



## **Uniform Law Commission Project Proposal**

### **Uniform Human Trafficking Law**

Submitted by: ABA Center for Human Rights

Address: American Bar Association  
740 15<sup>th</sup> Street NW  
Washington, DC 20005

Phone: (202) 662-1025

Email: patesm@staff.abanet.org

ULC Meeting: July 2010

---

#### **Project Description and Background**

The American Bar Association (ABA) Center for Human Rights, LexisNexis, and Reed Elsevier propose that the Uniform Law Commission undertake a project to create uniform state anti-human trafficking legislation. This memo outlines the background for the project, the need for and benefit of uniform anti-trafficking legislation, current Federal and State anti-trafficking legislation, and the key stakeholders and resources necessary to develop a uniform state human trafficking law.

Human trafficking is defined by the Trafficking Victims Protection Act of 2000 (TVPA) persons as a.) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or b.) the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery<sup>1</sup>. Human trafficking is a significant and growing crime in the United States. The U.S. State Department Office to Monitor and Combat Trafficking in Persons estimates between 14,000 and 17,500 people are trafficked into the U.S. each year, from as many as 48 countries. But human trafficking is not just limited to foreign nationals; U.S. citizens and Legal Permanent Residents also are trafficked within the United States. The National Center for Missing and Exploited Children (NCMEC) estimates that at least 100,000 American children are trafficked into the commercial sex industry within in the U.S. each year. Trafficked persons have been identified in large and small cities, suburban neighborhoods, and urban areas in states across the country.

---

<sup>1</sup> 8 U.S.C. § 1101

Human trafficking often takes place across international or state borders. While interstate movement is not necessarily a component of human trafficking, it is not uncommon for victims to be trafficked in or through several states. Some forms of human trafficking, such as forced prostitution or forced farm labor, are more frequently mobile, with perpetrators committing crimes in several jurisdictions. Other forms of trafficking, such as domestic servitude or forced marriage, are less mobile and may involve only one jurisdiction. Because interstate movement is often a component of human trafficking, inter-jurisdictional collaboration and communication are vital to the successful investigation and prosecution of human trafficking cases.

The Trafficking Victims Protection Acts (TVPA) provides Federal authority to prosecute human trafficking crimes. Some states, however, also have enacted anti-trafficking legislation. According to the Center for Women's Policy Studies' U.S. Policy Advocacy to Combat Trafficking (US PACT) project, 42 states and the District of Columbia currently have legislation criminalizing human trafficking. Yet, among those states, the definitions of trafficking, the availability of victim assistance and access to a private right of action, the penalties recommended for perpetrators, and other aspects of the laws vary greatly. The remaining eight states have passed no anti-trafficking legislation.

The proposed uniform state human trafficking legislation would address discrepancies in existing state laws, encourage states which have not yet criminalized human trafficking to do so, and promote collaboration among law enforcement officers, prosecutors, NGOs, lawyers, and other stakeholders in the investigation and prosecution of human trafficking.

### **Need, Benefits, and Feasibility**

States' adoption of a comprehensive anti-trafficking law is critical for a number of reasons. First, Federal resources alone cannot keep up with the high volume of human trafficking cases. The prevalence of the crime, as outlined above, warrants anti-trafficking legislation at the State level to reduce the strain on Federal resources. Second, State anti-trafficking laws spur local law enforcement to investigate cases as first responders and provide the option of local jurisdiction where necessary or desirable. And third, they can catalyze increased awareness and training for police officers, which often leads to increased victim identification, investigations, and prosecutions.

In short, state law uniformity will render the current patchwork of state anti-trafficking laws far more effective by providing a centralized "one-stop" standard that most accurately reflects the actual criminal behavior of traffickers and avoids piecemeal investigations and prosecutions under divergent state statutes, where they exist at all. Uniformity will:

- Increase levels of State prosecutions nationwide, which currently are very low;
- Support the enforcement and implementation of enacted anti-trafficking laws;
- Strengthen existing State codes for related crimes, such as pandering or money laundering, by creating an alternative for prosecutors;
- Provide a common basis for increased training for law enforcement and local prosecutors on the scope, extent, and methods used by traffickers;
- Build stronger relationships among local law enforcement and NGOs/service providers;
- Avoid conflicts of law where more than one state is involved, which occurs frequently in human trafficking cases, and thus further promote inter-jurisdictional collaboration among law enforcement, prosecutors, and human trafficking task forces; and
- Address the demand for trafficking, including questions of corporate liability and demand-reduction strategies for sex trafficking.

Developing such uniformity also is politically feasible. Historically, Federal and State anti-trafficking legislation has enjoyed broad, bipartisan support. The fight against human trafficking has been championed by both Republican and Democratic members of Congress, state legislatures, and governors.

## **Analysis of Existing State Law**

Within the United States there are wide variations in state attempts to address human trafficking. The majority of states do have specific provisions regarding human trafficking, while others include elements of human trafficking in kidnapping and other criminal statutes.

### **Criminal Penalties**

The legal elements of criminal human trafficking are similar throughout the states and territories. The following language is typical:

Trafficking in persons for forced labor or services. A person commits the offense of trafficking in persons for forced labor or services when he or she knowingly: (1) recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another person, intending or knowing that the person will be subjected to forced labor or services; or (2) benefits, financially or by receiving anything of value, from participation in a venture that has engaged in an act of involuntary servitude or involuntary sexual servitude of a minor.<sup>2</sup>

Two further elements widely shared among the states are, 1) Causing or threatening to cause serious physical injury to any person; and 2) Physically restraining or threatening to physically restrain another person.<sup>3</sup> There is greater diversity, however, in other additional elements. Numerous states include control of identifying documents<sup>4</sup> such as unlawful possession or destruction of another's immigration, travel, or identifying documents. In Missouri a defendant is subject to prosecution under this element where s/he

Destroys, conceals, removes, confiscates, or possesses a valid or purportedly valid passport, government identification document, or other immigration document of another person while committing crimes or with the intent to commit crimes."<sup>5</sup>

Another element that many states use is to derive benefit or value from trafficking.<sup>6</sup> States also frequently utilize abuse of the law or legal process as another criminal element.<sup>7</sup> Somewhat less common is the use of blackmail or extortion,<sup>8</sup> debt bondage,<sup>9</sup> financial harm,<sup>10</sup> and access to controlled substances.<sup>11</sup> A small number of states utilize a broad definition labeled as fraud

---

<sup>2</sup> 720 ILCS 5/10-9

<sup>3</sup> Exceptions include KRS §§ 529.100 through 529.110, Nev. Rev. Stat. Ann. §§ 200.464 through 200.468, S.C. Code Ann. § 16-3-930

<sup>4</sup> AZ, CA, CO, DE, FL, GA, GU, IL, IA, LA, ME, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY (see also [here](#)), NC, ND, OK, OR, PA, RI, TN, TX, UT, VA, VI, WI

<sup>5</sup> § 566.215 R.S.Mo.

<sup>6</sup> AK, AR, DE, FL, GU, IL, IN, IA, KS, KY, MD, MI, MS, MT, NE, NJ, NM, ND, OK, OR, RI, TN, TX, UT, VT, WA, WI

<sup>7</sup> AZ, AR, CO, DE, GU, IL, MI, MN, MS, MO, MT, NH, NM, ND, OK, OR, PA, TN, TX, UT, VT

<sup>8</sup> DE, GA, GU, IL, IA, LA, MI, MN, MS, MT, NH, NY (see also [here](#)), NC, ND, RI, TN

<sup>9</sup> AR, FL, GA, GU, IA, MN, NY (see also [here](#)), NC, ND, OR, TX, UT, WI

<sup>10</sup> AZ, DE, FL, GU, IL, MI, MS, MT, NE, TN

<sup>11</sup> AZ, GA, GU, NH, NY (see also [here](#)), NC, WI

or coercion.<sup>12</sup> Still other states apply more generalized language alluding to fraud or deceit, such as this example from New Jersey, “by means of any scheme, plan or pattern intended to cause the person to believe that the person or any other person would suffer serious bodily harm or physical restraint”.<sup>13</sup> Trafficking for the purposes of utilizing a victim's body parts is another element in three other states.<sup>14</sup> And withholding such necessities as food or water is specifically mentioned by two states.<sup>15</sup>

While most states share similar language and components of criminal human trafficking statutes, both California and Connecticut stand out with differing definitions. California describes human trafficking as,

unlawful deprivation or violation of the personal liberty of another [as] ... substantial and sustained restriction of another's liberty accomplished through fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.<sup>16</sup>

Duress is further defined as, “knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim.”<sup>17</sup> The felonies associated with human trafficking include procurement,<sup>18</sup> pimping,<sup>19</sup> pandering,<sup>20</sup> and abduction of a minor for prostitution,<sup>21</sup> employment of minor in sale or distribution of obscene matter or production of pornography,<sup>22</sup> extortion,<sup>23</sup> and forced labor or services.

The key element for a human trafficking violation in Connecticut is coercion. An individual is guilty of coercion if he or she

compels or induces another person to engage in conduct which such other person has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which such other person has a legal right to engage, by means of instilling in such other person a fear that, if the demand is not complied with, the actor or another will: (1) Commit any criminal offense; or (2) accuse any person of a criminal offense; or (3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute; or (4) take or withhold action as an official, or cause an official to take or withhold action.<sup>24</sup>

The other two elements of trafficking in persons in Connecticut are that the victim is coerced to engage in work or prostitution; trafficking in persons is a felony.<sup>25</sup> Coercion is an affirmative defense to prostitution charges.<sup>26</sup>

---

<sup>12</sup> CA, FL, GU, LA, MS, NH, WI

<sup>13</sup> N.J. Stat. § 2C:13-8; see also 21 Okl. St. § 748

<sup>14</sup> DE, MN, ND

<sup>15</sup> NH, OR

<sup>16</sup> Cal Pen Code § 236.1

<sup>17</sup> Ibid.

<sup>18</sup> Cal Pen Code § 266

<sup>19</sup> Cal Pen Code § 266h

<sup>20</sup> Cal Pen Code § 266i

<sup>21</sup> Cal Pen Code § 267

<sup>22</sup> Cal Pen Code § 311.4

<sup>23</sup> Cal Pen Code § 518

<sup>24</sup> Conn. Gen. Stat. § 53a-192

<sup>25</sup> Conn. Gen. Stat. § 53a-192a

<sup>26</sup> Conn. Gen. Stat. § 53a-82

As shown above, the majority of states go into a fair amount of detail of what can constitute human trafficking. But there are a few states that either define human trafficking without much specificity or incorporate these elements into kidnapping or sex offenses rather than trafficking per se. Idaho, for example, defines human trafficking as:

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained eighteen (18) years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>27</sup>

Elements such as “fraud or coercion” and “debt bondage” are used here but not defined. Indiana similarly uses the phrase, “knowingly or intentionally recruits, harbors, or transports another person by force, threat of force, or fraud,” to enter into forced labor, involuntary servitude, prostitution or marriage.<sup>28</sup> Again, though, no elaboration is offered.

Other states, while not invoking human or sex trafficking, nevertheless include some elements of human trafficking in their other criminal statutes. Maine and Virginia, for example, include control of identifying documents as components of kidnapping.<sup>29</sup> Wyoming, as part of its felonious restraint statute, incorporates involuntary servitude as an element, while both West Virginia and Massachusetts include a prohibition on transport in or out of their respective states as part of kidnapping statutes.<sup>30</sup> Massachusetts and Ohio also have trafficking-like elements in prostitution statutes,<sup>31</sup> and Ohio does mention human trafficking in sentencing provisions.<sup>32</sup>

Finally, there are three states that have legalized, or regulated, trafficking. Oklahoma and Tennessee both have chapters or parts of chapters entitled “Trafficking in Children.” Oklahoma’s provisions seek to criminalize unauthorized placement and adoption of children.<sup>33</sup> Tennessee also criminalizes violations of its Trafficking in Children provisions, but is much more concerned with regulating out-of-state adoptions.<sup>34</sup> Washington regulates the lawful entry of foreign workers and international labor recruiters. Among the requirements for domestic employers of foreign workers is a disclosure statement that discusses wages, withholdings and control of identifying documents.<sup>35</sup>

In sum, nearly every state carries a criminal penalty for trafficking. These states also utilize and share the most basic elements of trafficking: the use or threat of force and restraint. Control of identifying documents and deriving benefit or value from trafficking are found in roughly half of the states. And a few states incorporate typical trafficking elements into other criminal statutes or seek to regulate trafficking in other ways.

## Civil Remedies and Penalties

---

<sup>27</sup> Idaho Code § 18-8602

<sup>28</sup> Burns Ind. Code Ann. § 35-42-3.5-1

<sup>29</sup> See footnote 34

<sup>30</sup> Wyo. Stat. § 6-2-202, W. Va. Code § 61-2-14a, ALM GL ch. 265, § 26

<sup>31</sup> ALM GL ch. 272, § 12, ORC Ann. 2907.22

<sup>32</sup> ORC Ann. 2929.01, ORC Ann. 2929.14, ORC Ann. 2941.1422

<sup>33</sup> 21 Okl. St. § 865 through 21 Okl. St. § 869

<sup>34</sup> Tenn. Code Ann. §§ 37-5-401 through 37-5-406

<sup>35</sup> Rev. Code Wash. (ARCW) §§ 19.320.010 through 19.320.030

Aside from criminal penalties, a number of states address human trafficking in three general areas: 1) victim assistance, which overlaps to some degree with 2) additional punitive measures for perpetrators; and 3) government awareness/training.

### Public Assistance

Public assistance programs are one of the major ways states aid human trafficking victims. Almost half the states provide some type of assistance, whether it is specific mention in victims' compensation provisions or other welfare aid, including access to medical assistance. A number of states address public assistance to trafficking victims directly. Florida, for example, provides assistance on an interim basis until a visa is granted. Assistance includes access to medical care, cash, housing and other social services equivalent to other state or community programs available to other refugees.<sup>36</sup> Oklahoma provides services as part of medical treatment, which also includes access to legal services and protection from retaliation, while Connecticut allows for private contractors to aid in granting assistance.<sup>37</sup>

California and New York are a bit more expansive than other states. While California generally disallows undocumented aliens from receiving public assistance, exceptions are made for trafficking victims to receive emergency cash, social services, and be included in refugee resettlement programs.<sup>38</sup> New York provides aid to exploited children and crime victims, and ties benefits to the Federal Victims Protection Act.<sup>39</sup> Other states have followed suit and grant benefits and assistance until the victim receives federal aid, provided the victim's status is confirmed and the victim cooperates with investigators.<sup>40</sup>

Some types of assistance are provided through victim compensation laws. Iowa specifically mentions trafficking victims, assuring that victims will have the same rights as other crime victims.<sup>41</sup> Other states take a more general approach and include trafficking victims in the list of eligible compensation recipients, while other states provide protection to victims by including victims in address confidentiality programs.<sup>42</sup> Finally, a small number of states include trafficking victims as qualified for receiving general welfare benefits such as emergency cash, housing or medical care.<sup>43</sup>

Guam also assumes the obligation to protect victims and their families from threats and reprisals or perpetrators, keep information regarding victims private, provide information for victims in a language they can understand, and develop plans of support with victims. Other forms of victim assistance include prohibiting disclosure of shelter locations and support measures for minors, such as health care, reunification with family, court testimony by video, and access to compensation funds.<sup>44</sup>

### Victim Immunity

---

<sup>36</sup> Fla. Stat. § 409.9531; see also COMAR 07.06.08.01, Minn. Stat. § 299A.795, N.D. Admin. Code 75-02-01.2-28.1, 305 ILCS 5/1-11 for other treatment of refugees

<sup>37</sup> 21 Okl. St. § 748.2, Conn. Gen. Stat. § 54-234; see also Tex. Gov't Code § 531.382

<sup>38</sup> Cal Wel & Inst Code § 13283, Cal Wel & Inst Code § 14005.2, Cal Wel & Inst Code § 18945; see also Cal Gov Code § 13956 and 2 CCR 649.48

<sup>39</sup> NY CLS Soc Serv § 447-b, NY CLS Soc Serv §§ 483-aa through 483-ee, 9 NYCRR § 6174.1 through 9 NYCRR § 6174.5, 18 NYCRR § 765.1 through 18 NYCRR § 765.7

<sup>40</sup> N.M. Stat. Ann. § 30-52-2; see also § 566.223 R.S.Mo., OAC Ann. 5101:1-2-30.3

<sup>41</sup> Iowa Code § 915.51

<sup>42</sup> Ala. Admin. Code r. 262-X-4-.02, this is the only mention of human trafficking in Alabama law; see also N.J. Stat. § 52:4B-11, N.C. Gen. Stat. § 15C-1, ORS § 192.822 and ORS § 192.826

<sup>43</sup> 7 Alaska Admin. Code 100.052, 106 CMR 203.675, 106 CMR 320.620, 106 CMR 362.220, and CRIR 15-020-022

<sup>44</sup> 9 GCA § 26.30 through 9 GCA § 26.41

Immunity from prosecution is another tool states use to protect victims and ensure their assistance with prosecution of perpetrators. Such provisions typically state that

[i]t shall be an affirmative defense, in addition to any other affirmative defenses for which the victim might be eligible, to a prosecution for a criminal violation directly related to the defendant's status as a victim of a crime, that the defendant committed the violation under compulsion by another's threat of serious injury, provided that the defendant reasonably believed that such injury was imminent.<sup>45</sup>

Minnesota requires that a victim prove victimization by a preponderance of the evidence, while in Oregon, putative victims may claim duress.<sup>46</sup> Indiana and Kentucky both prohibit authorities from incarcerating victims and New York prohibits labor or sex trafficking victims from being charged as accomplices.<sup>47</sup> While providing immunity from prosecution, Guam also offers testimonial privilege between victims and human trafficking case workers, as does California.<sup>48</sup>

### Restitution

A number of states require perpetrators to make restitution to victims. The form of restitution is fairly straightforward and standard. Illinois provides a useful example:

Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA)... or the Minimum Wage Law, whichever is greater.<sup>49</sup>

Supplemental to economic loss, some states also order restitution in the form of physical or mental rehabilitation and transport for rehabilitation, childcare or the return of property.<sup>50</sup> Indiana, New Mexico, New Jersey and Oklahoma tie restitution for trafficking in with overall criminal restitution.<sup>51</sup>

### Civil Actions

Along with restitution, several states also allow victims to bring civil actions against perpetrators. The most common awards are for actual, compensatory or statutory, and punitive damages along with court costs and attorneys fees.<sup>52</sup> Other states grant treble damages in lieu of punitive damages, with California allowing the greater of treble damages or \$10,000.<sup>53</sup> California also deducts from such awards restitution previously paid.<sup>54</sup> While Pennsylvania simply states that any private remedies are available, Connecticut may grant statutory damages of up to \$1000 for each day the victim was coerced by the perpetrator.<sup>55</sup> Illinois and Texas both

<sup>45</sup> Iowa Code § 710A.3; see also Conn. Gen. Stat. § 53a-192, 21 Okl. St. § 748 (D), N.C. Gen. Stat. § 14-43.11, and 13 V.S.A. § 2635a(d)

<sup>46</sup> Minn. Stat. § 609.325, ORS § 163.269 and ORS § 161.270

<sup>47</sup> Burns Ind. Code Ann. § 35-42-3.5-4, KRS § 431.063, NY CLS Penal § 135.36, and NY CLS Penal § 230.36

<sup>48</sup> 9 GCA § 26.03, 9 GCA § 26.40, and Cal Evid Code §§ 1038 through 1038.2

<sup>49</sup> 720 ILCS 5/10-9 (g); see also 11 Del. C. § 787 (c), Iowa Code § 710A.4, 17-A M.R.S. § 1322 (F), § 566.218 R.S.Mo., 18 Pa.C.S. § 3003, R.I. Gen. Laws § 11-67-4, Tenn. Code Ann. § 39-13-307

<sup>50</sup> 9 GCA § 26.06, Idaho Code § 18-8604, RSA 633:10, and ORC Ann. 2929.18

<sup>51</sup> Burns Ind. Code Ann. § 35-42-3.5-2, N.M. Stat. Ann. § 30-52-1, N.J. Stat. § 52:4B-11 and 21 Okl. St. § 748

<sup>52</sup> Burns Ind. Code Ann. § 35-42-3.5-3, 5 M.R.S. § 4701, Minn. Stat. § 609.284, 21 Okl. St. § 748.2, ORS § 30.867, and Tex. Civ. Prac. & Rem. Code §§ 98.001 through 98.006

<sup>53</sup> Cal Civ Code § 52.5, 9 GCA § 26.31, Fla. Stat. § 772.104, and Wis. Stat. § 940.302

<sup>54</sup> Cal Civ Code § 52.5 (g)

<sup>55</sup> 18 Pa.C.S. § 3003 and Conn. Gen. Stat. § 52-571i

take more expansive approaches. In addition to state ordered-restitution, victims in Illinois may sue for economic loss, death, and physical harm and rehabilitation costs.<sup>56</sup>

### Forfeiture

Whereas restitution and civil actions are provided to either restore or compensate the victim, forfeiture is a tool governments use to recoup costs and as legal action against perpetrators. Four of the states that utilize forfeiture specifically tie such provisions within human trafficking chapters or subchapters.<sup>57</sup> California, Illinois, and Maine all include human trafficking among broader forfeiture provisions.<sup>58</sup>

California allocates proceeds from forfeiture sales to the Victim-Witness Assistance Fund, fifty percent of which is granted to community-based organizations that aid with minor trafficking victims.<sup>59</sup> In Guam, assets, including overseas assets that are retrievable, are used to pay for victim restitution and awards from civil actions. Any remaining proceeds are used to fund government aid to trafficking victims and other crime victims.<sup>60</sup> Typically, forfeited property must have been used or acquired as a result of trafficking.<sup>61</sup> Both New Hampshire and Pennsylvania go into a significant detail concerning seizure, hearings, and transfers of property for forfeiture.

### Business Liability

Another form of punitive civil action in some states is to hold liable businesses and corporations that engage in or facilitate human trafficking. In Nevada, corporations engaging in trafficking will found guilty of a gross misdemeanor.<sup>62</sup> In Georgia and Tennessee, a business can be prosecuted only if an agent committed the act or omission while acting within the scope of employment.<sup>63</sup> Wisconsin calls for administrative dissolution for human trafficking violations, and in Minnesota, Missouri, and Guam, if a corporation or business entity is convicted of trafficking, courts may order dissolution or reorganization of the business, surrender or revocation of licenses or permits, or surrender of any charters or certificates for conducting business.<sup>64</sup>

### Task Force/Council

Another method states employ to combat human trafficking is through task forces or councils. Most task forces are comprised of members from various agencies throughout the state, including law enforcement, women or children's advocacy committees, labor departments and social services, to name a few. The task forces usually analyze programs, both within and outside of the state for effectiveness in combating trafficking and aiding victims. Most councils or task forces either meet annually or publish an annual report of findings and recommendations.<sup>65</sup>

### Law Enforcement Training

---

<sup>56</sup> 740 ILCS 128/20; see 740 ILCS 128/1 through 740 ILCS 128/99 for the entire Act.

<sup>57</sup> 9 GCA § 26.07, RSA 633:8, 18 Pa.C.S. § 3004, and R.I. Gen. Laws § 11-67-5

<sup>58</sup> Cal Pen Code § 186.8, 725 ILCS 5/124B-300, and 15 M.R.S. § 5821

<sup>59</sup> Cal Pen Code § 186.8

<sup>60</sup> 9 GCA § 26.07

<sup>61</sup> California is the lone exception and Rhode Island places proceeds into the general fund.

<sup>62</sup> Nev. Rev. Stat. Ann. § 613.080

<sup>63</sup> O.C.G.A. § 16-5-46 (g) and Tenn. Code Ann. § 39-13-311

<sup>64</sup> Wis. Stat. § 181.1420, Minn. Stat. § 609.284, § 566.265 R.S.Mo., and 9 GCA § 26.05

<sup>65</sup> Colorado and Rhode Island each have a set date to report findings; Connecticut meets quarterly; Guam and Minnesota meet annually, while New Mexico, New York, and Utah each publish an annual report; Texas publishes a report at the end of even-numbered years.

Proper training of law enforcement personnel is an integral element of preventing human trafficking and aiding victims. California, for example, requires training in understanding “the dynamics and manifestations of human trafficking,” as well as identifying victims, the necessary documentation to satisfy state and federal law, and in providing proper assistance to victims.<sup>66</sup> Identifying and communicating with victims, along with knowledge of services available for victims, are common in training programs.<sup>67</sup> Some states also require that training be in conjunction with other agencies or standing committees. In Connecticut, the Commission on the Status of Women, along with the Police Officer Standards and Training Council, is tasked with developing a training program for law enforcement personnel on both the state and local level.<sup>68</sup> Other states stipulate training with other aspects of law enforcement, such as prosecutors or public safety personnel.<sup>69</sup>

\* \* \*

In sum, criminal penalties for human trafficking are the most common form of legislation among the states and territories. Additional commonality is found in the language and elements used in the various statutes prohibiting human trafficking. Use or threat of force and restraint are nearly universal elements. Control of identifying documents and deriving financial benefit from trafficking, while not quite as widespread, are proscribed in numerous states. A large number of states address civil penalties and remedies as well. Civil actions, restitution, and forfeiture are tools the various jurisdictions use to make victims whole, fund state anti-trafficking programs, and deter perpetrators. Some states have also established task forces to prescribe future measures, including legislation, that address human trafficking. Finally, law enforcement training programs that instruct personnel in interacting with victims and collaborating with other state, federal and non-governmental agencies is found in a number of states.

### **Impact of Existing Federal Laws and Regulations**

In 2000, the Federal Trafficking Victims Protection ACT (TVPA), which regulates and prohibits human trafficking in the U.S., was signed into law. Since then, that legislation has been reauthorized every two to three years. The Federal legislation not only approves of the development of complimentary state anti-trafficking laws, it anticipates their creation and provides the following guidelines for their development:

#### **SEC. 225. PROMOTING EFFECTIVE STATE ENFORCEMENT.**

(b) **MODEL STATE CRIMINAL PROVISIONS.**— In addition to any model State anti-trafficking statutes in effect on the date of the enactment of this Act, the Attorney General shall facilitate the promulgation of a model State statute that —

(1) furthers a comprehensive approach to investigation and prosecution through modernization of State and local prostitution and pandering statutes; and

<sup>66</sup> Cal Pen Code § 13519.14; see also Minn. Stat. § 299A.79

<sup>67</sup> Burns Ind. Code Ann. § 5-2-1-9

<sup>68</sup> Conn. Gen. Stat. § 46a-4b; see also N.J. Stat. § 52:4B-44

<sup>69</sup> Fla. Stat. § 787.06 (d), 9 GCA § 26.22 and Iowa Code § 80B.11 (e)

(2) is based in part on the provisions of the Act of August 15, 1935 (49 Stat. 651; D.C. Code 22–2701 et seq.) (relating to prostitution and pandering).

Accordingly, no changes to any Federal laws or regulations would be required for the development of uniform state anti-trafficking legislation.

### **Key Stakeholders**

The American Bar Association Center for Human Rights, LexisNexis, and Reed Elsevier have strong relationships with several of the organizations and individuals who have been leaders in the development of state anti-trafficking legislation in the past. These partners have expressed support of model anti-trafficking legislation and would be key participants in the process of developing a uniform statute. While this list is not exhaustive, it represents some of the most critical allies and partners to include in the drafting and development process. The key stakeholder organizations and their primary points of contact include:

**Amy Farrell, Assistant Professor**

College of Criminal Justice  
Northeastern University

**Nigel Roberts, Director**

LexisNexis

**Vivian Huelgo, Chief Counsel**

ABA Commission on Domestic Violence

**Jolene Smith, Executive Director**

Free the Slaves

**Teresa Jennings, Senior Director,  
State Government Affairs**

Reed Elsevier

**Charles Song**

Howrey LLP

**Eva Klain, Director**

Child and Adolescent Health  
ABA Center on Children and the Law

**Brad Myles, Deputy Director**

Polaris Project

**Amanda Kloer, Program Associate**

ABA Center for Human Rights

**Martina Vandenberg**

Jenner and Block

**William Livermore, Executive Director**

The Somaly Mam Foundation

**Samantha Vardaman, Policy Director**

Shared Hope International

**Michael Pates, Director**

ABA Center for Human Rights

**Leslie Wolfe, Director**

Center for Women Policy Studies

### **Availability of Existing Research and/or Financial Support**

There is a fair quantity of existing research on state anti-trafficking legislation. Several non-governmental organizations have developed rich online depositories of information about existing and pending state anti-trafficking laws, legal analysis, and model comprehensive legislation. Some of the best resources for existing research and examples of model anti-trafficking legislation include:

LexisNexis Legal Memo on Ancillary Human Trafficking Provisions, attached here as Appendix

Department of Justice (DOJ) Model Law, based on criminal sections of the TVPA 2000. Available at [http://www.justice.gov/crt/crim/model\\_state\\_law.pdf](http://www.justice.gov/crt/crim/model_state_law.pdf)

Polaris Project Comprehensive Model Law (due to be updated 6/30/2010). Available at [www.polarisproject.org/images/.../Model-Comprehensive-State-Legislation.pdf](http://www.polarisproject.org/images/.../Model-Comprehensive-State-Legislation.pdf)

Freedom Network Comprehensive Model Law. Available at [www.legislationline.org/.../action/.../5b6fb5af473eb70407d29b957330.pdf](http://www.legislationline.org/.../action/.../5b6fb5af473eb70407d29b957330.pdf)

Center for Women Policy Studies (CWPS) Human Trafficking Resource Guide, which provides model law guidelines. Available at [www.centerwomenpolicy.org/pdfs/TraffickingResourceGuide.pdf](http://www.centerwomenpolicy.org/pdfs/TraffickingResourceGuide.pdf)

As yet, no outcome-neutral sources of financial support for this project have been identified, but the proposing entities are currently exploring a number of options.

## APPENDIX

### **MEMORANDUM**

To: Brian Cole, LexisNexis

From: Troy Lemke, LexisNexis

Re: Provisions Ancillary to Human Trafficking

Date: May 28, 2010

### **Introduction**

Human trafficking touches on a wide variety of laws and topics. This memo, which serves as an addendum to the earlier human trafficking memo, will provide an overview of the following topics: prostitution, sexual solicitation of minors, statutory rape, regulation of domestic workers, and wage and hour laws concerning migrant and undocumented laborers. Representative samples of laws will also be included.

### **Prostitution**

Sex trafficking is, perhaps, the more common form of human trafficking. As such, most trafficking victims are forced into prostitution. Prostitution statutes can be divided into three general categories; 1) prostitution; 2) patronizing and; 3) pandering or “pimping”.

Prostitution is typically defined as exchanging money or anything of value for sexual conduct; prostitution itself is usually a misdemeanor.<sup>70</sup> Patronizing a prostitute is usually a misdemeanor or low level felony.<sup>71</sup> Some states also impound vehicles used for patronizing prostitutes.<sup>72</sup>

Promoting prostitution is the most heavily criminalized of the three categories. A handful of states classify promotion by degrees. First degree promotion, like human trafficking, penalizes force or threats of force, or if the prostitute is a minor.<sup>73</sup> Subsequent degrees penalize controlling a prostitution operation or merely drawing benefit from prostitution.<sup>74</sup> Enhanced penalties are provided when the prostitute is a minor, alternately deemed as “aggravated promotion” or child prostitution.<sup>75</sup> Other states, Colorado and South Carolina most notably, devote more effort to defining and penalizing child prostitution.<sup>76</sup>

---

<sup>70</sup> See HRS § 712-1200 and N.D. Cent. Code, § 12.1-29-03

<sup>71</sup> See N.M. Stat. Ann. § 30-9-3 and Tenn. Code Ann. § 39-13-514 as examples of misdemeanors; and § 567.030 R.S.Mo., 18 Pa.C.S. § 5902 (E), and NY CLS Penal §§ 230.02 through 230.06 of felonies.

<sup>72</sup> See Conn. Gen. Stat. § 54-36m and D.C. Code § 22-2724 as examples of impoundment; and

<sup>73</sup> Code of Ala. § 13A-12-111 and Alaska Stat. § 11.66.110.

<sup>74</sup> HRS § 712-1203 and Conn. Gen. Stat. § 53a-88; see also Burns Ind. Code Ann. § 35-45-4-4 and K.S.A. § 21-3513 which combine the elements and degrees into one statute.

<sup>75</sup> See Mont. Code Anno., § 45-5-603 and 17-A M.R.S. § 852 for aggravated promotion and ALM GL ch. 272, § 4A and A.R.S. § 13-3212 for promotion of child prostitution.

<sup>76</sup> C.R.S. 18-7-401 through 18-7-409, S.C. Code Ann. § 16-15-39 through 16-15-445, and N.M. Stat. Ann. § 30-6A-4.

Two other areas that touch on prostitution and human trafficking are marriage brokers and sex tourism. Only one state, Missouri, regulates marriage brokers by requiring both the broker and clients be subject to criminal background checks, for clients to provide a marital history, and information on basic rights for recruits.<sup>77</sup> Provisions on sex tourism are slightly more common, with Missouri prohibiting travel agent or agencies from promoting, advertising, or selling “sex travel.”<sup>78</sup> Hawaii and Washington also prohibit promoting travel for prostitution, while Alaska and New York list encouraging or facilitating travel as an element of promoting prostitution.<sup>79</sup>

## **Sexual Solicitation of Minors**

As with child prostitution, an essential aspect of sex trafficking is soliciting minors for sex. States tend to use similar language such as, “Solicits, requests, commands, importunes or otherwise attempts to cause any child who has not yet reached that child’s eighteenth birthday to engage in a prohibited sexual act.”<sup>80</sup> Beyond the element of solicitation itself, states vary in the depth and breadth of statutes. Some states only address solicitation of a minor through technology.<sup>81</sup> Many states include electronic solicitation as elements of the larger crime.<sup>82</sup> Other states, however, have adopted a broad approach and definition, such that spelling out the actual means of solicitation are unnecessary.<sup>83</sup>

## **Statutory Rape**

Sex abuse of minors has generally subsumed statutory rape provisions.<sup>84</sup> However a handful of states, primarily in the southern United States, still retain statutory rape laws.<sup>85</sup> Common elements of statutory rape laws are age differences between victim and perpetrator with threshold ages for each. Some states, such as South Dakota, determine 13 to be the threshold age, with a younger victim constituting a rape charge with stiffer penalties.<sup>86</sup> Other states determine that a range, between 14 and 16 for example, is more appropriate.<sup>87</sup> An age difference of three to four years between victim and perpetrator is also common.<sup>88</sup> The age of the perpetrator also plays a factor in determining the severity. As seen in Georgia, a perpetrator 18 or younger will be charged with a misdemeanor, while a perpetrator 21 or older will be charged with a felony.<sup>89</sup>

---

<sup>77</sup> § 566.221 R.S.Mo.

<sup>78</sup> § 567.087 R.S.Mo.; see also § 567.089 R.S.Mo.

<sup>79</sup> HRS § 712-1208, Rev. Code Wash. (ARCW) § 9A.88.085, Alaska Stat. § 11.66.120, and NY CLS Penal § 230.25

<sup>80</sup> 11 Del. C. § 1112A

<sup>81</sup> Code of Ala. §§ 13A-6-120 through 13A-6-127, La. R.S. 14:81.3, N.C. Gen. Stat. § 14-202.3, and Utah Code Ann. § 76-4-401; see also Tex. Penal Code § 33.021 and W. Va. Code § 61-3C-14b for states that list electronic solicitation under computer crimes.

<sup>82</sup> Tenn. Code Ann. § 39-13-528, 720 ILCS 5/11-6, and R.I. Gen. Laws § 11-37-8.8

<sup>83</sup> O.C.G.A. § 16-6-5, Iowa Code § 710.10, and MCLS §§ 750.145a through 750.145b.

<sup>84</sup> See D.C. Code § 22-4001 (6)(B) as an example.

<sup>85</sup> California has a law entitled “Unlawful sexual intercourse with a minor” which shares many of the same elements as other statutory rape laws.

<sup>86</sup> See S.D. Codified Laws § 22-22-1 (5)

<sup>87</sup> See Miss. Code Ann. § 97-3-65

<sup>88</sup> See O.C.G.A. § 16-6-3 (c) and Tenn. Code Ann. § 39-13-506

<sup>89</sup> See footnote above; compare with § 566.034 R.S.Mo.

## Domestic, Migrant and Undocumented Workers

Labor trafficking victims are most likely to be forced into either domestic or agricultural work. Unfortunately, the regulations for both types of laborers tend to hold them apart from other types of workers. New York does have a statement of rights for domestic workers and, along with California, regulates employment agencies that place domestic workers.<sup>90</sup> However, California and other states do not include domestic or agricultural workers in unemployment insurance, workers compensation or some wage and hour provisions.<sup>91</sup> Missouri and Nevada are exceptions regarding workers compensation. Missouri allows coverage after domestic workers cross a certain earning threshold and Nevada permits coverage under homeowner liability policies.<sup>92</sup>

One potential reason domestic and, particularly, agricultural workers may be exempt from wage and hour requirements is because employer tend to offer housing, food, and other amenities.<sup>93</sup> Nevertheless, agricultural labor is typically regulated through large contracts that can control working conditions and wages.<sup>94</sup> Of course numerous states penalize employers for hiring undocumented workers. Many states disallow employers with illegal employees from working on public works contracts.<sup>95</sup> Employers who knowingly or intentionally hire illegal aliens are subject to fines, license revocation, or even prison.<sup>96</sup>

## Conclusion

A useful step to crafting a uniform law on human trafficking is an understanding of ancillary laws and topics. The overview of prostitution, sexual solicitation of minors, statutory rape, and domestic, migrant and undocumented workers, along with a sampling of the laws themselves, has provided a basic understanding of these issues. Combined with previous memo on human trafficking, this memo will, hopefully, aid the ABA in devising a more standardized approach to human trafficking.

---

<sup>90</sup> See NY CLS Gen Bus § 185-a, NY CLS Labor § 692, and Cal Civ Code § 1812.5095

<sup>91</sup> For unemployment see Cal Unemp Ins Code § 629, Cal Unemp Ins Code § 687.2, and C.R.S. 8-70-141; for workers compensation see D.C. Code § 32-1501 (E), Idaho Code § 72-1385, and Tex. Lab. Code § 406.091; for wage and hour see RSA 279:21 and N.M. Stat. Ann. § 50-4-1.

<sup>92</sup> Md. LABOR AND EMPLOYMENT Code Ann. § 9-209 and Nev. Rev. Stat. Ann. § 616B.032.

<sup>93</sup> N.C. Gen. Stat. §§ 95-222 through 95-229.1

<sup>94</sup> Idaho Code §§ 44-1601 through 44-1618, La. R.S. 23:881 through 23:889, and ALM GL ch. 151, § 2A

<sup>95</sup> Cal Pub Contract Code § 6101, Idaho Code § 44-1005, and Nev. Rev. Stat. Ann. § 338.130

<sup>96</sup> § 285.025 R.S.Mo., § 285.025 R.S.Mo. and A.R.S. § 23-212; but see Wyo. Stat. §§ 27-4-113 through 27-4-115 which discusses contracts with aliens and prohibits payment to third parties.