

DRAFT
FOR DISCUSSION ONLY

PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For February 10-11, 2012 Drafting Committee Meeting

(Without Prefatory Note and Comments)

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January 10, 2012

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PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

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

2
3 **ARTICLE 1**

4 **DEFINITIONS**

5 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Prevention of and
6 Remedies for Human Trafficking Act.

7 **SECTION 102. DEFINITIONS.** As used in this act:

8 (1) “Abuse of a position of power or of a position of vulnerability” means any situation in
9 which a person takes advantage of another’s belief that there is no real and acceptable alternative
10 but to submit to the will of that person. This belief may be the result of:

11 (A) having entered the country illegally or without proper documentation;

12 (B) pregnancy or any physical or mental disease or disability of the person;

13 (C) reduced capacity to form judgments by virtue of being a minor, illness,
14 infirmity, or a physical or mental disability;

15 (D) a promise or the giving of payments or benefits to those having authority over
16 a person; or

17 (E) the abuse of a position of trust.

18 (2) “Abuse of the law or legal process” means the use or threatened use of a law or legal
19 process, whether administrative, civil, or criminal, in any manner or for any purpose for which
20 the law was not designed, in order to exert pressure on another person to cause that person to
21 take some action or refrain from taking some action.

22 (3) “Benefit” means to receive anything of value, such as money, a product, a service, or
23 another form of compensation.

24 (4) “Business entity” means a corporation, business trust, estate, trust, partnership,

1 limited liability company, association, joint venture, or any other commercial entity.

2 (5) “Coercion” includes:

3 (A) the use or threat of force, abduction, serious harm to, or physical restraint
4 against any person;

5 (B) the use of a scheme, plan, pattern, or fraudulent statement with intent to cause
6 a person to believe that failure to perform an act would result in serious harm to or physical
7 restraint against any person;

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

9
10 (D) the abuse of a position of power or of a position of vulnerability;

11 (E) providing or controlling a person’s access to a controlled substance;

12 (F) the destruction of, taking of, or the threat to destroy or take another person’s
13 identification document as defined in Section 101(9); and

14 (G) the use of another’s personal services as security for a debt if any of the
15 following also occurs;

16 (i) the value of the services as reasonably assessed is not applied toward
17 the liquidation of the debt;

18 (ii) the length and nature of those services are not respectively limited and
19 clearly defined;

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

22 (iv) the person is prevented from acquiring accurate and timely
23 information pertinent to the disposition of the debt.

1 (6) "Deception" includes:

2 (A) the creation or confirmation of another's impression of any material fact or
3 event which is false and which the accused knows or has reason to believe to be false, including
4 as to:

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

6 (ii) the conditions of work; or

7 (iii) the extent to which the person will be free to leave his or her place of
8 residence; or

9 (B) the promise of benefits or performance of services, which the accused does
10 not intend to be delivered.

11 (7) "Identification document" includes a passport, driver's license, immigration
12 document, travel document, or other government identification document.

13 (8) "Labor or service" means work or service of economic or financial value performed
14 or provided.

15 (9) "Person" means an individual, corporation, business trust, estate, trust, partnership,
16 limited liability company, association, joint venture, public corporation, government or
17 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

18 (10) "Serious harm" means any harm, whether physical or nonphysical, including
19 psychological, financial, or reputational harm, that is sufficiently serious, under all the
20 surrounding circumstances, to compel a reasonable person of the same background and in the
21 same circumstances to perform or to continue performing labor, services, or sexual services in
22 order to avoid incurring that harm.

23 (11) "Sexual activity" includes sexual intercourse, cunnilingus, fellatio, anal intercourse,

1 intrusion by any object into the genital or anal opening of another person's body, the stimulation
2 by hand or any other object of another's genitals or breasts for the purpose of arousing or
3 gratifying the sexual desire of either person. [OR includes those acts set forth in (citation to
4 sections of state law defining unlawful sexual activity)]

5 (12) "Sexual services" include sexual activity, erotic dancing, and participation in the
6 production of pornographic images.

7 (13) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
8 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
9 the United States.

10 (14) "Victim" means any individual who has been subjected to any one or more of the
11 offenses set forth in Article 2 of this act, regardless of whether a perpetrator is identified,
12 apprehended, prosecuted or convicted.

13 **Comment**

14 [Reserved]
15

16 **ARTICLE 2**

17 **CRIMES AND REMEDIES**

18 **SECTION 201. HUMAN TRAFFICKING.**

19 (a) A person may not knowingly or recklessly recruit, transport, transfer, harbor, receive,
20 provide, obtain, isolate, maintain, or entice an individual for the purpose of:

21 (1) forced labor or servitude in violation of Section 202;

22 (2) sexual servitude in violation of Section 203; or

23 (3) sexual servitude of a minor in violation of Section 204.

24 (b) Violation of this section is a [felony of the 2nd degree].

1 **Legislative Note:** *Some states have amended existing racketeering (RICO) statutes to include the*
2 *crime of human trafficking. It is recommended that a state add human trafficking as a predicate*
3 *racketeering offense, if it has not already done so.*

4
5 **Comment**

6
7 [Reserved]

8
9 **SECTION 202. FORCED LABOR AND SERVITUDE.**

10 (a) A person may not knowingly or recklessly use coercion, deception, or fraud to compel
11 an individual to provide labor or services.

12 (b) Violation of this section is a [felony of the 1st degree].

13 **Comment**

14
15 [Reserved]

16
17 **SECTION 203. SEXUAL SERVITUDE.**

18 (a) A person may not, in anticipation or receipt of a benefit, knowingly or recklessly use
19 coercion, deception, or fraud to compel an individual 18 years or older to provide sexual
20 services.

21 (b) Violation of this section is a [felony of the [[1st or 2st]] degree].

22 **Comment**

23
24 [Reserved]

25
26 **SECTION 204. SEXUAL SERVITUDE OF A MINOR.**

27 (a) A person may not, in anticipation or receipt of a benefit, knowingly or recklessly
28 offer, obtain, procure, or provide an individual less than 18 years of age to engage in sexual
29 services.

30 (b) Violation of this section is a [felony of the 1st degree].

31 (c) In a prosecution under this section, the government need not prove that the defendant

1 knew the victim's age. Reasonable mistake of age or consent of the individual less than 18 years
2 of age shall not be a defense to liability under this section.

3 **Comment**
4

5 [Reserved]

6 **SECTION 205. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.**

7 (a) A person may not knowingly pay, agree to pay, or offer to pay anything of value as
8 compensation to engage in sexual activity with an individual knowing or in reckless disregard of
9 the fact that the individual is a victim of sexual servitude in violation of Sections 203 or 204.

10 (b) A person who violates subsection (a) is guilty of a [felony of the 3rd degree].

11 (c) Nothing in this section precludes a prosecution under [state statutory rape law].

12 **Comment**
13

14 [Reserved]
15

16 **SECTION 206. DEBT BONDAGE.**

17 (a) A person may not knowingly use another's personal services as security for a real or
18 purported debt if any of the following also occurs:

19 (1) the value of the services as reasonably assessed is not applied toward the
20 liquidation of the debt;

21 (2) the length and nature of those services are not respectively limited and clearly
22 defined;

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

25 (4) the person is prevented from acquiring accurate and timely information
26 pertinent to the disposition of the debt.

(b) A person who violates this section is guilty of a [felony of the 2nd degree].

Comment

[Reserved]

**SECTION 207. UNLAWFUL CONDUCT WITH RESPECT TO
IDENTIFICATION DOCUMENTS.**

(a) A person may not knowingly destroy, take, possess, or so threaten, an actual or
purported identification document belonging to another person while committing, or with intent
to commit, an offense violating a section in this article.

(b) A person may not knowingly use coercion, deception, or fraud to induce an individual
to use a false or altered identification document while committing or with intent to commit an
offense violating a section in this article.

(c) A person may not, without lawful authority, purposely make or alter an identification
document to be used to violate a section in this article.

(d) A person who violates this section is guilty of a [felony of the 3rd degree].

Comment

[Reserved]

SECTION 208. BENEFITING FROM TRAFFICKING OFFENSES.

(a) A person may not knowingly benefit from another person's violation of Sections 201
- 207.

(b) A person who violates this section is guilty of a [felony of the 3rd degree].

Comment

[Reserved]

1 **SECTION 209. BUSINESS LIABILITY.**

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

3 (b) A business entity may be prosecuted for a crime under this article if:

4 (1) an agent of the business entity knowingly engages in conduct that constitutes
5 an offense under this article while acting within the scope of employment and on behalf of the
6 business entity; or

7 (2) an employee of the business entity engages in conduct that constitutes an
8 offense under this article and the commission of the crime constituted a pattern of illegal activity
9 on behalf of the business entity that an agent knew was occurring or recklessly disregarded and
10 failed to take effective action to stop it.

11 **Alternative A**

12 (c) It is an affirmative defense to liability under subsection (b)(2) if the business entity
13 proves [by a preponderance of the evidence] that the business entity had in place adequate
14 procedures designed to prevent persons associated with the business entity from undertaking
15 such conduct.

16 **Alternative B**

17 (c) It is an affirmative defense to liability under subsection (b)(2) if the business entity
18 proves [by a preponderance of the evidence] that the business entity promulgated an anti-
19 trafficking policy with an effective complaint procedure.

20 **Alternative C**

21 (c) It is an affirmative defense to liability under subsection (b)(2) if the business entity
22 proves [by a preponderance of the evidence] that the business entity exercised reasonable care to
23 prevent and correct promptly a violation of this article.

1 **End of Alternatives**

2 (d) The court may consider the severity of the business entity's offense and order
3 enhanced penalties, including one or more of the following:

- 4 (1) a fine of not more than \$1,000,000;
5 (2) suspension or revocation of any license or permit;
6 (3) dissolution or reorganization;
7 (4) disgorgement of profit;
8 (5) debarment from government contracts; or
9 (6) any other equitable measure as justice so requires.

10 **Comment**

11 [Reserved]
12
13

14 **SECTION 210. PROHIBITED DEFENSES.** A defendant charged with a violation of
15 Sections 201—208 shall not use an alleged victim's consent as a defense where the labor,
16 services, sexual activity, or sexual services were procured or maintained by coercion, deception,
17 or fraud.

18 **Comment**

19 [Reserved]
20

21 **SECTION 211. VICTIM IMMUNITY AND DEFENSES.**

22 (a) A victim is not criminally liable for illegal sexual activity committed as a direct result
23 of, or incident to, being a victim.

24 (b) It is an affirmative defense in a prosecution for a criminal violation that the
25 defendant:

- 26 (1) is a victim, as defined in Section 101(14); and

1 (2) committed the violation under a reasonable apprehension in the mind of the
2 defendant created by another person that if the defendant did not commit the act, that person
3 would inflict serious harm upon the defendant or a member of the defendant's family.

4 (c) Individuals that satisfy subsection 211(a) and are less than [18] years of age shall be
5 [presumed a Child in Need of Protection to be] treated in accordance with [applicable state
6 juvenile program].

7 **Comment**

8 [Reserved]
9

10 **SECTION 212. RESTITUTION.**

11 (a) The court shall order a person convicted of an offense under Sections 201- 207 to pay
12 restitution to any victim including:

13 (1) except as provided in subsection 2, the amount equal to the greatest of:

14 (A) the gross income or value to the defendant of the victim's labor or
15 services, including sexual services, not taking into consideration any expenses the defendant
16 claims to have incurred as a result of maintaining the victim;

17 (B) the value of the victim's labor or services as calculated under the
18 minimum wage and overtime provisions of applicable state and federal law; or

19 (2) if it is not possible or not in the best interest of the victim to compute any of
20 the values under (A) and (B), the equivalent of the value of the victim's labor or services if the
21 victim had provided labor or services that were subject to the minimum wage and overtime
22 provisions of the Fair Labor Standards Act or [state minimum wage and overtime provisions];

23 (3) costs and expenses actually incurred by the victim as a result of the offense
24 for:

- 1 (A) medical services;
- 2 (B) therapy or psychological counseling;
- 3 (C) temporary housing;
- 4 (D) transportation;
- 5 (E) childcare;
- 6 (F) physical and occupational therapy or rehabilitation;
- 7 (G) reasonable funeral and burial services in the case of an offense
- 8 resulting in death or in bodily injury that leads to death; and
- 9 (H) attorneys' fees and other legal costs; and
- 10 (4) any other reasonable costs the victim incurred as a result of the offense.

11 (b) The absence of the victim from the jurisdiction shall not prevent the court from

12 ordering restitution.

13 **Comment**

14 [Reserved]

15

16 **SECTION 213. FORFEITURE.**

17 (a) The court shall order a person convicted of an offense under Sections 201-207 to

18 forfeit:

19 (1) any interest in real or personal property that was used or intended to be used to

20 commit or to facilitate the commission of the violation; and

21 (2) any interest in real or personal property constituting or derived from any

22 proceeds that the person obtained, directly or indirectly, as a result of the offense.

23 (b) The proceeds of a public sale or auction of the forfeited property shall be distributed

24 as follows:

(1) the amount necessary to pay any court-ordered restitution shall be applied to pay that restitution;

(2) the amount necessary to pay any civil award won by any victim from the defendant by the time the forfeiture occurs shall be applied to pay that civil award;

(3) if a remainder exists, of the remainder:

(A) twenty percent (20%) to the state's crime victims compensation fund ;

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

(C) forty percent (40%) to the law enforcement and prosecuting agencies who obtained the conviction.

Comment

[Reserved]

SECTION 214. SENTENCE ENHANCEMENTS. Except as otherwise provided by law, in imposing a sentence for a violation of Sections 201-207 the court may impose an enhanced penalty of:

(1) up to 5 years where:

(A) the victim is at least 14 and less than 18 years of age at any point during the course of the offense, except for an offense under Section 204;

(B) in the course of committing the offense for which the defendant was convicted, the defendant also committed:

(i) assault in violation of [state law on assault]; or

(ii) battery in violation of [state law on battery]; or

1 (C) the defendant abused a position of trust to facilitate the offense.

2 (2) up to 10 years where:

3 (A) the victim is less than 14 years of age at any point during the course of the
4 offense, except for a violation of Section 204;

5 (B) the defendant knew or should have known the victim was particularly
6 vulnerable due to physical or mental condition or otherwise particularly susceptible to the
7 criminal conduct;

8 (C) in the course of committing the offense for which the defendant was
9 convicted, the defendant also committed:

10 (i) sexual assault in violation of [state law on sexual assault]; or
11 (ii) child abuse, neglect, or endangerment in violation of [state laws on
12 child abuse, neglect, or endangerment];

13 (D) the defendant used a weapon in the commission of the offense;

14 (E) the defendant transported the victim across state or national borders;

15 (F) the defendant subjected the victim to the offense for more than 180 days;

16 (G) the defendant subjected more than two victims to the same or similar offense;

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

20 (I) the defendant organized or directed another person to commit the offense; or

21 (J) the defendant was previously convicted for the same or a similar offense; and

22 (3) ten years up to life where in the course of committing the offense for which the
23 defendant was convicted, the defendant also committed:

1 (A) rape or aggravated sexual assault in violation of [state law on rape or
2 aggravated sexual assault];

3 (B) homicide in violation of [state laws on homicide];

4 (C) sexual abuse of a minor in violation of [state law on sexual abuse of a minor];
5 or

6 (D) kidnapping or abduction in violation of [state law on kidnapping or
7 abduction]; and

8 (4) where the defendant is convicted of attempting to commit any of the crimes for which
9 an enhancement should be considered under this section, the court may impose the term of years
10 specified for the completed commission of the crime attempted.

11 **Comment**

12 [Reserved]
13

14 **SECTION 215. STATUTE OF LIMITATIONS FOR CRIMINAL**

15 **PROSECUTION.** There shall be no statute of limitations on criminal prosecution for a
16 violation of Sections 201 - 205.

17 **Comment**

18
19 [Reserved]
20

21 **SECTION 216. VICTIM PROTECTION.** In a prosecution for a criminal violation of
22 Article 2, the [prosecutor] shall take reasonable steps to protect the victim and the victim's family
23 from being re-victimized.

24 **Comment**

25 [Reserved]
26

27 **SECTION 217. CIVIL ACTION.**

1 (a) Victims may bring a civil action against a perpetrator for damages incurred as a
2 consequence of violations of the criminal prohibitions of this Article 2.

3 (b) The court may award actual damages, general damages, [punitive damages,] and
4 litigation expenses and costs reasonably incurred. The court may also award treble damages on
5 proof of actual damage where defendant's acts are willful and malicious. [The court may also
6 award a prevailing plaintiff attorney's fees.]

7 (c) The court may stay a civil action filed under this section during the pendency of
8 criminal prosecution arising out of the same acts as the civil claim.

9 (d) An action brought pursuant to this section shall be commenced within ten years of the
10 date on which the victim was freed from the trafficking situation, or within ten years after the
11 victim attains 18 years of age, whichever comes later.

12 **Comment**

13 [Reserved]
14

15 **ARTICLE 3**

16 **AWARENESS AND PREVENTION**

17 **SECTION 301. ESTABLISHMENT OF ANTI-HUMAN TRAFFICKING [TASK**
18 **FORCE, COUNCIL, OR COORDINATOR].** There is established [an interagency task force
19 on human trafficking, human trafficking council, or a human trafficking coordinator in an
20 existing state agency].

21 **SECTION 302. DUTIES.** The [interagency task force, council, or coordinator] shall:

22 (a) evaluate state efforts to combat human trafficking;

23 (b) submit an annual report of its evaluation, including any recommendations, to the
24 [state legislative body];

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

4 (1) The identity of victims shall be excluded from any collected data.

5 (2) Collected data in summary form shall be included in the annual report to the
6 [state legislative body]; and

7 (d) conduct such other activities to combat human trafficking within the state as from
8 time to time may be [authorized by law] [appropriate].

9 **Comment**

10 [Reserved]
11

12 **SECTION 303. TRAINING.** State [and local] agencies shall include appropriate
13 training in recognition and prevention of human trafficking in annual training for all state
14 officers and employees who may reasonably be expected to come into contact with victims or
15 perpetrators of human trafficking activity in the course of their duties, Training conducted shall
16 include victim awareness and protection training as needed.

17 **Comment**

18 [Reserved]
19

20 **SECTION 304. VICTIM SERVICES.**

21 (a)The [interagency task force, council, or coordinator] shall coordinate the
22 development, preparation, and distribution of items of information most reasonably calculated to
23 reach victims regarding the availability of and access to existing services, protections and
24 benefits available to victims.

25 (b) Information shall be made available to the extent possible in languages that victims

are likely to understand without assistance.

Comment

[Reserved]

SECTION 305. VICTIM ELIGIBILITY FOR SERVICES. A victim shall not be denied benefits and services otherwise available through the state solely due to immigration status if the victim's immigration status is a direct consequence of human trafficking activity.

Comment

[Reserved]

ARTICLE 4

MISCELLANEOUS

SECTION 401. 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 402. 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 403. EFFECTIVE DATE. This [act] takes effect [date].