

D R A F T

FOR APPROVAL

UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

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NATIONAL CONFERENCE OF COMMISSIONERS
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June 4, 2013

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

3 **ARTICLE I**

4 **GENERAL PROVISIONS**

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

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

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

9 (2) “Business entity” means a person other than an individual.

10 (3) “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 the use of force against,
15 abduction of, serious harm to, or physical restraint of an individual;

16 (C) abuse of law or legal process;

17 (D) controlling an individual’s access to a controlled substance set forth in [insert
18 the appropriate state code sections defining controlled substances];

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

21 (F) debt bondage.

22 (4) “Commercial sexual services” means sexual services for which anything of value is
23 given to, promised to, or received by a person.

1 (5) “Debt bondage” means requiring an individual to provide:

2 (A) commercial sexual services in payment or satisfaction of a real or purported
3 debt; or

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

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

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

9 (6) “Human trafficking” means the offenses created under this [act].

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

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

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

15 (10) “Person” means an individual, estate, business or nonprofit entity, or other legal
16 entity. The term does not include a public corporation, government or governmental subdivision,
17 agency, or instrumentality.

18 (11) “Public corporation” means an entity that is:

19 (A) owned by a government, or a governmental subdivision, agency, or
20 instrumentality; or

21 (B) created to perform a governmental function or to operate under the control of
22 a government or government subdivision, agency, or instrumentality.

23 (12) “Serious harm” means harm, whether physical or nonphysical, including

1 psychological, economic, or reputational, to an individual which would compel a reasonable
2 individual of the same background and in the same circumstances to perform or continue to
3 perform labor or services or sexual services to avoid incurring the harm.

4 (13) “Sexual activity” means the acts set forth in [citation to sections of state law defining
5 unlawful sexual activity].

6 (14) “Sexual services” means sexual activity or sexually-explicit performances.

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

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

14 **ARTICLE II**

15 **PENALTIES**

16 **SECTION 3. TRAFFICKING AN INDIVIDUAL.**

17 (a) A person commits trafficking an individual if the person recruits, transports, transfers,
18 harbors, receives, provides, obtains, isolates, maintains, or entices an individual, and the person
19 knows that the individual will be subjected to:

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

21 (2) sexual servitude in violation of Section 5.

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

23 (c) Trafficking an individual when the individual is a minor is a [class b felony].

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

5
6 **SECTION 4. FORCED LABOR.**

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

9 (b) Forced labor is a [class c felony].

10 (c) Forced labor when the individual is a minor is a [class b felony].

11 **SECTION 5. SEXUAL SERVITUDE.**

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

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

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

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

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

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

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

22 (a) An individual commits patronizing a victim of sexual servitude if the individual gives,
23 agrees to give, or offers to give anything of value so that the individual may engage in
24 commercial sexual services with another individual and the individual knows that the other
25 individual is a victim of sexual servitude.

26 (b) Patronizing a victim of sexual servitude is a [class d felony]

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

Legislative Note: A majority of states already have statutory provisions addressing the offense of Commercial Sexual Abuse of a Minor or Patronizing a Minor. If a State has a provision comparable to Section 7, a State may indicate that such offense is provided for in [cite relevant state law] and may also cross reference the provision in Section 6. For those that do not, the language in bracketed Section 7 should be inserted.

[SECTION 7. PATRONIZING A MINOR.

(a) An individual commits patronizing a minor if:

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

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

(b) Patronizing a minor under subsection (a)(1) is a [class b felony].

(c) Patronizing a minor under subsection (a)(2) is a [class c felony].

SECTION 8. BUSINESS ENTITY LIABILITY.

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

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

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

(b) The court may consider the severity of a business entity's offense under this [act] and order penalties in addition to those otherwise provided for the offense, including:

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

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

3 (3) debarment from state and local government contracts.

4 **[SECTION 9. AGGRAVATING CIRCUMSTANCE.]**

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

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

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

11 (b) If the trier of fact finds that an aggravating circumstance occurred, the defendant may
12 be imprisoned for up to [five] years in addition to the period of imprisonment prescribed for the
13 offense.]

14 **SECTION 10. RESTITUTION.**

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

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

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

21 (A) the gross income to the defendant for, or the value to the defendant of,
22 the victim's labor or services or sexual services;

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

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

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

(c) If the victim is unavailable for [five] years from the date of the restitution order, the restitution ordered under subsection (a) must be paid to the [Human Trafficking [Council] created under Section 19 for operational costs] [[insert applicable state crime victims compensation fund] to help human trafficking victims].

Legislative Note: States should choose whether the restitution monies available after five years under subsection (c) should be paid to the Human Trafficking [Council] or to the state crime victims compensation fund and delete the bracket not chosen.

In states in which the constitution, or other law, does not permit the phrase "as amended" when federal statutes are incorporated into state law, the phrase should be deleted in subsection (a)(2)(C).

Legislative Note: A state will need to examine its existing forfeiture provisions to insure that they cover the human trafficking offenses created by this act and that victims have first priority for receipt of proceeds to pay the restitution or civil awards courts have ordered. If a state has no general forfeiture statute, the bracketed section provides a model for inclusion in this act.

[SECTION 11. FORFEITURE.

(a) On motion, the court shall order a person convicted of an offense under Section 3, 4, or 5 of this [act] to forfeit:

(1) any interest in real or personal property that was used or intended to be used to commit or facilitate the commission of the offense; and

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

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

2 (b) Proceeds from the public sale or auction of property forfeited under subsection (a)
3 must be distributed in the following order:

4 (1) the amount necessary to pay court-ordered restitution or a civil award to a
5 victim entered against the person before the forfeiture occurs must be applied to pay the
6 restitution or civil award; and

7 (2) if a remainder exists after distribution under paragraph (1), of the remainder:

8 (A) [40] percent to the [state crime victims compensation fund];

9 (B) [40] percent to providers of free or low-cost services to human
10 trafficking victims in the [county, parish, city, town, or municipality] where the conviction
11 occurred; and

12 (C) [20] percent to the law-enforcement and prosecuting agencies that
13 obtained the conviction.]

14 **ARTICLE III**

15 **VICTIM PROTECTIONS**

16 ***Legislative Note:*** *A state will need to ensure that the statutes of limitations of the enacting state*
17 *cover or are amended to cover the crimes set forth in this act. States also should review their*
18 *statutes for tolling provisions. Should a state not have a tolling provision in its existing statutes*
19 *of limitations, the state might adopt this section.*
20

21 **[SECTION 12. TOLLING OF STATUTE OF LIMITATIONS.** The period within
22 which a prosecution must be commenced under this [act] does not include a period in which:

23 (1) the accused is continuously absent from this state or has no reasonably ascertainable
24 place of abode or work in the state; or

25 (2) the person committing the offense is unknown or the offense is unknown.]

26 **SECTION 13. VICTIM CONFIDENTIALITY.** In an investigation of or a

1 prosecution for an offense under this [act], [law-enforcement officers and prosecuting agencies]
2 shall keep the identity and pictures or images of the victim and the victim's family confidential,
3 unless disclosure is required by law or court order or necessary to ensure provision of services
4 and benefits for the victim and the victim's family.

5 **SECTION 14. PAST SEXUAL BEHAVIOR OF VICTIM.** In a prosecution or civil
6 action for damages under this [act], evidence of a specific instance of the alleged victim's past
7 sexual behavior, or reputation or opinion evidence of past sexual behavior of the alleged victim,
8 is not admissible unless the evidence is:

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

10 (2) offered by the prosecution in a criminal case to prove a pattern of trafficking by the
11 defendant.

12 ***Legislative Note:** A state will need to ensure that the state's rape shield evidence rule or statute*
13 *applies to civil and criminal proceedings and contains no provision that would conflict with the*
14 *purpose of this section.*

15
16 **SECTION 15. IMMUNITY OF MINOR.**

17 (a) A minor is not criminally liable for [prostitution] and [insert other non-violent
18 offenses] committed as a direct result of being a victim of human trafficking.

19 (b) A minor who has engaged in commercial sexual services is not criminally liable for
20 [prostitution].

21 (c) An individual who is not criminally liable under subsection (a) or (b) is presumed to
22 be a child in need of services under [cite child protection statutes].

23 (d) The immunities granted by this section do not apply in a prosecution for [patronizing
24 a prostitute].

25 ***Legislative Note:** A state should determine the other non-violent offenses to be immunized by*
26 *subsection (a). Those offenses should be added to the provision in place of the second bracketed*

1 *language. In those states where a term is used other than “prostitution” and “patronizing a*
2 *prostitute,” those terms should be substituted within bracket one.*

3
4 **SECTION 16. DEFENSE TO CHARGE OF [PROSTITUTION].** An individual

5 charged with [prostitution] or [insert other non-violent offenses] committed as a direct result of
6 being a victim of human trafficking may assert as an affirmative defense that the individual is a
7 victim.

8 ***Legislative Note:*** *A state should determine the other non-violent offenses to be subject to an*
9 *affirmative defense as established in this section. Those offenses should be added to the*
10 *provision in place of the second bracketed language. In those states where a term is used other*
11 *than “prostitution,” that term should be substituted within bracket one.*

12
13 **SECTION 17. MOTION TO VACATE CONVICTION.**

14 (a) An individual convicted of [prostitution] or [insert other non-violent offenses]
15 committed as a direct result of being a victim of human trafficking may apply to [insert name of
16 appropriate court] to vacate the applicant’s record of conviction for the offense.

17 (b) No official determination or documentation is required to grant a motion under this
18 section, but official documentation from a federal, state, or local government agency of the
19 defendant’s status as a victim at the time of the offense creates a presumption that the
20 defendant’s participation in the offense was a result of being a victim.

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

24 ***Legislative Note:*** *A state should determine whether any other non-violent offenses are to be*
25 *subject to post-conviction review under subsection (a). Those offenses should be added to the*
26 *provision in place of the second bracket. In those states where a term is used other than*
27 *“prostitution,” that term should be substituted within bracket one.*

28
29 *Because some, but not all, states specify the sentencing court as the proper entity to hear post-*
30 *conviction motions, a state also should identify the appropriate court to hear a motion to vacate*
31 *a conviction under this section by inserting the appropriate court in place of the third bracket.*

1 *A state should cite the appropriate statute or rule governing post-conviction relief procedures in*
2 *subsection (c) in place of the fourth bracket.*
3

4 **SECTION 18. CIVIL ACTION.**

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

8 (b) In an action under this section, the court shall award a prevailing victim reasonable
9 attorney's fees and costs.

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

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

13 (2) attains 18 years of age.

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

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

18 ***Legislative Note:*** *The question of whether the civil action survives the victim's death should be*
19 *addressed by the state's survival statute. The adopting state should choose whether to use*
20 *"actual" or "compensatory" damages in subsection (a).*
21

22 **ARTICLE IV**

23 **STATE COORDINATION**

24 **SECTION 19. HUMAN TRAFFICKING [COUNCIL].**

25 (a) The [Governor] shall appoint the chair and members of a [council] on human
26 trafficking within the [state department], including designees from [state, local, or tribal
27 agencies] that have contact with victims or perpetrators, nongovernmental organizations that

1 represent or work with victims, and other individuals and organizations whose expertise would
2 benefit the [council].

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

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

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

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

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

12 (4) create a public-awareness sign that contains local and national hotline
13 information;

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

16 (6) conduct other appropriate activities.

17 **SECTION 20. DISPLAY OF PUBLIC-AWARENESS SIGN; PENALTY FOR**
18 **FAILURE TO DISPLAY.**

19 (a) The [state transportation department] shall display the public-awareness sign created
20 under Section 19(c)(4) in every transportation station, rest area, and welcome center in the state
21 which is open to the public.

22 (b) A strip club, sexually-oriented business, hotel or other entity cited as a nuisance for
23 prostitution, job recruitment center, hospital, emergency care provider, and farm that employs

1 [five] or more migrant or seasonal agricultural workers shall display the public-awareness sign
2 created under Section 19(c)(4) in a location that is clearly conspicuous and visible to employees
3 within each place of business.

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

7 **SECTION 21. ELIGIBILITY FOR SERVICES.**

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

11 (b) A minor engaged in commercial sexual services is eligible for a benefit or service
12 available through the state and identified in the plan developed under Section 19(c)(1), regardless
13 of immigration status.

14 (c) As soon as practicable after a first encounter with an individual who reasonably
15 appears to [the appropriate state or local agency] to be a victim or a minor engaged in
16 commercial sexual services, the [agency] shall notify the [state or local agency identified in the
17 comprehensive plan developed under Section 19(c)(1)] that the individual may be eligible for a
18 benefit or service under this [act].

19 **SECTION 22. LAW-ENFORCEMENT AGENCY PROTOCOL.**

20 (a) On request from an individual whom a [law-enforcement officer] reasonably believes
21 is a victim who is or has been subjected to a severe form of trafficking or criminal offense
22 required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. Section
23 1101(a)(15)(T)[, as amended,] or 8 U.S.C. Section 1101(a)(15)(U)[, as amended], the [law-

1 enforcement officer], as soon as practicable after receiving the request, shall complete, sign, and
2 give to the individual the Form I-914B or Form I-918B provided by the United States
3 Citizenship and Immigration Services on its Internet website.

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

8 ***Legislative Note:** In states in which the constitution, or other law, does not permit the phrase “as*
9 *amended” when federal statutes are incorporated into state law, the phrase should be deleted in*
10 *subsection (a).*

11 12 **[SECTION 23. GRANT TO OR CONTRACT WITH SERVICE PROVIDER.]**

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

17 (b) A recipient of a grant or contract under subsection (a) shall report annually to the
18 [council] created by Section 19 the number and demographic information of all trafficking
19 victims served.]

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

23 24 **ARTICLE V**

25 **MISCELLANEOUS PROVISIONS**

26 **SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

27 applying and construing this uniform act, consideration must be given to the need to promote

1 uniformity of the law with respect to its subject matter among states that enact it.

2 **[SECTION 25. SEVERABILITY.** If any provision of this [act] or its application to
3 any person or circumstance is held invalid, the invalidity does not affect other provisions or
4 applications of this [act] which can be given effect without the invalid provision or application,
5 and to this end the provisions of this [act] are severable.]

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

8
9 **SECTION 26. EFFECTIVE DATE.** This [act] takes effect....