**UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING**

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS

 ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT

IN ALL THE STATES

at its

ANNUAL CONFERENCE

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SECOND YEAR

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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**HUMAN TRAFFICKING**

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

SECTION 2. DEFINITIONS.In this [act]:

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

 (2) “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 statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of, an individual;

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

 (D) controlling or threatening to control an individual’s access to a controlled substance as defined in [insert the appropriate state code sections defining controlled substances];

 (E) the destruction or taking of or the threatened destruction or taking of an individual’s identification document or other property;

 (F) the use of debt bondage;

 (G) the use of an individual’s physical or mental impairment when the impairment has a substantial adverse effect on the individual’s cognitive or volitional function; or

 (H) the commission of civil or criminal fraud.

(3) “Commercial sexual activity” means sexual activity for which anything of value is given to, promised to, or received, by a person.

(4) “Debt bondage” means inducing an individual to provide:

 (A) commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

 (B) labor or services in payment toward or satisfaction of a real or purported debt if:

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

 (ii) the length of the labor or services is not limited and the nature of the labor or services is not defined.

(5) “Human trafficking” means the commission of an offense created by Sections 3 through 7.

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

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

 (8) “Minor” means an individual less than 18 years of age.

 (9) “Person” means an individual, estate, business or nonprofit entity, or other legal 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 individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.

 (11) “Sexual activity” means [insert covered sexual activities]. The term includes a sexually-explicit performance.

 (12) “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. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

 (13) “Victim” means an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this [act] been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

***Legislative Note:*** *For Section 2(2)(D), an enacting state should ensure that all controlled substances statutes or schedules are cited in the space indicated by brackets. The term “controlled substances” should include any drug that has been declared by state or federal law to be illegal for sale, use, or possession unless lawfully dispensed under a prescription. Thus, threatening to control a victim’s access to either prescription drugs (such as benzodiazepines or gabapentin) or unlawful drugs (such as heroin or methamphetamine) should constitute coercion. Some criminal controlled substances statutes or schedules may not address prescription drugs so enacting states should ensure that all appropriate statutes are cited.*

*For Section 2(11), a state either may cite its state laws on prostitution and similar crimes or name specific sex acts, such as, for example, sexual intercourse, cunnilingus, fellatio, anal intercourse, intrusion by any object into the genital or anal opening of another’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.*

*Section 2 does not define “knowingly” or “knows,” both of which are used in this act. See Sections 3 through 6 and 8. An enacting state may rely on an existing statutory definition in the general criminal code or a definition drawn from case law as the circumstances dictate. Alternatively, the state could insert a statutory definition in Section 2. An example of such a definition is: “Knowingly” means having actual knowledge of or acting with deliberate ignorance or reckless disregard of an element, fact, or circumstance.*

#  SECTION 3. TRAFFICKING AN INDIVIDUAL.

 (a) A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

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

 (2) sexual servitude in violation of Section 5.

 (b) Trafficking an individual who is an adult is a [class c felony].

 (c) Trafficking an individual who is a minor is a [class b felony].

***Legislative Note:*** *A state should ensure that the offense classifications [class b through d] in this act are modified to correspond with the existing grading and punishment ranges of the state. The three classes of felonies in the act are not intended to restrict legislative discretion in the classification of offenses.*

#  SECTION 4. FORCED LABOR.

 (a) A person commits the offense of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except when such conduct is permissible under federal law or law of this state other than this [act].

(b) Forced labor of an individual who is an adult is a [class c felony].

 (c) Forced labor of an individual who is a minor is a [class b felony].

#  SECTION 5. SEXUAL SERVITUDE.

 (a) A person commits the offense of sexual servitude if the person knowingly:

 (1) maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or

 (2) uses coercion or deception to compel an adult to engage in commercial sexual activity.

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

 (c) Sexual servitude under subsection (a)(1) is a [class b felony].

 (d) Sexual servitude under subsection (a)(2) is a [class c felony].

#  SECTION 6. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.

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

(b) Patronizing a victim of sexual servitude who is an adult is a [class d felony].

(c) Patronizing a victim of sexual servitude who is a minor is a [class c felony].

#  [SECTION 7. PATRONIZING A MINOR FOR COMMERCIAL SEXUAL ACTIVITY.

 (a) A person commits the offense of patronizing a minor for commercial sexual activity if:

 (1) with the intent that an individual engage in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or

 (2) the person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.

(b) Patronizing a minor for commercial sexual activity under subsection (a)(1) is a [class b felony].

(c) Patronizing a minor for commercial sexual activity under subsection (a)(2) is a [class c felony].]

***Legislative Note:*** *A majority of states already have statutes addressing the offense of commercial sexual abuse of a minor or patronizing a minor.  If a state has a provision comparable to Section 7, the state may elect to keep its existing provision. If the existing provision is codified elsewhere, the state may insert a note following Section 6 which states that the offense of patronizing a minor is provided for in [cite relevant state law].  For those states that do not have an existing statute addressing this offense, the language in bracketed Section 7 should be used.*

#  SECTION 8. BUSINESS ENTITY LIABILITY.

(a) A person that is a business entity may be prosecuted for an offense under Sections 3 through 7 only if:

 (1) the entity knowingly engages in conduct that constitutes human trafficking; or

 (2) an employee or nonemployee agent of the entity engages in conduct that constitutes human trafficking and the conduct is part of a pattern of activity in violation of this [act] for the benefit of the entity, which the entity knew was occurring and failed to take effective action to stop.

 (b) When a person that is a business entity is prosecuted for an offense under Sections 3 through 7, the court may consider the severity of the entity’s conduct and order penalties in addition to those otherwise provided for the offense, including:

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

 (2) disgorgement of profit from activity in violation of this [act]; and

 (3) debarment from state and local government contracts.

#  [SECTION 9. AGGRAVATING CIRCUMSTANCE.

(a) An aggravating circumstance during the commission of an offense under Section 3, 4, or 5 occurs when [:

 (1)] the defendant recruited, enticed, or obtained the victim of the offense from a shelter that serves individuals subjected to human trafficking, domestic violence, or sexual assault, runaway youth, foster children, or the homeless[; or

 (2) [insert any additional aggravating factor]].

 (b) If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under Section 3, 4, or 5, the defendant may be imprisoned for up to [five] years in addition to the period of imprisonment prescribed for the offense.]

***Legislative Note:*** *A state should examine its existing aggravating circumstances provisions to ensure that they cover the human-trafficking offenses created by this act. If the state has no general statutory provision covering aggravating circumstances, bracketed Section 9 provides a model. The circumstance set forth in Section 9(a)(1) is specific to human trafficking. The state also should include other pertinent aggravating circumstances not otherwise provided for by state law.*

#  SECTION 10. RESTITUTION.

 (a) The court shall order a person convicted of an offense under Section 3, 4, or 5 to pay restitution to the victim of the offense for:

 (1) expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney’s fees and costs; and

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

 (A) the gross income to the defendant for, or the value to the defendant of, the victim’s labor or services or sexual activity;

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

 (C) the value of the victim’s labor or services or sexual activity, calculated under the minimum-wage and overtime provisions of the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq.[, as amended,] or [cite state minimum-wage and overtime provisions], whichever is higher, even if the provisions do not apply to the victim’s labor or services or sexual activity.

 (b) The court shall order restitution under subsection (a) even if the victim is unavailable to accept payment of restitution.

 (c) If the victim does not claim restitution ordered under subsection (a) for five years after entry of the order, the restitution must be paid to the [[Council] on Human Trafficking created under Section 19] [[insert applicable state-crime-victims compensation fund] to help victims].

***Legislative Note:*** *A state should choose whether the restitution money available after [five] years under subsection (c) should be paid to the Council on Human Trafficking, if one exists, or to the state-crime-victims compensation fund and delete the bracket not chosen.*

*A state will omit the bracketed language “[, as amended,]” if the state constitution or judicial decisions prohibit incorporating future changes to federal law as an impermissible delegation of state authority.*

#  [SECTION 11. FORFEITURE.

 (a) On motion, the court shall order a person convicted of an offense under Section 3, 4, or 5 to forfeit any interest in real or personal property that:

 (1) was used or intended to be used to commit or facilitate the commission of the offense; or

 (2) constitutes proceeds or was derived from proceeds that the person obtained, directly or indirectly, as a result of the offense.

 (b) In a proceeding against real or personal property under this section, the person convicted of the offense may assert a defense that the forfeiture is manifestly disproportional to the seriousness of the offense. The person has the burden to establish the defense by a preponderance of the evidence.

 (c) Proceeds from the public sale or auction of property forfeited under subsection (a) must be distributed in the manner provided for the distribution of the proceeds of [criminal forfeitures] [judicial sales].]

***Legislative Note:*** *A state should examine its existing forfeiture provisions to ensure that they cover the human-trafficking offenses created by this act. States with such provisions should: (1) follow the procedures outlined in those provisions to proceed against real and personal property used as an instrumentality in committing the offense and real and personal property derived from the proceeds of the offense; (2) rely on existing procedures and judicial discretion to determine whether the seizure of assets is proportional to the criminal activity at issue; and (3) ensure that proceeds from the public sale or auction of property forfeited are distributed first to a victim who has been awarded restitution or obtained a judgment in a civil action for a human-trafficking offense, such as the action authorized by Section 18. If a state has no general forfeiture statute, the bracketed section provides a model for inclusion in this act.*

[SECTION 12. STATUTE OF LIMITATIONS.A prosecution for an offense under this [act] must be commenced not later than 20 years after commission of the offense.]

***Legislative Note:*** *Many states already have statutes of limitations for criminal offenses. An enacting state should ensure that its statute of limitations includes the offenses created by this act. For a state that does not already have an applicable statute of limitation, the language in Section 12 should be used.*

SECTION 13. VICTIM CONFIDENTIALITY. In an investigation of or a prosecution for an offense under this [act], [law-enforcement officers and prosecuting agencies] shall keep confidential the identity, pictures, and images of the alleged victim and the family of the alleged victim, except to the extent that disclosure is:

 (1) necessary for the purpose of investigation or prosecution;

 (2) required by law or court order; or

 (3) necessary to ensure provision of services or benefits for the victim or the victim’s family.

SECTION 14. PAST SEXUAL BEHAVIOR OF VICTIM.In a prosecution for an offense under this [act] or a civil action under Section 18, evidence of a specific instance of the alleged victim’s past sexual behavior or reputation or opinion evidence of past sexual behavior of the alleged victim is not admissible unless the evidence is:

 (1) admitted in accordance with [cite state’s rape-shield evidence rule or statute]; or

 (2) offered by the prosecution to prove a pattern of human trafficking by the defendant.

***Legislative Note:*** *A state should ensure that the state’s rape-shield evidence rule or statute, including the relevant procedures, apply to both civil and criminal proceedings and contain no provision that conflicts with the purpose of this section.*

#  SECTION 15. IMMUNITY OF MINOR.

 (a) An individual is not criminally liable or subject to a [juvenile-delinquency proceeding] for [prostitution] or [insert other nonviolent offenses] if the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim.

 (b) An individual who has engaged in commercial sexual activity is not criminally liable or subject to a [juvenile-delinquency proceeding] for [prostitution] if the individual was a minor at the time of the offense.

 (c) A minor who under subsection (a) or (b) is not subject to criminal liability or a [juvenile-delinquency proceeding] is presumed to be a [child in need of services] under [cite child-protection statutes].

 (d) This section does not apply in a prosecution or a [juvenile-delinquency proceeding] for [patronizing a prostitute].

***Legislative Note:*** *A state should determine the other nonviolent offenses to be immunized by subsection (a). Examples of nonviolent offenses might include forgery, possession of stolen property, shoplifting, or issuing worthless checks. The offenses selected by the enacting state should be added to the provision in place of the third bracket. In a state where a term is used other than “prostitution” or “patronizing a prostitute,” the term should be substituted in the second bracket in subsections (a), (b), and (d).*

*An enacting state that does not adopt all provisions of Section 15 should ensure that affected minors are referred to a diversion program.*

 SECTION 16. AFFIRMATIVE DEFENSE OF VICTIM.An individual charged with [prostitution] or [insert other nonviolent offenses] committed as a direct result of being a victim may assert an affirmative defense that the individual is a victim.

***Legislative Note:*** *In a state where a term is used other than “prostitution,” the term should be substituted in the first bracket. A state should determine the other nonviolent offenses to be subject to the affirmative defense established in this section. Those offenses should be added to the provision in place of the second bracket.*

#  SECTION 17. MOTION TO VACATE AND EXPUNGE CONVICTION.

(a) An individual convicted of [prostitution] or [insert other nonviolent offenses] committed as a direct result of being a victim may apply by motion to [insert name of appropriate court] to vacate the conviction and expunge the record of conviction. The court may grant the motion on a finding that the individual’s participation in the offense was a direct result of being a victim.

 (b) No official determination or documentation is required to grant a motion by an individual under subsection (a), but an official determination or documentation from a federal, state, local, or tribal agency that the individual was a victim at the time of the offense creates a presumption that the individual’s participation was a direct result of being a victim.

 (c) A motion filed under subsection (a), any hearing conducted on the motion, and any relief granted are governed by [insert the appropriate state code section governing post-conviction-relief procedures].

***Legislative Note:*** *A state should determine the other nonviolent offenses to be subject to post-conviction review under subsection (a). Those offenses should be added to the provision in place of the second bracket. In a state where a term is used other than “prostitution,” that term should be substituted in the first bracket.*

*Because some states specify the sentencing court as the proper court to hear post-conviction motions, a state also should identify the appropriate court to hear a motion to vacate a conviction under this section by inserting the appropriate court in place of the third bracket. A state should cite the appropriate statute or rule governing post-conviction-relief procedures in place of the bracket in subsection (c).*

#  SECTION 18. CIVIL ACTION.

 (a) A victim may bring a civil action against a person that commits an offense against the victim under Section 3, 4, or 5 for [actual] [compensatory] damages, punitive damages, injunctive relief, and any other appropriate relief.

(b) If a victim prevails in an action under this section, the court shall award the victim reasonable attorney’s fees and costs.

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

(1) no longer was subject to human trafficking; or

(2) attained 18 years of age.

(d) Damages awarded to a victim under this section for an item must be offset by any restitution paid to the victim pursuant to Section 10 for the same item.

(e) This section does not preclude any other remedy available to a victim under federal law or law of this state other than this [act].

***Legislative Note:*** *The question of whether the civil action survives the victim’s death should be addressed by the state’s survival statute.*

#  [SECTION 19. [COUNCIL] ON HUMAN TRAFFICKING.

(a) The [Council] on Human Trafficking is created in [designate state department]. The [Governor] shall appoint the chair and members of the [council]. Members must include representatives of:

(1) [state, local, or tribal agencies] that have contact with victims or perpetrators;

 (2) nongovernmental organizations that represent, advocate for, or provide services to victims; and

 (3) other organizations and individuals, including victims, whose expertise would benefit the [council].

(b) The [state agencies] represented on the [council] created under this section shall provide staff to the [council].

(c) The [council] created under this section shall meet on a regular basis and:

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

(2) collect and evaluate data on human trafficking in this state and submit an annual report to the [Governor] [and Legislature];

(3) promote public awareness about human trafficking, victim remedies and services, and trafficking prevention;

(4) create a public-awareness sign that contains the [[state][,] [local][,] and] National Human Trafficking Resource Center hotline information;

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

 (6) conduct other appropriate activities.]

***Legislative Note:*** *States will determine the proper authority for appointing members of the Council on Human Trafficking. The appointing authority need not be exclusively the executive branch.*

*The appropriate state agency or agencies should be inserted to replace the bracketed term “state agency” or “state agencies” in subsections (a) and (b).*

*In states where a state or local hotline operates and is comparable to the national hotline operated by the National Human Trafficking Resource Center, the appropriate language in the brackets in subsection (c)(4) should be added.*

#  [SECTION 20. DISPLAY OF PUBLIC-AWARENESS SIGN; PENALTY FOR FAILURE TO DISPLAY.

 (a) The [state transportation department] shall display a public-awareness sign that contains the [[state][,] [local][,] and] National Human Trafficking Resource Center hotline information in every transportation station, rest area, and welcome center in the state which is open to the public.

(b) An employer shall display the public-awareness sign described in subsection (a) in a place that is clearly conspicuous and visible to employees and the public at each of the following locations in this state at which the employer has employees:

(1) a strip club or other sexually-oriented business;

 (2) a business entity found to be a nuisance for prostitution under [cite state nuisance law];

(3) a job-recruitment center;

(4) a hospital; or

(5) an emergency-care provider.

(c) The [state labor department] shall impose a [fine] of $[300] per violation on an employer that knowingly fails to comply with subsection (b). The [fine] is the exclusive remedy for failure to comply.]

***Legislative Note:*** *In states where a state or local hotline operates and is comparable to the national hotline operated by the National Human Trafficking Resource Center, the appropriate language in the brackets in subsection (a) should be added.*

#  SECTION 21. ELIGIBILITY FOR BENEFIT OR SERVICE.

(a) A victim is eligible for a benefit or service available through the state [and identified in the plan developed under Section 19(c)(1)], including compensation under the [applicable state-crime-victims compensation fund], regardless of immigration status.

(b) A minor who has engaged in commercial sexual activity is eligible for a benefit or service available through the state [and identified in the plan developed under Section 19(c)(1)], regardless of immigration status.

 (c) 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 or a minor who has engaged in commercial sexual activity, the [agency] shall notify the [appropriate state or local agency] [identified in the comprehensive plan developed under Section 19(c)(1)] that the individual may be eligible for a benefit or service under the law of this state.

#  SECTION 22. LAW-ENFORCEMENT PROTOCOL.

(a) On request from an individual whom a [law-enforcement officer] reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. Section 1101(a)(15)(T)[, as amended,] or 8 U.S.C. Section 1101(a)(15)(U)[, as amended], or for continued presence under 22 U.S.C. Section 7105(c)(3)[, as amended], the [law-enforcement officer], as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website and ask a federal [law-enforcement officer] to request continued presence.

(b) If the [law-enforcement agency] determines that an individual does not meet the requirements for the [agency] to comply with subsection (a), the [agency] shall inform the individual of the reason and that the individual may make another request under subsection (a) and submit additional evidence satisfying the requirements.

***Legislative Note:*** *A state will omit the bracketed language “[, as amended,]” if the state constitution or judicial decisions prohibit incorporating future changes to federal law as an impermissible delegation of state authority.*

#  [SECTION 23. GRANT TO OR CONTRACT WITH SERVICE PROVIDER.

(a) [To the extent that funds are appropriated for this purpose, the] [The] [appropriate state agency] may make a grant to or contract with a unit of state or local government[, Indian tribe,] or nongovernmental victims service organization to develop or expand service programs for victims.

(b) A recipient of a grant or contract under subsection (a) shall report annually to [the [council] created by Section 19] [insert appropriate authority] the number and demographic information of all victims receiving services under the grant or contract.]

***Legislative Note:*** *States that must have explicit authority to authorize a state entity to make grants to or contract with units of local government or non-governmental organizations to provide or expand services to victims should consider enacting this section.*

SECTION 24. 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 25. 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 26. EFFECTIVE DATE. This [act] takes effect….

***Legislative Note:*** *States may need to consider amending or repealing existing law.*