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
BOSTON, MASSACHUSETTS
JULY 6 - JULY 12, 2013

WITH PREFATORY NOTE AND COMMENTS

COPYRIGHT © 2013
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

February 25, 2014

ABOUT ULC

The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 122nd year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.

- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.

- ULC keeps state law up-to-date by addressing important and timely legal issues.

- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.

- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.

- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.

- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.

- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

DRAFTING COMMITTEE ON UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

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

STEVE WILBORN, 306 Tower Dr., Shelbyville, KY 40065, *Chair*
ANITA RAMASASTRY, University of Washington School of Law, William H. Gates Hall, Box 353020, Seattle, WA 98195-3020, *Vice-Chair*
STEPHEN Y. CHOW, 125 Summer St., Boston, MA 02110-1624
SUE ANN DERR, Oklahoma House of Representatives, State Capitol Bldg., 2300 N. Lincoln Blvd., Room 109, Oklahoma City, OK 73105
NORMAN L. GREENE, 551 5th Ave., 14th Floor, New York, NY 10176
H. LANE KNEEDLER, 900 E. Main St., Richmond, VA 23219
ESSON McKENZIE MILLER, JR., 1503 Confederate Ave., Richmond, VA 23227
MARIA DEL MAR ORTIZ-RIVERA, 2306 Calle Laurel, San Juan, PR 00913-4619
ROBERT J. TENNESSEN, 2522 Thomas Ave. S., Minneapolis, MN 55405
NORA WINKELMAN, Office of Chief Counsel, Pennsylvania House of Representatives, Room 620, Main Capitol Bldg., Harrisburg, PA 17120
SUSAN DELLER ROSS, Georgetown University Law Center, 600 New Jersey Ave. NW, Washington, DC 20001, *Reporter*
JOSEPH A. COLQUITT, University of Alabama School of Law, P.O. Box 870382, Tuscaloosa, AL 35487-0382, *Associate Reporter*

EX OFFICIO

MICHAEL HOUGHTON, 1201 N. Market St., 18th Floor, Wilmington, DE 19899, *President*
STEVE WILBORN, 306 Tower Dr., Shelbyville, KY 40065, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

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

EXECUTIVE DIRECTOR

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

Copies of this Act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

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

UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

TABLE OF CONTENTS

GENERAL PROVISIONS

PREFATORY NOTE..... 1
SECTION 1. SHORT TITLE. 5
SECTION 2. DEFINITIONS. 5

OFFENSES AND PENALTIES

SECTION 3. TRAFFICKING AN INDIVIDUAL. 9
SECTION 4. FORCED LABOR. 10
SECTION 5. SEXUAL SERVITUDE. 10
SECTION 6. PATRONIZING A VICTIM OF SEXUAL SERVITUDE. 11
[SECTION 7. PATRONIZING A MINOR FOR COMMERCIAL SEXUAL ACTIVITY. 12
SECTION 8. BUSINESS ENTITY LIABILITY. 13
[SECTION 9. AGGRAVATING CIRCUMSTANCE. 14
SECTION 10. RESTITUTION. 15
[SECTION 11. FORFEITURE. 17

VICTIM PROTECTIONS

[SECTION 12. STATUTE OF LIMITATIONS. 18
SECTION 13. VICTIM CONFIDENTIALITY. 18
SECTION 14. PAST SEXUAL BEHAVIOR OF VICTIM. 19
SECTION 15. IMMUNITY OF MINOR. 19
SECTION 16. AFFIRMATIVE DEFENSE OF VICTIM. 21
SECTION 17. MOTION TO VACATE AND EXPUNGE CONVICTION. 21
SECTION 18. CIVIL ACTION. 22

SERVICES TO VICTIMS

[SECTION 19. [COUNCIL] ON HUMAN TRAFFICKING. 23
[SECTION 20. DISPLAY OF PUBLIC-AWARENESS SIGN; PENALTY FOR FAILURE TO DISPLAY. 25
SECTION 21. ELIGIBILITY FOR BENEFIT OR SERVICE. 27
SECTION 22. LAW-ENFORCEMENT PROTOCOL. 27
[SECTION 23. GRANT TO OR CONTRACT WITH SERVICE PROVIDER. 28

MISCELLANEOUS PROVISIONS

SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION. 29
[SECTION 25. SEVERABILITY. 29
SECTION 26. EFFECTIVE DATE. 29

UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

PREFATORY NOTE

I. History and Background of Drafting Project

The Uniform Act on Prevention of and Remedies for Human Trafficking (UAPRHT) will help ensure effective action by the fifty states, District of Columbia, Puerto Rico, and the U.S. Virgin Islands, against those who force human beings into labor or sexual servitude against their will. States have an increasingly important role to play in what is now a worldwide movement to end this modern-day slavery and will benefit in that effort from harmonized legislation that encourages coordination both within a state and across state lines.

Human trafficking is a "process crime;" as such, it encompasses each of the steps criminals take to exploit others through force or coercion into prostitution, commercial sexual activities, labor, or services. The U.S. State Department's 2012 Trafficking in Persons Report (TIP Report) described the phenomena of trafficking in the United States:

> The United States is a source, transit, and destination country for men, women, and children – both U.S. citizens and foreign nationals – subjected to forced labor, debt bondage, involuntary servitude, and sex trafficking. Trafficking in persons can occur in many licit and illicit industries or markets, including in brothels, massage parlors, street prostitution, hotel services, hospitality, agriculture, manufacturing, janitorial services, construction, health and elder care, and domestic service, among others.

U.S. Department of State, Trafficking in Persons Report 359 (2012)

Millions are subjected to human trafficking every year. In 2012, the International Labour Organization (ILO) issued a comprehensive and sophisticated statistical analysis, finding 20.9 million people in forced labor worldwide, with 98% of sex trafficking victims and 55% of forced labor victims being women and girls (International Labour Organization, ILO Global Estimate of Forced Labour 13-14 (2012)). Fortunately, public awareness of this global problem is on the rise.

In 2010, the American Bar Association Center for Human Rights, LexisNexis, and Reed Elsevier proposed to the Uniform Law Commission (ULC) that a project be undertaken to create uniform state anti-human trafficking legislation. In the autumn of 2010, a committee was appointed to begin drafting a new uniform act dealing with prevention of and remedies for human trafficking. Over the next two years, the Committee worked with victim advocates, prosecutors, government officials, and others to draft a comprehensive act. The Act drew upon work already undertaken by many state legislatures, seeking to build on and refine that work through the addition of new up-to-date strategies, procedures, and programs. In the summer of 2013, the ULC, at its annual conference in Boston, approved the Act overwhelmingly; and just 32 days later the American Bar Association's House of Delegates recommended the Act unanimously.

II. Divergence in Existing State Laws and the Benefits of Uniformity

The United States is a global leader of the anti-trafficking movement, starting with enactment of the federal Trafficking Victims Protection Act (TVPA) in 2000 and ratification of the International Trafficking Protocol in 2005. Dating from the enactment of the TVPA in 2000, states started to enact anti-trafficking legislation. All states have some form of human-trafficking criminal provisions. The scope of activity included within the definitions of "human trafficking" varies widely, but usually includes the core elements of coercion, deprivation of liberty, compelled conduct, and gain to the perpetrators. All states and numerous jurisdictions have trafficking laws, but more is needed to make these laws comprehensive so that perpetrators can be brought to justice, victims freed, and future victimization prevented.

Current state laws on human trafficking range from very narrow anti-prostitution statutes to much more comprehensive anti-trafficking statutes, which include provisions to deal with victim assistance, mandatory restitution awards, private civil causes of action, business liability, law enforcement training, and public education and prevention efforts. While it is encouraging that all states have recognized the need for anti-trafficking legislation, it is imperative we now assure those laws provide comprehensive tools for prosecution, prevention, coordination, and victim's assistance.

Uniform prohibitions, enforcement approaches, and public policies enhance the overall effort to control and decrease human trafficking activity in all states. This is another strong policy reason for streamlining anti-trafficking laws and harmonizing the corresponding inter-state enforcement efforts. In this regard, the 2012 TIP Report noted:

> [a]lthough state prosecutions continued to increase, protocols, policies, and training for relevant law enforcement officials and assigned dedicated personnel within state prosecutors' offices were slow to be put in place. Existing state trafficking in person laws continued to be underutilized due to . . . inconsistent understanding of the nature of the crime, and greater familiarity with prosecuting other related crimes.

U.S. Department of State, Trafficking in Persons Report 361-62 (2012)

Against this backdrop, a uniform act on human trafficking will: (i) allow states and state governments to improve coordination of enforcement, services, and policy decisions; (ii) permit states to update their laws to provide victims with greater access to remedies and legal protections; and (iii) offer states an opportunity to update their existing laws to keep pace with emerging trends in approach to prosecution, prevention and inter- and intra-state coordination efforts to eradicate human trafficking.

A uniform act on human trafficking also can unify and coordinate efforts within a state to combat human trafficking by facilitating data and information sharing among law enforcement, social service agencies, policy makers, and other interested parties. Coordination helps maximize resource allocation effectiveness and reduces inefficiencies that the current patchwork of diverging state practices creates.

III. Overview of Proposed Uniform Act

Without a concerted multi-faceted approach, no end is in sight for the destabilizing moral, legal, and economic threat that traffickers pose. This Act seeks to accomplish three main goals: provide prosecutors with a toolkit of uniform and comprehensive criminal offenses; offer remedies, protections, and services to victims so they may rebuild their lives and assist law enforcement in investigations and prosecutions; and coordinate human-trafficking activities so as to conserve scarce resources and raise public awareness.

The Act's three distinct components provide a comprehensive roadmap for legislatively addressing the growing scourge of human trafficking. Part I establishes the substantive offenses, corresponding penalties, and a right to restitution. Part II focuses on victim protection and remedies, including civil remedies for victims. Part III sets forth an approach for states to coordinate cost-effectively their prevention and educational efforts.

A. A Clear and Complete Set of Criminal Proscriptions (Part I)

The Act's human-trafficking offenses cover the range of core activities: trafficking an individual (Section 3); forced labor (Section 4); sexual servitude (Section 5); and patronizing a victim of sexual servitude (Section 6), while also specifically acknowledging the offenses of patronizing a minor for commercial sexual activity (Section 7) and criminal liability for business entities that knowingly engage in trafficking (Section 8). It also provides for additional penalties for certain aggravating circumstances (Section 9).

B. Essential Victim Remedies and Protections (Part II)

The Act provides states with a comprehensive set of reactive and proactive provisions addressing remedies and protections for victims. Mandatory restitution after a human-trafficking conviction is a key remedy for victims of human trafficking (Section 10), as is the victim's right to bring a civil action for damages (Section 18). The Act also provides for forfeiture (Section 11) and a long statute of limitations appropriate to the nature of the crime (Section 12).

In response to perpetrators' efforts to silence victims through intimidation, the Act requires that the confidentiality of victim-identifying information be maintained (Section 13). Similarly, a victim's past sexual history may not be used as evidence against the victim in a prosecution for human trafficking or in a civil action for damages arising from human-trafficking activities (Section 14).

The Act recognizes that trafficking victims may seek relief in the form of an affirmative defense from charges of prostitution and a limited class of non-violent offenses if the conduct arose as a direct result of their status as a victim (Section 16). In addition, to begin the process of allowing victims to rebuild their lives, the Act permits victims to file a motion to vacate convictions for prostitution or other nonviolent offenses which arose as a direct result of being a human-trafficking victim (Section 17). Minors are offered immunity from prosecution for the same crimes if committed as the direct result of being a human-trafficking victim (Section 15). The immunity section protects children who commit prostitution as a result of being a human-

trafficking victim from being criminally liable and ensures they receive the services needed under existing state child protection statutes (Section 15).

C. State Coordination (Part III)

The Human Trafficking Council (Section 19) is responsible for building public awareness, coordinating activities among stakeholders (such as law enforcement, service providers, and state government), and ensuring victims are provided needed services. Members are appointed from among state and local agencies, NGOs, and other experts in the field who work with victims.

The Council is tasked with developing a coordinated and comprehensive plan for providing victims with services (Sections 19(c)(1), 21, and 23). In addition, the Council will develop the planning, training, and public education needed to have an effective action plan (Sections 19(c)(3)-(5) and 20). It will collect and evaluate data on human trafficking within the state and submit an annual report to the Governor and legislature (Section 19(c)(2)). To minimize fiscal impact, it is envisioned that the Council will be established within an existing state department and the state agencies represented on the Council will provide necessary staffing (Section 19(b)).

Victims need access to existing governmental service for their own wellbeing and to ensure effective prosecution and conviction of criminals. The federal TVPA is in place to provide funding for foreign victims who cooperate with law enforcement officials in investigating and prosecuting crimes. These individuals are able to receive visas and are eligible for federal benefits. In order to ensure both the federal benefits and victim cooperation, the Act sets up a protocol for law enforcement officials to fill out the simple law enforcement officer form posted by the United States Citizenship and Immigration Services on its Internet website if the officials think the individuals are trafficking victims who meet the relevant criteria (Section 22).

IV. Conclusion

Each year, millions of adults and children around the world fall victim to human traffickers, suffering terrible subjugation and maltreatment. This growing, increasingly-organized epidemic of human trafficking demands a coordinated, comprehensive response.

UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR 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 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.

Comment

1. Introduction: The Act's definitions are drawn from state laws on human trafficking; the federal Victims of Trafficking and Violence Protection Act (TVPA) of 2000 and its subsequent amendments and reauthorizations of 2003, 2005, 2008, and 2013 (Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, codified as amended primarily in 18 U.S.C. §§ 1581, 1583, 1589-1597, and 22 U.S.C. §§ 7101-7113) [TVPA]; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, U.N. Doc. A/RES/55/25, 2237 U.N.T.S. 319 (*entered into force* Dec. 25, 2003; ratified by the United States Nov. 3, 2005) [Trafficking Protocol].

2. "Coercion." All states with anti-trafficking laws include some of the elements of Section 2(2)'s definition of 'coercion.' These laws vary widely: some offer a limited list of means of coercion while others provide more comprehensive definitions. The Act draws upon state definitions that identify means of coercion specifically linked to human trafficking (such as those of Alabama, Oklahoma, and Vermont) and from the TVPA in order to capture the broad range of techniques used by traffickers to coerce their victims. 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).

The most frequent forms of coercion found in existing statutes are set forth in Section 2(2)(A) and (B). They focus on the use of force, abduction, restraint, and the threat of serious harm, and are widely covered by many states and the TVPA. See, e.g., Wyo. Stat. Ann. § 6-2-701(a)(ii)(A) ("Coercion" means any one (1) or more of the following: (A) The use or threat of force, abduction, serious harm to or physical restraint against any individual"), Fla. Stat. § 787.06(2)(a)(1)-(2) (force and restraint); and N.Y. Penal Law §§ 135.35(4)(a) (force and serious harm) and 230.34(5)(a) (same). See 18 U.S.C. § 1589(a), 1591(a)(2).

Coercion through the abuse of the law or legal process (Section 2(2)(C)), coercion through drug addiction (Section 2(2)(D)) or the destruction or taking of identification documents (Section 2(2)(E)), and the use of fraud (Section 2(2)(H)) are forms of coercion included in numerous state statutes, while states such as Alabama, Oklahoma, and Vermont include the use of debt bondage (Section 2(2)(F)). The Act also defines coercion to include abuse of an individual's physical or mental impairment (Section 2(2)(G)). This is a form of coercion recently identified as a method used by human traffickers.

3. "Debt bondage." Section 2(4) defines the term "debt bondage" identified in Section 2(2)(F) as one form of coercion. Section 2(4)(A) defines a specific form of debt bondage: requiring victims to engage in commercial sexual activity, including prostitution, as the way to pay off a real or purported debt. See N.Y. Penal Law § 230.34(4). Section 2(4)(B) defines another form of debt bondage: inducing a person to perform labor or services when someone is forced to work off a debt and the debt effectively can never be paid off because the work is so undervalued. See Ala. Code § 13A-6-151(2)(b) and N.Y. Penal Law § 135.35(2). Inflated debts are also a means of keeping workers in debt bondage. By 2013, at least twenty-eight states and one U.S. territory had prohibited debt bondage through their trafficking statutes. The federal law

equivalent is the prohibition of peonage in 18 U.S.C. § 1581(a).

4. "Serious harm." The concept of "serious harm" is used in the definition of "coercion" in Sections 2(2)(A) and (B), and so is defined in Section 2(10). The definition in many state laws mirrors that of the TVPA. 18 U.S.C. §§ 1589(c)(2), 1591(e)(4).

5. "Minor." Section 2(8) makes clear all children under 18 are considered minors for the purpose of the protections under the Act

6. "Person." The standard ULC definition is used in Section 2(9).

7. "Sexual activity." Many traffickers make money from using children in, or forcing adults into, commercial sexual activity. It is necessary to define the sex acts in question, which Sections 2(3) ("commercial sexual activity") and 2(11) ("sexual activity") are designed to do.

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.*

Comment

Section 3 identifies the various elements which make up the act of trafficking. The trafficking of individuals is a multi-step process during which different criminal actors may take different steps to subjugate victims into commercial sexual activity or forced labor. Thus, Section 3 defines the offense of trafficking to enable prosecutors to pursue any of the criminal actors in the sequence. More than forty states have sex-trafficking crimes and labor-trafficking crimes that address the *process* of trafficking by the ways victims are recruited, moved, and received into forced labor or sex work; however, significant disparity exists among these state laws as many do not criminalize the full range of actions as Section 3 does.

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].

Comment

Section 4 criminalizes the use of coercion to compel people to work against their will. At least thirty states have specific criminal provisions for forced labor or servitude as part of their human-trafficking statutes. The District of Columbia and Wyoming provide examples of state laws with comparable language. See D.C. Code § 22-1832: "Forced labor. (a) It is unlawful for an individual or a business knowingly to use coercion to cause a person to provide labor or services."; Wyo. Stat. Ann. § 6-2-704: "Forced labor or servitude; penalty (a) A person is guilty of forced labor or servitude when the person intentionally, knowingly or recklessly uses coercion, deception or fraud to compel an individual to provide forced services." The TVPA also makes forced labor a crime. See 18 U.S.C. § 1589(a) (2006). Subsection 4(a) also clarifies that both parents and employers may engage in legally permitted activities to control behavior and exert discipline.

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].

Comment

Section 5 addresses sexual servitude directed at two classes of victims: minors and adults. For minors, who are protected by subsection (a)(1), no coercion or deception is required for prosecution; simply providing a child under 18 to others for the purpose of commercial sexual activity is the crime. Minors are deemed to be legally incapable of consenting to participating in commercial sexual activity, which is the same concept that underlies statutory rape laws. For adults, who are protected by subsection (a)(2), the criminal actor uses coercion or deception to compel the adult to engage in the commercial sexual activity.

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). Alaska, Georgia, Kentucky, Massachusetts, Mississippi, Missouri, Nebraska, North Carolina, Oregon, Tennessee, and Wyoming have similar provisions.

At least fifteen states explicitly criminalize sexual servitude of adults separately from the provisions making the trafficking of adults for the purpose of sexual servitude a crime. 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).

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].

Comment

Section 6 makes *knowingly* patronizing a victim of sexual servitude a separate offense from mere patronizing, thereby helping to reduce the demand that leads traffickers to bring children into commercial sexual activity and to coerce adults into it. If the patron knows the individual is a victim of sexual servitude, patronizing for commercial sexual activity is a class c felony when the victim is a minor, but a class d felony when the victim is an adult.

Vermont provides an example of such a provision: "(a) No person shall knowingly

solicit a commercial sex act from a victim of human trafficking." Vt. Stat. Ann. tit. 13, § 2655. Vermont sets the penalty level for this crime at a maximum of five years or a $100,000 fine, or both. *Id.* § 2655(b). States with similar laws include Arkansas (Ark. Code Ann. § 5-18-104), Indiana (Ind. Code Ann. § 35-42-3.5-1(d)(3)), Mississippi (Miss. Code. Ann. § 97-3-54.1(b)-(c)), and Wyoming (Wyo. Stat. Ann. § 6–2–707).

[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.*

Comment

Section 7 is directed toward reducing demand among patrons for commercial sexual activity with minors by raising the penalty level in existing state statutes to reflect the gravity of the offense. Subsection (a)(1) is a specific intent crime and therefore carries a higher range of punishment than subsection (a)(2), which is a strict liability offense. Subsection 7(a)(1) focuses

on the worst predators, those who intentionally seek out children as their sexual objects; accordingly, it is a class b felony for these perpetrators. Minnesota has a similar law for patrons who intentionally hire minors to engage in prostitution. See Minn. Stat. Ann. § 609.324(subdiv. 1).

Subsection 7(a)(2), in contrast, focuses on those without this specific *mens rea*, but who pay for commercial sexual activity with minors; accordingly, it is a class c felony for them. Subsection 7(a)(2) is similar to a Washington state law aimed at "commercial sexual abuse of a minor." Wash. Rev. Code § 9.68A.100(1).

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.

Comment

Many states have provisions within their general human-trafficking offense statutes specifically establishing business liability for criminal trafficking offenses. These laws fall into three categories: (1) describing the specific criteria for when a business entity may be found liable (as distinguished from individual criminal liability); (2) imposing additional penalties for businesses convicted of human trafficking; and, (3) specifying that both individuals and businesses can commit these offenses. Section 8 draws on all three categories by establishing the

standard to be used in deciding whether a business entity is liable, listing additional penalties for business entities found criminally liable, and specifying that businesses can be held criminally liable. This Section also establishes that businesses are liable only for the acts of agents or employees under the specific and limited circumstances when the company knows of an ongoing pattern of illegal activity and does not take steps to stop the human trafficking conduct from which it is benefitting.

It is generally accepted that criminal statutes applying to the actions of a "person" reach business entities. Several states (the District of Columbia, Hawaii, Rhode Island, and South Carolina) specifically include 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 §§ 22-1832-1836.

Section 8 draws upon the laws of four states (Alabama, Georgia, Mississippi, and Tennessee) that specify the liability standard for businesses. See, e.g., Ga. Code Ann. § 16-5-46(j). Nine states (Arkansas, Hawaii, Massachusetts, Minnesota, Mississippi, Missouri, South Carolina, 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. Ann. § 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 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.

Comment

Section 10 mandates that defendants convicted of trafficking an individual, forced labor, or sexual servitude offenses pay restitution to their victims. Trafficking victims suffer losses ranging from immediate medical, housing, and other survival needs once they are rescued from the trafficking situation to the lost opportunity to work in lawful and non-coerced employment. The section envisions a comprehensive assessment of the victim's financial losses and requires restitution for expenses incurred once they are no longer in the situation of forced labor or sexual servitude. These expenses include such costs as medical care, therapy and psychological counseling, temporary housing, transportation, childcare, physical and occupational therapy or rehabilitation, funeral and burial services, and reasonable attorney's fees and court costs. These expenses include both those incurred at the time of defendant's criminal conviction and for those reasonably certain to be incurred in the future.

In addition, subsection 10(a)(2) provides three ways to value the lost opportunity to earn employee wages suffered by victims and requires the court to award the greatest of the amounts. First, a court may order the perpetrator to pay to the victim the gross income or value to the defendant of the victim's labor or activity, or second, the amount the defendant promised to pay the victim. Third, if neither of these two measures can be adequately calculated, or an alternative formula yields a higher amount, the alternative formula values the time a victim worked at the highest level set by the state or federal minimum wage and overtime pay requirements. The use of the minimum wage as a means for calculating restitution is not meant to value the hardship victims have suffered, it merely serves as a basis for calculating a victim's lost opportunity to work when no other adequate way to measure this form of restitution exists or the alternatives provide a lower amount.

At least twenty-one states (Alabama, Arizona, Delaware, Hawaii, Idaho, Illinois, Indiana, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, and Wyoming) mandate restitution to the victim of human trafficking. The TVPA also 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 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.*

Comment

States use post-conviction asset forfeiture to help assure victims receive court-ordered restitution and damages to make traffickers pay for the cost of services for victims, and to deter people from engaging in human trafficking through the threat of an additional financial penalty. At least thirty-two states provide for forfeiture upon conviction of a human-trafficking offense: of these, at least thirteen states, including Alabama, California, Illinois, Massachusetts,

Minnesota, New Hampshire, Tennessee, and South Carolina, have innovative provisions insuring that the assets be used to pay restitution and damages to the victims or to victim-service providers or to both. See, e.g., Ala. Code § 13A-6-156; N.H. Rev. Stat. Ann. § 633:8; Tenn. Code Ann. § 39-13-312.

Section 11 further provides a specific defense against the disproportionate seizure of property. This is in addition to other existing defenses, such as the innocent owner defense.

[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.*

Comment

Citation to more than one statute of limitation may be necessary because a state's existing laws may establish different time limits for diverse offenses and ranges of punishment, such as subsection 5(c) (sexual servitude of a minor, a class b felony) and subsection 6(b) (patronizing a victim of sexual servitude who is an adult, a class d felony).

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.

Comment

Law enforcement officials are to keep the identity and pictures of victims and their families confidential both to protect them from traffickers and to lessen the impact of the adverse publicity. Several states and other jurisdictions already mandate this protection, including Massachusetts, Mississippi, Missouri, Oklahoma, South Carolina, and Wyoming. See, e.g., Okla. Stat. tit. 21, § 748.2(A)(6)(b) (protecting the victim's safety by "ensuring that the names

and identifying information of trafficked persons and their family members are not disclosed to the public."); Wyo. Stat. Ann. § 6-2-709(e) ("police and prosecuting agencies shall keep the identity of the victim and the victim's family confidential").

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.*

Comment

Under Section 14, courts would apply their state's rape shield laws in both criminal prosecutions and civil actions for damages under this act. Many states have such provisions in their human-trafficking laws, including Alabama, the District of Columbia, Georgia, Massachusetts, Mississippi, New Hampshire, New Jersey, South Carolina, Vermont, Virginia, and Wisconsin. See, e.g., D.C. Code § 22-1839 (rejecting use of "reputation or opinion evidence of the past sexual behavior of the alleged victim" in human-trafficking cases and rejecting evidence of victim's "past sexual behavior" unless admitted in accordance with rape shield law). Under Alabama law, a person charged with human trafficking may not introduce evidence of the victim's past sexual history or commercial sexual activity as a defense. See Ala. Code § 13A-6-154.

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).*

Any state that does not adopt this Section must ensure affected minors are referred to an appropriate state-sponsored diversion program whereby a criminal conviction may be dismissed and expunged when a minor has undertaken certain counseling and educational programs.

Comment

Section 15 ensures all children under age 18 who engage in acts of child prostitution or similar offenses are treated as victims of commercial sexual exploitation rather than as juvenile delinquents or criminals. This policy recognizes these children were lured or coerced into these activities by persons who took advantage of their immaturity and special vulnerability. In addition, the safe harbor laws seek to ensure these children receive essential services, such as housing, medical care, and counseling, to recover from the exploitation and abuse they suffered.

Subsections (a) and (b) achieve these goals by immunizing minor victims of human trafficking and commercial sexual exploitation for certain nonviolent offenses specified by a state. Immunity is provided because minor victims of human trafficking should not be viewed as legally capable of consenting to their own commercial sexual exploitation. Immunity in such cases recognizes the facts that: (a) the real culpability for the offenses of the minor resides with the coercing or exploiting party; and (b) the minor is a child in need of counseling, treatment, and support rather than prosecution. Subsection (c) is directed toward the child's needs by requiring that the child receive the needed services under the state's child-protection statutes.

As of 2013, more than a dozen states had passed such laws, including Colorado, Connecticut, Florida, Illinois, Kentucky, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Ohio, Tennessee, Vermont, and Wyoming. See, e.g., 720 Ill. Comp. Stat. Ann. § 5/11-14(d) (child under 18 "immune from prosecution for a prostitution offense"); Vt. Stat. Ann. tit. 13, § 2652(c). 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).

For those states that have not yet established immunity for minors, an alternate approach has been successfully implemented in a number of states. In those states a minor is diverted by the court into an appropriate program and designated as a child in need of protective services in lieu of criminal prosecution or juvenile delinquency proceedings. Massachusetts, Ohio, and Washington are states that have enacted diversion provisions as an alternative to an immunity provision. See, e.g., Mass. Gen. Laws ch. 119 § 39L; Ohio Rev. Code Ann. § 2152.021(F)(1)(b); and Wash. Rev. Code Ann. § 13.40.213. In Ohio, diversion is available if the minor first completes "diversion actions" (e.g., treatment) established by a court. In such a case, the court will dismiss and expunge the underlying criminal charge. In Massachusetts, a child who engages in prostitution-related acts is recognized under the law as a "sexually exploited child" eligible to participate in certain diversion programs and entitled to access to an advocate. Once the minor completes certain court-ordered programs, the criminal charges will be dismissed.

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.*

Comment

Section 16 provides an affirmative defense for those charged with prostitution and other nonviolent offenses when the acts were committed as a direct result of being a human-trafficking victim. States including Alabama, Arkansas, Connecticut, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, and Wyoming have enacted similar statutes. See, e.g., Ala. Code § 13A-6-159 (being a "victim of human trafficking" is "an affirmative defense" to "prosecution for prostitution, or a sexually explicit performance" for acts "performed as a result of labor servitude or sexual servitude"); Wyo. Stat. Ann. § 6–2–708(a).

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).

Comment

Section 17 provides those forced to commit prostitution and other nonviolent offenses as a direct result of being a victim the opportunity to "clear their records and start anew" once they are free from their traffickers. Victims may move the appropriate court to vacate the conviction. Several states permit this option, including Connecticut, Hawaii, Illinois, Maryland, Nevada, New Jersey, New York, Vermont, Washington, and Wyoming. See, e.g., N.Y. Crim. Proc. Law § 440.10. Arkansas and Colorado have similar provisions authorizing the sealing of the conviction. See Ark. Code Ann. § 16-90-123.

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.*

Comment

Twenty-six states and other jurisdictions explicitly provide victims with a private right of action to sue the trafficker, as does the TVPA. See Tenn. Code Ann. § 39-13-314(b), 18 U.S.C. § 1595. The state and federal statutes make attorney's fees and costs available to prevailing plaintiffs. The states include Alabama, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Illinois, Indiana, Kentucky, Maine, Minnesota, Mississippi, Missouri, Nevada, New Jersey, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Vermont, Washington, and Wisconsin. Civil actions are an important tool for victims to recover damages for the abuse they have suffered and may help provide the resources needed during the recovery process. They also enable victims to obtain relief even when state prosecutors are unable to bring a criminal prosecution.

Subsection (c) 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.

[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.

Comment

States can more efficiently and effectively work to prevent trafficking if there is a central coordinating body in place. Different governmental and nongovernmental entities are involved in trafficking prevention, law enforcement, and victims' advocacy – each has special areas of competence, authority, jurisdiction, and expertise.

Section 19 authorizes the Governor or other state entity to appoint members of a human-trafficking council. To reduce the fiscal impact of the council, it is placed within an existing state department or agency, and the state agencies on the council provide staffing.

Many states have already created such entities, including Connecticut, Louisiana, Massachusetts, Mississippi, Nebraska, New Jersey, New Mexico, North Carolina, Rhode Island, South Carolina, and Washington. See, e.g., Conn. Gen. Stat. Ann. § 46a-170; N.C. Gen. Stat. Ann. § 15.3A; S.C. Code Ann. § 16-3-2050. Task forces generally include representatives from state and local law enforcement, state prosecutors, labor and agricultural regulators, state health and human services agencies, education and transportation departments, non-governmental victim service providers, medical professionals, human trafficking experts, and victims themselves.

Subsection (c) sets out the duties needed for effective coordination of services, prevention, public-awareness measures, and prosecution, which include plans for victim services, data collection and analysis, public awareness, a hotline number, and state and local employee training.

Paragraph (4) references the National Human Trafficking Resource Center hotline. This is a federally-supported program run by the Polaris Project. The Polaris Project is a leading research organization on anti-trafficking law and policy and has developed specific recommendations for the creation and use of these signs.

Paragraph (5) calls for the human trafficking council to coordinate the training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators.

[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.*

Comment

Section 20 is a key instrument for educating the public about human trafficking: the display of the public-awareness sign. The section requires display of the sign at locations such as transportation centers, state welcome areas, and hospitals, as well as in sexually-oriented businesses.

To ensure that employers display the sign, subsection (c) requires imposing a fine for knowing failure to display the sign. The amount of the fine should be similar to the state fines imposed for similar workplace rules, and should ordinarily be not less than $300.

Several states have such laws, including Alabama, Arkansas, California, Louisiana, Maryland, Nebraska, Ohio, Tennessee, Vermont, Virginia, and Washington. 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 Ann. § 47.38.080 (development of trafficking informational posters for placement in bathroom stalls).

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.

Comment

At least six states (California, Florida, 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. Law § 483-cc(a); Mo. Rev. Stat. § 566.223(4).

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.*

Comment

Section 22 makes it possible for human-trafficking victims who are from other countries to receive designated federal benefits. Human-trafficking victims who are aliens may receive nonimmigrant T or U Visas or be granted "continued presence." See 8 C.F.R. §§ 214.11 (T Visa), 214.14 (U Visa), and 28 C.F.R. § 1100.35 (continued presence). In order for the victims to receive the T or U Visa, and the federal benefits, state or local law enforcement officials must fill out simple on-line forms available from the United States Citizenship and Immigration Services [USCIS] (Form I-914 Supplement B for the T Visa) or (Form I-918 Supplement B for the U Visa). To receive continued presence, the state or local official would ask a federal official to make this request.

Once victims receive a T Visa, a U Visa, or are permitted continued presence, they are entitled to remain in the country to aid in the identification and prosecution of traffickers. They are entitled to receive the same federal benefits refugees receive, thus reducing the fiscal impact on states of providing them with services. Nine states already have such a provision, including California, Illinois, Indiana, Iowa, New Jersey, New Mexico, New York, Vermont, and Wyoming. See, e.g., Cal. Pen. Code § 236.5; Vt. Stat. Ann. tit. 13, § 2663.

[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.*

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. 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 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.*