the prosecution of a defendant for human trafficking violations, at least four states (Georgia, New Hampshire, Virginia, and Washington, D.C.) specifically bar evidence of the alleged victim's previous sexual commercial history or sexual activity. This version is drawn from the D.C. human trafficking provision on this issue, D.C. CODE § 22-1839. Alabama and Guam provide that such evidence is not a defense to a trafficking violation and does not preclude a conviction.

SECTION 12. VICTIM DEFENSES.

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

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

(1) is a victim; and

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

(c) If a victim who is not criminally liable under subsection (a) is less than 18 years of age, the victim must be [presumed to be a [child in need of protection] to be] treated in accordance with [applicable state juvenile program].

Comment

[Reserved]

Sources

Subsection (a) is modified from Guam law and protects victims coerced into committing illegal commercial sex acts from prosecution for those acts. 9 GUAM CODE ANN. § 26.03 (“A victim of trafficking in persons is not criminally liable for any commercial sex act or illegal sexually-explicit performance committed as a direct result of, or incident or related to, being trafficked”). Tennessee and Vermont provide that children under 18 are immune from prosecution for prostitution.

Eleven states (Alabama, Connecticut, Guam, Massachusetts, Minnesota, New Jersey, Ohio, Oregon, Vermont, and Washington) provide affirmative defenses for victims of human trafficking who are being criminally prosecuted. Subsection (b) closely follows Minnesota’s affirmative defense, which requires the victim to prove victim status during the time the crime was committed and that the victim acted under compulsion of the trafficker. MINN. STAT. ANN. § 609.325. Vermont also provides that children under 18 who are victims of trafficking may be treated as persons in need of care or supervision, as subsection (c) provides. VT. STAT. ANN. tit. 13 § 2652(e).

SECTION 13. MOTION TO VACATE CONVICTION. At any time after a conviction, the court in which the conviction was entered may vacate the conviction if the court finds the defendant’s participation in the offense was the result of being a victim. Official documentation from a federal, state, or local government agency of the defendant’s status at the time of the offense as a victim creates a presumption that the defendant’s participation in the offense was a result of being a victim, but official documentation is not required to grant a motion under this section.

Comment

[Reserved]

Sources

At least three states (Maryland, New York, and Washington) offer victims an opportunity to ask the court to vacate their conviction for the offense of prostitution if the offense is found to have been the result of their status as a victim. See, e.g., N.Y. CRIM. PRO. § 440.10. Oregon permits expunging the juvenile delinquency record of a child under 18 for prostitution.

SECTION 14. COMPENSATION RESTITUTION.

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

~~compensation~~restitution to a victim, including:

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

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

(B) the value to the defendant of the victim's labor or services, including sexual services, not reduced by expenses the defendant incurred as a result of maintaining the victim;

~~(C)~~ the value of the victim's labor or services calculated under the minimum wage and overtime provisions of the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq.; ~~or [state minimum wage and overtime provisions], whichever is higher;~~

(D) the value of the victim's labor or services calculated under the [state minimum wage and overtime provisions];

(2) if it is not possible or in the best interest of the victim to compute a value 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. Section 201 et seq., or [state minimum wage and overtime provisions], whichever is higher; and

(3) costs and expenses incurred or needed 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;
- (H) reasonable attorney's fees and other legal costs; and
- (I) other services needed by~~ests~~ the victim ~~incurred~~.

(b) In determining value under subsection (a)(1)(B), the court shall use the prevailing wage for the labor or services in the area if there is one, and if not, the average amount actually paid for such labor or services, both as established by expert evidence.

(c) The court ~~shall~~may order ~~compensation~~restitution under subsection (a) even if the victim is absent from the jurisdiction or unavailable.

(d) In the event the victim is absent or unavailable, the court shall order that the compensation be paid to the Human Trafficking [Task Force] established under Section 20, and that the [Task Force] attempt to locate and pay the victim or the victim's surviving family member.

(e) If it is not possible to locate the victim or the victim's surviving family member after one year, the Human Trafficking [Task Force] may use the funds for its work.

Comment

[Reserved]

Sources

At least fourteen states (Alabama, Delaware, Hawaii, Idaho, Illinois, Michigan, Missouri,

New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, and Tennessee) mandate restitution to the victim upon the defendant's conviction of human trafficking. This language expands on that provided in R.I. GEN. LAWS § 11-67-4. The TVPA mandates restitution to the victim to cover the full amount of the victim's losses plus "the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act." 18 U.S.C. § 1593(b)(1) (2006).

SECTION 15. FORFEITURE.

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

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

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

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

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

(2) if a remainder exists after a distribution under paragraph (1), the amount necessary to pay a civil award to a victim entered against the person before the forfeiture occurs must be applied to pay the civil award;

(3) if a remainder exists after distributions under paragraphs (1) and (2), of the remainder:

(A) 20 percent to the [state's crime victims compensation fund];

(B) 40 percent to providers of free or low-cost services to human trafficking victims in the [county, parish, city, town, or municipality] where the conviction took place; and

(C) 40 percent to the law enforcement and prosecuting agencies that obtained the conviction.

Comment

[Reserved]

Sources

At least twenty-three states provide for forfeiture upon conviction of a human trafficking offense. Alabama, Illinois, Massachusetts, Minnesota, and New Hampshire have innovative provisions insuring that the assets be used to pay restitution and damages to the victims, and that the remaining funds go to victim service providers. This language combines aspects of Alabama and New Hampshire law. ALA. CODE § 13A-6-156; N.H. REV. STAT. ANN. § 633:8. The TVPA also provides for forfeiture of any interest in real or personal property used or intended to be used to commit the crimes of trafficking, peonage, slavery, involuntary servitude, or forced labor or that was derived from such crimes. 18 U.S.C. § 1594(d) (2006).

SECTION 16. 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 defendant used a weapon in the commission of the offense;
- (3) the defendant subjected more than one victim to the same or similar offense;
- (4) the defendant was previously convicted for the same or similar offense;
- (5) the victim was less than 14 years of age;
- (6) the defendant knew or should have known that the victim was particularly vulnerable due to the victim's physical or mental condition or otherwise was particularly susceptible to the criminal conduct;
- (7) the defendant transported the victim across state or national borders;
- (8) the defendant subjected the victim to the offense for more than 180 days;

(9) 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; or

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

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

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

Comment

The Committee also considered drafting this section to give the court permission to enhance the sentence for the designated factors (Sentence Enhancement, rather than Aggravating Circumstances). It decided, however, to require that the trier of fact find that the specific factor occurred during the course of committing an offense, and thus labeled the section Aggravating Circumstances.

Sources

The particular aggravating circumstances listed here are drawn from various sources. The Federal Sentencing Guidelines impose a two level sentence increase where “the defendant knew or should have known that a victim of the offense was a vulnerable victim.” U.S. SENTENCING GUIDELINES MANUAL § 3A1.1(b) (2011). Vulnerable victim is defined in the GUIDELINES as a victim “who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct.” *Id.* at § 3A1.1(b) cmt. n.2. Section 16(a)(6) adopts this language, although age (victim less than 14) is listed separately in paragraph (5). Similar factors include those in paragraphs (1) (defendant abused a position of trust) and (9) (defendant enticed victims from shelters). The factor in paragraph (8) for the duration of isolating victims is modeled after the Washington, D.C. law. *See* D.C. CODE § 22-1837.

SECTION 17. STATUTE OF LIMITATIONS FOR CRIMINAL PROSECUTION.

There is no statute of limitations on criminal prosecution for an offense under this [act].

Comment

[Reserved]

Sources

At least one state (Vermont) specifically provides that there is no statute of limitations for human trafficking crimes. VT. STAT. ANN. tit. 13 § 4501.

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

Comment

[Reserved]

Sources

Section 18 is drawn from Guam's law, 9 GUAM CODE ANN. § 26.35. At least two other states or territories mandate confidentiality of victim identification specifically for human trafficking victims. *See* 6 N. MAR. I. CODE § 15011 (2005) (requiring that the Attorney General take all reasonable measures in prosecutions to ensure that the victim and victim's family's identification remains confidential); and OKLA. STAT. tit. 21, § 748.2 (requiring protecting the victim's safety, including by "ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public."). Federal law provides the same protection through 28 C.F.R. § 1100.31(d).

SECTION 19. CIVIL ACTION.

(a) A victim may bring a civil action against a person that commits an offense under this [act] for damages caused to the victim by~~incurred as a consequence of an alleged~~ the offense and for injunctive relief, including relief to prevent a future offense under this [act] ~~by the person.~~

(b) In an action under this section, the trier of fact may award actual and punitive damages, ~~punitive damages, and litigation expenses reasonably incurred~~

(c) ~~In an action under this section,~~ In an action under this section, ~~the~~ court shall award a prevailing victim reasonable attorney's fees and costs and may award a prevailing defendant reasonable attorney's fees and

costs only if the court finds that that the plaintiff's action was frivolous, unreasonable, or without foundation.}

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

(~~e~~) An action under this section must be commenced not later than [10] years after the later of the date on which the victim:

(1) was freed from subjection to the human trafficking that is the basis of the action; or

(2) ~~the date on which the victim~~ attains 18 years of age.

(f) Compensation paid to a victim pursuant to Section 14 shall be offset from damages awarded under this section for the same item.

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

Comment

Permitting the victim to sue the trafficker for damages provides an important avenue for the victim to gain economic resources needed for recovery and reintegration into society, an avenue that is independent of whether a state prosecutor is willing to pursue the matter. Injunctive relief is also important to stop future violations that may affect many victims. Providing reasonable attorney's fees and costs to the prevailing plaintiff is indispensable to these goals. The language concerning the standard for awarding attorney's fees to prevailing plaintiffs and defendants is drawn from U.S. Supreme Court case law interpreting 42 U.S.C. §1988, governing the award of attorney's fees under civil rights cases. In its most recent and unanimous decision on this issue, Fox v. Vice, 563 U. S. 2____, 131 S.Ct. 2205 (2011), the Court stated the relevant standard and the reasons for it as follows:

The statute involved here, 42 U.S.C. § 1988, allows the award of "a reasonable attorney's fee" to "the prevailing party" in various kinds of civil rights cases, including suits brought under § 1983. Most of our decisions addressing this provision have concerned the grant of fees to prevailing plaintiffs. When a plaintiff succeeds in remedying a civil rights violation, we have stated, he serves "as a 'private attorney general,' vindicating a policy that Congress considered of the highest priority." Newman

v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402 (1968) (per curiam). He therefore “should ordinarily recover an attorney's fee” from the defendant—the party whose misconduct created the need for legal action. Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 416 (1978) (internal quotation marks omitted). Fee shifting in such a case at once reimburses a plaintiff for “what it cos[t][him] to vindicate [civil] rights,” Riverside v. Rivera, 477 U.S. 561, 577–578 (1986) (internal quotation marks omitted), and holds to account “a violator of federal law,” Christiansburg, 434 U.S., at 418. In Christiansburg, we held that § 1988 also authorizes a fee award to a prevailing defendant, but under a different standard reflecting the “quite different equitable considerations” at stake. Id., at 419. In enacting § 1988, we stated, Congress sought “to protect defendants from burdensome litigation having no legal or factual basis.” Id., at 420. Accordingly, § 1988 authorizes a district court to award attorney's fees to a defendant “upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation.” Id., at 421; see also Kentucky v. Graham, 473 U.S. 159, 165 (1985).

Ending human trafficking and modern-day slavery calls for the same approach.

Subsection (b) brackets the award of attorney's fees to a prevailing victim because some states may not permit the award of attorney's fees.—Subsection (ed) suggests a longer, 10- year, statute of limitations for bringing an action than some general state limitations statutes provide because a victim's trauma may preclude seeking assistance from law enforcement or others for an extended period of time. Subsection (g) makes explicit that victims are free to pursue other available avenues of relief in addition to this statutory cause of action.

Sources

At least fifteen states explicitly provide victims with a private right of action, as does the TVPA, and all the state and federal statutes make attorney's fees and costs available to prevailing plaintiffs. The language in this section is largely modified from subsections of CAL. CIV. CODE § 52.5. The other states include Alabama, Connecticut, District of Columbia, Florida, Guam, Indiana, Maine, Minnesota, Missouri, Nevada, North Mariana Islands, Oklahoma, Washington, and Wisconsin. See also 18 U.S.C. § 1595, which also has a ten-year statute of limitations.

SECTION 20. GOVERNOR'S APPOINTMENT ESTABLISHMENT OF HUMAN TRAFFICKING [TASK FORCE] [COUNCIL] [COORDINATOR] MEMBERS.

(a) ~~There is created the [interagency task force on human trafficking] [human trafficking council] [office of human trafficking coordinator in [an existing state agency]].~~

(b) The [Governor] shall appoint ~~[the chair and members of and consultants to the an~~ [interagency ~~agency~~ task force on human trafficking] ~~[human trafficking council] [office of human trafficking coordinator]~~ established by subsection (a). Appointees may include who are

state officials serving in the [departments] whose duties may bring them into contact with victims or offenders, representatives from the [departments] of [justice], [law enforcement], [labor], [health and human services], [child welfare], [juvenile justice], [transportation], [education], [agriculture], and [housing], nongovernmental agencies, and service providers, and victims and other individuals.

(b) The [departments] [represented on the [task force] [council] [in the office]], or [assigned to consult with the [task force] [council] [coordinator]] are authorized to provide staff to the [task force] [council] [coordinator] on a nonreimbursable basis.

(c) The [interagency task force] shall:

(1) coordinate the implementation of this [act];

(2) evaluate state efforts to combat human trafficking, collect data on the subject, and submit an annual report to the Governor and [state legislative body];

(3) promote public awareness about human trafficking, remedies and services for victims, and prevention efforts, and create a public awareness sign about these topics and local and national hotline information;

(4) coordinate training relating to the recognition and prevention of human trafficking; and

(5) conduct other appropriate activities to combat human trafficking within this state.

Comment

The purpose for having a task force is to ensure effective coordination, education, and planning among the many different state and local agencies and non-governmental service providers that come into contact with both traffickers and victims. Only with this coordination will it be possible to ~~both~~ prevent trafficking, prosecute offenders, and provide remedies for the victims. For example, police, prosecutors, and attorneys in the state attorney general's office are

those most likely to arrest and prosecute traffickers. But personnel in the state labor, fair employment, human rights, or agriculture departments may also come into contact with offenders and victims while overseeing state labor and employment laws, since workers coerced into working against their will have been found in many fields of work governed by these laws, such as agricultural, factory, welding, hotel, and nail salon work. Similarly, personnel in agencies devoted to health and human services, housing, child abuse and neglect, and juvenile delinquency may oversee programs designed to bring services to victims and be able to point law enforcement to situations where victims can be found. The state transportation department may oversee state rest stops on the public highways where victims could learn of sources of help. Personnel in state education departments may learn of trafficking victims in schools and be able to help develop plans to train educators on how to recognize the signs and bring help to the victims. In the nongovernmental sector, there are many service providers that help trafficking victims recover and can help law enforcement by providing information about where to find trafficking victims and giving the victims the support they need to recover and help bring down the traffickers by testifying in criminal cases against the traffickers. Finally, having surviving victims represented will also give the task force vital information about the real situation faced by trafficking victims. Subsection (b) reduces the fiscal impact by providing that existing staff can be assigned to work with the task force.

Sources

At least twelve states currently have legislation creating a task force or similar structure. Task forces generally include representatives from state and local law enforcement, state prosecutors, labor regulators, inspectional service officers, victim service providers, nongovernmental agencies, and mental health professionals. Some states, including Connecticut and New York, provide a specific list of task force members. See, e.g., CONN. GEN. STAT. § 46a-170. Similarly, the TVPA created a permanent interagency task force, the President's Interagency Task Force (PITF), which includes the Secretary of State, Attorney General, and the heads of other relevant departments, including Education, Labor, Health and Human Services, National Intelligence, Defense, Homeland Security, USAID, and others the President may designate. 22 U.S.C. § 7103(b) (2006 & Supp. III 2007-2010).

Subsection (ab) is modeled after the state and federal provisions appointing task force members and gives discretion to state governors in appointing members. Subsection (b), The provision authorizing the provision of staff on a nonreimbursable basis, is also drawn from the TVPA. 22 U.S.C. § 7103(e)(1).

SECTION 21. DUTIES OF [TASK FORCE] [COUNCIL] [COORDINATOR].

[NOTE TO COMMITTEE MEMBERS: SECTION 21 HAS BEEN INCORPORATED INTO SECTION 20(c), BUT IS LEFT HERE SO YOU CAN SEE THE CHANGES NOW FOUND IN SECTION 20(c).] The [interagency task force ~~on human trafficking~~] [human-

~~trafficking council]~~ ~~[office of human trafficking coordinator]~~ created under Section 20 shall:

(1) coordinate the implementation of this [act], ~~including establishing protocols where appropriate in accordance with paragraphs (3) and (5) and Sections 22 and 24 through 26;~~

(2) evaluate state efforts to combat human trafficking, collect data on the subject, and submit an annual report to the Governor and [state legislative body];

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

~~(4) exclude from the data collected under paragraph (3) the identity of any victim and the victim's family;~~

~~(35)~~ promote public awareness about human trafficking, remedies and services for victims, and prevention efforts, and create a public awareness sign about these topics and local and national hotline information;

(4) coordinate training relating to ensure that a state [or local] employee who reasonably may be expected to come into contact in the course of the employee's duties with a victim or perpetrator is trained every three years in the ~~recognition and prevention of human trafficking;~~

~~— (6) create and maintain a website to publicize the [interagency task force, council, or coordinator]'s work;~~

~~(7) submit to the [state legislative body] an annual report of its evaluation under paragraph (2), including any recommendations, and a summary of the data collected under paragraph (3); and~~

~~(58)~~ conduct other appropriate activities to combat human trafficking within this state ~~which are appropriate.~~

Comment

Subsection 20(c)4 sets out the duties needed for effective coordination of prosecution, prevention, and remedial actions. Paragraph 1 provides that the task force is responsible for coordinating all activities needed to implement the act; ~~this includes the training activities specified in Section 22, though the task force need not itself conduct the training but can insure that it takes place.~~

Evaluation, data collections, and annual reporting can be helpful in shaping future prevention and enforcement efforts. Useful data covers victim demographics, including citizenship, age, sex, ethnic origin, race, and, for foreign victims, immigration status during victimization. It also documents human trafficking activity within the state, including types of activities reported, efforts to combat human trafficking, and impacts on victims and on the state.

Paragraph 35 sets forth the task force's authority in raising public awareness. To promote public awareness, it can be helpful to create a public-awareness sign about these topics and local and national hotline information, and also to create and maintain a website to publicize the task force's work. The Polaris Project, the leading research organization in the United States on anti-trafficking law and policy, operates a National Human Trafficking Resource Center, with a national, toll-free hotline, available to answer calls from anywhere in the country, 24 hours a day, 7 days a week, every day of the year. It recommends that states create a poster of no smaller than 8½ by 11 inches in size that states the following:

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

- Victims of human trafficking are protected under U.S. and [State] law.
- The Hotline is:
 - o Available 24 hours a day, 7 days a week
 - o Toll-free
 - o Operated by a non-profit, non-governmental organization
 - o Anonymous & Confidential
 - o Accessible in 170 languages
 - o Able to provide help, referral to services, training, and general information.”

A final key responsibility of the task force is insuring that the state personnel who may come in contact with traffickers and victims are trained in the law,

Sources

The existing state laws establish the duties the task force should carry out, as does the federal law.

Paragraph (1): Coordinate the implementation of this act, including establishing protocols. See, e.g., 9 GUAM CODE ANN. § 26.20(e)(1); N.Y. SOCIAL SERVICES LAW § 483-ee(b)(4) (McKinney 2011). See also 22 U.S.C. § 7103(d)(1) (2006 & Supp. III 2007-2010).

Other states have similar provisions.

Paragraph (2): Evaluate state efforts to combat human trafficking. See, e.g., COLO. REV. STAT. § 18-1.8-101(3)(c). Connecticut, New Mexico, New York, Ohio, Pennsylvania, and Texas have similar provisions, as does the TVPA. 22 U.S.C. § 7103(d)(2) (2006 & Supp. III 2007-2010)

Paragraph (23): Collect data on human trafficking activity. This is a common provision in the state laws. See N.Y. SOCIAL SERVICES LAW § 483-ee(b)(1) (McKinney 2011); D.C. CODE § 22-1841; see also 22 U.S. C. § 7103(d)(3).

Paragraph (2): Submit an annual report. At least eight states require the task force to submit a report summarizing the task force's findings and making recommendations. See, e.g., COLO. REV. STAT. § 18-1.8-101(5). Connecticut, Guam, New Mexico, New York, Ohio, Pennsylvania, Texas, and Utah also have these provisions, as does the TVPA. 22 U.S.C. § 7103(d)(7) (2006 & Supp. III 2007-2010).

Paragraph (35): Promote public awareness about human trafficking, remedies and services for victims, and prevention efforts, and create a public-awareness sign. Many states call for the task force to undertake public awareness measures. See N.Y. SOCIAL SERVICES LAW § 483-ee(b)(5) (McKinney 2011). Maryland requires that the state Education Department and Department of Health and Mental Hygiene (DHMH) provide awareness and training for Directors of Student Services to use in preventing trafficking of children. MD. CODE ANN., EDUC. § 7-432.

Paragraph (4): Coordinate training of key personnel. At least sixteen states (California, Connecticut, Colorado, Florida, Guam, Idaho, Indiana, Iowa, Maryland, Minnesota, Missouri, New Mexico, New York, Tennessee, Texas, and Washington) currently have statutes addressing training on human trafficking issues. See, e.g., CONN. GEN. STAT. § 46a-4b.

~~Paragraph (7): Submit an annual report. At least eight states require the task force to submit a report summarizing the task force's findings and making recommendations. See, e.g., COLO. REV. STAT. § 18-1.8-101(5). Connecticut, Guam, New Mexico, New York, Ohio, Pennsylvania, Texas, and Utah also have these provisions, as does the TVPA. 22 U.S.C. § 7103(d)(7) (2006 & Supp. III 2007-2010).~~

~~**SECTION 22. TRAINING. [NOTE TO COMMITTEE MEMBERS: SECTION 22 HAS BEEN INCORPORATED INTO SECTION 20(c)(4) IN A SIMPLIFIED VERSION].**~~

~~A state [or local] officer or employee who reasonably may be expected to come into contact in the course of the officer's or employee's duties with a victim or perpetrator of human trafficking~~

~~must be trained annually in the recognition and prevention of human trafficking. Training must include victim awareness and protection, sources for victim services, and protocols for how to proceed.~~

Comment

~~Under Section 21, the Task Force is responsible for coordinating implementation of the [act], including for training; this section clarifies who is to be trained.~~

Sources

~~At least sixteen states (California, Connecticut, Colorado, Florida, Guam, Idaho, Indiana, Iowa, Maryland, Minnesota, Missouri, New Mexico, New York, Tennessee, Texas, and Washington) currently have statutes addressing training on human trafficking issues. See, e.g., CONN. GEN. STAT. § 46a-4b.~~

SECTION 213. DISPLAY OF PUBLIC-AWARENESS SIGN; PENALTY.

(a) The [state transportation department] shall display the public-awareness sign created under Section ~~20(c)4(35)~~ in all state-operated public rest areas, welcome centers, and transportation stations.

(b) An employer of five or more employees shall display the public-awareness sign created under Section ~~20(c)4(35)~~ in a manner clearly visible to employees within the employer's place of business.

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

Comment

The Polaris Project notes that trafficking victims are often found in locations such as massage parlors, strip clubs, bars, hotels and motels, factories, restaurants, and in transportation hubs (airport, train station, bus station, highway rest stop), truck stops, hospitals, schools, and job centers.

Subsection (a) requires displaying a public-awareness sign in public rest areas, such as

restrooms, and in transportation stations. This may help victims who are being moved around to learn of sources of help when they are taken to places such as restrooms and bus stations.

Subsection (b) requires that employers post the sign. This is designed to help victims who are forced into employment against their will in establishments such as massage parlors, factories, strip clubs, and hotels and motels. Requirements for employers to post such signs are already common, as many state and federal laws require them so that employees will know their rights. The requirement to display the sign may therefore help them.—The amount of the fine required under subsection (c) should be similar to the state fines imposed for similar workplace rules, and should ordinarily be not less than \$300.

Sources

Several states now have such laws. *See, e.g.,* MD. CODE ANN., BUS. REG. §§ 15-207, 19-103 (requiring the State to design an informational sign and also permitting a state, county, or municipal law enforcement agency to issue a civil citation to any lodging establishment where there are arrests for sex trafficking to post the sign in each of its guest rooms, subject to a \$1,000 fine for non-compliance); WASH. REV. CODE §47.38.080 (development of trafficking informational posters for placement in rest areas).

SECTION 224. VICTIM SERVICES.

(a) The [interagency task force ~~on human trafficking~~] ~~[human trafficking council]~~ ~~[office of human trafficking coordinator]~~ ~~created by Section 20~~ shall develop a plan for a coordinated response system, in consultation with nongovernmental organizations, to provide victims with the following services for legal and medical help, housing, counseling, and training, including information regarding access to the services:

~~—————(1) appropriate housing, taking into account the victim’s status as a victim, including safe conditions for sleeping, food, and personal hygiene, and ensuring to the extent possible that the victim is not held in a detention facility;~~

~~—————(2) psychological counseling;~~

~~—————(3) medical assistance, including confidential testing for sexually transmitted diseases and the human immunodeficiency virus;~~

~~—————(4) substance abuse counseling;~~

~~(5) childcare;~~
~~(6) access to employment, educational, and training opportunities;~~
~~(7) legal assistance and case management;~~
~~(8) social case management, including information about and help with access to victim services; and~~
~~(9) any other service the [task force] [council] [coordinator] determines is appropriate.~~

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

~~(c) To the extent that funds are appropriated for this purpose, the [interagency task force on human trafficking] [human trafficking council] [office of human trafficking coordinator] created by Section 20 shall ensure the services enumerated in subsection (a) are provided [to as many victims as can be served with the available funds].~~

Comment

[Reserved]

Sources

At least five states (Guam, Indiana, Maryland, New York, and Oklahoma) require that services be provided to victims and another five states (Idaho, Illinois, Minnesota, New York, and Washington) suggest that states provide services. Three states (Idaho, Nebraska, and Delaware) have evaluated how their public benefits serve victims. Some states (such as New Jersey, Missouri, and Ohio) simply provide information about services to victims. At least five states (Connecticut, Florida, Guam, New Jersey, and Texas) have combined these models by mandating formulating a plan for providing services for victims. This language is similar in part to 9 GUAM CODE ANN. § 26.38. The TVPA provides for victim services, including access to financial benefits available to refugees and certain protections. 22 U.S.C.A. §§ 7105(b)(1), 7105(f).

SECTION 235. VICTIM ELIGIBILITY FOR SERVICES.

[Choice for Drafting Committee:

- 1. Bracket Section 23.**
- 2. Delete Section 23.**
- 3. Keep Section 23 without brackets.]**

Alternative A

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

Alternative B

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

End of Alternatives

(b) As soon as practicable after a first encounter with an individual who reasonably appears to [the appropriate state or local agency] to be a victim, the [agency] shall notify the ~~[appropriate state agency, department, or nongovernmental organization] in accordance with the protocol established by the~~ [interagency task force ~~on human trafficking~~] ~~[human trafficking council] [office of human trafficking coordinator] created by Section 20~~ that the individual may be eligible for a benefit or service under this [act].

Comment

[Reserved]

Sources

At least seven states (California, Florida, Guam, Missouri, New Mexico, New York, and North Carolina) have statutes specifically ensuring victims of human trafficking access to state-provided benefits and services. See, e.g., N.Y. SOC. SERV. § 483-cc(a); MO. REV. STAT. § 566.223(4).

SECTION 246. STATE LAW ENFORCEMENT AGENCY PROTOCOL.

(a) On request from a victim who may qualify for a [T Visa, U Visa, or Continued Presence], and associated federal benefits, the [law enforcement agency] shall not later than [10] days after receiving the request:

(1) complete, sign, and give to the victim the [law enforcement agency] form required by the United States Citizenship and Immigration Services for the [T Visa or U Visa] if the victim has been subjected to a severe form of trafficking or crime listed on the form and is assisting in its investigation or prosecution; and

(2) ask a federal [law enforcement agency] to request [Continued Presence] if the victim has been subjected to a severe form of trafficking as defined by 22 U.S.C. § 7102(8) and is assisting in its investigation or prosecution.

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

~~(a) On request of a foreign national victim or the foreign national's legal representative, the [relevant state or local law enforcement agency] shall:~~

~~(1) not later than 10 days after receiving the request, if it determines that the foreign national satisfies the requirements for completing the Supplement listed in subparagraph (A) or (B), sign and deliver to the foreign national or representative either or both of the following:~~

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

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

~~_____ (2) not later than 72 hours after receiving the request, if it determines that the foreign national making the request or on whose behalf the request is made more likely than not is a victim, request a federal law enforcement official to submit an application for continued presence under the Victims of Trafficking and Violence Protection Act, 22 U.S.C. § 7105(e)(3)(A), for the foreign national. _____~~

~~_____ (b) If a state or local law enforcement agency determines that granting an LEA Declaration, a U Nonimmigrant Status Certification, or request for continued presence is inappropriate for an alleged victim, the agency not later than 15 days after making the determination shall provide the victim or the victim's legal representative with a letter explaining the grounds for denial. The victim may submit additional evidence to the law enforcement agency, which must reconsider the denial not later than 10 days after receiving the additional evidence.~~

Comment

[Reserved] This section helps states prosecute traffickers and reduces the costs of helping victims by ensuring that foreign victims of severe forms of trafficking are eligible for the visas that enable them to stay in the country and help police and prosecutors in their investigations and prosecutions of traffickers. Without the victims to provide information and testify, it is virtually impossible to have effective criminal actions against traffickers. Since federal law also provides

monetary and other benefits to victims who qualify for T Visas, U Visas, or Continued Presence, an outside source of funding for the services victims need is also provided. Finally, there is a simple form, available on-line from the United States Citizenship and Immigration Services, that local law enforcement personnel can fill out, considerably simplifying the work involved. It has boxes to check off for the relevant severe forms of trafficking and other qualifying crimes, as well as for information on victims assisting in investigations and prosecutions. See <http://www.uscis.gov/files/form/i-914supb.pdf> (USCIS Form I-918 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons); and <http://www.uscis.gov/files/form/i-918supb.pdf> (USCIS Form I-918 Supplement B, U Nonimmigrant Status Certification). The federal TVPA provides for this relief in 22 U.S.C. § 7015(b); regulations concerning Continued Presence are authorized in 22 U.S.C. § 7015(c)(3), and are found at 28 C.F.R. § 1100.35.

Sources

At least seven states already have such a provision, including California, Guam, Illinois, Iowa, New Jersey, New York, and Vermont. See, e.g., CAL. PEN. CODE § 236.5; 720 ILL. COMP. STAT. 5/10-9(1).

SECTION 257. STATE GRANT TO SERVICE PROVIDER.

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

(b) A recipient of a [grant] [contract] under subsection (a):

(1) must be equipped to serve victims; and

(2) shall report to the [interagency task force ~~on human trafficking~~] [~~human trafficking council~~] [~~office of human trafficking coordinator~~] created by Section 20 the number and demographic information of all trafficking victims served.

Comment

Indian tribes are bracketed so that a state may define which Indian tribes, whether they are federally-recognized or meet a broader definition, should be eligible for grants.

Sources

At least two states (California and Texas) authorize grants to service providers for subsets of human trafficking victims. This section uses language modified from both CAL. PEN. CODE § 13837 and TEX. GOV'T CODE ANN. § 531.383.

SECTION 268. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

[SECTION 279. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

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

SECTION 2830. EFFECTIVE DATE. This [act] takes effect....