

DRAFT
FOR DISCUSSION ONLY

PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For February 15-17, 2013 Drafting Committee Meeting

Copyright 2013
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

February 5, 2013

**DRAFTING COMMITTEE 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, Room 109, Oklahoma City, OK 73105

NORMAN L. GREENE, 551 5th Ave., New York, NY 10176

H. LANE KNEEDLER, 901 E. Byrd St., Suite 1700, 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, Harrisburg, PA 17120

SUSAN DELLER ROSS, Georgetown University Law Center, 600 New Jersey Ave. NW, Washington, DC 20001, *Reporter*

JOSEPH COLQUITT, University of Alabama School of Law, P.O. Box 870382, Tuscaloosa, AL 35487-0382, *Associate Reporter*

EX OFFICIO

MICHAEL HOUGHTON, P.O. Box 1347, 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 ULC Drafting Committee on the 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.

PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

TABLE OF CONTENTS

SECTION 1. SHORT TITLE.	3
SECTION 2. DEFINITIONS.	3
SECTION 2. DEFINITIONS.	4
SECTION 3. TRAFFICKING.	8
SECTION 3. TRAFFICKING. [Reformatted Version]	9
SECTION 3. TRAFFICKING IN HUMANS.	10
SECTION 3. TRAFFICKING IN HUMANS.	11
SECTION 4. SUBJECTING AN INDIVIDUAL TO INVOLUTARY SERVITUDE OR FORCED LABOR.	12
SECTION 4. SUBJECTING AN INDIVIDUAL TO FORCED LABOR. [Reformatted Version]	12
SECTION 4. SUBJECTING AN INDIVIDUAL TO FORCED LABOR.	13
SECTION 4. SUBJECTING AN INDIVIDUAL TO FORCED LABOR.	13
SECTION 5. SUBJECTING AN ADULT TO SEXUAL SERVITUDE.	14
SECTION 5. SUBJECTING AN ADULT TO SEXUAL SERVITUDE. [Reformatted version]	14
SECTION 5. SEXUAL SERVITUDE OF AN ADULT.	15
SECTION 5. SEXUAL SERVITUDE OF AN ADULT.	15
SECTION 6. SUBJECTING A MINOR TO SEXUAL SERVITUDE.	16
SECTION 6. SUBJECTING A MINOR TO SEXUAL SERVITUDE. [Reformatted Version].	16
SECTION 6. SEXUAL SERVITUDE OF A MINOR.	17
SECTION 6. SEXUAL SERVITUDE OF A MINOR.	18
CONSOLIDATION OF SECTIONS 5-6.	18
SECTION 5. SEXUAL SERVITUDE.	19
SECTION 5. SEXUAL SERVITUDE.	19
SECTION 7. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.	20
SECTION 7. PATRONIZING A VICTIM OF SEXUAL SERVITUDE. [Reformatted Version]	21
SECTION 7. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.	21
SECTION 8. DEBT BONDAGE.	22
SECTION 8. DEBT BONDAGE.	23
SECTION 9. ABUSE OF IDENTIFICATION DOCUMENT.	24
SECTION 9. ABUSE OF IDENTIFICATION DOCUMENT. [Reformatted Version]	24
SECTION 9. ABUSE OF IDENTIFICATION DOCUMENT.	25
SECTION 10. BUSINESS LIABILITY.	25
[SECTION 11. PAST SEXUAL BEHAVIOR OF VICTIM.	26
SECTION 12. VICTIM DEFENSES.	27
SECTION 13. MOTION TO VACATE CONVICTION.	31
SECTION 13. MOTION TO VACATE CONVICTION.	32
SECTION 13. MOTION TO VACATE CONVICTION.	32
SECTION 14. RESTITUTION.	34
SECTION 15. FORFEITURE.	36

SECTION 16. AGGRAVATING CIRCUMSTANCES.	37
SECTION 16. AGGRAVATING CIRCUMSTANCES.	39
SECTION 17. STATUTE OF LIMITATIONS FOR CRIMINAL PROSECUTION.	40
SECTION 17. STATUTE OF LIMITATIONS FOR CRIMINAL PROSECUTION.	42
SECTION 18. VICTIM CONFIDENTIALITY.	43
SECTION 19. CIVIL ACTION.	44
SECTION 20. HUMAN TRAFFICKING [COUNCIL].	46
SECTION 21. DISPLAY OF PUBLIC-AWARENESS SIGN; PENALTY.	50
SECTION 22. VICTIM ELIGIBILITY FOR SERVICES.	52
SECTION 23. STATE LAW ENFORCEMENT AGENCY PROTOCOL.	53
[SECTION 24. GRANTS TO SERVICE PROVIDERS.	54
SECTION 25. UNIFORMITY OF APPLICATION AND CONSTRUCTION.	55
[SECTION 26. SEVERABILITY.	55
SECTION 27. EFFECTIVE DATE.	55

PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

Associate Reporter's Comment

This draft addresses proposed revisions to Sections 2-10, 12-13, 16-17, the criminal sections of the Prevention of and Remedies for Human Trafficking Act, and comments about the revisions. Section 11 is a civil provision which is placed amongst the criminal sections. The committee might consider moving Section 11 to a more appropriate place within the Act. I have not addressed Sections 14 (Restitution) and 15 (Forfeiture) at this time.

The materials that follow will be reviewed by the Drafting Committee for the first time at its meeting in Washington, D.C., on February 15-17, 2013.

General Summary of this Document

Each section addressed sets forth a copy of the current version of that section, followed in many – but not all – cases by a format-only revision of the section. The format-only revisions are labeled “Reformatted Version.” They are intended to simplify the provision without changing its substantive content. Following the current and – if applicable – reformatted versions of each section, at least one Alternative is offered. The Alternative versions undertake to address shortcomings in, and criticisms of, the substantive content of the current version of the particular section. An Associate Reporter's Comment follows each Alternative. The Comment explains the nature of and the reasoning behind the changes reflected in the respective Alternative. They are addressed to the Committee for committee consideration and do not constitute reporter's commentary for adoption purposes. The comments will need to be rewritten after Committee action on the provisions.

Associate Reporter's Comment

General – Classes of Offenses. The Act utilizes four (4) grades of felonies (Classes A-D). The Drafting Committee might consider adding a Legislative Note (or at least a Comment) explaining the use of the degrees by enacting jurisdictions. In suggesting that possibility, it is noted that the commentary to the Act already states: “A class ‘a’ felony indicates the most serious felony other than one calling for the death penalty. The following felony levels of ‘b’, ‘c’, and ‘d’ denote lower levels of felony. This structure is used throughout the offenses created by this act.”

Although the classification of felonies into degrees was viewed by the Model Penal Code drafters as “one of the most important rationalizing principles of the Model Code,” and the “great majority” of states enacting comprehensive criminal codes have followed the general approach, – see Model Penal Code § 6.01 – a number have not. In fact, some states have not adopted comprehensive criminal codes based on the Model Penal Code. Thus, accepting the Model Penal Code's recital of adoptions, in the states that follow the Model Penal Code model, some states have only 3 degrees of felonies (e.g., Alabama, Hawaii, New Hampshire, North Dakota, Oregon, Washington), while others have more than 4 (e.g., Arizona [6], Colorado [5 non-capital, plus “unclassified” felonies], Florida [5], Illinois [5, numbered], Kentucky [5], Nebraska [6], Ohio

[6], Virginia [6]). Moreover, some states (e.g., Georgia, Rhode Island, Vermont) do not utilize a numbered or lettered classification system. The Model Penal Code originally used only 3 felony classifications. The draft of the proposed revision of the Model Penal Code contains 5 levels and notes that states may choose to utilize a higher number of classifications. Thus, some states that enact the Act will need to revise the classifications to mesh them with their existing scheme of 3, 4, 5, or more levels of felonies.

Complicating the issue further, even a cursory review of states' punishment ranges within the classifications reveals considerable variation in punishment schemes. For example, a Class A felony in Alabama authorizes a penalty of 10 years to life in prison; in Colorado, punishment for a Class 2 felony ranges from 4-48 years imprisonment; in Illinois, a Class X felony ranges from 6-30 years and a Class 1 from 4-15 years imprisonment; in Texas, a first-degree felony is punished by life or a term of from 5-99 years.

Thus, the actual meaning of a [class a/b/c/d felony] designation would vary greatly from state to state. That fact seemingly should be noted prominently in the commentary, and a Legislative Note possibly should be inserted at the end of each substantive crime provision (Sections 3-9). For example, such a note could state:

Legislative Note: *Enacting states will need to ensure that the offense classification [class a-d] in this Section are modified to correspond with the existing grading and punishment ranges of the enacting state. The 4 classes of felonies contained in the Act are not intended to unduly restrict legislative discretion in the classification of offenses.*

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

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

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 * * *

6 (3) “Coercion” means:

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

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

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

13 (D) the abuse of a position of power;

14 (E) taking advantage of a position of vulnerability ;

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

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

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

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

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

1 is not defined;

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

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

6 **SECTION 2. DEFINITIONS.** In this [act]:

7 **Alternative [modified subsections only]**

8 () [new] “Adult” means an individual who is eighteen (18) years of age or older.

9 () [relocated] “Agent” means a person authorized to act on behalf of a business entity.

10 () “Coercion” means:

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

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

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

17 (D) providing to an individual or controlling an individual’s access to a controlled
18 substance;

19 (E) the destruction of, taking of, or the threat to destroy or take an individual’s
20 identification document.

21 () [new] “Fraud” means a misrepresentation of the truth or concealment of a material
22 fact to induce another to act to his or her detriment. Fraud includes deceit, trickery, and
23 subterfuge whether perpetrated by words – oral or written – conduct, or silence. The

misrepresentation can be intentionally or knowingly made, or made with reckless indifference as to its truth or falsity.

[_] **[reinserted]** “Intentionally” refers to an actor’s action with respect to a material element of an offense if:

(A) the element involves the nature of the actor’s conduct or a result thereof, and it is the actor’s conscious object to engage in conduct of that nature or to cause such a result; or

(B) the element involves the attendant circumstances and the actor is aware of the existence of such circumstances or believes or hopes that they exist.]

[_] **[reinserted]** “Knowingly” refers to an actor’s action with respect to a material element if an offense it:

(A) the element involves the nature of the actor’s conduct or the attendant circumstances and the actor is aware that the conduct is of that nature or that such circumstances exist; or

(B) the element involves a result of the actor’s conduct and the actor is aware that it is practically certain that the conduct will cause such a result.]

[_] **[new]** “Minor” means an individual who is less than eighteen (18) years of age.

[_] **[amended]** “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.

[_] **[reinserted]** “Recklessly” refers to an actor’s action with respect to a material element of an offense when that actor consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the action. The risk must be of such nature and degree that, considering the nature and purpose of the person’s conduct and the

1 circumstances known to the actor, its disregard involves a gross deviation from the standard of
2 conduct that a law-abiding person would observe in the actor’s situation.]

3 () [amended] “Victim means an individual, whether national, foreign, or stateless, who
4 has been subjected to an offense that violates this [act], regardless of whether a perpetrator is
5 identified, apprehended, prosecuted, or convicted.

6 **End of Alternative**

7 **Associate Reporter’s Comment to the Alternative**

8
9
10 “Adult.” By defining and using the term “adult” throughout the Act, provisions using “an
11 individual 18 years of age or older” become unnecessary. See, e.g., Section 5.

12
13 “Agent.” The term is defined in the existing version of Section 10(a). This insertion
14 moves the definition to the Definitions section and allows the deletion of subsection (a) of
15 Section 10 in keeping with the prevalent practice of defining terms in the Definitions section
16 rather than in the criminal sections.

17
18 “Coercion.” The Alternative modifies the definition of “coercion.” One concern about the
19 existing definition is its reach.

20
21 I recommend deletion of Subsections (D) and (E), “abuse of a position of power” and
22 “taking advantage of a position of respectability.” The suggestion is made due to the vagueness
23 and breadth of these two subsections. After combing existing statutes (through their December,
24 2011 versions), I could find no state law that contained an analogue to either of these subsections
25 in its definition of coercion. Therefore, I suggest deleting Subsections (D) and (E).

26
27 Subsection (F), “providing to an individual or controlling an individual’s access to a
28 controlled substance” was previously amended to address an issue raised at the Conference.

29
30 Subsection (H) of coercion is nearly identical to Section 8 (Debt Bondage). The word
31 coercion is used in Sections 4, 5, and 9 (Subjecting a Person to Forced Labor, Sexual Servitude,
32 and Abuse of an Identification Document, respectively). Additionally, I have employed it in
33 Alternative B to Section 12 (Victim Defenses), in Subsection (a)(2). In these three Sections
34 coercion exists alongside with deception and fraud. In Sections 4 and 5, coercion is used to
35 “compel” an individual to action; in Section 9, coercion is used to “induce” an individual to
36 action. Both these meanings comport with Subsections (A)-(F) in the definition of coercion.
37 Sections 4, 5, and 9 would be none the worse if Subsections (G) and (H) were removed from the
38 definition of coercion. The content contained in Subsections (G) and (H) would still be covered
39 in the act – via Section 8 (Debt Bondage) and Section 9 (Abuse of an Identification Document) –
40 and the act would increase in coherence. Accordingly, I recommend deletion of Subsections (G)
41 and (H) from the definition of coercion.

1 “Fraud.” The Committee should choose whether to insert a definition of fraud. A number
2 of versions of human trafficking provisions use, but do not define the term. The Associate
3 Reporter was instructed to prepare an initial draft of a definition for fraud. The proposed
4 definition is added as paragraph (6) above. The alternatives available to the Committee are to (a)
5 omit a definition of fraud, (b) adopt the draft definition, (c) develop a different definition, or (d)
6 insert a Legislative Note informing the enacting state that it may wish to refer to a definition of
7 fraud that already exists in the enacting state.

8
9 “Minor.” By defining and using the term “minor” throughout the Act, numerous
10 provisions using “an individual less than 18 years of age” become unnecessary.

11
12 “Intentional,” “knowingly,” and “recklessly.” With regards to the mens rea terms used in
13 the Act, it might be helpful to provide a legislative note and/or insert the terms and their
14 definitions in brackets in the definitions section. The definitions contained in an earlier draft of
15 the Act have been reinserted in Section 2 as a bracketed option should the Committee choose to
16 define them in the Act. Alternatively, a legislative note could explain, for example:

17
18 ***Legislative Note:** Enacting states which have not statutorily defined the mens rea elements of*
19 *intent and knowledge used in the Act will need to insert definitions for the mens rea in their*
20 *state’s criminal code or human trafficking act.*

21 22 **Reporter’s Explanation to the Committee of the amended definitions.**

23
24 The ULC revised Drafting Rules require the amended and more succinct definition of
25 “person.” The Committee voted to amend the definition of “victim” at its October 2012 meeting,
26 by adding “whether national, foreign, or stateless,” to coordinate with the amendment to Section
27 22.

28 29 **Sources of Definitions**

30 “Fraud.” Many state versions of human trafficking provisions use fraud or “by any
31 means,” which presumably would include fraud, but the statutes do not define the term. The
32 sources for the draft definition are Black’s Law Dictionary, a state statute, and several cases,
33 including: Tenn. Code § 39-1-106(a)(13); U.S. v. Gilbert, 464 F.3d 674, 678 (7th Cir. 2006); U.S.
34 v. Hill, 2011 WL 3320490, at *3 (E.D. Mich. 2011) (unreported in F. Supp. 2d). Fraud is
35 construed broadly to encompass wide varieties of communications and actions. See, e.g., State v.
36 Henry, 68 P.3d 455, 460 (Ariz. App. 2003).

37
38 “Intentionally,” “knowingly,” and “recklessly.” The definitions of intentionally,
39 knowingly, and recklessly were taken from the December 2011 draft of the Act. The definitions
40 were deleted from subsequent drafts and do not appear in the current version of the Act.

41
42 “Minor.” The definition is used in a number of statutes. See, e.g., Ark. Code § 5-14-
43 101(6). Numerous statutes define minors as persons under the age of 18. See, e.g., Ariz. Rev.
44 Stats. § 1-215(22); Cal. Penal Code § 313(g); Colo. Rev. Stats. §§ 12-44-301(3), 27-81-102(13);
45 705 Ill. Comp. Stats. § 405/3-40(a); Mich. Comp. Laws § 722.1(a); Ohio Rev. Code §

2907.01(M); Tex. Penal Code § 43.24(a)(1); Wash. Rev. Code § 9.68A.011.

SECTION 3. TRAFFICKING.

(a) A person commits trafficking in the first degree if the person intentionally recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual for the purpose of:

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

(2) sexual servitude in violation of Section 5; or

(3) sexual servitude of an individual less than 18 years of age in violation of Section 6.

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

(c) A person commits trafficking in the second degree if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual for the purpose of:

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

(2) sexual servitude in violation of Section 5; or

(3) sexual servitude of an individual less than 18 years of age in violation of Section 6.

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

(e) A person commits trafficking in the third degree if the person recklessly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual for the purpose of:

1 (1) forced labor or servitude in violation of Section 4;
2 (2) sexual servitude in violation of Section 5; or
3 (3) sexual servitude of an individual less than 18 years of age in violation of
4 Section 6.

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

7 **SECTION 3. TRAFFICKING. [Reformatted Version]**

8 (a) A person commits trafficking if the person intentionally, knowingly, or recklessly
9 recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices
10 an individual for the purpose of:

11 (1) forced labor in violation of Section 4;
12 (2) sexual servitude in violation of Section 5; or
13 (3) sexual servitude of a minor in violation of Section 6.

14 (b) Trafficking constitutes trafficking in the first degree, a [class b felony], if it is
15 committed intentionally, but if the victim is a minor, it is a [class a felony].

16 (c) Trafficking constitutes trafficking in the second degree, [a class c felony], if it is
17 committed knowingly, but if the victim is a minor, it is a [class b felony].

18 (d) Trafficking constitutes trafficking in the third degree, [a class d felony], if it is
19 committed recklessly, but if the victim is a minor, it is a [class c felony].

20 **Associate Reporter's Comment**

21 This version of Section 4 only attempts to reformat the substantive content for brevity
22 and clarity.

23
24 To date, the Committee has chosen to refer to the offense defined in Section 3 as
25 "trafficking." I suggest that would be more definite and descriptive to call it "trafficking in
26 persons." There are many trafficking crimes. A few examples illustrate the breadth of trafficking

1 offenses. They include, but certainly are not limited to: Ala. Code §§ 13A-8-193 (trafficking in
2 stolen identities), 13A-12-231 (trafficking in illegal drugs); Ariz. Rev. Stats. § 13-
3 2301D,4.(b)(xii) (trafficking in explosives, weapons or stolen property); Ark. Code § 5-55-201
4 (trafficking in illegal food coupons or vouchers); Cal. Penal Code § 186.2(a)(17) (trafficking in
5 controlled substances); Colo. Rev. Stats. § 26-2-305(1)(a) (trafficking in food stamp coupons);
6 D.C. Code § 23-113 (3)(J) (trafficking in labor or commercial sex and sex trafficking of
7 children); Fla. Stats. § 499.0051(7) (knowing trafficking in contraband prescription drugs); Md.
8 Code § 11-701 (sex trafficking); Minn. Stats. § 609.322 (sex trafficking); N.D. Cent. Code § 2.1-
9 06.1-01(11) (trafficking in explosives, weapons, or stolen property); Okla. Stats. § 6-243.C
10 (trafficking in food stamps); S.C. Code §§ 16-3-2020 (trafficking in persons), 44-53-370
11 (trafficking in cocaine, LSD, ecstasy, crack cocaine, ephedrine, marijuana).

12
13 On the other hand, when addressing human trafficking, the statutes usually refer to
14 “human trafficking” or “trafficking of persons.” Examples include: Human trafficking or
15 trafficking in persons: Ala. Code § 13A-6-150; Cal. Civ. Code § 52.5 (civil); Cal. Penal Code §§
16 186.2(a)(28), 236.1; Conn. Gen. Stats. § 46a-170 (trafficking in persons); D.C. Code § 22-1831;
17 Fla. Stats. § 787.06; 9 Guam Code §§ 26.01 (both); Idaho Code § 18-8602; Ill. Comp. Stats. §
18 720.5/10-9 (trafficking in persons); Ind. Code § 35-42-3.5-1; Iowa Code § 710A.1 ; Kan. Stats. §
19 21-5426; Ky. Penal Code § 529.010(5); La. Stats. § 46.2; Md. Code § 11-303 (pandering -
20 human trafficking); Mass. Gen. Laws §§ 260 § 4D, 271A § 1 (both); Me. Rev. Stats. § 5-4701(3)
21 (civil); Mich. Comp. Laws § 659,452j; Minn. Stats. § 256J.08 Subd. 90 (trafficking in persons);
22 N.D. Cent. Code § 2.1-06.1-01(20); N.J. Stats. § 2C:13-8; N.M. Stats. § 30-52-1; Okla. Stats. §
23 21-748.2 (civil); S.C. Code §§ 16-3-2040(E), 16-3-2060 (civil); S.D. Laws 22-49-1; Tenn. Code
24 § 39-13-301 (“Tennessee Human Trafficking Act of 2007”); Utah Code § 76-5-308; V.I. Code §
25 1721A. (18) (trafficking of persons); Vt. Stats. §§ 2651, 2652; Wisc. Stats. 940.302. But see
26 Wash. Crim. Code 9A.40.100 (trafficking).

27 28 **Alternative A**

29 **SECTION 3. TRAFFICKING IN HUMANS.**

30 (a) A person commits trafficking in humans persons if the person knowingly recruits,
31 transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an
32 individual for the purpose of:

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

34 (2) sexual servitude in violation of Section 5; or

35 (3) sexual servitude of a minor in violation of Section 6.

36 (b) Trafficking in humans is [a class c felony], but if the victim is a minor, it is a [class b
37 felony].

1 **Associate Reporter's Comment to Alternative A**

2 This Alternative limits human trafficking to knowing acts. The existing draft of Section
3 uses all 3 principal mens rea levels – intent, knowledge, and recklessness. After an accelerated
4 but hopefully adequate review of existing statutes addressing human trafficking, whether for
5 sexual or forced labor purposes, it appears that about 57 statutes use knowledge as the mens rea
6 for the offenses. Other statutes use only intent (7), or intent (or purpose) and knowledge (4), or
7 knowledge and wilfulness (1). Two use knowledge and recklessness as to the causation of harm.
8 Section 3 thus is sweeping, which may have been a principal reason for some of the concerns
9 expressed about the Act. It appears that very few – if any – existing statutes rely on recklessness
10 in the way close to Section 3. Similarly, other crimes, such as labor servitude, sexual servitude,
11 human smuggling, etc, shun recklessness as a sufficient mens rea level. Of the statutes of these
12 types reviewed, three used intent, four used one or the other of intent/knowledge,
13 purpose/knowledge, or knowledge/wilfulness. Thirty-nine used knowledge, one used
14 knowledge/recklessness as to causation, and none relied on recklessness in the manner of Section
15 3.

16
17 **Alternative B**

18 **SECTION 3. TRAFFICKING IN HUMANS.**

19 (a) A person commits trafficking in humans if the person intentionally or knowingly
20 recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices
21 an individual for the purpose of:

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

23 (2) sexual servitude in violation of Section 5; or

24 (3) sexual servitude of a minor in violation of Section 6.

25 (b) Trafficking in humans constitutes trafficking in the first degree, a [class b felony], if
26 it is committed intentionally, but if the victim is a minor, it is a [class a felony].

27 (c) Trafficking in humans constitutes trafficking in the second degree, [a class c felony],
28 if it is committed knowingly, but if the victim is a minor, it is a [class b felony].

29 **Associate Reporter's Comment to Alternative B**

30 Alternative B utilizes both intent and knowledge as possible mens rea. The levels of mens
31 rea determine the degree of the crime, viz: intentional equals first degree human trafficking,
32 knowing equals second degree human trafficking.

1 **End of Alternatives**

2 **SECTION 4. SUBJECTING AN INDIVIDUAL TO INVOLUTARY SERVITUDE**
3 **OR FORCED LABOR.**

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

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

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

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

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

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

19 **SECTION 4. SUBJECTING AN INDIVIDUAL TO FORCED LABOR.**

20 **[Reformatted Version]** A person commits forced labor if the person intentionally, knowingly,
21 or recklessly uses coercion, deception, or fraud to compel an individual to provide labor or
22 services. The offense constitutes:

23 (a) Forced labor in the first degree, [a class b felony] if it is committed intentionally, but

1 if the victim is a minor, it is a [class a felony].

2 (b) Forced labor in the second degree, [a class c felony] if it is committed knowingly, but
3 if the victim is a minor, it is a [class b felony].

4 (c) Forced labor in the third degree, [a class d felony] if it is committed reckless, but if
5 the victim is a minor, it is a [class c felony].

6 **Associate Reporter's Comment**

7 This version of Section 4 only attempts to reformat the substantive content for brevity
8 and clarity.

9 **Alternative A**

10 **SECTION 4. SUBJECTING AN INDIVIDUAL TO FORCED LABOR.**

11 (a) A person commits forced labor if the person knowingly uses coercion, deception, or
12 fraud to compel an individual to provide labor or services.

13 (b) Forced labor is [a class b felony], but if the victim is a minor, it is a [class a felony].

14 **Associate Reporter's Comment to Alternative A**

15 Alternative A uses only "knowingly" as the mens rea. In reviewing a number of extant
16 forced labor provisions, knowledge is by far the preferred mens rea. Of the statutes examined,
17 twelve used "knowingly." One used "intentionally," one used "intentionally or knowingly," and
18 none used "recklessly."

19 **Alternative B**

20 **SECTION 4. SUBJECTING AN INDIVIDUAL TO FORCED LABOR.** A person
21 commits forced labor if the person intentionally or knowingly uses coercion, deception, or fraud
22 to compel an individual to provide labor or services. The offense constitutes:

23 (a) Forced labor in the first degree, [a class b felony] if it is committed intentionally, but
24 if the victim is a minor, it is a [class a felony].

25 (b) Forced labor in the second degree, [a class c felony] if it is committed knowingly, but

1 if the victim is a minor, it is a [class b felony].

2 **Associate Reporter's Comment to Alternative B**

3 Alternative B incorporates both “intentionally” and “knowingly” as mens rea.

4 **End of Alternatives**

5 **SECTION 5. SUBJECTING AN ADULT TO SEXUAL SERVITUDE.**

6 (a) A person commits sexual servitude of an adult in the first degree if the person
7 intentionally uses coercion, deception, or fraud to compel an individual 18 years of age or older
8 to engage in commercial sexual services.

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

10 (c) A person commits sexual servitude of an adult in the second degree if the person
11 knowingly uses coercion, deception, or fraud to compel an individual 18 years of age or older to
12 engage in commercial sexual services.

13 (d) Sexual servitude of an adult in the second degree is a [class c felony].

14 (e) A person commits sexual servitude of an adult in the third degree if the person
15 recklessly uses coercion, deception, or fraud to compel an individual 18 years of age or older to
16 provide commercial sexual services.

17 (f) Sexual servitude of an adult in the third degree is a [class d felony].

18 **SECTION 5. SUBJECTING AN ADULT TO SEXUAL SERVITUDE.**

19 **[Reformatted version]** A person commits sexual servitude of an adult if the person
20 intentionally, knowingly, or recklessly uses coercion, deception, or fraud to compel an individual
21 18 years of age or older to engage in commercial sexual services. The offense constitutes:

22 (a) Sexual servitude of an adult in the first degree, [a class b felony] if it is committed
23 intentionally; or

(b) Sexual servitude of an adult in the second degree, [a class c felony] if it is committed knowingly; or

(c) Sexual servitude of an adult in the third degree, [a class d felony] if it is committed recklessly.

Associate Reporter's Comment

This version of Section 5 only attempts to reformat the substantive content for brevity and clarity.

Alternative A

SECTION 5. SEXUAL SERVITUDE OF AN ADULT.

(a) A person commits sexual servitude of an adult if the person knowingly uses coercion, deception, or fraud to compel an adult to engage in commercial sexual services.

(b) Sexual servitude of an adult is [a class c felony].

Associate Reporter's Comment to Alternative A

[reserved]

Alternative B

SECTION 5. SEXUAL SERVITUDE OF AN ADULT.

(a) A person commits sexual servitude of an adult if the person intentionally or knowingly uses coercion, deception, or fraud to compel an adult to engage in commercial sexual services.

(b) The offense constitutes:

(1) Sexual servitude of an adult in the first degree, [a class b felony] if it is committed intentionally; or

(2) Sexual servitude of an adult in the second degree, [a class c felony] if it is committed knowingly.

1 **Associate Reporter’s Comment to Alternative B**

2 [reserved]

3 **End of Alternatives**

4 **SECTION 6. SUBJECTING A MINOR TO SEXUAL SERVITUDE.**

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

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

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

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

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

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

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

20 **SECTION 6. SUBJECTING A MINOR TO SEXUAL SERVITUDE. [Reformatted**
21 **Version]**

22 (a) A person commits sexual servitude of a minor if the person intentionally, knowingly,
23 or recklessly offers or procures an individual less than 18 years of age to engage in commercial

1 sexual services. The offense constitutes:

2 (1) Sexual servitude of a minor in the first degree, [a class a felony] if it is
3 committed intentionally; or

4 (2) Sexual servitude of an minor in the second degree, [a class b felony] if it is
5 committed knowingly; or

6 (3) Sexual servitude of an minor in the third degree, [a class c felony] if it is
7 committed recklessly.

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

11 **Associate Reporter's Comment**

12 This version of Section 6 only attempts to reformat the substantive content for brevity
13 and clarity.

14 **Alternative A**

15 **SECTION 6. SEXUAL SERVITUDE OF A MINOR.**

16 (a) A person commits sexual servitude of a minor if the person knowingly offers,
17 procures, or provides to another person a minor for the purpose of engaging in commercial
18 sexual services.

19 (b) Sexual servitude of a minor is [a class a felony].

20 (c) It is not a defense in a prosecution under this section that the minor consented to
21 engage in commercial sexual services or that the defendant reasonably believed the minor was an
22 adult.
23

1 **Associate Reporter's Comment to Alternative A**

2 [reserved]

3 **Alternative B**

4 **SECTION 6. SEXUAL SERVITUDE OF A MINOR.**

5 (a) A person commits sexual servitude of a minor if the person intentionally or knowingly
6 offers, procures, or provides a minor to another person for the purpose of engaging in
7 commercial sexual services.

8 (b) The offense constitutes:

9 (1) Sexual servitude of a minor in the first degree, [a class a felony] if it is
10 committed intentionally; or

11 (2) Sexual servitude of an minor in the second degree, [a class b felony] if it is
12 committed knowingly.

13 (c) It is not a defense in a prosecution under this section that the minor consented to
14 engage in commercial sexual services or that the defendant reasonably believed the minor was an
15 adult.

16 **Associate Reporter's Comment to Alternative B**

17 [reserved]

18 **End of Alternatives**

19 **CONSOLIDATION OF SECTIONS 5-6.**

20 **Associate Reporter's Comment to Consolidation of Sections 5-6**

21 If the Committee accepts the simplified versions of Sections 5 and 6 – whether
22 Alternatives A or Alternatives B –, it becomes possible to consolidate both crimes into a single
23 crime of “sexual servitude” in one statute instead of two provisions. This possibility simplifies
24 and shortens the Act while retaining the crimes as approved by the Committee.

25 The two versions of the consolidated provisions are set forth next as Alternatives A and
26 B.

1 **Alternative A**

2 **SECTION 5. SEXUAL SERVITUDE.**

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

4 (1) offers, procures, or provides a minor to another person for the purpose of
5 engaging the minor in commercial sexual services.

6 (2) uses coercion, deception, or fraud to compel an adult to engage in commercial
7 sexual services.

8 (b) Sexual servitude of a minor is [a class a felony].

9 (c) Sexual servitude of an adult is [a class c felony].

10 **Associate Reporter's Comment to Alternative A**

11
12 Alternative A consolidates the crimes of sexual servitude of an adult and sexual servitude
13 of a minor into a single provision. This is possible if the decision is made to limit mens rea to
14 knowingly rather than intentionally, knowingly, and recklessly.
15

16 **Alternative B**

17 **SECTION 5. SEXUAL SERVITUDE.**

18 (a) A person commits sexual servitude if the person intentionally or knowingly:

19 (1) offers, procures, or provides a minor to another person for the purpose of
20 engaging the minor in commercial sexual services. The offense constitutes:

21 (A) Sexual servitude of a minor in the first degree, [a class a felony] if it is
22 committed intentionally; or

23 (B) Sexual servitude of an minor in the second degree, [a class b felony] if
24 it is committed knowingly.

25 (2) uses coercion, deception, or fraud to compel an adult to engage in commercial
26 sexual services. The offense constitutes:

1 (A) Sexual servitude of an adult in the first degree, [a class b felony] if it
2 is committed intentionally; or

3 (B) Sexual servitude of an adult in the second degree, [a class c felony] if
4 it is committed knowingly.

5 **Associate Reporter's Comment to Alternative B**

6
7 Alternative B consolidates the crimes of sexual servitude of an adult and sexual servitude
8 of a minor into a single provision. This can be accomplished if the decision is made to limit
9 mens rea to intentionally and knowingly rather than intentionally, knowingly, and recklessly.

10
11 **End of Alternatives**

12 **SECTION 7. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.**

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

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

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

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

25 **Associate Reporter's Comment**

26 [reserved]

1 **SECTION 7. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.**

2 **[Reformatted Version]** A person commits patronizing a victim of sexual servitude if the person
3 gives, agrees to give, or offers to give anything of value so that an individual may engage in
4 sexual activity with another individual and the person

5 (a) knows the fact that the other individual is a victim of sexual servitude in violation of
6 Section 5 or 6. The offense is in the first degree, a [class d felony], if the person acts knowingly,
7 but if the victim is a minor, it is a [class c felony].

8 (b) recklessly disregards the fact that the other individual is a victim of sexual servitude
9 in violation of Section 5 or 6. The offense is in the second degree, a [class a misdemeanor], if the
10 person acts recklessly, but if the victim is a minor, it is a [class d felony].

11 **Associate Reporter's Comment**

12 This version of Section 7 only attempts to reformat the substantive content for brevity
13 and clarity.

14 **Alternative**

15
16 **SECTION 7. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.**

17 (a) A person commits patronizing a victim of sexual servitude if the person gives, agrees
18 to give, or offers to give anything of value so that an individual may engage in sexual activity
19 with another individual and the person

20 (1) knows the fact that the other individual is a victim of sexual servitude in
21 violation of Section 5 or 6.

22 (2) recklessly disregards the fact that the other individual is a victim of sexual
23 servitude in violation of Section 5 or 6.

24 (b) The offense constitutes:

25 (1) Patronizing in the first degree, a [class d felony], if the person acts knowingly,

1 but if the victim is a minor, it is a [class c felony].

2 (2) Patronizing in the second degree, a [class a misdemeanor], if the person acts
3 recklessly, but if the victim is a minor, it is a [class d felony].

4 **Associate Reporter's Comment to the Alternative**
5

6 This alternative merely refines the Reformatted Version by moving the classifications to
7 separate subsections rather than including the classifications within the criminal elements
8 subsections.
9

10 **End of Alternative**

11 **SECTION 8. DEBT BONDAGE.**

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

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

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

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

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

23 (b) The offense constitutes:

24 (1) Debt bondage in the first degree, [a class d felony] if the person acts
25 knowingly, but if the victim is a minor, it is a [class c felony]; or

26 (2) Debt bondage in the second degree, [a class a misdemeanor] if the person acts

recklessly, but if the victim is a minor, it is a [class d felony].

Associate Reporter's Comment

It has been suggested that the possible deletion of Section (a)(4) will be discussed during the February 2013 Committee meeting.

Debt bondage is one of the sections about which some have concerns of overbreadth and unintended consequences. To address some of those concerns as well as to simplify the Section, an Alternative to the existing version of Section 8 is offered.

Alternative

SECTION 8. DEBT BONDAGE.

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

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

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

(b) Debt bondage is a [class d felony], but if the victim is a minor, it is a [class c felony].

(c) Nothing in this section shall be construed to make a parent or guardian liable for their interactions with their children.

Associate Reporter's Comment to the Alternative

The Alternative removes recklessness as a possible mens rea. This change significantly reduces the possibility of overreach and unintended consequences. Rather than casting a wide net in order to catch culpable actors at the cost of ensnaring unsuspecting and well-intended actors, the Section focuses more narrowly on knowing actors who are, with that knowledge, culpable.

Subsection (a)(3) has been deleted in Alternative A. When included the Subsection states that a person who uses an individual's labor or services in satisfaction of a debt commits debt bondage if "the principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred[.]" – thus causing debt bondage to turn on the reasonableness of the amount of the debt, with no relation to the procedure in which the labor or services are provided or the boundaries governing the debt.

1 Subsection (a)(4) has also been deleted in this Alternative. The subsection, by
2 criminalizing preventing an individual“...from acquiring accurate and timely information about
3 the disposition of the debt.” – caused considerable concern amongst reviewers due to the fact that
4 this provision rests on potentially subjective criteria of “accuracy” and “timeliness.” Again, this
5 deletion narrows the Section to focus on culpable rather than well-meaning but somewhat
6 careless or sluggish (but perhaps careful and deliberate) actors.

7
8 Finally, to address the concern of overbreadth, a Subsection exempting parents and
9 guardians from liability arising out of their interactions with their children has been added. A
10 handful of states have similar statutes pertaining to their existing human trafficking laws. See,
11 e.g., Ariz. Rev. Stat. Ann. § 13-1308(C)(1)(b); N.C. § 14-43.12(d); N.H. Rev. Stat. Ann. §
12 633:7(I)(b).

13 14 **End of Alternative**

15 **SECTION 9. ABUSE OF IDENTIFICATION DOCUMENT.**

16 (a) A person commits abuse of an identification document if the person, while
17 committing, or with intent to commit, an offense under this [act]:

18 (1) knowingly destroys, takes, possesses, or threatens to destroy, take, or possess
19 a real or purported identification document;

20 (2) uses coercion, deception, or fraud to induce an individual to use a false or
21 altered identification document; or

22 (3) without lawful authority makes or alters an identification document.

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

24 **SECTION 9. ABUSE OF IDENTIFICATION DOCUMENT. [Reformatted** 25 **Version]**

26 (a) A person commits abuse of an identification document if the person, while
27 committing, or with intent to commit, an offense under this [act] knowingly:

28 (1) destroys, takes, possesses, or threatens to destroy, take, or possess a real or
29 purported identification document;

30 (2) uses coercion, deception, or fraud to induce an individual to use a false or

1 altered identification document; or

2 (3) makes or alters an identification document.

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

4 **Associate Reporter's Comment**

5 This version of Section 9 only attempts to reformat the substantive content for brevity
6 and clarity.
7

8 **Alternative**

9 **SECTION 9. ABUSE OF IDENTIFICATION DOCUMENT.**

10 [reserved]

11 **Associate Reporter's Comment to the Alternative**

12 [reserved]

13 **End of Alternative**

14 **SECTION 10. BUSINESS LIABILITY.**

15 (a) In this section, "agent" means a person authorized to act on behalf of a business
16 entity.

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

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

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

24 (c) It is an affirmative defense to a prosecution of a business entity under subsection

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

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

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

(2) disgorgement of profit; or

(3) debarment from government contracts.

Associate Reporter's Comment

I have spent a nominal amount of time on this section. Instead, due to the press of time, I have centered my attention on the other criminal sections more in need of critical appraisal and possible revision.

I do advance one suggestion in the Alternative below.

Alternative

Move subsection (a) [“(a) In this section, ‘agent’ means a person authorized to act on behalf of a business entity.”] to Section 2. Definitions, and delete subsection (a). I believe this may be the only instance in which a word is defined in the criminal provision rather than in the definitions section. Change the designation of subsection (b), viz:

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

End of Alternative

[SECTION 11. PAST SEXUAL BEHAVIOR OF VICTIM. In a prosecution or civil action for damages for an offense under this [act] in which there is evidence that the alleged victim was subjected to sexual servitude, reputation or opinion evidence of past sexual behavior of the alleged victim is not admissible. Evidence of a specific instance of the alleged victim's past sexual behavior is not admissible unless the evidence is admitted in accordance with [state 4

1 rape shield evidence rule] or is constitutionally required to be admitted.]

2 **Associate Reporter's Comment**

3 Section 11 is a civil provision – actually an evidence rule – and therefore outside my
4 assignment. I note that the provision is bracketed, leading me to believe the Committee may be
5 considering deletion. Because I have ruled on rape shield scenarios as a judge, served on the task
6 force that drafted the evidence rules for our state, written a treatise on state evidence law, and for
7 years, taught advanced evidence to judges at the National Judicial College, I am interested in the
8 topic, but it is outside my purview on this project. I would be happy to chat with any Committee
9 members on the topic of rape shield rules and the advisability of inserting a rape shield provision
10 in this Act.

11 12 **SECTION 12. VICTIM DEFENSES.**

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

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

16 (1) is a victim; and

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

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

23 **Associate Reporter's Comment**

24 The defenses in the current draft of Section 12 are (a) immunity from prosecution and (b)
25 an expanded version of the affirmative defense of duress. The Section, as written, drew a number
26 of comments and concerns during the 2012 Annual Conference. Alternative drafts of the Section
27 are offered in an attempt to address both the need to protect victims of human trafficking from
28 prosecution for illegal sexual activity arising from their status as victims and the need for a
29 provision acceptable to the Conference and state legislators.

30 Although existing Subsection (a) does not refer to the defense as immunity, the provision
31 creates an immunity from prosecution for some criminal acts by victims of human trafficking.

1 The Alternatives to the current draft – set forth below – delete the immunity provision.
2 Subsection (a) apparently is based on Guam Code § 26.03(b) (“A victim of trafficking in persons
3 is not criminally liable for any commercial sex act or illegal sexually-explicit performance
4 committed as a direct result of, or incident or related to, being trafficked.”). The approach has
5 gathered little traction. Other jurisdictions seem to rely on affirmative defenses modeled on the
6 duress defense.

7
8 With few exceptions, immunity from prosecution has been rather limited. In fact,
9 searching a number of criminal law and criminal defense treatises revealed no discussion of
10 immunity as a general defense. See, e.g., Wayne R. LaFare, *Substantive Criminal Law* (2d ed.
11 2003); Paul H. Robinson, *Criminal Law Defenses* (1984). Historically, when found in criminal
12 practice, immunity usually was (and is) granted in return for testimony and even then may be
13 seriously cabined and controlled. See, e.g., 1 Charles E. Torcia, *Wharton’s Criminal Law* § 80
14 (1993); *People v. Vecera*, 2012 WL 6201724 (Cal. App. 2012) (“A prosecutor may grant
15 immunity from prosecution to a witness on condition that he or she testify truthfully to the facts
16 involved.”).

17
18 Of course, immunity does exist in other contexts and frequently becomes quite
19 controversial in part because the approach can be laden with unforeseen circumstances. Perhaps a
20 good example is immunity from prosecution arising from “stand your ground” statutes which
21 morph the established defense of self defense into an immunity from prosecution approach. See,
22 e.g., Fla. Stats. § 776.032(a) (“A person who uses force as permitted in [cited Florida statutes] is
23 justified in using such force and is immune from criminal prosecution and civil action for the use
24 of such force . . . As used in this subsection, the term “criminal prosecution” includes arresting,
25 detaining in custody, and charging or prosecuting the defendant.”). Such provisions have drawn
26 attention due to the assertion of immunity from prosecution by potential defendants in homicide
27 or assault cases (such as the George Zimmerman / Trayvon Martin shooting). These laws have
28 become controversial in great part due to unforeseen applications and outcomes. See, e.g., Kris
29 Hundley, Susan Taylor Martin and Connie Humburg, Florida ‘stand your ground’ law yields
30 some shocking outcomes depending on how law is applied, *Tampa Bay (FL) Times*, Sunday,
31 June 3, 2012, available at <http://www.tampabay.com/news/publicsafety/crime/article1233133.ece>
32 [last visited December 20, 2012].

33
34 Rather than an airing and weighing of a defense such as self defense or duress in court
35 before a judge or jury, immunity potentially veils cases from public scrutiny. The Tampa Bay
36 Times article notes: “A comprehensive analysis of ‘stand your ground’ decisions is all but
37 impossible. When police and prosecutors decide not to press charges, they don’t always keep
38 records showing how they reached their decisions.”

39
40 Deleting Subsection (a) does not leave human trafficking victims without a defense if
41 prosecuted for illegal sexual activity. Subsection (b) of the current draft, a broadened version of
42 the duress defense, remains as Subsection (a). It constitutes a duress defense tailored specifically
43 for victims of human trafficking. Although a bit expansive and specialized, it should be familiar
44 to everyone because “[n]early every American jurisdiction recognizes some form of duress
45 excuse.” 2 Paul H. Robinson, *Criminal Law Defenses* § 177(a), at 348 (1984).

1 **Alternative A**

2 **SECTION 12. VICTIM DEFENSES.**

3 (a) It is an affirmative defense in a prosecution for commercial sexual services that the
4 defendant:

5 (1) is a victim; and

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

9 (b) If a victim who is not criminally liable under subsection (a) is a minor, the victim
10 must be [presumed to be a [child in need of protection] to be] treated in accordance with
11 [applicable state juvenile program].]

12 [(b) If a victim who is not criminally liable under subsection (a) is a minor, the victim
13 must be presumed to be a child in need of protection and treatment[.] [in accordance with [the
14 applicable state juvenile program]].]

15 **Associate Reporter's Comment to Alternative A**

16 This alternative removes Subsection (a), the immunity provision – as previously
17 discussed – and establishes only an affirmative defense. Alternative A constitutes a modified
18 version of a duress defense. To corral the defense and eliminate unwanted or unforeseen
19 outcomes, Subsection (a) limits duress defense to “commercial sexual services,” which is the
20 primary focus of the Section. The current version of Subsection (b) would permit a duress
21 defense even to the crime of murder. Limiting the defense to “commercial sexual services”
22 [which could be defined to clarify the provision] would limit the duress defense to crimes such as
23 prostitution and lewd dancing.
24

25 The current draft of Subsection (b) is much broader than the duress defense as it exists in
26 many states. Generally, duress requires a) a threat that is b) present, imminent, and impending,
27 which produces c) a objectively reasonable apprehension of death or serious bodily injury if the
28 person threatened fails to do the act coerced. Under duress as it was known in earlier times,
29 threats to property or even threats of unsubstantial physical harm were insufficient to raise a
30 duress defense. Similarly, threats of future harm were (or are) insufficient. And duress is
31 commonly denied to those who but for their recklessness or negligence would have had the

1 reasonable opportunity to avoid committing the crime.

2
3 Generally, there is a underlying thought that “the desirability and urgency of avoiding the
4 harm must clearly outweigh the harm sought to be prevented by the law proscribing the conduct,
5 according to ordinary standards of reasonableness.” *State v. Jones*, Slip Copy, 2012 WL 6176770
6 (Tenn. Crim. App., Dec. 11, 2012). To ensure that “desirability and urgency,” some states
7 impose rather severe prerequisites to a duress defense. See, e.g., *State v. Yang*, 644 N.W.2d 808
8 (Minn. 2002) (rejecting duress defense in murder case; “The defense of duress has three parts
9 and thus Yang bore the burden of production at trial that (1) he was under a present reasonable
10 apprehension of instant death, due to threats, should he refuse to participate in the crime; (2) fear
11 of instant death continued throughout the commission of the crime; and (3) he could not safely
12 withdraw. *Id.* A threat of future harm is not sufficient to establish the defense of duress; instead,
13 the threat must be of immediate death for noncooperation.”).

14
15 The current draft significantly eases some of the normal requirements of a duress defense.
16 Consider this scenario:

17
18 Paula, a prostitute, is a human trafficking victim. She kills Charlotte, another prostitute,
19 because the trafficker is a ruthless individual who informed her that unless she killed
20 Charlotte, he would use his connections to have her son’s juvenile probation revoked.
21 (Or, to subject her parents to identity theft in a manner and to such an extent that it would
22 ruin their ability to purchase necessities on credit or perhaps even to rent a home).

23
24 In either of those instances, she seemingly can raise a duress defense to the murder
25 charge, although a number of jurisdictions would not allow a duress defense under current law a)
26 in a murder case, or b) absent a specific, existing threat of imminent death or at least great bodily
27 harm. In a number of jurisdictions, duress does not serve as a defense to murder. (e.g., Alabama;
28 Arizona; California; Colorado; Indiana; Michigan; Missouri; New Mexico). See *People v.*
29 *Anderson*, 50 P.3d 368 (Cal. 2002) (holding that “fear for one’s own life does not justify killing
30 an innocent person. Duress is not a defense to murder,” and noting that “[o]ver two centuries
31 ago, William Blackstone, the great commentator on the common law, said that duress is no
32 excuse for killing an innocent person: “And, therefore, though a man be violently assaulted, and
33 hath no other possible means of escaping death, but by killing an innocent person, this fear and
34 force shall not acquit him of murder; for he ought rather to die himself than escape by the murder
35 of an innocent.” (2 Jones’s Blackstone (1916) p. 2197).” In New Jersey, duress can reduce a
36 murder to manslaughter. In some jurisdictions, duress is not a defense to other homicide, assault
37 or personal violence offenses. (e.g., Arizona; Indiana; Michigan).

38
39 Additionally, duress in some jurisdictions is available only if the threat involved death or
40 at least serious physical harm. (e.g., federal; Alabama; Arizona; Maine; Minnesota; Montana;
41 New Mexico; North Dakota; Tennessee; Texas) (but see Model Penal Code; Arkansas;
42 Delaware; Hawaii; Indiana; Missouri; New Jersey (threat or force which would have overcome
43 resistance of person of ordinary firmness sufficient)). Typically, the threat must be present,
44 imminent, and impending. (e.g., Alabama; Indiana; Maine; Minnesota; Missouri; Montana;
45 North Dakota; Tennessee; Texas).

1 Alternative A retains the bracketed portion of the current version of Section 11 because I
2 believe the Committee already is slated to return to that part of the Section and I have not been a
3 party to the Committee's previous discussion and the decision to bracket the materials.
4

5 **Alternative B**

6 **SECTION 12. VICTIM DEFENSES.**

7 (a) It is an affirmative defense in a prosecution for illegal sexual activity that the
8 defendant:

9 (1) is a victim; and

10 (2) committed the offense under coercion.

11 [(b) If a victim who is not criminally liable under subsection (a) is a minor, the victim
12 must be [presumed to be a [child in need of protection] to be] treated in accordance with
13 [applicable state juvenile program].]

14 [(b) If a victim who is not criminally liable under subsection (a) is a minor, the victim
15 must be presumed to be a child in need of protection and treatment[.] [in accordance with [the
16 applicable state juvenile program]].]

17 **Associate Reporter's Comment to Alternative B**

18 This version substitutes "coercion" for the more laborious "committed the offense under
19 a reasonable apprehension created by a person that, if the defendant did not commit the act, the
20 person would inflict serious harm on the defendant, a member of the defendant's family, or a
21 close associate."
22

23 Alternative B retains the bracketed portion of the current version of Section 11 because I
24 believe the Committee already is slated to return to that part of the Section and I have not been a
25 party to the Committee's previous discussion and the decision to bracket the materials.
26

27 **End of Alternatives**

28 **SECTION 13. MOTION TO VACATE CONVICTION.** At any time after a
29 conviction, the court in which the conviction was entered may vacate the conviction if the court
30 finds the defendant's participation in the offense was the result of being a victim. Official

1 documentation from a federal, state, or local government agency of the defendant's status at the
2 time of the offense as a victim creates a presumption that the defendant's participation in the
3 offense was a result of being a victim, but official documentation is not required to grant a
4 motion under this section.

5 **Associate Reporter's Comment**

6 It will be my suggestion to the Committee that Section 13 be deleted from the draft, at
7 least in its current form. As now drafted it is significantly more robust and much less defined
8 than any of the states which have attempted such a provision. I will prepare for the Committee
9 meeting a more comprehensive explanation of my concerns and research; however, the
10 principal reason for my concerns is that if trafficking victims are not to be granted immunity for
11 crimes committed by them while a victim [see Section 12, Alternatives A and B, and particularly
12 the Comment to Alternative A], it is illogical to permit them to return to court years later and
13 have convictions wiped clean for the reason that they were victims. This section and Section 12
14 address the same concerns and are so interrelated that they must mesh.

15 **Alternative A**

16 **SECTION 13. MOTION TO VACATE CONVICTION.**

17
18
19 (a) A person convicted of prostitution who committed the offense as a result of being a
20 victim of human trafficking may apply to the sentencing court for vacation of the applicant's
21 record of conviction for the prostitution offense.

22 (b) The motion filed and the hearing, if any, conducted on the motion shall be governed
23 by [insert the appropriate state code section governing post-conviction relief procedures].

24 **Associate Reporter's Comment to Alternative A**

25 Alternative A is provided for Committee perusal and consideration, it is limited in scope
26 to a prior conviction for prostitution .

27 **Alternative B**

28 **SECTION 13. MOTION TO VACATE CONVICTION.**

29
30
31 (a) A person convicted of prostitution who committed the offense as a result of being a
32 victim of human trafficking may apply to the sentencing court for vacation of the applicant's

1 record of conviction for the prostitution offense.

2 (b) The applicant may not have the record of conviction for prostitution vacated if any
3 one of the following is present:

4 (1) There are any criminal charges against the applicant pending in any court of
5 this state or another state, or in any federal court;

6 (2) The applicant has been convicted of another crime in this state, another state,
7 or federal court since the date of conviction; or

8 (3) The applicant has ever had the record of another prostitution conviction
9 vacated.

10 (c) A motion under this section shall be filed in the court in which the applicant was
11 convicted of prostitution. The motion shall be made with due diligence, after the applicant has
12 ceased to be a victim of human trafficking or has sought services for victims of human
13 trafficking, subject to reasonable concerns for the safety of the applicant, family members of the
14 applicant, or other victims of human trafficking that may be jeopardized by the bringing of such
15 motion.

16 (d) The motion shall be in writing and under oath. It shall describe the evidence and
17 provide copies of any documents showing that the applicant is entitled to relief under this
18 section. The applicant has the burden of proof by the preponderance of the evidence. Official
19 documentation of the applicant's status as a victim of sex trafficking or trafficking in persons at
20 the time of the offense from a federal, state or local government agency shall create a
21 presumption that the applicant's participation in the offense was a result of having been a victim
22 of human trafficking, but shall not be required for granting a motion under this section.

23 (e) The court may dismiss a motion without a hearing if the court finds that the motion

1 fails to assert grounds on which relief may be granted. Otherwise, the court shall hold a hearing
2 on a motion filed under this section if the motion satisfies the requirements of subsections (c) and
3 (d) of this section. The State shall have the right to be heard during the hearing.

4 (f) In ruling on a motion filed under this section, the court may vacate the conviction,
5 modify the sentence, or grant a new trial. The court shall state the reasons for its ruling on the
6 record.

7 (g) If the court vacates a record of conviction under this section, the person shall be
8 released from all penalties and disabilities resulting from the offense. The fact that the person has
9 been convicted of the offense shall not be included in the person's criminal history for purposes
10 of determining a sentence in any subsequent conviction.

11 **Associate Reporter's Comment to Alternative B**

12 Alternative B is provided for Committee perusal and consideration, it establishes not only
13 the opportunity for post-conviction review, but also much of the governing procedure for such
14 reviews.

15
16 **End of Alternatives**

17 **SECTION 14. RESTITUTION.**

18 (a) The court shall order a person convicted of an offense under this [act] to pay
19 restitution to a victim, including:

20 (1) expenses incurred or reasonably certain to be incurred by the victim as a result
21 of the offense for:

22 (A) medical services;

23 (B) psychological counseling;

24 (C) temporary housing;

25 (D) transportation;

1 (E) childcare;

2 (F) physical and occupational therapy ;

3 (G) funeral and burial services;

4 (H) reasonable attorney's fees and other legal costs; and

5 (I) other reasonable costs and expenses; and

6 (2) an amount equal to the greater of the following, with no reduction for

7 expenses the defendant incurred to maintain the victim :

8 (A) the gross income to the defendant for the victim's labor or services, or

9 sexual services; or

10 (B) the value to the defendant of the victim's labor or services, or sexual

11 services; or

12 (C) the amount the defendant contracted to pay the victim; or

13 (D) the value of the victim's labor or services, or sexual services,

14 calculated under the minimum wage and overtime provisions of the Fair Labor Standards Act,

15 [29 U.S.C. Section 201 et seq.], or [state minimum wage and overtime provisions], whichever is

16 higher, without regard to whether the Act or [state provisions] actually apply to the labor or

17 services, or sexual services.

18 (b) The court shall order restitution under subsection (a) even if the victim is unavailable.

19 (c) If the victim is a minor, the amount paid to the victim under subsection (a) shall be no

20 less than [\$150,000].

21 **Comment**

22 [Reserved]

1

2
3
4
5
6
7
8
9

1

12

13
1415
1617
1819
2021
22
23

24

25

26

27
28

1 place; and

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

4 **Comment**

5 [Reserved]

6 **Sources**

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

15
16 **SECTION 16. AGGRAVATING CIRCUMSTANCES.**

17 (a) An aggravating circumstance is one or more of the following that occur during the
18 commission of an offense under this [act]:

- 19 (1) the defendant abused a position of trust to facilitate the offense;
- 20 (2) the defendant used a weapon in the commission of the offense;
- 21 (3) the defendant subjected more than one victim to the same or similar offense;
- 22 (4) the defendant was previously convicted for the same or similar offense;
- 23 (5) the victim was less than 14 years of age;
- 24 (6) the defendant knew or should have known that the victim was particularly
25 vulnerable due to the victim's physical or mental condition or otherwise was particularly
26 susceptible to the criminal conduct;
- 27 (7) the defendant transported the victim across state or national borders;
- 28 (8) the defendant subjected the victim to the offense for more than 180 days;

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

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

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

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

Associate Reporter's Comment

I suggest that this section be deleted. The provision significantly overlaps other laws commonly present in comprehensive codes and structured sentencing paradigms. It also adds complexity to the prosecution of human trafficking cases. Moreover, such aggravating factors already are commonly used by judges even in the absence of statutory enhancement provisions to increase sentences imposed on offenders (albeit not beyond the maximum statutory limit).

Focusing on overlap, consider that the second aggravator [“the defendant used a weapon in the commission of the offense”] is commonly present in existing sentencing schemes. See, e.g., 24 C.J.S. Criminal Law § 2109 (2012) (“Many statutes provide an enhanced sentence for the possession or use of certain weapons.”) (citation omitted). A quick survey showed this to be true, revealing a few examples of firearms enhancements. See, e.g., Ariz. Rev. Stat. § 13-701(d)(2); Colo. Rev. Stat. § 18-1.3-406(2)(1)(I)(A); Guam Code § 80.37; Hawaii Rev. Stat. § 134-21; Ind. Code § 35-50-2-11; Iowa Code § 902.7; Minn. Stat. § 609.11; Mont. Code § 46-18-221; Pa. Code § 204-303.9(b); Utah Code § 76-3-203.8; Wash Rev. Code §§ 9.94A.510, 530, 599.

Likewise, the repeat offender found in (d)(11) already exists in generic form in many states' sentencing provisions. See, e.g., Ala. Code § 13A-5-9; Colo. Rev. Stat. § 18-1.3-801; Del. Code § 11-4214; Fla. Stat. § 775.084; Hawaii Rev. Stat. § 706-606.5; Ind. Code § 35-50-2-8; Iowa Code § 902.8; Ky. Rev. Stat. Ann. § 532.080; Miss. Code Ann. §§ 99-19-81, 83; Tex. Penal Code Ann. § 12.42.

One illustration of the complexity added by this section is the third aggravator [“the defendant subjected more than one victim to the same or similar offense”]. Other than prior

convictions, any fact that increases a sentence beyond the statutory maximum or permits departure from an otherwise presumptive sentence must be found by a jury to have been proven a reasonable doubt. See, e.g., *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). Prosecutors will be required to try the trafficking-related offense and provide notice to the defendant that there is to be a separate hearing (“bifurcation”) concerning the aggravator. Prosecutors will have to allege and prove beyond a reasonable doubt to juries the existence of the aggravating circumstance before a judge may consider it. See, e.g., *Blakely v. Washington*, 542 U.S. 296, 303 (2004). This will add to the imposition on jurors, as well as increase the complexity and length of trials. There also is the danger of possible double jeopardy claims if a defendant is tried for two similar offenses and evidence from one offense is to be used as an aggravating circumstance in the trial of the other offense. In addition, prosecutors will have to be careful to avoid the evidentiary pitfall of prejudice.

Alternative

SECTION 16. AGGRAVATING CIRCUMSTANCES.

(a) An aggravating circumstance is one or more of the following that occur during the commission of an offense under this [act]:

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

(2) the victim was less than 14 years of age;

(3) the defendant knew or should have known that the victim was particularly vulnerable due to the victim’s physical or mental condition or otherwise was particularly susceptible to the criminal conduct;

(4) the defendant transported the victim across state or national borders.

(5) the defendant recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless.

(b) If the trier of fact finds that an aggravating circumstance listed in subsection (a)(1) or (a)(2) is present, the defendant may be imprisoned for an additional period of up to 10 years. The provisions are not cumulative.

1 **Associate Reporter's Comment to Alternative**

2 Most of the aggravating circumstances enumerated in the current draft are redundant or
3 potentially elevate the complexity of trials. Although deletion of the section has been suggested,
4 some of the aggravators may be sufficiently unique to human trafficking as to merit retaining
5 them as aggravating circumstances for human trafficking prosecutions. I have focused on
6 circumstances (7) and (9) in the draft as possibly particularly important in trafficking-of-persons
7 cases. Therefore there may be reason to consider retaining the provision at least as to some
8 aggravators.

9 An alternative to a section, though, might be a Legislative Note suggesting the insertion
10 of the two aggravating circumstances in the enacting state's pertinent sentencing rule or statute.
11 Ergo, Alternative A is offered as a suggestion.

12 While I identified aggravators (4) and (5) as particularly pertinent to human trafficking
13 cases, sections (1), (2), and (3) have been suggested by others. I have listed all 5 in the
14 Alternative for consideration by the Committee.
15

16 **End of Alternative**

17 **Sources**

18 The particular aggravating circumstances listed here are drawn from various sources.
19 The Federal Sentencing Guidelines impose a two level sentence increase where "the defendant
20 knew or should have known that a victim of the offense was a vulnerable victim." U.S.
21 SENTENCING GUIDELINES MANUAL § 3A1.1(b) (2011). Vulnerable victim is defined in the
22 GUIDELINES as a victim "who is unusually vulnerable due to age, physical or mental condition, or
23 who is otherwise particularly susceptible to the criminal conduct." *Id.* at § 3A1.1(b) cmt. n.2.
24 Section 16(a)(6) adopts this language, although age (victim less than 14) is listed separately in
25 paragraph (5). Similar factors include those in paragraphs (1) (defendant abused a position of
26 trust) and (9) (defendant enticed victims from shelters). The factor in paragraph (8) for the
27 duration of isolating victims is modeled after the Washington, D.C. law. *See* D.C. CODE § 22-
28 1837.
29

30 **SECTION 17. STATUTE OF LIMITATIONS FOR CRIMINAL PROSECUTION.**

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

32 **Associate Reporter's Comment**

33 The current draft rejects time-period limitations for the prosecution of human trafficking
34 offenses under the Act.
35

36 The Committee should consider removing the no-time-limits provision and either using a
37 Legislative Note (Alternative A, below) or a provision that sets time limits for at least some of
38 the offenses contained in Sections 3-9 of the Act (Alternative B, below).
39

40 Except for murder and some other of the more egregious felonies, time limits for

1 prosecution usually exist. It certainly is quite unusual to see lesser crimes [e.g., class c and d
2 offenses] with no statute of limitation. And it may even be unique – or virtually unique – to find
3 misdemeanors with no statute of limitation. Yet Sections 7(b) and 8(b)(2) of the Act establish
4 misdemeanors which according to Section 17 can be prosecuted at any time.

5
6 Alternative approaches A and B are offered at the conclusion of these comments. But
7 first, the comment discusses the current landscape of time limitations drawn from a sampling of a
8 significant number of states’ provisions (albeit certainly not a full perusal of all laws dealing
9 with the issue of time limitations for prosecution).

10 At common law, no time limitation for the bringing of charges existed. Ergo, we have
11 “statutes of limitation.” There is no “right” to a statute of limitation; rather, the statutes are the
12 result of policy decisions by legislatures. understandably, the provisions of those statutes can
13 vary greatly state-to-state. But once a statute of limitation is established for a crime, it becomes
14 jurisdictional and will bar a criminal prosecution after the expiration of the time period
15 established.

16
17 Nearly all states have statutes of limitation for at least some, if not most, of their criminal
18 offenses. In some states, there is no statute of limitations for murder. (e.g., Arkansas; Colorado;
19 Delaware; Georgia; Hawaii; Idaho; Illinois; Montana; Nevada; New Jersey; New Mexico;
20 Pennsylvania; Tennessee; Wisconsin). Other states have no statute of limitations for other
21 serious felonies such as treason, robbery, rape, or kidnapping (e.g., Colorado; Delaware; Idaho;
22 Illinois; New Mexico).

23
24 Some establish limitations through a general statute of limitation which enumerates the
25 period of limitation, if any, for specific crimes (e.g., murder, robbery, human trafficking) (e.g.,
26 Colorado; Georgia), or specific classes of crimes (e.g., Class A, class B) (e.g., Arkansas;
27 Delaware; Maine), or for crimes carrying specific punishments (e.g., Georgia; Louisiana). Other
28 jurisdictions place the statute of limitation in the specific criminal statute (e.g., Florida; Kansas).
29 The selection may be misleading because some jurisdictions seem to follow both practices.

30
31 Some states do not have statutes of limitation for felonies. (e.g., Kentucky). Other states
32 do not establish time limits for the bringing of charges in enumerated offenses involving young
33 or elderly victims (e.g., Georgia; Maine), or extend the statutory period in crimes involving
34 young or elderly victims (e.g., Illinois; Kentucky; Montana; Nebraska; New Jersey;
35 Pennsylvania; Tennessee).

36
37 For states having statutes of limitation for felonies, the periods vary greatly, but a few
38 examples illustrate common assessments. Arkansas: Class Y or A - 6 years; Class B, C. or D - 3
39 years; Colorado: enumerated felonies - 5 years, other felonies - 3 years; Connecticut:
40 unenumerated felonies - 5 years; Georgia: enumerated felonies - 7 years; unenumerated felonies
41 - 4 years; Hawaii: manslaughter - 10 years; class A felonies - 6 years; other felonies 3-5 years;
42 Idaho: unenumerated felonies - 3-5 years; Illinois: unenumerated felonies - 3 years; Louisiana -
43 4-6 years; Maine: 3-6 years; Montana: enumerated felonies - 10 years; Nebraska - 3 years;
44 Nevada: at least certain felonies - 3 years; New Jersey: other felonies - 5-7 years; New Mexico:
45 classified felonies - 5-6 years; other felonies - 3 years; Ohio - certain enumerated felonies - 20
46 years; other felonies - 6 years; Pennsylvania: major sexual offenses - 12 years; other enumerated

1 felonies - 5 years; other felonies - 2 years; Tennessee: classified felonies - 2, 4, 8, or 15 years;
2 Utah: enumerated sex crimes - 8 years; other felonies - 4 years; Wisconsin: 3 years).

3
4 All states seem to have statutes of limitation for misdemeanors, usually consisting of a
5 year or two years. (e.g., Arkansas - 1 year; California - 1 year to 3 years; Colorado - 18 months;
6 Connecticut - 1 year to 3 years; Georgia - 2 years; Hawaii - 2 years; Idaho - generally 1 year;
7 Illinois - 1 year; Kentucky - normally 1 year; Louisiana - 2 years; Nebraska - 18 months; New
8 Mexico - 2 years; Ohio - 2 years; Tennessee - 1 year; Utah - 4 years for negligent homicide,
9 otherwise 2 years; Wisconsin: certain felonies - 15 years; otherwise 3 years).

10 States that have statutes of limitations for felonies commonly have tolling provisions
11 which stop the running of the period under specified circumstances, such as (e.g., Arkansas -
12 defendant continuously absent from state; Connecticut - same; Delaware - same; Georgia - same,
13 or crime or offender unknown; Hawaii - defendant continuously absent from state; Illinois -
14 same; Maine - same).

15 16 **Alternative A**

17
18 Delete Section 17 and replace it with a Legislative Note, such as:

19
20 ***Legislative Note:*** *Enacting states will need to ensure that the statutes of limitations of the*
21 *enacting state cover or are amended to cover the crimes set forth in this Act.*

22 23 **Associate Reporter's Comment to Alternative A**

24
25 I believe this is the preferred approach for addressing time limits. Most states already
26 have statutes of limitations for crimes. Sometimes they are located together in the existing
27 comprehensive criminal code. Sometimes they are spread through the code. Because most states
28 have, and will continue to have, statutes of limitations for most crimes, it seems preferable that
29 like-crimes be treated alike in a state's code. If Class B crimes normally must be prosecuted
30 within 7 years under an existing provision, so too should Class B crimes within this Act be
31 prosecuted within 7 years. It is easier to remain consistent if the time limits for the crimes set
32 forth in this Act are woven into existing statutes of limitations in the enacting states.

33 34 **Alternative B**

35 36 **SECTION 17. STATUTE OF LIMITATIONS FOR CRIMINAL PROSECUTION.**

37 (a) Except as provided in subsection (b), prosecutions for the crimes set forth in sections
38 3-9 of this Act shall be commenced within the following time periods:

39 (1) For a [class a felony], within [ten (10)] years;

40 (2) For a [class b felony], within [seven (7)] years;

41 (3) For a [class c felony], within [five (5)] years;

1 (4) For a [class d felony], within [three (3)] years; and

2 (5) For a misdemeanor, within [eighteen (18)] months.

3 (b) Prosecution for a felony set forth in this Act committed against a minor shall be
4 commenced within the time period set forth in subsection (a) or within [five (5)] years after the
5 victim attains the age of eighteen (18) years, whichever is later.

6 (c) The period within which a prosecution must be commenced under this section does
7 not include any period in which:

8 (1) The accused is continuously absent from the State or has no reasonably
9 ascertainable place of abode or work within the State; or

10 (2) The person committing the crime is unknown or the crime is unknown.

11 **End of Alternatives**

12 **Associate Reporter's Comment to Alternative B**

13
14 The periods of time set forth in Alternative B are offered for Committee consideration
15 should the Committee incorporate the provision into the Act. The time periods were influenced
16 by existing time limits contained in a number of existing state statutes of limitation from across
17 the country.

18
19 It is likely that enacting states will change the periods to more closely match existing
20 time limits in those states' existing statutes of limitation.

21
22 **SECTION 18. VICTIM CONFIDENTIALITY.** In a prosecution for an offense under
23 this [act], [law enforcement officers and prosecuting agencies] shall keep the identity of the
24 victim and the victim's family confidential.

25 **Comment**

26 [Reserved]

27 **Sources**

28 Section 18 is drawn from Guam's law, 9 GUAM CODE ANN. § 26.35. At least two other
29 states or territories mandate confidentiality of victim identification specifically for human

1 trafficking victims. *See* 6 N. MAR. I. CODE § 15011 (2005) (requiring that the Attorney General
2 take all reasonable measures in prosecutions to ensure that the victim and victim’s family’s
3 identification remains confidential); and OKLA. STAT. tit. 21, § 748.2 (requiring protecting the
4 victim’s safety, including by “ensuring that the names and identifying information of trafficked
5 persons and their family members are not disclosed to the public.”). Federal law provides the
6 same protection through 28 C.F.R. § 1100.31(d).

7 8 **SECTION 19. CIVIL ACTION.**

9 (a) A victim may bring a civil action against a person that commits an offense under this
10 [act] for actual damages, compensatory damages, punitive damages, injunctive relief, and any
11 other appropriate relief.

12 (b) Treble damages shall be awarded on proof of actual damages where defendant’s acts
13 were willful and malicious.

14 (c) In an action under this section, the court shall award a prevailing victim reasonable
15 attorney’s fees and costs. (d) An action under this section must be commenced not later than 10
16 years after the later of the date on which the victim:

17 (1) was freed from the human trafficking situation; or

18 (2) attains 18 years of age.

19 (e) The statutes of limitation shall be tolled for any period during which the victim is
20 incapacitated.

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

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

25 **Comment for Drafting Committee from Reporter:**

26
27 - All 19 states providing specifically for civil actions by human trafficking victims allow for the
28 awarding of actual damages

- 1 - 9 states provide for compensatory damages (AL, CA, DC, Guam, ME, MA, OH, SC, TN)
2
3 - 10 states explicitly make available injunctive relief (AL, CA, CO, DC, Guam, ME, MA, SC,
4 TN, VT)
5 - 17 states explicitly provide for punitive damages for victims (AL, CA, CONN, DC, Guam, IN,
6 ME, MA, MN, MO, N. Mariana Islands, OH, OK, SC, TN, VT, WI). Florida is the only state
7 that explicitly prohibits awarding punitive damages in such cases, but it awards treble damages.
8
9 - 6 states provide for treble damages, upon a finding that the defendant's acts were willful and
10 malicious (AL, DC, FL, Guam, MA, SC); of these, 5 (all but FL) provide for both punitive and
11 treble damages, and 3 make treble damages mandatory upon the showing ; the proposed new
12 language tracks the language of these 5 states.
13
14 - 8 states provide for the combination of actual damages, compensatory damages, punitive
15 damages, injunctive relief, and any other appropriate relief, as suggested in the proposed new
16 language (AL, CA, DC, Guam, MA, ME, SC, TN).
17
18 - 8 states additionally provide for "any other appropriate relief" (AL, CA, DC, Guam, ME, MA,
19 SC, TN)
20

21 **Comment**

22 Permitting the victim to sue the trafficker for damages provides an important avenue for
23 the victim to gain economic resources needed for recovery and reintegration into society, an
24 avenue that is independent of whether a state prosecutor is willing to pursue the matter.
25 Injunctive relief is also important to stop future violations that may affect many victims.
26 Providing reasonable attorney's fees and costs to the prevailing plaintiff is indispensable to these
27 goals. The language concerning the standard for awarding attorney's fees to prevailing plaintiffs
28 and defendants is drawn from U.S. Supreme Court case law interpreting 42 U.S.C. §1988,
29 governing the award of attorney's fees under civil rights cases. In its most recent and unanimous
30 decision on this issue, *Fox v. Vice*, 563 U. S. 2 ___, 131 S.Ct. 2205 (2011), the Court stated the
31 relevant standard and the reasons for it as follows:
32

33 The statute involved here, 42 U.S.C. § 1988, allows the award of "a reasonable
34 attorney's fee" to "the prevailing party" in various kinds of civil rights cases, including
35 suits brought under § 1983. Most of our decisions addressing this provision have
36 concerned the grant of fees to prevailing plaintiffs. When a plaintiff succeeds in
37 remedying a civil rights violation, we have stated, he serves "as a 'private attorney
38 general,' vindicating a policy that Congress considered of the highest priority." *Newman*
39 *v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968) (per curiam). He therefore
40 "should ordinarily recover an attorney's fee" from the defendant—the party whose
41 misconduct created the need for legal action. *Christiansburg Garment Co. v. EEOC*, 434
42 U.S. 412, 416 (1978) (internal quotation marks omitted). Fee shifting in such a case at
43 once reimburses a plaintiff for "what it cos[t][him] to vindicate [civil] rights," *Riverside*
44 *v. Rivera*, 477 U.S. 561, 577–578 (1986) (internal quotation marks omitted), and holds to
45 account "a violator of federal law," *Christiansburg*, 434 U.S., at 418. In *Christiansburg*,

1 we held that § 1988 also authorizes a fee award to a prevailing defendant, but under a
2 different standard reflecting the “quite different equitable considerations” at stake. *Id.*, at
3 419. In enacting § 1988, we stated, Congress sought “to protect defendants from
4 burdensome litigation having no legal or factual basis.” *Id.*, at 420. Accordingly, § 1988
5 authorizes a district court to award attorney's fees to a defendant “upon a finding that the
6 plaintiff's action was frivolous, unreasonable, or without foundation.” *Id.*, at 421; see also
7 *Kentucky v. Graham*, 473 U.S. 159, 165 (1985).
8

9 Ending human trafficking and modern-day slavery calls for the same approach.
10

11 Subsection (e) suggests a longer, 10- year, statute of limitations for bringing an action
12 than some general state limitations statutes provide because a victim's trauma may preclude
13 seeking assistance from law enforcement or others for an extended period of time. Subsection
14 (g) makes explicit that victims are free to pursue other available avenues of relief in addition to
15 this statutory cause of action.
16

17 Sources

18

19 At least nineteen states explicitly provide victims with a private right of action, as does
20 the TVPA, and all the state and federal statutes make attorney's fees and costs available to
21 prevailing plaintiffs. The states include Alabama, California, Connecticut, District of Columbia,
22 Florida, Guam, Indiana, Maine, Massachusetts, Minnesota, Missouri, Nevada, North Mariana
23 Islands, Ohio, Oklahoma, South Carolina, Tennessee, Vermont, Washington, and Wisconsin. See
24 also 18 U.S.C. § 1595, which also has a ten-year statute of limitations.
25

26 SECTION 20. HUMAN TRAFFICKING [COUNCIL].

27 (a) The [Governor] shall appoint the Chair and members of a [council on human
28 trafficking]. The Council will include:

29 (1) state officials or their designees in [departments] that have contact with
30 victims or offenders;

31 (2) state legislators or their designees;

32 (3) nongovernmental service providers and organizations that represent
33 communities affected by human trafficking;

34 (4) experts concerning human trafficking; and

35 (5) victims nominated by nongovernmental service providers.

36 (b) The [departments] [represented on the [council]] shall provide staff to the [council].

1 (c) The [council] shall meet on a regular basis and:

2 (1) make recommendations for the implementation of this [act], including
3 development of a coordinated and comprehensive plan to provide victims with access to
4 services;

5 (2) collect and evaluate state trafficking data , and submit an annual report to the
6 Governor and [state legislative body];

7 (3) promote public awareness about human trafficking, remedies and services for
8 victims, and prevention efforts, and recommend a public awareness sign that contains local and
9 national hotline information;

10 (4) coordinate [triennial] training on human trafficking prevention and relevant
11 victim services for state [or local] employees who may have recurring contact with victims or
12 perpetrators;

13 (5) conduct other appropriate activities to prevent human trafficking.

14 (d) Members of the [council] shall not receive compensation for serving on the [council]
15 and shall not be eligible for state travel reimbursement.

16 (e) Members of the [council] who are not state employees serve [at the pleasure of the
17 Governor] [for [x] years].

18 **Comment**

19 The purpose for having a council is to ensure effective coordination, education, and
20 planning among the many different state and local agencies and non-governmental service
21 providers that come into contact with both traffickers and victims. Only with this coordination
22 will it be possible to prevent trafficking, prosecute offenders, and provide remedies for the
23 victims. For example, police, prosecutors, and attorneys in the state Attorney General's office
24 are those most likely to arrest and prosecute traffickers. But personnel in the state labor, fair
25 employment, human rights, or agriculture departments may also come into contact with
26 offenders and victims while overseeing state labor and employment laws, since workers coerced
27 into working against their will have been found in many fields of work governed by these laws,
28 such as agricultural, factory, welding, hotel, and nail salon work.

1 Similarly, personnel in agencies devoted to health and human services, housing, child
2 abuse and neglect, and juvenile delinquency may oversee programs designed to bring services to
3 victims and be able to point law enforcement to situations where victims can be found. The state
4 transportation department may oversee state rest stops on the public highways where victims
5 could learn of sources of help. Personnel in state education departments may learn of trafficking
6 victims in schools and be able to help develop plans to train educators on how to recognize the
7 signs and bring help to the victims.

9 In the nongovernmental sector, there are many service providers that help trafficking
10 victims recover and can help law enforcement by providing information about where to find
11 trafficking victims and giving the victims the support they need to recover and help bring down
12 the traffickers by testifying in criminal cases against the traffickers. Legal aid providers can also
13 provide such information and provide necessary assistance to the victims, as can groups
14 concerned with sexual assault, domestic violence, and immigration rights. Experts who have
15 studied the issue can provide useful information. Finally, having surviving victims represented
16 on the council will also give the council vital information about the real situation faced by
17 trafficking victims.

18 Subsection (b) reduces the fiscal impact by providing that existing staff can be assigned
19 to work with the council.

21 Subsection (c) sets out the duties needed for effective coordination of prosecution,
22 prevention, and remedial actions. Paragraph 1 provides that the council is responsible for
23 making recommendations for effective coordination of all activities needed to implement the act.

25 Evaluation, data collections, and annual reporting, as set forth in paragraph 2, can be
26 helpful in shaping future prevention and enforcement efforts. Useful data covers victim
27 demographics, including citizenship, age, sex, ethnic origin, race, and, for foreign victims,
28 immigration status during victimization. It also documents human trafficking activity within the
29 state, including types of activities reported, efforts to combat human trafficking, and impacts on
30 victims and on the state.

32 Paragraph 3 sets forth the council's authority in raising public awareness. To promote
33 public awareness, it can be helpful to create a public-awareness sign about these topics and local
34 and national hotline information, and also to create and maintain a website to publicize the
35 council's work. These signs can be useful in a wide variety of locations, such as hospitals and
36 public restrooms on state highways. It is also helpful to have the signs in different languages,
37 including Spanish and any other language mandated by the Voting Rights Act of 1965 (Public
38 Law 89-110, 42 U.S.C. § 1973 et seq.) for the county where the sign will be posted. The Polaris
39 Project, the leading research organization in the United States on anti-trafficking law and policy,
40 operates a National Human Trafficking Resource Center, with a national, toll-free hotline,
41 available to answer calls from anywhere in the country, 24 hours a day, 7 days a week, every day
42 of the year. It recommends that states create a poster of no smaller than 8½ by 11 inches in size
43 that states the following:

45 "If you or someone you know is being forced to engage in any activity and cannot leave –
46 whether it is commercial sex, housework, farm work, or any other activity – call the National

1 Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services.

- 2
- 3 • Victims of human trafficking are protected under U.S. and [State] law.
- 4 • The Hotline is:
 - 5
 - 6 o Available 24 hours a day, 7 days a week
 - 7 o Toll-free
 - 8 o Operated by a non-profit, non-governmental organization
 - 9 o Anonymous & Confidential
 - 10 o Accessible in 170 languages
 - 11 o Able to provide help, referral to services, training, and general information.”
 - 12

13 Another responsibility of the council is insuring that the state personnel who may come in
14 contact with traffickers and victims are trained in the law, as paragraph 4 requires. This training
15 can be combined with training concerning such subjects as domestic violence and sexual assault
16 that already occurs, and should be done on a regular basis such as every three years to insure that
17 key personnel are aware of developments in the field

18
19 A final key responsibility is developing a plan to insure that victims and their dependents receive
20 the services they need in order to be able to help police and prosecutors put traffickers in prison
21 and recover from the trauma and deprivation they have suffered so they can regain their
22 independence and productivity. Paragraph 1 sets out this requirement. Some of the most
23 important services are those for case management, legal and medical assistance, housing,
24 counseling, and training. Case management is particularly important, as it provides someone
25 who can coordinate access to all the services victims need. Housing that takes account of their
26 status as victims is crucial, as the lack of housing can drive homeless victims back to the
27 traffickers. It will also be important to develop a certification process for identifying victims
28 who are eligible for state services under Section 22.

29
30 The Council must have members who are experts in providing services and others who are
31 survivors of trafficking. Without their knowledge of what services victims need to recover and
32 participate in the criminal justice project, the other members will not be able to develop an
33 effective plan that meets their needs.

34 35 Sources

36 At least twelve states currently have legislation creating a task force or similar structure.
37 Task forces generally include representatives from state and local law enforcement, state
38 prosecutors, labor regulators, inspectional service officers, victim service providers,
39 nongovernmental agencies, and mental health professionals. Some states, including Connecticut
40 and New York, provide a specific list of task force members. See, e.g., CONN. GEN. STAT. §
41 46a-170. Similarly, the TVPA created a permanent interagency task force, the President’s
42 Interagency Task Force (PITF), which includes the Secretary of State, Attorney General, and the
43 heads of other relevant departments, including Education, Labor, Health and Human Services,
44 National Intelligence, Defense, Homeland Security, USAID, and others the President may
45 designate. 22 U.S.C. § 7103(b).

1 Subsection (a) is modeled after the state and federal provisions appointing task force
2 members and gives discretion to state governors in appointing members. Subsection (b),
3 authorizing the provision of staff, is also drawn from the TVPA. 22 U.S.C. § 7103(e)(1).
4

5 Subsection (c) is drawn from existing state laws establishing the duties the task force
6 should carry out, as does the federal law.
7

8 Paragraph (1): Coordinate the implementation of this act, including establishing
9 protocols. See, e.g., 9 GUAM CODE ANN. § 26.20(e)(1); N.Y. SOCIAL SERVICES LAW § 483-
10 ee(b)(4) (McKinney 2011). See also 22 U.S.C. § 7103(d)(1). Other states have similar
11 provisions.
12

13 Paragraph (2): Evaluate state efforts to combat human trafficking. See, e.g., COLO. REV.
14 STAT. § 18-1.8-101(3)(c). Connecticut, New Mexico, New York, Ohio, Pennsylvania, and Texas
15 have similar provisions, as does the TVPA. 22 U.S.C. § 7103(d)(2).
16

17 Paragraph (2): Collect data on human trafficking activity. This is a common provision in
18 the state laws. See N.Y. SOCIAL SERVICES LAW § 483-ee(b)(1) (McKinney 2011); D.C. CODE §
19 22-1841; see also 22 U.S. C. § 7103(d)(3).
20

21 Paragraph (2): Submit an annual report. At least eight states require the task force to
22 submit a report summarizing the task force's findings and making recommendations. See, e.g.,
23 COLO. REV. STAT. § 18-1.8-101(5). Connecticut, Guam, New Mexico, New York, Ohio,
24 Pennsylvania, Texas, and Utah also have these provisions, as does the TVPA. 22 U.S.C. §
25 7103(d)(7).
26

27 Paragraph (3): Promote public awareness about human trafficking, remedies and services
28 for victims, and prevention efforts, and create a public-awareness sign. Many states call for the
29 task force to undertake public awareness measures. See N.Y. SOCIAL SERVICES LAW § 483-
30 ee(b)(5) (McKinney 2011). Maryland requires that the state Education Department and
31 Department of Health and Mental Hygiene (DHMH) provide awareness and training for
32 Directors of Student Services to use in preventing trafficking of children. MD. CODE ANN.,
33 EDUC. § 7-432.
34

35 Paragraph (4): Coordinate training of key personnel. At least sixteen states (California,
36 Connecticut, Colorado, Florida, Guam, Idaho, Indiana, Iowa, Maryland, Minnesota, Missouri,
37 New Mexico, New York, Tennessee, Texas, and Washington) currently have statutes addressing
38 training on human trafficking issues. See, e.g., CONN. GEN. STAT. § 46a-4b.
39

40 **SECTION 21. DISPLAY OF PUBLIC-AWARENESS SIGN; PENALTY.**

41 (a) The [state transportation department] shall display the public-awareness sign created
42 under Section 20(c)(3) in all state-operated public rest areas, welcome centers, and transportation
43 stations.

1 (b) An employer of five or more employees shall display the public-awareness sign
2 created under Section 20(c)(3) in a manner clearly visible to employees within the employer's
3 place of business.

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

7 **Comment for Drafting Committee from Reporter:**

8 The Committee made no decisions regarding Section 21, but requested information
9 concerning fines in various laws for failure to post a notice. Title VII of the 1964 Civil Rights
10 Act imposes a \$100 fine for each separate offense, 42 U.S.C. § 2000e-10(b). Connecticut
11 imposes a fine of \$250 and Maryland a fine of \$1000. The proposed Pennsylvania human
12 trafficking law (Senate Bill) provided by Commissioner Winkelman would impose a fine of up
13 to \$500. Some states require the posting of notices, but the state law doesn't prescribe a fine.
14 The U.S. Labor Department lists posting of notice requirements for many different areas of law,
15 including Job Safety & Health, Equal Employment Opportunity, Fair Labor Standards Act
16 (FLSA) — Minimum Wage, Employee Right for Workers with Disabilities/Special Minimum
17 Wage Poster, Family & Medical Leave, USERRA — Veteran Rights, Federal Construction
18 Contracts (Davis-Bacon), Construction Contracts, Employee Polygraph Protection, Migrant &
19 Seasonal Agricultural Workers, and Federal Contractor Posters. Virtually all state anti-
20 discrimination statutes also require the posting of signs in employer work places. The
21 Committee recommended discussion of the need for different languages in the Comment, which
22 I've added to the Comment for Section 20(c)(3).
23

24 **Comment**
25

26 The Polaris Project notes that trafficking victims are often found in locations such as
27 massage parlors, strip clubs, bars, hotels and motels, factories, restaurants, and in transportation
28 hubs (airport, train station, bus station, highway rest stop), truck stops, hospitals, schools, and job
29 centers.
30

31 Subsection (a) requires displaying a public-awareness sign in public rest areas, such as
32 restrooms, and in transportation stations. This may help victims who are being moved around to
33 learn of sources of help when they are taken to places such as restrooms and bus stations.
34

35 Subsection (b) requires that employers post the sign. This is designed to help victims
36 who are forced into employment against their will in establishments such as massage parlors,
37 factories, strip clubs, and hotels and motels. Requirements for employers to post such signs are
38 already common, as many state and federal laws require them so that employees will know their
39 rights. The amount of the fine required under subsection (c) should be similar to the state fines

1 imposed for similar workplace rules, and should ordinarily be not less than \$300.

3 Sources

5 Several states now have such laws. *See, e.g.,* MD. CODE ANN., BUS. REG. §§ 15-207, 19-
6 103 (requiring the State to design an informational sign and also permitting a state, county, or
7 municipal law enforcement agency to issue a civil citation to any lodging establishment where
8 there are arrests for sex trafficking to post the sign in each of its guest rooms, subject to a \$1,000
9 fine for non-compliance); WASH. REV. CODE §47.38.080 (development of trafficking
10 informational posters for placement in rest areas).

12 Comment

13 [Reserved]

14 Sources

15
16 At least five states (Guam, Indiana, Maryland, New York, and Oklahoma) require that
17 services be provided to victims and another five states (Idaho, Illinois, Minnesota, New York,
18 and Washington) suggest that states provide services. Three states (Idaho, Nebraska, and
19 Delaware) have evaluated how their public benefits serve victims. Some states (such as New
20 Jersey, Missouri, and Ohio) simply provide information about services to victims. At least five
21 states (Connecticut, Florida, Guam, New Jersey, and Texas) have combined these models by
22 mandating formulating a plan for providing services for victims. This language is similar in part
23 to 9 GUAM CODE ANN. § 26.38. The TVPA provides for victim services, including access to
24 financial benefits available to refugees and certain protections. 22 U.S.C.A. §§ 7105(b)(1),
25 7105(f).

27 SECTION 22. VICTIM ELIGIBILITY FOR SERVICES.

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

30 (b) As soon as practicable after a first encounter with an individual who reasonably
31 appears to [the appropriate state or local agency] to be a victim, the [agency] shall notify the
32 [state or local agency identified in the comprehensive plan developed under Section 20(c)(1)]
33 that the individual may be eligible for a benefit or service under this [act].

34 Comment

35 [Reserved]

Sources

At least seven states (California, Florida, Guam, Missouri, New Mexico, New York, and North Carolina) have statutes specifically ensuring victims of human trafficking access to state-provided benefits and services. See, e.g., N.Y. SOC. SERV. § 483-cc(a); MO. REV. STAT. § 566.223(4). States have developed a certification process for victims that is useful in identifying who is entitled to receive benefits. N.Y. SOC. SERV. § 483-cc(b); MO. REV. STAT. § 566.223(3); CAL. WELFARE & INSTITUTIONS CODE § 18945. The Council should develop this process as part of its responsibilities under Section 20(c)(1).

SECTION 23. STATE LAW ENFORCEMENT AGENCY PROTOCOL.

(a) On request from a victim whom a [qualified state or local official] reasonably believes was subject to an offense under this [act] who may qualify for a special immigrant visa or continued presence under 22 U.S.C. § 7105(b) and 7105(c)(3), and associated federal benefits, the [law enforcement officer] shall not later than [10] days after receiving the request:

(1) complete, sign, and give to the victim the [law enforcement officer] form provided by the United States Citizenship and Immigration Services on its website for a victim who has been subjected to a severe form of trafficking or crime listed on the form; and

(2) ask a federal [law enforcement officer] to request continued presence if the victim has been subjected to a severe form of trafficking as defined by 22 U.S.C. § 7102(8) .

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

Comment

This section helps states prosecute traffickers and reduces the costs of helping victims by ensuring that foreign victims of severe forms of trafficking are eligible for the visas that enable them to stay in the country and help police and prosecutors in their investigations and prosecutions of traffickers. Without the victims to provide information and testify, it is virtually

impossible to have effective criminal actions against traffickers. Since federal law also provides monetary and other benefits to victims who qualify for special immigrant visas [T Visas (for victims of severe form of trafficking) and U Visas (for victims of crimes, including severe trafficking crimes)], or Continued Presence (for victims of severe forms of trafficking), an outside source of funding for the services victims need is also provided. Finally, there is a simple form, available on-line from the United States Citizenship and Immigration Services, that local law enforcement personnel can fill out in well under 30 minutes, considerably simplifying the work involved. It has boxes to check off for the relevant severe forms of trafficking and other qualifying crimes, as well as for information on whether the victim is assisting in investigations or prosecutions or is under 18. See <http://www.uscis.gov/files/form/i-914supb.pdf> (USCIS Form I-918 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons); and <http://www.uscis.gov/files/form/i-918supb.pdf> (USCIS Form I-918 Supplement B, U Nonimmigrant Status Certification). The federal TVPA provides for this relief in 22 U.S.C. § 7105(b); regulations concerning Continued Presence are authorized in 22 U.S.C. § 7105(c)(3), and are found at 28 C.F.R. § 1100.35. See also 8 U.S.C. § 1101(a)(15)(T) and (U).

Sources

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

[SECTION 24. GRANTS TO SERVICE PROVIDERS.]

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

(b) A recipient of a [grant] [contract] under subsection (a) shall report annually to the [council] created by Section 20 the number and demographic information of all trafficking victims served.]

Comment

It is important to provide funding for victim services in order to help traumatized individuals recover and to enable them to cooperate in ending human trafficking by providing the information and testimony essential to effective criminal investigations and prosecutions. The section is bracketed because some states may not need a specific section in the trafficking statute to authorize funding for such services but can instead handle the issue through the appropriations process. Moreover, in the current economic climate, some states may not be able to provide

1 services, but would wish to do so when the economy improves. Since services are so vital to the
2 goal of ending human trafficking, it is important to have this section; even in bracketed form, it
3 serves as a reminder of the importance of the issue. Indian tribes are bracketed so that a state
4 may define which Indian tribes, whether they are federally-recognized or meet a broader
5 definition, should be eligible for grants.

6 Sources

7 At least two states (California and Texas) authorize grants to service providers for subsets
8 of human trafficking victims. This section uses language modified from both CAL. PEN. CODE §
9 13837 and TEX. GOV'T CODE ANN. § 531.383.

10 SECTION 25. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

12 applying and construing this uniform act, consideration must be given to the need to promote
13 uniformity of the law with respect to its subject matter among states that enact it.

14 [SECTION 26. SEVERABILITY. If any provision of this [act] or its application to
15 any person or circumstance is held invalid, the invalidity does not affect other provisions or
16 applications of this [act] which can be given effect without the invalid provision or application,
17 and to this end the provisions of this [act] are severable.]

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

20 SECTION 27. EFFECTIVE DATE. This [act] takes effect....
21