

DRAFT
FOR DISCUSSION ONLY

PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

Draft Prepared After the December 2011 Drafting Committee Meeting

With Prefatory Note and Comments

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November 16, 2011

**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:

MICHAEL J. WILKINS, P.O. Box 1348, Washington, UT 84780, *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, 60 E. 42nd St., 39th Floor, New York, NY 10165-0006

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, Office of Legislative Services, Legislative Assembly de
Puerto Rico, P.O. Box 6341, San Juan, PR 00902-3986

ANITA RAMASASTRY, University of Washington School of Law, William H. Gates Hall, Box
353020, Seattle, WA 98195-3020

ROBERT J. TENNESSEN, 2522 Thomas Ave. S, Minneapolis, MN 55405

NORA WINKELMAN, Office of Chief Counsel, Room 620 Main Capitol, Harrisburg, PA
17120

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

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1 PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING ACT

2 3 Prefatory Note

4 I. Introduction

5
6 Human trafficking is modern day slavery; the very nature of the crime seeks to destroy
7 the basic liberties of human dignity and self-determination, resulting in a scourge that is as
8 devastating as it is widespread. This Uniform Act on the Prevention of and Remedies for Human
9 Trafficking provides states with a comprehensive and effective tool for detecting human
10 trafficking crimes, prosecuting perpetrators, identifying and aiding victims, and preventing the
11 occurrence of future human trafficking crimes by raising awareness and training standards on a
12 state level.

13
14 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women
15 and Children, Supplementing the United Nations Convention Against Transnational Organized
16 Crime, which the United States ratified in 2005, defines human trafficking as:

17
18 the recruitment, transportation, transfer, harboring or receipt of persons, by means
19 of the threat or use of force or other forms of coercion, of abduction, of fraud, of
20 deception, of the abuse of power or of a position of vulnerability or of the giving
21 or receiving of payments or benefits to achieve the consent of a person having
22 control over another person, for the purpose of exploitation.

23
24 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and
25 Children, Supplementing the United Nations Convention Against Transnational Organized
26 Crime, *opened for signature* Dec. 12, 2000, U.N. Doc. A/RES/55/25, 2237 U.N.T.S. 319
27 (*entered into force* Dec. 25, 2003; ratified by the United States Nov. 3, 2005), *available at*
28 <http://www2.ohchr.org/english/law/protocoltraff.htm> [hereinafter Trafficking Protocol].

29
30 Federal and state law addressing human trafficking has more or less embraced the
31 essence of this definition, which enumerates the process used by traffickers (recruitment,
32 transportation, etc.), the means used by traffickers to compel victims (threat, force, coercion),
33 and the purpose of human trafficking—the victim’s labor or services).

34
35 Federal law fulfills most of the obligations provided by the Trafficking Protocol.
36 However, to effectively combat human trafficking and fully comply with the Trafficking
37 Protocol, collective state action is necessary. State and local agencies are on the front line in the
38 struggle to stem human trafficking crimes and protect victims, and thus it is essential that the
39 states examine how best to streamline efforts to prosecute perpetrators, protect victims, and
40 prevent future human trafficking crimes via enhanced communication, cooperation, and
41 uniformity.

42
43 The two primary manifestations of human trafficking addressed in this act are sexual
44 servitude and the exploitation of a person’s labor. Both cause serious and lasting harm to victims

1 even after removal from a trafficking situation, and therefore constitute separate crimes from
2 human trafficking. When victims are recruited, transported, transferred, harbored, isolated,
3 maintained, enticed, provided, obtained or received so that they can be exploited for their forced
4 labor or sexual servitude, this is a crime in itself. For example, the recruitment of a person for
5 the purpose of forced street prostitution or keeping a person confined for the purpose of securing
6 their domestic services is criminalized by this Act.

7
8 The U.S. State Department Office to Monitor and Combat Trafficking in Persons
9 estimates that between 14,000 and 17,500 people are trafficked into the United States each year
10 from as many as 48 countries, and the National Center for Missing and Exploited Children
11 estimates that at least 100,000 American children are trafficked into the commercial sex industry
12 within the United States annually. Because of the current lack of data collection at the state
13 level, concrete numbers are hard to establish. What is clear is that human trafficking occurs in
14 cities across the United States as well as in suburbs and more remote agricultural areas. Though
15 universally condemned, human trafficking continues to be a very profitable crime with penalties
16 that pose an insufficient risk of punishment to perpetrators.

17
18 Human trafficking is a form of modern day slavery and poses unique challenges to
19 legislatures, law enforcement, and victim service providers. This act aims to combat this
20 criminal industry by targeting the three main aspects of the crime of human trafficking: the
21 process of acquiring or retaining a victim, the means used to acquire the submission of a victim,
22 and the form of exploitation of a victim. An understanding of these elements is essential to the
23 recognition of a human trafficking crime and identification of victims. However, proper
24 treatment of victims, once identified, as well as preventative and awareness measures, are
25 equally essential to effective human trafficking legislation.

26
27 The United States has expressed its commitment to combating human trafficking through
28 both international treaties, most notably the Trafficking Protocol, and domestic law, via passage
29 of the Victims Trafficking and Violence Protection Act in 2000. The commitments embodied in
30 the Trafficking Protocol rest not only on the federal government but also upon the 50 states and
31 territories.

32
33 Though most states have enacted some form of human trafficking legislation, state law
34 overall is not uniform between states (nor is state law uniform with federal law) and does not
35 comprehensively address the problem of modern day slavery. State laws differ in focus and
36 intent, often addressing criminal offenses in some respect but not prevention, awareness, or
37 victim services. First, this act is intended to streamline the prosecutorial approach to the crime of
38 human trafficking by addressing the “strong need for uniformity in definitions and concepts
39 across state lines to minimize confusion as trafficking victims in state prosecutions begin to
40 seek... victim protections.” Model State Anti-Trafficking Criminal Statute (2005) DOJ. Second,
41 this uniform act embodies a comprehensive approach in order to equip states to reduce the
42 number of future human trafficking situations, through awareness and the provision of victim
43 services aimed at reintroducing victims back into the social and economic fabric of the
44 community. This uniform and comprehensive approach will facilitate cooperation between the
45 states as well as between the states and the federal government, encouraging the efficient
46 allocation of funds and services and the development of a uniform national policy to deal with

1 the crime of human trafficking.

2
3 **II. The United States, the fifty states, and all of the territories have obligations under**
4 **international law.**

5 |
6 It is necessary to employ both federal and state resources to comprehensively combat
7 human trafficking and to comply with international law. The nature of human trafficking is too
8 camouflaged and widespread to be adequately prevented by only the federal government. It is
9 vital for states to play an active role in both combating trafficking and protecting victims.
10 Otherwise, the United States' program could not be considered comprehensive and thus would
11 breach the Trafficking Protocol. In ratifying, the United States emphasized that it assumes the
12 Protocol's obligations consistent with our federal system, "pursuant to which both federal and
13 state criminal laws must be considered" in connection to the Protocol. *See* Ratifications and
14 Reservations, The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially
15 Women and Children, available at [http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-](http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html#EndDec)
16 [traffickingprotocol.html#EndDec](http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html#EndDec) (scroll down to the "United States of America") (last updated
17 Sep. 26, 2008).

18
19 The Trafficking Protocol requires that each State Party take a variety of actions. First,
20 Article 5 "Criminalization" requires that the United States federal government and each state
21 government adopt legislative and "other measures as may be necessary" to establish criminal
22 offenses regarding intentional acts, attempted acts, and aiding acts. *Id.* at arts. 5(1), 5(2). As the
23 United States has a federal and state criminal structure, there should be both federal and state
24 criminal statutes for human trafficking. For instance, the United States seeks to increase its
25 number of human trafficking prosecutions. As the states have the primary obligation to
26 prosecute offenses under the federalism system, it is necessary for the states to adopt a uniform
27 law that strengthens and enhances law enforcement's ability to successfully prosecute.

28
29 Second, the Trafficking Protocol requires that trafficking victims are assisted and
30 protected. Article 6 requires that State Parties consider implementing measures to provide for
31 the full recovery of victims in cooperation with non-governmental organizations and other
32 elements of civil society. Article 6(3) enumerates particular measures, including appropriate
33 housing, employment, and educational opportunities. *Id.* at art. 6. Given the governmental
34 structure within the United States, such measures like housing, counseling, medical assistance,
35 employment, and education are largely undertaken by the states. Therefore, to ensure that the
36 victims have the opportunity to make a full recovery (mentally, economically, and physically),
37 the states must adopt such policies. Both the federal and state branches of government must
38 work together to satisfy Article 6's requirements. A unified approach is preferable to ensure that
39 all victims are being given equal and sufficient opportunity to recover. Currently, the state
40 approach is varied and disconnected, thus preventing adequate data to be collected. Uniformity
41 among the states will enable states to better identify the issues and understand human trafficking,
42 which will allow for state and local resources to be more efficiently used and allocated, and will
43 allow victims to have greater access to obtaining the necessary services.

44 |
45 Third, the Trafficking Protocol requires the federal government and states to undertake

1 prevention strategies against human trafficking, including building general awareness. Article 9
2 mandates that States Parties adopt “comprehensive” policies and programs. *Id.* at arts. 9, 10.
3 Moreover, Article 10 explicitly states that law enforcement authorities must “cooperate with one
4 another” for information sharing and training. *Id.* at art. 10. Underscoring the point, the U.S.
5 State Department Report identifies that “[t]he lack of uniform nationwide data collection
6 remained an impediment to compiling fully accurate statistics,” as “no comprehensive data is
7 available on state prosecutions and convictions.” OFFICE TO MONITOR AND COMBAT
8 TRAFFICKING IN PERSONS, U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 372 (2011)
9 [hereinafter STATE DEP’T TRAFFICKING REPORT]. Aggregating such data is necessary for a
10 meaningful analysis and evaluation of human trafficking in the United States. Accurate data is
11 vital to ensure that resources are being appropriately allocated. As funding is often determined
12 according to available data, states must collect data efficiently and effectively in order to combat
13 human trafficking efficiently and effectively. The United States and the states must “endeavor to
14 undertake measures such as research, information and mass media campaigns and social and
15 economic initiatives to prevent and combat trafficking in persons”, cooperate with non-
16 governmental organizations, other relevant organizations and other elements of civil society, and
17 “to take or strengthen measures, including through bilateral or multilateral cooperation, to
18 alleviate the factors that make persons, especially women and children, vulnerable to trafficking,
19 such as poverty, underdevelopment and lack of equal opportunity.” Trafficking Protocol, *supra*,
20 at art. 6. This uniform law is one step in furtherance of this greater goal. As human trafficking
21 is inherently surreptitious, building awareness among communities and across jurisdictions is a
22 necessary step to identifying and eradicating it.

23
24 To better comply with the Trafficking Protocol, the states should adopt this uniform act
25 that comprehensively addresses criminal offenses, benefits and services to victims, and
26 prevention mechanisms. As the federal government has largely satisfied its duty, it is now the
27 states’ turn to fulfill their obligation and work to eradicate modern day slavery.

28 29 **III. The federal government has taken steps to combat human trafficking by enacting the** 30 **TVPA.**

31
32 The centerpiece of the federal government’s anti-human trafficking efforts is the Victims
33 of Trafficking and Violence Protection Act of 2000. Victims of Trafficking and Violence
34 Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in scattered
35 sections of 18 U.S.C. and 22 U.S.C.) [hereinafter TVPA]. The TVPA, which was reauthorized
36 in 2003, 2005, and 2008 and is being considered for reauthorization in 2011, addresses many
37 aspects of human trafficking. The stated purpose of the TVPA is “to combat trafficking in
38 persons, a contemporary manifestation of slavery whose victims are predominantly women and
39 children, to ensure just and effective punishment of traffickers, and to protect their victims.” 22
40 U.S.C. § 7101(a) (2006). The TVPA was needed in part because Congress found existing
41 legislation to be “inadequate to deter trafficking and bring traffickers to justice,” failed “to reflect
42 the gravity of the offenses involved,” did not provide adequate services to meet victims’ needs,
43 inappropriately punished victims for acts committed as a result of trafficking, did not facilitate
44 victim reporting, and failed to protect victims by punishing illegal immigrants who are victims
45 more harshly than the traffickers. 22 U.S.C. § 7101(b)(14), (17), (18), (19), (20) (2006).

1 The TVPA increased the penalties for the criminal prohibition of slavery that had existed
2 for many years, Office to Monitor and Combat Trafficking in Persons, STATE DEP'T
3 TRAFFICKING REPORT, *supra*, 372, and added the crimes of forced labor; trafficking with respect
4 to peonage, slavery, involuntary servitude, or forced labor; sex trafficking; destroying or
5 possessing a person's identification documents; and benefiting financially from peonage, slavery,
6 and trafficking. 18 U.S.C. § 1589; 18 U.S.C. § 1590; 18 U.S.C. § 1591; 18 U.S.C. § 1592
7 (2006). The criminal prohibitions address the three aspects of human trafficking crimes: the
8 process of acquiring and retaining victims, means, and forms of exploitation. The *acquiring* or
9 *retaining* of persons for the purpose of exploitation is criminalized by two sections, one covering
10 trafficking for peonage, slavery, involuntary servitude, or forced labor, and the other covering
11 sex trafficking. The TVPA importantly recognizes that physical force is not required to establish
12 a crime of human trafficking and lists a variety of *means* that traffickers use to exploit their
13 victims, including threat of serious harm which is defined to include psychological, financial, or
14 reputational harm. Lastly, the TVPA covers the *forms of exploitation*, namely forced labor and
15 forced commercial sex (peonage, slavery, and involuntary servitude having pre-existed the
16 TVPA). However, while it criminalizes forced labor in the absence of a movement aspect, it
17 does not criminalize forced commercial sex in absence of a movement aspect, which allows the
18 possibility that a trafficker who is involved in the exploitation of a prostitute, for example, but
19 never moved the prostitute could not be prosecuted. Also criminalized are attempting and
20 conspiring to violate these prohibitions. 18 U.S.C. § 1594 (2006).

21
22 The TVPA mandates restitution and forfeiture upon conviction of any offense in the
23 peonage, slavery, and trafficking in persons chapter. 18 U.S.C. § 1593, 1594(d)-(e) (2006).
24 These mechanisms serve to further punish traffickers, who usually gain financially for their
25 crimes, and provide compensation for victims. The 2003 TVPA Reauthorization added a civil
26 remedy for victims of trafficking to provide further compensation for their losses. 18 U.S.C. §
27 1595 (2006).

28
29 In addition to enhancing criminal penalties for slavery crimes and creating new criminal
30 provisions, the TVPA also provided a generous set of benefits and services for trafficking
31 victims in the United States. 22 U.S.C. §§ 7101-7112 (2006 & Supp. III 2007-2010). The
32 services are comprehensive, in compliance with the Trafficking Protocol, and the states should
33 emulate the federal government's comprehensive approach. The services include access to
34 refugee benefits, the opportunity to remain in the country through continued presence or a T-
35 Visa, protection from imprisonment, medical care while in custody, and confidentiality when in
36 custody. 22 U.S.C. § 7105 (2006). United States citizens and permanent residents must also be
37 provided services. 22 U.S.C. § 7105(f) (Supp. III 2007-2010). The TVPA established a grant
38 program for service organizations. 22 U.S.C. § 7105(b)(2) (2006).

39
40 The TVPA also includes several awareness measures. It established a comprehensive
41 Interagency Task Force to Monitor and Combat Trafficking with the Office to Monitor and
42 Combat Trafficking in the Department of State. *Id.* § 7103. The Task Force includes
43 representatives from many federal departments including: State, USAID, Justice, Labor, Health
44 and Human Services, National Intelligence, Defense, Education, and Homeland Security. *Id.* §
45 7103(b). The law also requires training for Department of Justice and Department of State
46 personnel. 22 U.S.C. § 7105(c)(4) (Supp. 2007-2010).

1
2 While the TVPA was welcomed by labor and human rights activists an important step in
3 the fight against human trafficking, it alone cannot comprehensively address the widespread
4 problem of human trafficking in states across the country. It has shortcomings that leave many
5 victims unprotected. A uniform approach by the states to combat human trafficking is necessary
6 to supplement the TVPA and fully address the problem of human trafficking.
7

8 **IV. Status of human trafficking laws in the fifty states and territories.**

9

10 Since 2003 when Washington passed the first state law outlawing human trafficking,
11 WASH. REV. CODE ANN. §9.68A.100 (West, Westlaw through 2011 legislation) (originally
12 effective as of Jul. 27, 2003), most states and territories have passed laws outlawing human
13 trafficking. *See* Comments to Sections 202 and 203. Efforts have been taken at state and local
14 levels, including training, awareness, collaboration with task forces, and service provision over
15 the last decade. However, there is an evident lack of uniformity between state laws and
16 comprehensiveness in most state laws. Because criminal law and public services for groups like
17 crime victims are primarily within the realm of the state government, it is integral that states
18 have strong and comprehensive laws to address human trafficking. Furthermore, uniformity
19 among state laws is essential for understanding the magnitude of the problem within the United
20 States and combating it effectively.
21

22 Enacting criminal provisions outlawing aspects of human trafficking has been the
23 overwhelming response of states to this problem. Yet the differences among state criminal laws
24 enacted hinder widespread data collection, end in unequal penalization of similar acts, and
25 frustrate prosecution of an often multi-state crime. First, the statutory organization of state law
26 varies. As described before, human trafficking can be broken down into three elements of the
27 process of acquiring or retaining victims, means, and forms of exploitation. Some states have all
28 the elements together, which ignores that the means and forms together is a crime in and of itself.
29 *See* Comment to Section 201. Also, there are several different sets of “process” verbs used
30 across states. Some states completely separate trafficking for labor or services and trafficking
31 for sexual servitude. Another discrepancy that exists is the penalties applied by states for the
32 same crimes. *Compare* LA. REV. STAT. ANN. §14:46.2 (West, Westlaw through 2011 1st
33 Extraordinary Sess.) (penalizing up to ten years for human trafficking); *with* MISS. CODE ANN. §
34 97-3-54 (through End of 2011 Reg. Sess.) (penalizing up to twenty years for human trafficking).
35 This discrepancy and discrepancies between state and federal sentences for the same crime
36 misalign incentives for prosecution and do not efficiently distribute the prosecutorial capacities
37 of state and federal jurisdictions. With these differences, state efforts fall short of a uniform
38 solution within the United States to human trafficking.

39 Besides a lack of uniformity among states laws, there are important factors in combating
40 human trafficking that the majority of states have not yet addressed. Some major examples
41 include immunity or affirmative defenses available to victims; without these victims end
42 criminally penalized for crimes they were forced to commit by their trafficker. *See* Comments to
43 Sections 216, 204. Also, only eight states and territories mandate restitution to the victim for
44 pain and suffering, rehabilitation, and to recover the wages they should have earned while

1 working for the trafficker, although it is an extremely useful tool to give victims access to
2 necessary services. *See* Comment to Section 218. Another gap in state laws is state task forces;
3 although shown to be very successful in enforcing criminal and service provisions, only twelve
4 states currently have one. *See* Comment to Section 401. Though civil suits on trafficking have
5 become a powerful tool for victims, only sixteen states and territories have specific civil
6 remedies at the state level. *See* Comment to Section 307. Also, states have not collected and
7 reported statistically significant and detailed data on human trafficking. STATE DEP'T
8 TRAFFICKING REPORT, *supra*. These are all gaps in state law that this Uniform Law seeks to
9 remedy.

11 **V. Summary of Uniform Act.**

13 This uniform law encapsulates a comprehensive approach to combating trafficking at the
14 state level. Each substantive article focuses on a different angle of the situation, addressing
15 crimes, victim protection and services, and prevention. These articles are meant to function
16 symbiotically to successfully combat human trafficking at the state level.

18 The substance and language of the statute was drawn primarily from four sources. The
19 TVPA was relied on extensively for language, content, and penalties. STATE DEP'T
20 TRAFFICKING REPORT, *supra*. Secondly, there were five model laws that were looked to for
21 breadth of necessary provisions, topics, and effective language. MODEL PROVISIONS OF
22 COMPREHENSIVE STATE LEGISLATION TO COMBAT HUMAN TRAFFICKING (2010) (Polaris Project)
23 [hereinafter Polaris Model Law]; STATE MODEL LAW ON PROTECTION FOR VICTIMS OF HUMAN
24 TRAFFICKING (2005) (Global Rights, Ayuda, Inc. & King & Spalding, LLP) [hereinafter Global
25 Rights Model Law]; RESOURCE FOR STATE LEGISLATORS: MODEL PROVISIONS FOR STATE ANTI-
26 TRAFFICKING LAWS (2005) (Nat'l Inst. on State Policy on Trafficking of Women and Girls &
27 Ctr. for Women Policy Studies) [hereinafter Women Policy Studies Model Law]; MODEL LAW
28 AGAINST TRAFFICKING IN PERSONS (2009) (UN Office on Drugs and Crimes) [hereinafter
29 UNODC Model Law]; MODEL STATE ANTI-TRAFFICKING CRIMINAL STATUTE (2005) (DOJ)
30 [hereinafter DOJ Model Law]. Also, concepts and requirements in the Trafficking Protocol
31 among other international treaties ratified by the United States bearing on human trafficking
32 were looked to for reference to the international communities' developments in strategies and
33 requirements. Optional Protocol to the Convention on the Rights of the Child on the Sale of
34 Children, Child Prostitution and Child Pornography, *opened for signature* May 25, 2000, U.N.
35 Doc. A/RES/54/263, 2171 U.N.T.S. 227 (*entered into force* Jan. 18, 2002; ratified by the United
36 States July 5, 2000), *available at* <http://www2.ohchr.org/english/law/crc-sale.htm> [hereinafter
37 Child Prostitution Protocol]; Supplementary Convention on the Abolition of Slavery, the Slave
38 Trade, and Institutions and Practices Similar to Slavery, *opened for signature* Sep. 7, 1956, 266
39 U.N.T.S. 3 (*entered into force* Apr. 30, 1957; ratified by the United States Dec. 6, 1967),
40 *available at* [hereinafter Supplementary Slavery Convention]. Finally, this law draws
41 extensively from state innovations in order to implement successful tactics across states,
42 discussed in the comments to each section that detail state law on the subject.

44 **Article 1. Definitions.** Section 101 defines terms used throughout the act. Notably, this
45 section includes a definition for “coercion” that contains not only the methods of coercion

1 provided by the TVPA and the Trafficking Protocol, but additional methods pulled from state
2 statutes and model laws. Because coercion, deception, and fraud are key elements of the crime
3 of human trafficking, they should be broadly interpreted so as to effectively prevent and punish
4 the trafficking and exploitation of people.
5

6 **Article 2. Crimes and Remedies.** Article 2 creates criminal prohibitions to address the
7 various ways people can commit or contribute to human trafficking. It addresses the three
8 aspects of the crime of human trafficking. It covers the acquisition and retention of persons for
9 forced labor or forced commercial sex with a single trafficking statute. It also criminalizes the
10 two primary forms of exploitation, forced labor and forced commercial sex. These crimes are
11 accomplished through the means of coercion, deception, or fraud, coercion being defined
12 comprehensively to address the different tactics used by traffickers.
13

14 Article 2 suggests penalties for various human trafficking crimes. These penalties are
15 equivalent to those at the federal level under the TVPA. Disparity between state and federal
16 penalties results in prosecutors at the state level turning cases over to federal authorities who can
17 get longer sentences upon conviction. The penalties at the state level should be uniformly raised
18 to match the penalties at the federal level, so state prosecutors have the same incentives to
19 prosecute a case and can share the responsibility and resources of prosecuting trafficking crimes.
20 This sharing of prosecutions will increase the number of trafficking prosecutions that can be
21 initiated.
22

23 **Article 3. Benefits, Services, and Protections.** This article provides for all protections
24 and services for victims that are not dependent on a criminal conviction of the trafficker. First it
25 provides two ways that victims can be made whole, through a private civil action in Section 307
26 and through access to public and private state and local services in Sections 301 through 304,
27 where the role of the state is to coordinate different avenues for services, implement a protocol
28 where a victim can access these services in a “one-stop-shop” approach, and bolster existing
29 services and providers. Then this article mandates victim protections and counselor
30 confidentiality in Sections 305 and 306 to safeguard the victim’s privacy and safety.
31

32 **Article 4. Awareness and Prevention.** Article 4 focuses on enabling officials and civil
33 society at the state level to combat trafficking. Section 401 requires states to establish an
34 oversight committee on human trafficking, recommending that a permanent task force be
35 implemented. Task forces have been and continue to be central to effectively understanding the
36 complex nature of human trafficking and also to combating human trafficking offenses at the
37 local, state, and federal levels. Section 402 requires training for law enforcement officers.
38 Section 403 requires that the state undertake data collection mechanisms and produce an annual
39 report on the status of human trafficking within the state. Section 404 requires employers and
40 specific state agencies to post an informational sign about human trafficking that includes the
41 number to the National Trafficking Hotline. Section 405 gives the Labor Department
42 responsibility to ensure that employers are not engaging in human trafficking offenses in
43 violation of this act. Section 406 requires school faculty and staff to be educated about the
44 dangers of human trafficking and recommends that students be educated on human trafficking an
45 age-appropriate manner.
46

VI. Conclusion

This Uniform Law is multifaceted and comprehensive in that the different components of the law are interdependent. For example, without the training and awareness measures provided for in Article 4, victims will go unidentified and perpetrators will continue exploiting with impunity. Without benefits and services in Article 3, it is very unlikely that victims will be able to be witnesses, leaving prosecutors without convictions. Without collaboration between state agencies and civil society through the task forces provided in Article 4, victims will not be directed to the appropriate services and will fall through the cracks. Therefore, it is imperative that all of the articles and sections are implemented for this uniform law to be effective tool to combat human trafficking.

1 **ARTICLE 1**

2 **DEFINITIONS**

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

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

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

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

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

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

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

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

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

20 (3) “Benefit” means to receive anything of value, anything for consideration, a product, a
21 service, or a profit.

22 (4) “Business entity” means a corporation, business trust, estate, trust, partnership,
23 limited liability company, association, joint venture, public corporation, government or

1 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

2 (5) “Coercion” includes:

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

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

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

9 (D) abduction;

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

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

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

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

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

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

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

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

1 (6) "Deception" includes:

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

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

5 (ii) the conditions of work; or

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

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

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

12 (8) "Knowingly" refers to an actor's action with respect to a material element of an
13 offense if:

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

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

19 (9) "Labor or service" means work or service of economic or financial value that is
20 performed or provided.

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

1 (11) “Purposely” refers to an actor’s action with respect to a material element of an
2 offense if:

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

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

7 (12) “Recklessly” refers to an actor’s action with respect to a material element of an
8 offense when that actor consciously disregards a substantial and unjustifiable risk that the
9 material element exists or will result from the action. The risk must be of such a nature and
10 degree that, considering the nature and purpose of the person’s conduct and the circumstances
11 known to the actor, its disregard involves a gross deviation from the standard of conduct that a
12 law-abiding person would observe in the actor's situation.

13 (13) “Serious harm” means any harm, whether physical or nonphysical, including
14 psychological, financial, or reputational harm, that is sufficiently serious, under all the
15 surrounding circumstances, to compel a reasonable person of the same background and in the
16 same circumstances to perform or to continue performing labor, services, or sexual services in
17 order to avoid incurring that harm.

18 (14) “Sexual activity” includes sexual intercourse, cunnilingus, fellatio, anal intercourse,
19 intrusion by any object into the genital or anal opening of another person's body, the stimulation
20 by hand or any other object of another's genitals or breasts for the purpose of arousing or
21 gratifying the sexual desire of either person.

22 (15) “Sexual services” include sexual activity, erotic dancing, and display in
23 pornographic photographs or videos.

1 (16) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
2 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
3 the United States.

4 (17) "Victim" means any individual, whether a U.S. citizen or foreign national, who has
5 been subjected to the offenses set forth in Article 2 of this act, or whom [competent authorities,
6 including a designated nongovernmental organization where applicable] reasonably believe has
7 been subjected to the offenses set forth in Article 2 of this act, regardless of whether a perpetrator
8 is identified, apprehended, prosecuted or convicted.

9 **Comment**

10 This section includes terms used throughout the act. Coercion is generally considered the
11 centerpiece of the second element of human trafficking: the means by which people are
12 trafficked for labor or sex. As such, coercion is often a key element of human trafficking
13 offenses, yet the Trafficking Protocol, TVPA, model laws, and state laws treat the term in
14 varying ways, in some cases providing only a vague definition, or no definition at all, for the
15 term. The Trafficking Protocol requires State Parties to criminalize the use of the means of:

16
17 the threat or use of force or other forms of coercion, of abduction, of fraud, of
18 deception, of the abuse of power or of a position of vulnerability or of the giving
19 or receiving of payments or benefits to achieve the consent of a person having
20 control over another person.

21
22 Trafficking Protocol, *supra*, at art. 3(a).

23
24 Coercion as outlined in paragraph (5) includes the means set out in the Trafficking
25 Protocol and the TVPA and adds the exertion of control over another's access to a controlled
26 substance, control over another's identification document, and debt bondage. It does not include
27 deception, which is defined separately, or fraud, which is a common law concept and depends on
28 the case law in each state. This subsection reflects the importance, already recognized by the
29 federal government and many states, of defining the many faces of coercion. The TVPA
30 provides that:

31
32 [t]he term 'coercion' means – (A) threats of serious harm to or physical restraint
33 against any person; (B) any scheme, plan, or pattern intended to cause a person to
34 believe that failure to perform an act would result in serious harm to or physical
35 restraint against any person; or (C) the abuse or threatened abuse of the legal
36 process.
37

1 18 U.S.C. § 1591(e)(2) (2006). This definition applies specifically to § 1591 (“Sex trafficking of
2 children or by force, fraud, or coercion”) and not to the TVPA as a whole. Section 1589, which
3 deals with forced labor, does not use the term coercion at all, though it includes language similar
4 to the definition provided in § 1591(e)(2) when it prohibits the provision or obtaining of the labor
5 or services of a person by:

6
7 ...the following means –

8 (1) by means of force, threats of force, physical restraint, or threats of
9 physical restraint to that person or another person;

10 (2) by means of serious harm or threats of serious harm to that person or
11 another person;

12 (3) by means of any scheme, plan or pattern intended to cause the person
13 to believe that, if that person did not perform such labor or services, that person
14 or another person would suffer serious harm or physical restraint.
15

16 18 U.S.C. § 1589(a) (2006). This inconsistency in the articulation of the means of human
17 trafficking can create confusion and unnecessarily complicates an analysis of the
18 elements of a human trafficking crime. A uniform definition provides clarity to those
19 charged with detecting such crimes and minimizes ambiguity in applying the law.
20

21 State statutes vary greatly in the comprehensiveness of their approach to the term
22 coercion. Oklahoma, for example, addresses coercion expansively within its law addressing
23 forced labor and forced sexual exploitation:
24

25 1. "Coercion" means compelling, forcing or intimidating a person to act by:

26 a. threats of harm or physical restraint against any person,

27 b. any act, scheme, plan, or pattern intended to cause a person to believe
28 that performing, or failing to perform, an act would result in serious physical,
29 financial, or emotional harm or distress to or physical restraint against any person,

30 c. the abuse or threatened abuse of the law or legal process,

31 d. knowingly destroying, concealing, removing, confiscating or possessing
32 any actual or purported passport, labor or immigration document, or other
33 government identification document, including but not limited to a driver license
34 or birth certificate, of another person,

35 e. facilitating or controlling a person's access to any addictive or
36 controlled substance other than for legal medical purposes,

37 f. blackmail,

38 g. demanding or claiming money, goods, or any other thing of value from
39 or on behalf of a prostituted person where such demand or claim arises from or is
40 directly related to the act of prostitution,

41 h. determining, dictating or setting the times at which another person will
42 be available to engage in an act of prostitution with a third party,

43 i. determining, dictating or setting the places at which another person will
44 be available for solicitation of, or to engage in, an act of prostitution with a third
45 party, or

46 j. determining, dictating or setting the places at which another person will

1 reside for purposes of making such person available to engage in an act of
2 prostitution with a third party.

3
4 OKLA. STAT. tit. 21, § 748(1) (West, Westlaw through 2011 ch. 385 of First Reg. Sess.).

5
6 Conversely, Arkansas provides that a person “commits the offense of trafficking in
7 persons if he or she (1) Recruits, harbors, transports, or obtains a person for labor or services
8 through the use of force, fraud, or coercion for [enumerated purposes],” but provides no
9 definition for coercion within its human trafficking statutes. ARK. CODE ANN. § 5-11-108(b)
10 (West, Westlaw through 2011 Reg. Sess.). Coercion is defined, however, elsewhere in Title 5
11 (Criminal Offenses) of Arkansas Code:

12
13 (a) A person commits coercion if he or she compels or induces another person to
14 engage in conduct from which the other person has a legal right to abstain, or to
15 abstain from engaging in conduct in which the other person has a legal right to
16 engage, by purposeful conduct designed to instill in the other person a fear that, if
17 a demand is not complied with, the actor or another person will:

- 18 (1) Cause physical injury to any person;
19 (2) Cause damage to property;
20 (3) Subject any person to physical confinement;
21 (4) Accuse any person of an offense or cause criminal proceedings to be
22 instituted against any person; or
23 (5) Expose a secret or publicize an asserted fact, whether true or false,
24 tending to subject any person to hatred, contempt, or ridicule.

25
26 ARK. CODE ANN. § 5-13-208 (West, Westlaw through 2011 Reg. Sess.).

27
28 A definition for coercion that may be well suited to general criminal offenses such as
29 assault and battery may not be as well suited to the more insidious and subtle methods used by
30 human traffickers to exploit vulnerabilities in their victims. In recognition of the great variance
31 in state definitions of coercion and the increasingly manipulative methods of coercion used by
32 human traffickers, this section defines coercion broadly to go beyond the general means laid out
33 in the Trafficking Protocol, the TVPA and in many state laws. The definition provided in
34 paragraph (5) should be interpreted to include situations not explicitly included in the text.

35
36 Paragraph (1) defines the abuse of a position of power or a position of vulnerability,
37 which is included under subparagraph (5)(E) as a form of coercion under this act. This is one of
38 the means included in the Trafficking Protocol’s definition of “trafficking in persons,” though no
39 definition is provided for the phrase. Trafficking Protocol, *supra*, at art. 3(a). The UNODC
40 Model Law presents identical language, and notes in the accompanying comments that the
41 inclusion of the abuse of power (along with the inclusion of fraud, deception, and the abuse of a
42 position of vulnerability) “recognizes that trafficking can occur without the use of any overt
43 (physical) force.” UNODC MODEL LAW art. 8.

44 |
45 While at least three states address specifically the abuse of a position of power in relevant
46 trafficking statutes, none provide a definition for the phrase. *See* NEV. REV. STAT. ANN. §

1 201.300(1)(d) (West, Westlaw through 2009 75th Reg. Sess. and 2010 26th Special Sess. and
2 technical corrections received from the 2010 Leg. Counsel Bureau) (a person who, by “abuse of
3 any position of confidence or authority” procures a person for the purpose of prostitution is
4 guilty of pandering); CAL. PEN. CODE § 266i(a)(5) (West, Westlaw through 2011 ch. 745 of Reg.
5 Sess.) (same); P.R. LAWS ANN. tit. 33 § 4781 (West, Westlaw through Dec. 2008) (“Any person
6 who commits the crime [sex trafficking] shall incur a third degree felony if...there is...abuse of
7 authority or any means of intimidation or coercion”).
8

9 The definition provided in paragraph (1) is taken from the UNODC Model Law, which
10 was influenced by language in the 2003 United States State Department Model Law to Combat
11 Trafficking in Persons. UNODC MODEL LAW art. 5(1)(a). Paragraph (1) outlines some
12 examples of common situations that may precede the abuse of a position of power or a position
13 of vulnerability. As the UNODC Model Law commentary notes, “[m]any other definitions of
14 abuse of a position of vulnerability are possible, including elements such as abuse of the
15 economic situation of the victim or of dependency on any substance, as well as definitions
16 focusing on the objective situation or on the situation as perceived by the victim.” *Id.* Though
17 abuse of a position of vulnerability does not currently appear in any state statutes, its inclusion
18 here underlines the importance of comprehensively addressing the means of coercion that have
19 been identified in human trafficking situations. This act defines the abuse of a position of power
20 and the abuse of a position of vulnerability together in recognition of the fact that these positions
21 are two sides of the same coin, sharing the same identifying characteristics but covering
22 opposing perspectives. A comprehensive definition of coercion as it pertains to human
23 trafficking should address both positions in order to reflect both sides of the human trafficking
24 equation: powerful traffickers and their vulnerable targets.
25

26 Paragraph (2) defines abuse or threatened abuse of the law or legal process, which is
27 included in subparagraph (5)(C) as a form of coercion. The language in paragraph (2) is taken
28 from the TVPA, which defines the phrase as it is used in 18 U.S.C. § 1589(c)(1) (2006) (method
29 of coercion in relation to forced labor) and § 1591(e)(1) (in relation to the “sex trafficking of
30 children or by force, fraud, or coercion”). Washington, D.C., law provides an almost identical
31 definition for the phrase, and at least twenty-five states include the phrase in human trafficking
32 statutes as a form of coercion or force without defining it. *See* ARIZ. REV. STAT. ANN. § 13-
33 1308(C)(1)(a)(iv) (West, Westlaw through 2011 First Reg. Sess. and Third Special Sess.) (as
34 mean of coercion in labor trafficking); ARIZ. REV. STAT. § 13-1307(E)(1)(a) (West, Westlaw
35 through 2011 First Reg. Sess. and Third Special Sess.) (as mean of coercion in sex trafficking);
36 D.C. CODE § 22-1831(1) (West, Westlaw through Sept. 13, 2011); *see also* COLO. REV. STAT.
37 § 18-3-503(1)(e) (West, Westlaw through 2011 Reg. Sess.); DEL. CODE ANN. tit. 11, §
38 787(b)(1)(c) (West, Westlaw through 2011 chs. 1-125 of 78 Laws); 9 GUAM CODE ANN. §
39 26.02(c)(2)(C) (West, Westlaw through Pub. Law 31-074); 720 ILL. COMP. STAT. 5/10-
40 9(a)(4)(C) (West, Westlaw through 2011 P.A. 97-530, with exception of P.A. 97-334, and 97-
41 463 of 2011 Reg. Sess.); IOWA CODE § 710A.1(3)(c) (West, Westlaw through 2011 Reg. Sess.);
42 KAN. STAT. ANN. § 21-5426(a)(3)(C) (West, Westlaw through 2011 Reg. Sess.); MICH. COMP.
43 LAWS § 750.462d (West, Westlaw through 2011 P.A. No. 209 Reg. Sess.); MISS. CODE ANN. §
44 97-3-54.4(e)(iii) (West, Westlaw through 2011 Re. Sess.); MO. REV. STAT. § 566.203 (West,
45 Westlaw through 2011 First Extraordinary Sess.); NEV. REV. STAT. ANN. § 200.463(1)(c) (West,
46 Westlaw through 2009 75th Reg. Sess. and 2010 26th Special Sess. and technical corrections from

2010 Leg. Counsel Bureau); N.J. STAT. § 2C:13-8(a)(1)(e) (West, Westlaw through 2011
legislation); N.M. STAT. ANN. § 30-52-1 (West, Westlaw through 2011 First Reg. Sess.); N.Y.
PENAL LAW § 230.34 (West, Westlaw through 2011 legislation, ch. 1-54 and 57-495); N.D.
CENT. CODE § 12.1-40-02 (West, Westlaw through 2011 Reg. Sess.); OKLA. STAT. tit. 21, § 748
(West, Westlaw through 2011 ch. 385 of First Reg. Sess.); OR. REV. STAT. § 163.263(1)(a)
(West, Westlaw through 2011 Reg. Sess. legislation effective through 9/29/11); 18 PA. CONST.
STAT. §3001(a)(3) (West, Westlaw through 2011 Acts 1 to 81); P.R. LAWS ANN. tit. 33 § 4781
(West, Westlaw through December 2008); R.I. GEN. LAWS § 11-67-2(a)(3) (West, Westlaw
through 2011 ch. 188 of Jan. Sess.); TENN. CODE ANN. § 39-13-307(a)(3) (West, Westlaw
through 2011 Reg. Sess.); UTAH CODE ANN. § 76-5-308 (West, Westlaw through 2011 Second
Special Sess.); VT. STAT. ANN. tit. 13, § 2651(2)(C) (West, Westlaw through 2011 First Sess.).
In addition, the Center for Women Policy Model Law provides “abuse or threatened abuse of the
law or legal process,” as a method of “force, fraud, or coercion” in defining the crime of human
trafficking. WOMEN POLICY STUDIES MODEL LAW The Crime of Human Trafficking. The
phrase is intended to include, for example, the use of a threat to report a person to a government
agency for the purpose of arrest or deportation to obtain that person’s acquiescence.

Subparagraph (5)(G) of this act broadens the definition of coercion to include the
exertion of control over another person’s access to a controlled substance. Traffickers gain
control over victims, particularly minors, by intentionally providing a controlled substance “to
foster dependence on both the drugs and the dealer.” Sharon W. Cooper, *The Sexual
Exploitation of Children and Youth: Redefining Victimization*, in *THE SEXUALIZATION OF
CHILDHOOD* 119 (Sharna Olfman, ed., 2009). At least nine states include the provision of a
controlled substance to a person, control over a person’s access to a controlled substance, or
some variation on the two in their definition of coercion as it relates to human trafficking. *See*
ALA. CODE § 13A-6-151(1)(f) (West, Westlaw through 2011 Reg. Sess.) (“Controlling a
person’s access to a controlled substance”); ARIZ. REV. STAT. § 13-1307(E)(1)(e) (West,
Westlaw through 2011 First Reg. Sess. and Third Special Session) (“Facilitating or controlling
another person’s access to a controlled substance,” as mean of coercion in sex trafficking); ARIZ.
REV. STAT. ANN. § 13-1308(C)(1)(a)(vii) (West, Westlaw through 2011 First Reg. Sess. and
Third Special Sess.) (same, as mean of coercion in labor trafficking); D.C. CODE § 22-1831(3)(F)
(West, Westlaw through Sept. 13, 2011) (“Facilitating or controlling a person’s access to an
addictive or controlled substance or restricting a person’s access to prescription medication”);
GA. CODE ANN. § 16-5-46(a)(1)(D) (West, Westlaw through 2011 Reg. and Special Sess.)
 (“Providing a controlled substance...to such person for the purpose of compelling such person to
engage in labor or sexual servitude against his or her will”; 9 GUAM CODE ANN. § 26.02(c)(2)(I)
(West, Westlaw through Pub. Law 31-074) (“facilitating or controlling a victim’s access to an
addictive controlled substances”); N.C. GEN. STAT. § 14-43.10(a)(1)(d) (West, Westlaw through
ch. 18) (“Providing a controlled substance...to a person”); 21 OKLA. STAT. § 748(A)(1)(e)
(West, Westlaw through 2011 ch. 385 of First Reg. Sess.) (“facilitating or controlling a person’s
access to any addictive or controlled substance other than for legal medical purposes”); VT.
STAT. ANN. tit. 13, § 2651(2)(E) (West, Westlaw through 2011 First Sess.) (“providing a drug,
including alcohol, to another person with the intent to impair the person’s judgment or maintain a
state of chemical dependence”). New York law addresses specific drugs commonly associated
with the crime of sex trafficking, providing that:

1 [a] person is guilty of sex trafficking if he or she intentionally advances or profits
2 from prostitution by:

3 1. unlawfully providing to a person who is patronized, with intent to impair said
4 person's judgment: (a) a narcotic drug or a narcotic preparation; (b) concentrated
5 cannabis as defined in paragraph (a) of subdivision four of section thirty-three
6 hundred two of the public health law; (c) methadone; or (d) gamma-
7 hydroxybutyrate (GHB) or flunitrazepan, also known as Rohypnol;...

8
9 N.Y. PENAL LAW § 230.24(1) (West, Westlaw through 2011 legislation, ch. 1-54 and 57-
10 495)

11
12 Subparagraph (5)(H) provides that the destruction or taking of, or threat to destroy or
13 take, another person's identification document as defined in subparagraph 101(9) is a form of
14 coercion. This inclusion emphasizes the important role that identification documents play in
15 self-determination and the coercive uses that identification documents may be put to by
16 traffickers to undermine another's self-determination. The language in this subsection mirrors
17 that used by at least twenty states. *See* ARIZ. REV. STAT. § 13-1307(E)(1)(b) (West, Westlaw
18 through 2011 First Reg. Sess. and Third Special Sess.) (as mean of coercion in sex trafficking);
19 ARIZ. REV. STAT. ANN. § 13-1308(C)(1)(a)(iii) (West, Westlaw through 2011 First Reg. Sess.
20 and Third Special Sess.) (as mean of coercion in labor trafficking); 20 COLO. REV. STAT. §18-3-
21 503(1)(a) (West, Westlaw through 2011 Reg. Sess.); DEL. CODE ANN. tit. 11, § 787(b)(1)(d)
22 (West, Westlaw through 2011 chs. 1-125 of 78 Laws); 9 GUAM CODE ANN. § 26.02(c)(2)(D)
23 (West, Westlaw through Pub. Law 31-074); ILL. COMP. STAT. 5/10-9(a)(4)(C) (West, Westlaw
24 through 2011 P.A. 97-530, with exception of P.A. 97-334, and 97-463 of 2011 Reg. Sess.); IOWA
25 CODE § 710A.1(3)(d) (West, Westlaw through 2011 legislation, ch. 1-54 and 57-495); KAN.
26 STAT. ANN. § 21-5426(a)(3)(E) (West, Westlaw through 2011 Reg. Sess.); MICH. COMP. LAWS §
27 750.462a (West, Westlaw through 2011 legislation, ch. 1-54 and 57-495); MISS. CODE ANN. §
28 97-3-54.4(e)(iv) (West, Westlaw through 2011 Reg. Sess.); NEV. REV. STAT. ANN. §
29 200.463(1)(d) (West, Westlaw through 2009 75th Reg. Sess. and 2010 26th Special Sess. and
30 technical corrections from 2010 Leg. Counsel Bureau); N.J. STAT. § 2C:13-8(a)(1)(d) (West,
31 Westlaw through 2011 legislation); N.M. STAT. ANN. § 30-52-1 (West, Westlaw through 2011
32 legislation, ch. 1-54 and 57-495); N.Y. PENAL LAW § 230.34 (West, Westlaw through 2011
33 legislation, ch. 1-54 and 57-495); N.D. CENT. CODE § 12.1-40-02 (West, Westlaw through 2011
34 legislation, ch. 1-54 and 57-495); OR. REV. STAT. § 163.263(1)(b) (West, Westlaw through 2011
35 Reg. Sess. legislation effective through 9/29/11); 18 PA. CONST. STAT. §3001(a)(4) (West,
36 Westlaw through 2011 Acts 1 to 81); TENN. CODE ANN. § 39-13-307(a)(4) (West, Westlaw
37 through 2011 Reg. Sess.); R.I. GEN. LAWS § 11-67-2(a)(4) (West, Westlaw through 2011 ch. 188
38 of Jan. Sess.); UTAH CODE ANN. § 76-5-308 (West, Westlaw through 2011 Second Special
39 Sess.); VT. STAT. ANN. tit. 13, § 2651(2)(D) (West, Westlaw through 2011 First Sess.).

40
41 Subparagraph (5)(I) provides that debt bondage is a form of coercion. The inclusion of
42 debt bondage here, in addition to its inclusion as a separate debt bondage crime, emphasizes the
43 frequency of its use in human trafficking crimes, and the power this means of coercion can have
44 over financially vulnerable individuals.

45
46 The definition for "deception" in paragraph (6) is derived from provisions contained in

1 the laws of Alabama, Georgia, and North Carolina. ALA. CODE § 13A-6-151(2) (West, Westlaw
2 through 2011 Reg. Sess.); GA. CODE ANN. § 16-5-46 (West, Westlaw through 2011 Reg. and
3 Special Sess.); N.C. GEN. STAT. § 14-43.10(a)(2) (West, Westlaw through ch. 18). The term is
4 intended to cover situations where, for example, a trafficker misrepresents a working situation to
5 a person in order to lure that person into a position of vulnerability. Subparagraph (B) requires
6 that the actor have no intent to deliver a promised benefit or performance of a service, and thus
7 evidence of failure to deliver or perform services standing alone cannot be sufficient to authorize
8 a conviction under this section.

9
10 Paragraphs (8), (11), and (12) define knowingly, purposely, and recklessly, respectively.
11 All are taken from the Model Penal Code. MODEL PENAL CODE § 2.02(2)(a), (b), and (c) (1962).
12 The Code also provides that the requirement of knowledge is established “if a person is aware of
13 a high probability of [the existence that a particular fact is an element of an offense], unless [the
14 actor] actually believes [the particular fact] does not exist. Thus, knowledge of a high
15 probability that an action is an element of an offense under this act satisfies a knowledge
16 requirement. *See* MODEL PENAL CODE § 2.02(7) (1962).

17
18 The definitions in paragraphs (10) and (14) for a person and a state, respectively, are both
19 standard definitions provided by ULC Drafting Rules. Drafting Rules for Uniform and Model
20 Acts, National Conference of Commissioners on Uniform State Law, 11, 12 (2006). Paragraph
21 (4), defining a business entity, matches the definition for a person provided in paragraph (10)
22 minus the individual.

23
24 Paragraph (13) provides a definition for serious harm that is identical to that provided by
25 the TVPA. 18 U.S.C. § 1589(c)(2) (2006) (as it relates to forced labor); § 1591(e)(4) (2006)
26 (same in relation to the “sex trafficking of children or by force, fraud, or coercion”).

27
28 Paragraph (14) defines sexual activity and is taken almost verbatim from Rhode Island’s
29 definition of “sex act” as provided in R.I. GEN. LAWS § 11-67-6 (2011)§ 11-67-6 (West, Westlaw
30 through 2011 ch. 188 of Jan. Sess.) (sex trafficking of a minor). The term is intended to include
31 commercial and non-commercial sexual activity. Paragraph (15) defines sexual services, and
32 provides a broader term that encompasses not only sexual activity but also other forms of
33 commercial activity that may be categorized in the realm of “sexual,” such as, for example,
34 erotic dancing.

35
36 Paragraph (17) defines a victim as it is used in this act to refer to a victim of human
37 trafficking. The language is modified from the definition of a “victim of trafficking” as provided
38 by the UNODC Model Law, which recommends linking the definition for a victim with the
39 national mechanism for identification. UNODC MODEL LAW art. 5(v).

40
41 **SECTION 103. PRESCRIBED CULPABILITY REQUIREMENT APPLIES TO**
42 **ALL MATERIAL ELEMENTS.** When the law defining an offense prescribes the kind of
43 culpability that is sufficient for the commission of an offense, without distinguishing among the

1 material elements thereof, such provision shall apply to all the material elements of the offense,
2 unless a contrary purpose plainly appears.

3 **Comment**

4 This section borrows language from the Model Penal Code. MODEL PENAL CODE §
5 2.02(4) (1962). As the note to the similar Model Penal Code provision explains, it addresses “a
6 pervasive ambiguity in definitions of offenses that include a culpability requirement, namely,
7 that it is often difficult to determine how many of the elements of the offense the requirement is
8 meant to modify.” MODEL PENAL CODE § 2.02(4) explanatory note (1962). In this act, where a
9 criminal offense includes a culpability requirement or requisite mental state, such as knowingly
10 or recklessly, that culpability requirement applies to every element of that offense, unless the text
11 explicitly indicates otherwise. The requirement of culpability is based upon the theory that the
12 purpose of the criminal law is to punish those with a criminal mind or criminal intent.
13

1 **ARTICLE 2**

2 **CRIMES AND REMEDIES**

3 **SECTION 201. HUMAN TRAFFICKING.**

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

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

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

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

9 (b) A person who violates this section is guilty of a crime and upon conviction shall be
10 subject to the same penalty as provided for the offense that resulted from the recruitment,
11 transportation, transfer, harboring, receipt, provision, obtainment, isolation, maintenance, or
12 enticement, or, if multiple offenses result, shall be subject to the same penalty as the resulting
13 offense with the highest penalty.

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

17
18 **Comment**

19
20 While exploitation in the forms of forced labor or sexual servitude is the heart of the
21 crime of human trafficking and a crime in itself, many traffickers treat their victims like
22 commodities to be moved around for the purposes of exploiting them. This section criminalizes
23 the process by which traffickers acquire or retain people for the purpose of exploiting them for
24 labor, services, or commercial sex. The list of verbs in subsection (a) is meant to encompass the
25 many tactics traffickers use in labor and sex trafficking. A person does not have to move an
26 individual across national, state, county, city, or any other border to violate this section. The last
27 element of the offense requires that the actions be for the purpose of subjecting a person to
28 forced labor, services, or commercial sexual servitude, as criminalized by Sections 202, 203, and
29 204. The offender must know or be in reckless disregard that the action is for such a purpose to
30 be found in violation of this section. However, to violate this section, the offender need not be
31 the person who actually exploits the labor or services of the victim in violation of Sections 202,
32 203, or 204; recruiting, transporting, transferring, harboring, receiving, providing, obtaining,
33 isolating, maintaining, or enticing a person alone is a violation of this section.

1
2 I. *This List of Verbs Covers the Full Range of Tactics Used by Traffickers.*
3

4 This comprehensive list of verbs should be used to describe human trafficking so that the
5 full range of tactics used by traffickers is criminalized. The list of verbs in this provision is
6 intended to cover the process of acquiring or retaining persons for both labor and sex trafficking.
7 The importance of having the multiple verbs, each one independently fulfilling the first element
8 of trafficking, is demonstrated in *U.S. v. Brooks*. 610 F.3d 1186 (9th Cir. 2010). In *Brooks*, the
9 defendants argued that there was no evidence that they recruited or enticed the minor victims.
10 *Id.* at 1196-97. The court rejected these arguments since the record demonstrated that the
11 defendants instead harbored and transported the minors, therefore fulfilling that element of
12 trafficking. *Id.*
13

14 Though multiple verbs may apply to a particular human trafficking case, *see, e.g., id.*,
15 they each describe a particular human trafficking tactic. The following is a brief, but not
16 exclusive, description of how these verbs might apply in a particular human trafficking case.
17

18 “Recruiting” applies to the situation where there is a short time period between the
19 trafficker’s initial interaction with the victim and the victim’s participation in forced labor,
20 services, or commercial sexual activity. For example, traffickers might recruit their victims by
21 making false promises about a job, and then force them into labor or services for little or no pay
22 once they have control over the victim. In the case *United States v. Askarkhodjaev*, the
23 defendant recruited foreign national workers with “false promises related to the terms, conditions
24 and nature of their employment.” Press Release, Dep’t of Justice, Uzbek Man Pleads Guilty to
25 Charges for Involvement in a Racketeering Enterprise That Engaged in Forced Labor (Oct. 21,
26 2010), <http://www.justice.gov/opa/pr/2010/October/10-crt-1186.html>.
27

28 While “recruiting” can also be used for commercial sexual exploitation, “enticing” is a
29 common tactic used by traffickers to lure victims for commercial sexual exploitation. For
30 example, a common method of luring minors into sex services is for the trafficker to feign a
31 romantic relationship with the minor over a period of time to build a rapport with the victim.
32 SHARED HOPE INTERNATIONAL, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING:
33 AMERICA’S PROSTITUTED CHILDREN, 35, 37-40 (2009). The trafficker will then coerce the
34 minor, oftentimes violently, into becoming a prostitute or providing other commercial sex
35 services. *Id.* “Enticing” describes this long-term method. For example, in a case of sex
36 trafficking where women were forced into prostitution, the defendant pursued a young woman
37 romantically to persuade her to travel from Mexico to Atlanta before making her engage in
38 prostitution. Press Release, Dep’t of Justice, Member of Human Trafficking Ring Pleads Guilty
39 to Sex Trafficking Charges (Dec. 18, 2008), [http://www.justice.gov/opa/pr/2008/December/08-](http://www.justice.gov/opa/pr/2008/December/08-crt-1130.html)
40 [crt-1130.html](http://www.justice.gov/opa/pr/2008/December/08-crt-1130.html).
41

42 Persons on the receiving end of a transfer of an individual for forced labor or sexual
43 servitude are covered by this section. Their actions are criminalized by the verbs “receive” and
44 “obtain.”
45

46 Where a trafficker has custody of or exerts control over a person, the trafficker could

1 “provide” a victim to a third party for the purpose of exploiting the victim while maintaining
2 possession of or control over the victim. For example, parents could “provide” their child to a
3 third party to prostitute the child. Similarly a trafficker could “provide” individuals to a third
4 party’s factory where the individuals would be exploited for their labor. The trafficker could
5 also “transfer” control of an individual to a third party for the purposes of exploitation.

6
7 “Transporting” or moving an individual from one place to another for the purposes of
8 exploitation is criminalized. Such transporting might occur when a trafficker busses his victims
9 to and from a farm where they are forced to work, or when a sex trafficker moves his victim
10 through a multistate or city circuit, which is a common way to elude law enforcement. SHARED
11 HOPE INTERNATIONAL, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING:
12 AMERICA’S PROSTITUTED CHILDREN, 26-27 (2009),
13 <http://www.sharedhope.org/Resources/DEMAND.aspx>.

14
15 “Harboring” involves the physical containment of a victim. In *Brooks*, hotel receipts
16 were evidence that the defendant “harbored the girls in rented hotel rooms.” *Brooks*, 610 F.3d at
17 1197. “Isolating” a victim is a common tactic that is similar to harboring; however, while a
18 trafficker might not physically contain the victim so as to harbor the victim, the trafficker might
19 socially isolate the victim from people outside the trafficking situation to prevent the victim from
20 seeking help and to make the victim dependent on the trafficker. *See, e.g., United States v.*
21 *Udeozor*, 515 F.3d 260, 264 (4th Cir. 2008) (trafficker warned the victim that if she spoke to
22 anyone about being sexually assaulted, he would tell her parents she was a prostitute); *United*
23 *States v. Calimlim*, 538 F.3d 706, 709 (7th Cir. 2008) (domestic servant was only allowed to
24 walk to church on back paths and was not allowed to attend the same church many times in a
25 row).

26
27 “Maintaining” a victim refers to the situation where a trafficker may not have initiated the
28 victim into the industry but has maintained them in an industry. For example, a woman may
29 have voluntarily worked as a prostitute for a period of time, but then a trafficker becomes her
30 pimp, using coercion to keep her in prostitution and taking the money she makes, thereby
31 maintaining her for forced commercial sexual exploitation. The victim’s participation in the
32 activity at issue may have begun voluntarily but became coerced when the trafficker became
33 involved.

34 35 II. *Current Law Generally, but Inconsistently, Criminalizes this Aspect of Human Trafficking.*

36
37 International, federal, and many current state laws address the process of human
38 trafficking. Forty-six states have sex trafficking crimes, and forty-nine states have labor
39 trafficking crimes that address the process of trafficking. However, there is significant disparity
40 among these state laws, and most of these laws do not criminalize the full range of verbs
41 described in this provision.

42
43 Five of the verbs describing this movement--recruit, transport, transfer, harbor, receive--
44 are taken from the Trafficking Protocol. *See* Trafficking Protocol, *supra*, at art. 3(a). The TVPA
45 adds the verbs “provide” and “obtain” to those used by the Trafficking Protocol. 18 U.S.C. §§
46 1590(a), 1591(a)(1) (2006). This section incorporates the verbs used by both international law

1 and federal law and adds three more: entice, maintain, and isolate.

2
3 Several existing state statutes use some or all of these verbs to describe the movement
4 element of human trafficking crimes. Twenty-three states use the same verbs as the TVPA
5 (recruit, harbor, transport, provide, or obtain) and add the verb entice. ARIZ. REV. STAT. ANN. §§
6 13-1307, -1308 (West, Westlaw through 2011 First Reg. Sess. and Third Special Sess.); DEL.
7 CODE ANN. tit. 11, § 787(b)(3) (West, Westlaw through 2011 chs. 1-125 of 78 Laws); GA. CODE
8 ANN. § 16-5-46(b), -46(c) (West, Westlaw through 2011 chs. 1-125 of 78 Laws); 720 ILL. COMP.
9 STAT. 5/10-9(d) (West, Westlaw through 2011 chs. 1-125 of 78 Laws); KY. REV. STAT. ANN. §
10 529.110(1)(b) (West, Westlaw through 2011 Legis.); H. 3808, 187th Gen. Court, Reg. Sess. (Ma.
11 2011); MISS. CODE ANN. § 97-3-54.1(a) (West, Westlaw through 2011 Reg. Sess.); MONT. CODE
12 ANN. § 45-5-306(1)(a) (West, Westlaw through 2011 Laws); NEB. REV. STAT. ANN. §28-831(3)
13 (West, Westlaw through the 102d Leg. First Reg. Sess. 2011); NEV. REV. STAT. ANN. § 200.464
14 (West, Westlaw through 2009 75th Reg. Sess. and 2010 26th Special Sess. and technical
15 corrections from 2010 Leg. Counsel Bureau); N.C. GEN. STAT. § 14-43.11 (West, Westlaw
16 through ch. 18); N. MAR. I. CODE § 1503 (2005); OR. REV. STAT. § 163.266(1)(a) (West, Westlaw
17 through 2011 Reg. Sess. Legis. effective through 9/29/11); 18 PA. CONS. STAT. § 3001(5) (West,
18 Westlaw through 2011 Reg. Sess. Legis. effective through 9/29/11); R.I. GEN. LAWS § 11-67-3
19 (West, Westlaw through 2011 ch. 188 of Jan. Sess.); S.C. CODE ANN. § 16-3-930 (West, Westlaw
20 through 2011 Reg. Sess. Legis. effective through 9/29/11); TENN. CODE ANN. § 39-13-308, -309
21 (West, Westlaw through 2011 Reg. Sess.); TEX. PENAL CODE ANN. § 20A.01(4) (West, Westlaw
22 through 2011 Reg. Sess. and 1st Called Sess. of the 82d Legis.); H.153, 2011 Leg (Vt. 2011);
23 WIS. STAT. § 948.051 (West, Westlaw through 2011 Acts 31, 33-36, 38-44).

24
25 Four states use only the verbs in the TVPA's definition of trafficking: recruit, harbor,
26 transport, provide, or obtain. IDAHO CODE ANN. § 18-8602 (West, Westlaw through 2011 ch. 1-
27 335); KAN. STAT. ANN. § 21-3446(a)(1) (West, Westlaw through 2011 First Extraordinary Sess.);
28 MO. REV. STAT. § 566.206 (West, Westlaw through 2011 First Extraordinary Sess.); S.D.
29 CODIFIED LAWS § 22-49-1 (West, Westlaw through 2011 Special Sess.). Other states use various
30 combinations of these verbs and other similar verbs. ARK. CODE ANN. § 5-11-108(b)(1) (West,
31 Westlaw through end of the 2011 Reg. Sess.) ("recruits, harbors, transports, or obtains"); UTAH
32 CODE ANN. § 76-5-308 (West, Westlaw through 2011 Second Special Sess.) (same); ALA. CODE
33 § 13A-6-153 (a)(2) (West, Westlaw through 2011 Reg. Sess.) ("recruits, entices, solicits,
34 induces, harbors, transports, holds, restrains, provides, maintains, subjects, or obtains"); D.C.
35 CODE § 22-1833 (West, Westlaw through Sept. 13, 2011) ("recruit, entice, harbor, transport,
36 provide, obtain, or maintain"); FLA. STAT. § 787.06(2)(c) (West, Westlaw through 2011 ch. 236)
37 ("transporting, soliciting, recruiting, harboring, providing, or obtaining"); IND. CODE § 35-42-
38 3.5-1(a) (West, Westlaw through 2011 Reg. Sess.) ("recruits, harbors, or transports"); IOWA
39 CODE § 710A.1(4) (West, Westlaw through 2011 Reg. Sess.) ("recruit, harbor, transport, supply
40 provisions, or obtain"); LA. REV. STAT. ANN. § 14:46.2(A)(1) (West, Westlaw through 2011 1st
41 Extraordinary Sess.) ("recruit, harbor, transport, provide, solicit, obtain, or maintain"); MICH.
42 COMP. LAWS § 750.462j(2) (West, Westlaw through 2011 P.A. No. 209 Reg. Sess.) ("recruit,
43 harbor, transport, provide, or obtain"); MINN. STAT. § 609.21(5) (West, Westlaw through 2011
44 Reg. Sess.) ("recruitment, transportation, transfer, harboring, enticement, provision, obtaining,
45 or receipt"); N.H. REV. STAT. ANN. § 633:7(II) (West, Westlaw through Chapter 269 of the 2011
46 Reg. Sess.) ("recruit, harbor, transport, provide, obtain, or otherwise make available"); N.J.

1 STAT. ANN. § 2C:13-8(a)(1) (West, Westlaw through 2011 legislation) (“holds, recruits, lures,
2 entices, harbors; transports, provides or obtains”); N.M. STAT. ANN. § 30-52-1 (West, Westlaw
3 through 2011 First Reg. Sess.) (“recruiting, soliciting, enticing, transporting or obtaining”); N.Y.
4 PENAL LAW § 135.35 (West, Westlaw through 2011 legislation, ch. 1-54 and 57-495) (“recruits,
5 entices, harbors, or transports”); N.D. CENT. CODE, § 12.1-40-01 (West, Westlaw through 2011
6 Reg. Sess.) (“Promotes, recruits, entices, harbors, transports, provides, or obtains”); OHIO REV.
7 CODE ANN. § 2905.32(A) (West, Westlaw through 2011 Files 1 to 27, 29 to 47, and 49 of the
8 129th GA (2011-2012), apv. by 9/26/2011, and filed with the Sec. of State by 9/26/2011)
9 (“recruit, lure, entice, isolate, harbor, transport, provide, obtain, or maintain”); OKLA. STAT. tit.
10 21, § 748(A)(4) (West, Westlaw through 2011 ch. 385 of First Reg. Sess.) (“recruiting, enticing,
11 harboring, maintaining, transporting providing or obtaining”); WASH. REV. CODE § 9A.40.100
12 (West, Westlaw through 2011 Leg.) (“Recruits, harbors, transports, transfers, provides, obtains,
13 or receives”).
14

15 Two states include the verb “isolate” in their description of human trafficking. 9 GUAM
16 CODE ANN. § 26.02(a)(1), (b)(1) (West, Westlaw through Pub. Law 31-074) (“recruits, entices,
17 solicits, isolates, harbors, transports, provides, or obtains”); OHIO REV. CODE ANN. § 2905.32(A)
18 (West, Westlaw through 2011 Files 1 to 27, 29 to 47, and 49 of the 129th GA (2011-2012), apv.
19 by 9/26/2011, and filed with the Sec. of State by 9/26/2011) (“recruit, lure, entice, isolate,
20 harbor, transport, provide, obtain, or maintain”). Four states include the verb “maintain.” ALA.
21 CODE § 13A-6-153 (a)(2) (West, Westlaw through 2011 Reg. Sess.) (“recruits, entices, solicits,
22 induces, harbors, transports, holds, restrains, provides, maintains, subjects, or obtains”); D.C.
23 CODE § 22-1833 (West, Westlaw through Sept. 13, 2011) (“recruit, entice, harbor, transport,
24 provide, obtain, or maintain”); OHIO REV. CODE ANN. § 2905.32(A) (West, Westlaw through
25 2011 Files 1 to 27, 29 to 47, and 49 of the 129th GA (2011-2012), apv. by 9/26/2011, and filed
26 with the Sec. of State by 9/26/2011) (“recruit, lure, entice, isolate, harbor, transport, provide,
27 obtain, or maintain”); OKLA. STAT. tit. 21, § 748(A)(4) (West, Westlaw through 2011 ch. 385 of
28 First Reg. Sess.) (“recruiting, enticing, harboring, maintaining, transporting providing or
29 obtaining”).
30

31 The legislative note to this section directs states to add human trafficking as a predicate
32 offense for racketeering. Some states, like Connecticut, have already incorporated human
33 trafficking into their racketeering provisions. *See, e.g.*, CONN. GEN. STAT. § 53-394 (West,
34 Westlaw through 2011 Jan. Reg. Sess.) (“‘Racketeering activity’ means to commit, to attempt to
35 commit, to conspire to commit, or to intentionally aid, solicit, coerce or intimidate another
36 person to commit any crime which, at the time of its commission, was a felony chargeable by
37 indictment or information under the following provisions . . . relating to trafficking in persons.”).
38 The federal government charged forced labor trafficking as part of RICO for the first time in the
39 case *United States v. Askarkhodjaev*, et. al, resulting in guilty pleas for four defendants. Press
40 Release, Dep’t of Justice, Uzbek Man Pleads Guilty to Charges for Involvement in a
41 Racketeering Enterprise That Engaged in Forced Labor, *supra*. Human trafficking should be
42 added to racketeering statutes so all aspects of the crime and the many players in human
43 trafficking can be fully prosecuted.
44

45 III. Human Trafficking Distinguished from Migrant Smuggling 46

Human trafficking is distinct from the crime of migrant smuggling. Migrant smuggling is the movement of persons across national borders, accomplished with the consent of the migrant. U.S. Dept. of Health and Human Services, Human Trafficking Fact Sheet (2011), http://www.acf.hhs.gov/trafficking/about/fact_human.pdf. In contrast, “victims are coerced into trafficking,” and “[i]f victims do consent, that consent is rendered meaningless by the actions of the traffickers.” *Id.* This distinction is important so law enforcement officers can identify when a person brought into the country illegally is either a victim or a criminal and therefore correctly identify victims of human trafficking crimes. See POLARIS MODEL LAW Commentary at § II Training (c). A victim of human trafficking who has been moved across national borders for the purpose of forced labor or forced sexual exploitation through coercion, force, or fraud has not committed the crime of migrant smuggling.

IV. *There Are Significant Benefits to Having a Uniform Definition of This Aspect of Human Trafficking.*

Because human trafficking often involves transporting victims across state lines, a consistent definition of this aspect of the crime will facilitate coordination among law enforcement in different states. A consistent definition will also lead to interpretive case law that can be used from state to state to guide prosecutions, which will be useful especially where a state has not yet prosecuted a case under this provision. Lastly, a consistent definition will facilitate better use of data, so that crimes and related data are reported consistently and data about the different methods used and how often they are used can be shared among jurisdiction.

SECTION 202. FORCED LABOR AND SERVITUDE.

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

(b) An individual who violates this section is guilty of a crime and upon conviction may be imprisoned not more than [20] years, fined not more than [\$250,000], or both.

Comment

I. This Provision Criminalizes Using People for Their Labor Without Their Consent, Which Often Involves, but Does Not Require, Violence.

Subsection 202(a) criminalizes the exploitation of a person’s labor, which is the heart of labor trafficking. Forced labor “is practiced in a wide range of industrial sectors, including domestic service, the sex industry, food service, factory production, and agriculture.” Hidden Slaves, *supra*, at 5. A study of newspaper articles from 1998 to 2003 revealed 131 reported cases of forced labor in the United States involving 19,254 male, female, and child victims. *Id.* Forced labor incidents occur at a high rate in the domestic service, and agricultural industries because employment in these industries is often excluded from regulatory schemes. See, e.g., *United States v. Sabhnani*, 599 F.3d 215, 244 (2d Cir. 2010) *cert. denied*, 131 S. Ct. 1000 (2011)

1 (conviction for forced labor based on having two housekeepers); *United States v. Djoumessi*, 538
2 F.3d 547 (6th Cir. 2008) (conviction for forced labor based on bringing immigrant into United
3 States to be a housekeeper). Indicators of forced labor include: an environment where
4 employees do not feel free to leave their job; confiscation of employees' travel or identification
5 documents; employee fear of retaliation; employer threats of and employee fear of police or
6 immigration authority action; and locks designed to keep people in a place of employment. *Id.* at
7 31, 44. Training of law enforcement officers and labor inspectors should include information
8 about employment practices in these susceptible industries and information about forced labor
9 indicators that might be specific to the state's industries, so incidents of forced labor can be
10 identified and further exploitation can be prevented.

11
12 An offense is committed under this section even if a victim was not physically moved or
13 if control over the victim was not transferred from one person to another. Additionally, if one
14 person subjects a victim to forced labor, but a different person trafficked the victim for the
15 purpose of that forced labor, the person who subjects the victim may be prosecuted under
16 subsection 202(a). See *Sabhnani*, 599 F.3d at 244 (affirming conviction for forced labor in
17 violation of 18 U.S.C. § 1589(a) where there was no violation of 18 U.S.C. § 1590, the federal
18 trafficking statute).

19
20 Though violence is not required to commit forced labor, it often accompanies the crime,
21 making forced labor an extremely egregious and harmful practice. For example, Kil Soo Lee
22 operated a garment factory in American Samoa and was ultimately convicted of involuntary
23 servitude under federal law. *United States v. Kil Soo Lee*, 472 F.3d 638 (9th Cir. 2006). Guards
24 at the factory physically abused the workers, beating one woman to the point where she lost her
25 eye. *Id.* at 640. One worker described the environment as "[like] watching a film where the
26 people are being brutally beaten to the point of like massacre." *Id.*

27 28 II. *International Law Prohibits Forced Labor and Approximately Half of the States Separately* 29 *Criminalize Forced Labor.*

30
31 Forced labor is included in the Trafficking Protocol's definition of prohibited
32 exploitation. Trafficking Protocol, *supra*, at art. 3(a). However, the Trafficking Protocol, in
33 contrast to the TVPA and this act, only criminalizes trafficking for forced labor and does not
34 address forced labor absent the trafficking element. The International Covenant on Civil and
35 Political Rights, to which the United States is a party, states that "[n]o one shall be required to
36 perform forced or compulsory labour." ICCPR, *supra*, at art 8(3)(a). This section's criminal
37 prohibition of forced labor implements these international obligations and ensures the right of all
38 persons to be free from forced labor.

39
40 This provision closely parallels the crime of forced labor created by the TVPA. See 18
41 U.S.C. § 1589(a) (2006). As punishment for the crime of forced labor, the TVPA establishes a
42 maximum of twenty years imprisonment. 18 U.S.C. § 1589(d) (2006). Additionally or
43 alternatively, an individual may be fined up to \$250,000, except where the defendant "derives
44 pecuniary gain from the offense, or . . . the offense results in pecuniary loss to a person other
45 than the defendant," in which case "the defendant may be fined not more than the greater of
46 twice the gross gain or twice the gross loss." 18 U.S.C. § 3571(b) (2006). An organization may

1 be fined up to \$500,000. 18 U.S.C. § 3571(c) (2006). The penalty for committing forced labor
2 under this act is the same as the penalty under the TVPA.
3

4 Twenty-five states currently have specific criminal provisions for forced labor or
5 servitude as part of their human trafficking statutes, but distinct from the movement aspect of
6 human trafficking. *See* ARIZ. REV. STAT. ANN. § 13-1306 (West, Westlaw through 2011 First
7 Reg. Sess. and Third Special Sess.) (“it is unlawful for a person to knowingly obtain the labor or
8 services of another person by doing any of the following: 1. Causing or threatening to cause
9 bodily injury to that person or another person. 2. Restraining or threatening to restrain that
10 person or another person without lawful authority and against that person's will. 3. Withholding
11 that person's governmental records, identifying information or other personal property.”); COLO.
12 REV. STAT. 18-3-503 (West, Westlaw through 2011 Reg. Sess.) (“coercion of involuntary
13 servitude is a class 6 felony.”); CONN. GEN. STAT. § 53a-192a (West, Westlaw through 2011 Jan.
14 Reg. Sess.) (prohibiting committing coercion where the other person is compelled or induced to
15 provide labor or services); D.C. CODE § 22-1832 (West, Westlaw through Sept. 13, 2011) (“it is
16 unlawful for an individual or a business knowingly to use coercion to cause a person to provide
17 labor or services.”); DEL. CODE ANN. tit. 11, § 787(b)(1) (West, Westlaw through 2011 chs. 1-
18 125 of 78 Laws) (“a person is guilty of holding another person in involuntary servitude when the
19 person knowingly subjects, or attempts to subject, the person to forced labor or services.”); GA.
20 CODE ANN. § 16-5-46(b) (West, Westlaw through 2011 Reg. and Special Sess.) (“a person
21 commits the offense of trafficking a person for labor servitude when that person knowingly
22 subjects another person to or maintains another person in labor servitude”); 9 GUAM CODE ANN.
23 § 26.02(c) (West, Westlaw through Pub. Law 31-074) (prohibiting subjecting a person to labor
24 or services through various means of force and coercion); 720 ILL. COMP. STAT. 5/10-9 (West,
25 Westlaw through 2011 P.A. 97-530, with exception of P.A. 97-333, 97-334, and 97-463 of 2011
26 Reg. Sess.) (“A person commits the offense of involuntary servitude when he or she knowingly
27 subjects . . . another person to forced labor or services” and employs one of various forms of
28 force and coercion); KAN. STAT. ANN. § 21-3446(a)(3) (West, Westlaw through 2011 Reg. Sess.)
29 (prohibiting “coercing employment by obtaining or maintaining labor or services that are
30 performed or provided by another person through” one of various forms of force and coercion);
31 MICH. COMP. LAWS § 750.462b-462.c (West, Westlaw through 2011 P.A. No. 209 Reg. Sess.)
32 (“A person shall not knowingly subject or attempt to subject another person to forced labor or
33 services by causing or threatening to cause physical harm to another person.”); MISS. CODE ANN.
34 § 97-3-54.1 (West, Westlaw through 2011 Reg. Sess.) (“A person who knowingly subjects, or
35 attempts to subject, another person to forced labor or services shall be guilty of the crime of
36 procuring involuntary servitude.”); MO. REV. STAT. § 566.203 (West, Westlaw through 2011
37 First Extraordinary Sess.) (“A person commits the crime of abusing an individual through forced
38 labor by knowingly providing or obtaining the labor or services of a person: (1) By threats of
39 serious harm or physical restraint against such person or another person; (2) By means of any
40 scheme, plan, or pattern of behavior intended to cause such person to believe that, if the person
41 does not perform the labor services, the person or another person will suffer substantial bodily
42 harm or physical restraint; or (3) By means of the abuse or threatened abuse of the law or the
43 legal process.”); MONT. CODE ANN. § 45-5-305 (West, Westlaw through 2011 Laws) (“A person
44 commits the offense of subjecting another to involuntary servitude if the person purposely or
45 knowingly obtains or maintains the forced labor or services of another person by” any one of
46 various forms of force and coercion); NEB. REV. STAT. ANN. §28-831 (West, Westlaw through

the 102d Leg. First Reg. Sess. 2011) (“No person shall knowingly subject or attempt to subject another person to forced labor or services.”); NEV. REV. STAT. ANN. § 200.463 (West, Westlaw through 2009 75th Reg. Sess. and 2010 26th Special Sess. and technical corrections from 2010 Leg. Counsel Bureau) (“A person who knowingly subjects, or attempts to subject, another person to forced labor or services by” any one of various forms of force or coercion “is guilty of holding a person in involuntary servitude.”); N.H. REV. STAT. ANN. § 633:7 (West, Westlaw through Chapter 269 of the 2011 Reg. Sess.) (“It is a class A felony to knowingly subject a person to involuntary servitude, where the compulsion is accomplished by” any one of various forms of force or coercion.); N.Y. PENAL LAW § 135.35 (West, Westlaw through 2011 legislation, ch. 1-54 and 57-495) (“A person is guilty of labor trafficking if he or she compels or induces another to engage in labor” by any one of various forms of force or coercion.); N.C. GEN. STAT. § 14-43.12 (West, Westlaw through ch. 18) (“A person commits the offense of involuntary servitude when that person knowingly and willfully holds another in involuntary servitude.”); 6 N. MAR. I. CODE § 1502 (2005) (“A person commits the crime of involuntary servitude if the person recklessly, knowingly, or intentionally subjects, or attempts to subject, another person to forced labor or services without due process of law.”); OR. REV. STAT. § 163.263 (West, Westlaw through 2011 Reg. Sess. Legis. effective through 9/29/11) (“A person commits the crime of subjecting another person to involuntary servitude in the second degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by:” any one of various forms of force or coercion.); R.I. GEN. LAWS § 11-67-2 (West, Westlaw through 2011 ch. 188 of Jan. Sess.) (making it a crime to “knowingly . . . subject another person to forced labor” by using any one of various forms of force or coercion.); S.C. CODE ANN. § 16-3-930 (West, Westlaw through End of 2010 Reg. Sess.) (“A person who knowingly subjects another person to forced labor or services . . . guilty of a felony”); UTAH CODE ANN. § 76-5-301 (West, Westlaw through 2011 Second Special Sess.) (“An actor commits kidnapping if the actor intentionally or knowingly, without authority of law, and against the will of the victim . . . holds the victim in involuntary servitude.”); VA. CODE ANN. § 18.2-356 (West, Westlaw through End of 2011 Reg. Sess. and includes 2011 Sp. S. I, c. 1.) (“Any person who receives any money or other valuable thing for or on account of . . . causing any person to engage in forced labor or services . . . shall be guilty of a Class 4 felony.”); H.153, 2011 Leg (Vt. 2011) (“No person shall knowingly . . . subject a person to labor servitude”).

III. *Coercion, Deception, or Fraud Constitutes the Element of Force*

The use of coercion, deception, or fraud is the element that makes the labor or services “forced.” These terms embody the recognition that physical force or injury is not required to exploit a person’s labor or services. They should be interpreted broadly so as to prevent and punish the exploitation of people by using their labor without their full, freely-given, and fully-informed consent. *See* Comment to Section 101. The term “compel” is used in the ordinary sense of the word and further embodies the idea that the crime of forced labor involves taking labor from a person without their full, freely-given, and fully-informed consent.

Several state laws use coercion, deception, or fraud as independently fulfilling the element of force in the crime of forced labor or servitude. *See, e.g.,* D.C. CODE § 22-1831, -1832 (West, Westlaw through Sept 13, 2011) (defining coercion as deception or fraud); FLA. STAT. § 787.06(b) (West, Westlaw through 2011 ch. 236) (defining forced labor or services as “labor or

services obtained from a person by . . . fraud or coercion”); LA. REV. STAT. ANN. § 14:46.2 (West, Westlaw through 2011 1st Extraordinary Sess.) (“It shall be unlawful: [f]or any person to . . . maintain the use of another person through fraud, force, or coercion to provide services or labor.”); MICH. COMP. LAWS § 750.462(j) (West, Westlaw through 2011 P.A. No. 209 Reg. Sess.) (“A person shall not knowingly provide or obtain the labor or services of another person by force, fraud, or coercion” and defining fraud as a “false or deceptive offer of employment or marriage.”); WIS. STAT. § 940.302(2)(A) (West, Westlaw through 2011 Acts 31, 33-36, 38-44) (criminalizing trafficking accomplished by fraud or deception).

SECTION 203. SEXUAL SERVITUDE.

(a) A person may not knowingly or recklessly use coercion, deception, or fraud to compel an individual 18 years or older to provide commercial sexual services.

(b) An individual who violates this section is guilty of a crime and upon conviction shall be imprisoned at least [15] years up to [any period of years or life], fined not more than [\$250,000], or both.

Comment

Section 203 criminalizes forced commercial sexual exploitation of adults, which is the heart of sex trafficking. One study surveyed news reports and service providers and found that, out of 131 cases, more forced labor occurred in the prostitution sector than in any other sector. Hidden Slaves, at 14.

This provision follows the language of Section 202, but is specific to the use of forced sexual services. Commercial sexual services are defined broadly to include not only sexual activities that involve penetration or touching, but also those that involve erotic dancing or pornography. *See* paragraphs 101(14), (15). Whenever a person forces, coerces, or deceives another person to undertake any commercial activity of a sexual nature, that person violates Section 203(a).

This section applies only to adults, whereas Section 204 criminalizes the sexual exploitation of minors. The primary distinction between the sections is that use of coercion, deception, or fraud is an element of the crime of subjecting an adult to commercial sex acts, whereas it is not an element of the crime of commercial sexual servitude of children. This distinction exists because adults have the ability to consent to these types of sexual activity absent coercion, deception, or fraud, although in some cases, the sexual activity will be illegal. Children, however, do not have the psychological or emotional maturity to consent to sex, and often cannot legally consent to sex. This distinction mirrors the difference between trafficking of adults and of children in the Trafficking Protocol. *See* Trafficking Protocol, *supra*, at art. 3(c) (“The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in person’ even if this does not involve [threat or use

of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or
 of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the
 consent of a person having control over another person]). Similarly, some existing state statutes
 criminalize sex trafficking or exploitation of a child absent any coercion, deception, or fraud, but
 retain the element of coercion where the victim is an adult. *Compare, e.g.*, LA. REV. STAT. ANN.
 § 14:46.2 (West, Westlaw through 2011 1st Extraordinary Sess.) (defining human trafficking for
 services, including commercial sexual activity, as involving fraud, force, or coercion), *with* LA.
 REV. STAT. ANN. § 14:46.3 (prohibiting trafficking of children for sexual purposes absent any
 element of fraud, force, or coercion); 720 ILL. COMP. STAT. 5/10-9(b), -(a)8 (West, Westlaw
 through 2011 P.A. 97-530, with exception of P.A. 97-333, 97-334, and 97-463 of 2011 Reg.
 Sess.) (“A person commits the offense of involuntary servitude when he or she knowingly
 subjects, attempts to subject, or engages in a conspiracy to subject another person to [commercial
 sexual activity or sexually-explicit performances] and: (1) causes or threatens to cause physical
 harm to any person; (2) physically restrains or threatens to physically restrain another person; (3)
 abuses or threatens to abuse the law or legal process; (4) knowingly destroys, conceals, removes,
 confiscates, or possesses any actual or purported passport or other immigration document, or any
 other actual or purported government identification document, of another person; or (5) uses
 intimidation, or uses or threatens to cause financial harm to or exerts financial control over any
 person.”), *with* 720 ILL. COMP. STAT. 5/10-9(c) (“A person commits the offense of involuntary
 sexual servitude of a minor when he or she knowingly recruits, entices, harbors, transports,
 provides, or obtains by any means, or attempts to recruit, entice, harbor, provide, or obtain by
 any means, another person under 18 years of age, knowing that the minor will engage in
 commercial sexual activity, a sexually-explicit performance, or the production of pornography,
 or causes or attempts to cause a minor to engage in one or more of those activities and . . . there
 is no overt force or threat”); D.C. CODE § 22-1833 (West, Westlaw through Sept. 13, 2011) (“It
 is unlawful for an individual . . . to . . . maintain by any means a person, knowing, or in reckless
 disregard of the fact that: (1) Coercion will be used or is being used to cause the person to . . .
 engage in a commercial sex act”), *with* D.C. CODE § 22-1834 (“It is unlawful for an individual or
 a business knowingly to recruit, entice, harbor, transport, provide, obtain, or maintain by any
 means a person who will be caused as a result to engage in a commercial sex act knowing or in
 reckless disregard of the fact that the person has not attained the age of 18 years.”); FLA. STAT. §
 796.045 (West, Westlaw through 2011 ch. 236) (“Any person who knowingly recruits, entices,
 harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or
 coercion will be used to cause that person to engage in prostitution, commits the offense of sex
 trafficking”), *with* FLA. STAT. § 796.035 (“Any . . . person having custody or control of a minor
 who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise
 transfer custody of such minor, with knowledge that, as a consequence . . . the minor will engage
 in prostitution, perform naked for compensation, or otherwise participate in the trade of sex
 trafficking, commits a felony of the first degree”); 9 GUAM CODE ANN. § 26.02(c) (West,
 Westlaw through Pub. Law 31-074) (defining involuntary servitude as subjecting a person to
 commercial sex acts or sexually explicit performance by various forms of coercion, deception, or
 fraud), *with* 9 GUAM CODE ANN. § 26.02(b) (defining sexual servitude as trafficking a minor for
 the purpose of commercial sex acts or sexually explicit performance); MO. REV. STAT. § 566.209
 (West, Westlaw through 2011 First Extraordinary Sess.) (“A person commits the crime of
 trafficking for the purposes of sexual exploitation if a person knowingly recruits, transports,
 provides, or obtains by any means another person for the use or employment of such person in

1 sexual conduct . . . without his or her consent.”), *with* MO. REV. STAT. § 566.212 (“A person
2 commits the crime of sexual trafficking of a child if the individual knowingly . . . [c]auses a
3 person under the age of eighteen to engage in a commercial sex act”); TEX. PENAL CODE ANN. §
4 20A.02(a)(3) (West, Westlaw through 2011 Reg. Sess. and 1st Called Sess. of the 82d Legis.)
5 (prohibiting trafficking another person and through force, fraud, or coercion, causing the person
6 to engage in prostitution), *with* TEX. PENAL CODE ANN. § 20A.02(7) (prohibiting trafficking a
7 child and by any means causing the child to engage in various prohibited sexual activities). *See*
8 *also* GA. CODE ANN. § 16-5-46(a)(6) (West, Westlaw through 2011 Reg. and Special Sess.); KY.
9 REV. STAT. ANN. § 529.010(5)(b) (West, Westlaw through 2011 Legis.); N.C. GEN. STAT. § 14-
10 43.10(5) (West, Westlaw through ch. 18); TENN. CODE ANN. § 39-13-301(12) (West, Westlaw
11 through 2011 Reg. Sess.).
12

13 The TVPA does not have a criminal provision specific to sexual servitude of adults
14 without the trafficking element. However, thirteen states explicitly criminalize sexual servitude
15 of adults separately from trafficking or movement of adults for the purpose of sexual servitude.
16 ALA. CODE § 13A-6-152 (a)(1) (West, Westlaw through 2011 Reg. Sess.) (prohibiting knowingly
17 subjecting “another person to . . . sexual servitude through use of coercion or deception.”); R.I.
18 GEN. LAWS § 11-67-2 (West, Westlaw through 2011 ch. 188 of Jan. Sess.) (substantially the
19 same); GA. CODE ANN. § 16-5-46(c) (West, Westlaw through 2011 Reg. and Special Sess.)
20 (prohibiting knowingly subjecting another person to sexual servitude); TENN. CODE ANN. § 39-
21 13-309 (West, Westlaw through 2011 Reg. Sess.) (same); 9 GUAM CODE ANN. § 26.02(c)(1)
22 (West, Westlaw through Pub. Law 31-074) (prohibiting knowingly subjecting “another person to
23 commercial sex acts or sexually explicit performance”); N.C. GEN. STAT. § 14-43.13 (West,
24 Westlaw through ch. 18) (“A person commits the offense of sexual servitude when that person
25 knowingly subjects or maintains another in sexual servitude.”); KY. REV. STAT. ANN. §
26 529.010(5)(b) (West, Westlaw through 2011 Legis.) (defining human trafficking as, among other
27 things, subjecting a person to commercial sexual activity through the use of force, fraud, or
28 coercion); DEL. CODE ANN. tit. 11, § 787(a)(7), (b)(1) (West, Westlaw through 2011 chs. 1-125
29 of 78 Laws) (defining “services” to include commercial sexual activity and sexually-explicit
30 performances) 720 ILL. COMP. STAT. 5/10-9(b), -(a)8 (West, Westlaw through 2011 P.A. 97-530,
31 with exception of P.A. 97-333, 97-334, and 97-463 of 2011 Reg. Sess.) (same); MICH. COMP.
32 LAWS § 750.462a(j), 462b (West, Westlaw through 2011 P.A. No. 209 Reg. Sess.) (same);
33 MONT. CODE ANN. § 45-5-305(1), 3(g) (West, Westlaw through 2011 Laws) (same); NEB. REV.
34 STAT. ANN. §28-830(9), -831(1) (West, Westlaw through the 102d Leg. First Reg. Sess. 2011)
35 (same); N.H. REV. STAT. ANN. § 633:6(V), :7 (West, Westlaw through Chapter 269 of the 2011
36 Reg. Sess.) (defining involuntary servitude to include commercial sex acts or sexually explicit
37 performances). Commercial sex services are often not considered labor or services in the
38 traditional sense; therefore, this provision is separate from the forced labor provision to
39 emphasize that coercing or deceiving a person to induce that person to perform commercial sex
40 acts is also a crime. This distinction is also made in the TVPA, *compare* 18 U.S.C. § 1590
41 (2006) (prohibiting trafficking with respect to forced labor), *with* 18 U.S.C. § 1591 (prohibiting
42 sex trafficking), and the Trafficking Protocol, *supra*, art. 3(a) (defining exploitation through
43 force and coercion to include the “exploitation of the prostitution of others or other forms of
44 sexual exploitation” and separately, “forced labour or services”).
45

46 **SECTION 204. SEXUAL SERVITUDE OF A MINOR.**

1 (a) A person may not knowingly or recklessly:

2 (1) offer, obtain, procure, or provide an individual less than 18 years of age to
3 engage in sexual services in exchange for anything of value; or

4 (2) accept anything of value as compensation for an individual less than 18 years
5 of age to engage in sexual activity.

6 (b) An individual who violates subsection (a) is guilty of a crime, and upon conviction
7 must be imprisoned for one of the following periods, and may be fined not more than
8 [\$250,000], or both:

9 (1) [at least 15 years up to any period of years or life] if the victim had not
10 attained the age of 14 years at the time of the offense, or if coercion, deception, or fraud was
11 used to induce the victim to engage in the sexual activity and the victim was at least 14 and less
12 than 18 years of age at the time of the offense; or

13 (2) [at least 10 years up to any period of years or life] if the victim was at least 14
14 and less than 18 years of age at the time of the offense.

15 (c) In a prosecution of this section, the government need not prove that the defendant
16 knew the victim's age. Reasonable mistake of age or consent of the individual less than 18 years
17 of age shall not be a defense to liability under this section.

18 (d) Individuals that satisfy subsection 216(a) and are less than 18 years of age shall be
19 [presumed a Child in Need of Protection to be] treated in accordance with [Section 302 or
20 applicable state juvenile program].

21 **Comment**

22 Experts of child sexual servitude explain the crime in economic terms, with the trafficker
23 supplying the commodity of children for sex, and the patron or john as the consumer creating the
24 demand. SHARED HOPE INTERNATIONAL, DEMAND. A COMPARATIVE EXAMINATION OF SEX
25 TOURISM AND TRAFFICKING IN JAMAICA, JAPAN, THE NETHERLANDS, AND THE UNITED STATES 1,

1 <http://www.sharedhope.org/Resources/DEMAND.aspx>. This section criminalizes the seller, and
2 Section 205, Patronizing a Sexual Servitude Victim, criminalizes the buyer of children for sex.
3 Together, they punish those who commercially sexually exploit the child, and protect the child
4 from being criminalized for the abuse he or she has suffered.
5

6 Subsection (a) targets promoting the sexual servitude of children by the pimp or
7 trafficker. Abhorrence of this type of child abuse is shown by the U.S. ratification of the Sale of
8 Children Optional Protocol to the Convention on the Rights of the Child, committing the United
9 States and the individual states to criminalize the “offering, obtaining, procuring, or providing” a
10 child for the use of “sexual activities for remuneration.” Child Prostitution Protocol, *supra*, at
11 arts. 2(b), 3(1)(b). This section mirrors that language, and is meant to harshly punish procuring
12 or promoting prostitution of those under eighteen years old, as well as causing a child to provide
13 other types of sexual services such as exotic dancing or the making of pornography. *See* Section
14 101(15) for a list of prohibited sexual acts under this section.
15

16 This subsection is separate from the other forced servitude provisions because, like the
17 federal law and as required by the Trafficking Protocol, it makes a policy choice that due to
18 children’s developmental immaturity, where a child engages in sexual activities for
19 remuneration, the adult providing the child is exerting control over the child. Therefore the
20 coercion, deception, or fraud element is removed when the victim is a child. 18 U.S.C. §1591(b)
21 (2006, Supp. III 2007-2009); Trafficking Protocol, *supra*, at art. 3(c).

22 This section follows the trend of the federal law and at least nine state trafficking laws
23 that impose harsh penalties on the trafficker of children for sexual services. 18 U.S.C. §1591(b)
24 (2006, Supp. III 2007-2009); FLA. STAT. § 796.035 (West, Westlaw through 2011 ch. 236); MD.
25 CODE ANN., CRIM. LAW §11-303 (West, Westlaw through 2011 Acts); MICH. COMP. LAWS §
26 750.462g (West, Westlaw through 2011 P.A. No. 209 Reg. Sess.); IND. CODE § 35-42-3.5-1(b)
27 (West, Westlaw through 2011 Reg. Sess.); MO. REV. STAT. §§566.212, 213 (West, Westlaw
28 through 2011 First Extraordinary Sess.); 6 N. MAR. I. CODE § 1504 (2005); NEB. REV. STAT. §
29 28-831 (West, Westlaw through the 102nd Leg. First Reg. Sess. 2011); R.I. GEN. LAWS §11-67-6
30 (West, Westlaw through 2011 ch. 188 of Jan. Sess.); WASH. REV. CODE §9.68A.101 (West,
31 Westlaw through all 2011 Leg.). DEL. CODE ANN. tit. 11, § §787(b)(2) (West, Westlaw through
32 2011 chs. 1-125 of 78 Laws) (has gradations of penalties based on use of force and age of the
33 minor victim). Two other states criminalize this action in a non-trafficking statute. OHIO REV.
34 CODE ANN. §2907.22(B) (West, Westlaw through 2011 Files 1 to 27, 29 to 47, and 49 of the
35 129th GA (2011-2012), apv. by 9/26/2011, and filed with the Sec. of State by 9/26/2011); VA.
36 CODE ANN. §18.2-48. (West, Westlaw through End of 2011 Reg. Sess. and includes 2011 Sp. S.
37 I, c. 1.).

38 The penalties suggested for violating subsection (a) as enumerated by subsection (b)
39 mirror the federal penalties in 18 U.S.C. 1591(b) (2006). This is different from the 20-year
40 maximum penalty used in most of Article 2. This is done in order to provide uniform penalties
41 between the state and federal laws, but also to take into account the gravity of sexual exploitation
42 of children. Similarly, the minimum penalty is higher for children under fourteen or if coercion,
43 deception, or fraud was used on children aged fourteen through seventeen, because of the
44 abhorrence of forcing so young a child into prostitution and other sexual activity on a regular

1 basis.

2
3 This section imposes a strict liability standard in subsection (c) concerning the age of the
4 victim by prohibiting the affirmative defense of mistake regarding the victim's age. This is to
5 provide more uniformity between trafficking and statutory rape laws and other laws concerning
6 abuse of children. *See* Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. ST.
7 THOMAS L.J. 96, 102 (2009). The overriding public interest in protecting children from becoming
8 sexual commodities calls for making consumption of these illegal services costly. This will put
9 the responsibility on those already committing the illegal act of promoting or compelling
10 prostitution that those they offer for sexual activity and services are really adults if they want less
11 of a legal risk.

12 The choice of age of eighteen tracks the federal law on child sex trafficking, which treats
13 all legal minors as victims, despite them committing otherwise criminal acts. 18 U.S.C. §1591(b)
14 (2006, Supp. 2007-2009); Wendi J. Adelson, *supra*, at 99. Even though this age is higher than
15 many states' legal age of sexual consent, it reflects the difference between normal consensual sex
16 and being involved in the illegal sex industry where the threat of violence, Sexually Transmitted
17 Diseases, and emotional and physical consequences are all the more concentrated and severe.

18 The immunity in (d) for those under eighteen who are caused by another to engage in
19 sexual activity in exchange for something of value addresses the legal paradox of children under
20 the age of majority for consensual sex being prosecuted for what is assumed to be consensual
21 commercialized sex and sexual acts. *See U.S. v. Rogers*, 587 F.3d 816, 820 (7th Cir. 2009)
22 (stating as reasons for its holding that "minors lack the ability to consent, and so sexual contact
23 with a minor is always 'without consent'"). Like a statutory rape law, this section assumes that
24 those less than eighteen years of age, if not directly "trafficked" for this crime, do not have the
25 developmental maturity to comprehend the ramifications of entering or remaining in the sex
26 service industry, and therefore should not justly be held legally liable for such actions. JULIAN
27 SHER, *SOMEBODY'S DAUGHTER: THE HIDDEN STORY OF AMERICA'S PROSTITUTED CHILDREN AND*
28 *THE BATTLE TO SAVE THEM*, 251-76 (2011). This immunity is necessary to protect victims;
29 although 20 states have higher penalties for patronizing children for prostitution, only a handful
30 of states grant immunity to these children from being prosecuted for prostitution. *See* TENN.
31 CODE ANN. § 39-13-514(4) (West, Westlaw through 2011 Reg. Sess.) (giving immunity to
32 children under 18); CONN. GEN. STAT. § 53a-82a (West, Westlaw through 2011 Jan. Reg. Sess.)
33 (giving immunity to children under 16); N.Y. SOC. SERV. LAW § 447-a,b (West, Westlaw
34 through 2011 leg., ch. 1-54 and 57-495) (gives immunity to children under 18) and MICH. COMP.
35 LAWS §750.448 (West, Westlaw through 2011 P.A. No. 209 Reg. Sess.) (giving immunity to
36 children under 16).

37 The gap in state laws between prostitution statutes designed for adults and laws about the
38 age of sexual consent has fostered a situation where minors are treated like criminals, not
39 victims, depending on whether federal or state prosecutors take the case. The prevalence of
40 children being prosecuted for sexual acts they may not be able to legally consent to, depending
41 on the age of majority of the state, was decried in the Concluding Comments and
42 Recommendations of the Committee on the Rights of the Child, issued in response to the United
43 States' Initial Report regarding its compliance with the Optional Protocol on the Sale of

Children. COMMITTEE ON THE RIGHTS OF THE CHILD, CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 12, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY, CONCLUDING OBSERVATIONS: UNITED STATES OF AMERICA, 37- 38 (48th Sess. 2008), U.N. Doc. CRC/C/OPSC/USA/CO/1, 3 (2008), *available at* <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.USA.CO.1.pdf>.

The second part of subsection (d) mandates that children found to be victims of sexual servitude be entered into the state program for children or juveniles who are at risk and in need of services or, if such a program is not available or desirable, be treated as a victim in accordance to this act. Examples of such state programs are Persons in Need of Supervision in New York (PINS), and a Child in Need of Services in Washington (CHINS). N.Y. FAM. CT. ACT § 712 (McKinney, Westlaw through L.2011) (outlines definition and procedures regarding PINS); N.Y. SOC. SERV. LAW § 447-a (West, Westlaw through L.2011) (defines a victim of sexual trafficking or a minor engaged in prostitution as being eligible for the PINS program, while providing immunity from prosecution); WASH. REV. CODE §§ 13.32A.010 –300 (West, Westlaw through 2011 Leg.) (enumerates the program for CHINS). In choosing a procedure for victims of this section, it is imperative that the best interests of the child be served concerning safety, rehabilitation, and access to needed services. Child Prostitution Protocol, *supra*, at 8(3) (“shall ensure, in the treatment by the criminal justice system of children who are victims of offences described in the present Protocol, the best interests of the child shall be a primary consideration”). Detention should be a last resort—the children are victims of protracted sexual abuse, not criminals, and will not be rehabilitated if they are treated as criminals. Child Prostitution Protocol, *supra*, at 9(3) (“shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offenses, including their full social reintegration and their full physical and psychological recovery.”).

SECTION 205. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.

(a) A person may not knowingly pay, agree to pay, or offer to pay anything of value as compensation to engage in sexual activity with

(1) an individual 18 years or older knowing or in reckless disregard of the fact that the individual is a victim of sexual servitude; or

Alternative A

(2) an individual less than 18 years of age.

Alternative B

(2) an individual less than 18 years of age that is a victim under Section 204.

End of Alternatives

1 (b) A person who violates subsection (a) is guilty of a crime and upon conviction may be
2 imprisoned not more than [10] years, fined not more than [\$250,000], or both.

3 (c) In a prosecution under subsection (a)(2), the government need not prove that the
4 defendant knew the victim's age. Reasonable mistake of age or consent of the individual under
5 18 shall not be a defense to liability under this section.

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

7 **Comment**

8
9 This section fills a large gap in federal and state human trafficking laws. Demand for
10 commercial sexual services is the driving force behind the sexual servitude industry, and must be
11 targeted to adequately fight human trafficking. SHARED HOPE INTERNATIONAL, DEMAND. A
12 COMPARATIVE EXAMINATION OF SEX TOURISM AND TRAFFICKING IN JAMAICA, JAPAN, THE
13 NETHERLANDS, AND THE UNITED STATES 1-3,
14 <http://www.sharedhope.org/Resources/DEMAND.aspx>. This involves deterrence through
15 criminal sanctions as well as general awareness that a portion of sex workers are actually sexual
16 servitude victims.

17
18 States Parties shall adopt or strengthen legislative or other measures, such as
19 educational, social or cultural measures, including through bilateral and
20 multilateral cooperation, to discourage the demand that fosters all forms of
21 exploitation of persons, especially women and children, that leads to
22 trafficking.

23
24 Trafficking Protocol, *supra*, at art. 9(5). Currently, patronizing and prostitution laws are the
25 legal framework to punish those who buy sexual servitude victims. These laws often do not take
26 into account the age of the victim or whether or not they were coerced into providing sexual
27 services, and carry misdemeanor penalties. These laws assume consent on behalf of the one
28 providing sexual services. However, depending on the age of the victim or the coerced
29 circumstances, these acts of "prostitution" are much more parallel to rape than consensual sex.
30 Therefore, harsher penalties that fit the gravity of the crime must be imposed.

31
32 Subsection (a) models common patronizing law language, as well as Washington's law
33 created to address demand for child sex services, WASH. REV. CODE ANN. §9.68A.100 (West,
34 Westlaw through 2011 legislation), to describe the prohibited behavior. Then it enumerates the
35 two types of sexual servitude victims, those who are compelled through coercion, deception, or
36 fraud (victims of Section 203) or those under the age of 18 (victims of Section 204).

37
38 Paragraph (1) borrows language from Polaris's 2010 Model Provisions and can be
39 satisfied if a person uses the services of a prostitute in reckless disregard of the prostitute's status
40 as a victim of human trafficking. POLARIS MODEL LAW § I Patronizing a Human Trafficking

1 Victim (A). This subsection emphasizes the particular harm to trafficking victims when they are
2 forced to prostitute themselves. It places a burden on people who patronize a prostitute to ensure
3 that the prostitute is not a trafficking victim or else face a higher penalty. A person who violates
4 this section has already committed a crime under most state laws by procuring a prostitute and
5 should therefore have to bear the burden of ensuring the criminal activity is not in reality a
6 greater crime that inflicts more severe harm on the victim because of the coercive nature of the
7 prostitution. By engaging in criminal activity in the first place, an individual who procures a
8 prostitute assumes the risk that the prostitute is a victim of human trafficking and should be
9 punished for the resulting crime, not merely for the lesser crime that the individual intended.
10 This concept is common in other areas of criminal law, where a *mens rea* is dispensed with for
11 certain elements of the crime when the defendant intended any criminal action. See, e.g., *United*
12 *States v. Feola*, 420 U.S. 671, 686 (1975); *Unites States v. Wright*, 363 F.3d 237, 241-242 (3rd
13 Cir. 2004).

14
15 Paragraph (2) criminalizes the consumption of sex services provided by children.
16 Without a provision that specifically criminalizes buying children for sex, this form of child
17 sexual abuse is left to state patronizing prostitution laws. This is problematic if, as in almost two
18 thirds of the states, prostitution laws do not consider the age of the person being prostituted and
19 the usual misdemeanor penalties are applied to those who pay to have sex with children. See e.g.
20 N.D. CENT. CODE ANN. §12.1-29-06 (West, Westlaw through 2011 Reg. Sess.) (penalizing hiring
21 another for sexual activity as a class B misdemeanor, which has a maximum of 30 days in
22 prison); IND. CODE ANN. § 35-45-4-3 (West, Westlaw through 2011 First Reg. Sess.) (penalizing
23 the first two convictions of patronizing a prostitute as a Class A misdemeanor, which has a
24 maximum of 1 year sentence). Whereas a person who rapes a child without paying for it usually
25 faces felony penalties, “renting” a child to rape, where anything of value is exchanged, could
26 bring only misdemeanor penalties of patronizing a prostitute. The light penalties of these
27 prostitution laws present a legal inconsistency compared with statutory rape and other child
28 sexual abuse laws, which were enacted to help “protect minors below a certain age from
29 predatory, exploitative sexual relationships.” OFFICE FOR VICTIMS OF CRIME, A.B.A. & CTR. ON
30 CHILDREN AND THE LAW, STATE LEGISLATORS’ HANDBOOK FOR STATUTORY RAPE ISSUES 6, 13
31 (2000), <http://www.ojp.usdoj.gov/ovc/publications/infores/statutoryrape/handbook/statrape.pdf>.

32
33 This paragraph has two alternatives for criminalizing buying a child for sexual services.
34 Alternative A is more comprehensive and will better reconcile patronization and statutory rape
35 laws because it penalizes buying a child for sexual services whether or not they are being
36 exploited by a trafficker, in accordance with a broad policy to discourage demand for children’s
37 sexual services. It is important to note that this penalty for the patron does not extend the
38 immunity granted to victims of Section 204 to those children that are not being exploited by a
39 pimp or trafficker.

40
41 Alternative B limits the harsher penalties to those children that are victims under 204,
42 those that are being controlled by a pimp or trafficker. If a state chooses alternative B, it is
43 strongly suggested that the state patronizing law also be amended to take into account the age of
44 the victim and match the state’s age of consent and penalties used for statutory rape. This will
45 ensure that a subset of vulnerable children engaged in “survival sex” will also be treated like
46 victims of crime and exploitation at the hands of adults.

Misdemeanor penalties do not reflect the gravity of using a child for sexual services, *see* Child Prostitution Protocol, *supra*, at art. 3(3) (requiring penalties that take account of the “grave nature” of these offenses), and at least nineteen states besides Washington have heightened penalties for patronizing prostitution from a child. Eight states besides Washington penalize patronizing a “child”, “minor”, or one “under 18.” 720 ILL. COMP. STAT. ANN. 5/11-18.1 (West, Westlaw through P.A. 97-427, with the exception of P.A. 97-333,34 of the Reg. Sess.); ME. REV. STAT. ANN. 17 §855 (West, Westlaw through 2011 First Reg. Sess. of the 125th Legislature) (Sentencing knowing a child is under 18 with up to 5 year sentences); NEV. REV. STAT. ANN. §201.354 (West, Westlaw through 2010 26th Spec. Sess.) (sentencing 1-4 years); N.H. REV. STAT. ANN. §645:2(II) (West, Westlaw through Chap. 269 of 2011 Reg. Sess.) (sentencing up to 7 years); N.J. STAT. ANN. §2C:34-1(7) (West, Westlaw Current through L.2011, c.136 and J.R. No. 8) (sentencing 3-5 years); OHIO REV. CODE ANN. § 2907.21(3), (4) (West, Westlaw through 2011 Files 1-27, 29-47, 49-129th GA) (Sentencing 9-36 months); OKL. ST. ANN. 21 §1087(2) (West, Westlaw though First Reg. Sess. of 53rd Leg. 2011) (Sentencing 1-10 years); TENN. CODE ANN. §39-13-514(4) (West, Westlaw through end of 2011 First Reg. Sess.) (sentencing 1-6 years). Five states raise penalties if the child is under eighteen, but also have higher sentences if the child is younger than thirteen. ARIZ. REV. STAT. ANN. §13-3212 (West, Westlaw through the First Reg. Sess. and the Third Spec. Sess. of the Fiftieth Leg. 2011) (penalizing a minimum of 13 years if under 15 or knows that child is under 18, otherwise maximum of 2 years); GA. CODE ANN. §16-6-13(b) (West, Westlaw through 2011 Reg. and Spec. Sess.) (penalizing patronizing those under 16 with 10-30 years and 16-17 with 5-20 year sentences); MINN. STAT. ANN. §609.324(Subd. 1) (West, Westlaw through end of 2011 Reg. Sess.) (sentencing a maximum of 20 years if child is under 13, 10 years if the child is 13-15, and 5 years if the child is 16-17); MO. ANN. STAT. §567.030 (West, Westlaw through 2011 First Reg. Sess. of the 96th Gen. Assembl.); TEX. PENAL CODE ANN. §43.02(c)(3-4) (West, Westlaw through 2011 Reg. Sess. and First Called Sess. of 82nd Leg.) (sentencing 2-20 years if child is under 14, and 2-10 years if the child is 14-17). Finally, six states raise penalties for children, but cap these penalties at an age lower than 18. CONN. GEN. STAT. ANN. §53a-83 (West, Westlaw through 2011 Jan. Reg. Sess. and June Spec. Sesss.) (providing immunity for children under 16 who are prostituted, and only allowing patron laws to cover buying sex from those 16 and older); LA. REV. STAT. ANN. §14:82.1 (West, Westlaw through 2011 1st Extraordinary Sess.) (criminalizes patronizing prostitution from children under 16 with 2-10 year sentences); MASS. GEN. LAWS ANN. 272 § 53A (West, Westlaw through Chapter 141 of the 2011 1st Annual Sess.) (only raises penalty if child is under 14 to 2.5 years in a penitentiary or 10 years in state prison, maximum); MICH. COMP. LAWS ANN. §§750.448,49(a) (West, Westlaw through P.A. 2011, No. 166, of the Reg. Sess., 96th Legislature) (defines a prostitute as one 16 or over who engages in prostitution, making paying for a child under 16 be criminalized under child abuse and rape laws); MONT. CODE ANN. §45-5-601(West, Westlaw with 2011 laws and 2010 ballot measures) (severely heightens penalties if child is under 12, up to 100 years jail time and registry in sex offender list); N.Y. PENAL LAW §§230.06, 230.05 (West, Westlaw through L.2011, Chap. 1-54, 57-495) (sentencing up to 7 years if the child is under 11, and 4 years if the child is 11-13).

The penalty suggested in (b) for patronizing a child for prostitution or other sexual activity comes from three sources. First, it parallels the penalties enacted by one third of the states that have raised penalties for patronizing a prostituted minor. Secondly, it tries to

1 reconcile the gap between usual patronizing laws and statutory rape laws. Statutory rape
2 penalties also have a median range of 5-10 years for children just under the age of consent. *See*,
3 *e.g.*, N.H. REV. STAT. ANN. § 632-A:3 (West, Westlaw through Chapter 269 of the 2011 Reg.
4 Sess.) (maximum penalty of seven years); TEX. PENAL CODE ANN. § 22.011 (West, Westlaw
5 through 2011 Reg. Sess. and 1st Called Sess. of the 82d Legis.) (with a penalty range from 2-20
6 years). Finally, the maximum of ten years takes into account that defendants do not have the
7 defense of mistake of age of the victim.

8
9 This statute imposes a strict liability standard concerning the age of the victim by
10 prohibiting the affirmative defense of mistake regarding the victim's age in paragraph (c), similar
11 to statutory rape laws, and other laws concerning abuse of children. *See* Wendi J. Adelson, *Child*
12 *Prostitute or Victim of Trafficking?*, 6 U. ST. THOMAS L.J. 96, 102 (2009). The overriding public
13 interest in protecting children from becoming sexual commodities calls for making consumption
14 of these illegal services costly. This will put the responsibility on those looking to buy sexual
15 services that those they engage are really adults if they want less of a legal risk.

16 17 **SECTION 206. DEBT BONDAGE.**

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

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

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

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

26 (4) the person is prevented from acquiring information pertinent to the disposition
27 of the debt.

28 (b) A person who violates this section is guilty of a crime and upon conviction may be
29 imprisoned not more than [20] years, fined not more than [\$250,000], or both.

30 **Comment**

31 In 1967, the U.S. bound itself to take "all necessary and practicable measures to bring
32 about....the complete abolition" of practices similar to slavery, specifically including "debt

1 bondage.” Supplementary Slavery Convention, *supra*, at art. 1. With the increasing occurrence
2 of human trafficking, using debts to force a person to perform services indefinitely, or debt
3 bondage, has become a common tactic to almost enslave people for their labor or services. *See*
4 *Sabhnani*, 599 F.3d 215, 241 (2d Cir. 2010) (convicting defendants of peonage among other
5 trafficking crimes for holding victims as domestic servants); *United States v. Fu Sheng Kuo*, 620
6 F.3d 1158, 1161 (9th Cir. 2010) (finding that an “increasing” debt was used to keep victims
7 providing sexual services to customers, though federal peonage law was not invoked). This
8 section recognizes how common this tactic is, and appropriately penalizes inducing a victim to
9 perform services by holding a debt over them which is never meant to be paid off.

10 This slavery-like practice falls between the lines of peonage, which is tied to threat of or
11 violence or abuse of the legal system, *e.g.* *United States v. Farrell*, 563 F.3d 364, 372 (8th
12 Cir.2009) (interpreting 18 U.S.C. 1581), and extortion, which is tied to obtaining property from
13 the victim, *e.g.* *Scheidler v. National Organization for Women, Inc.* 537 U.S. 393, 394 (2003)
14 (outlining the Hobbes’ Act elements of extortion); 18 U.S.C. §1951(b)(2). Therefore, debt
15 coercion should be a separate crime.

16
17 State law has already begun to recognize the role debt bondage plays in human
18 trafficking. At least seventeen states have incorporated it into their trafficking or servitude
19 statutes as either a means of coercion or as a purpose of trafficking. At least eleven states use it
20 as a means of trafficking or servitude, putting it within the definition of coercion or deception, or
21 specifically enumerating it as a means. MICH. COMP. LAWS §750.462j (West, Westlaw through
22 2011 P.A. No. 209 Reg. Sess.) (used as means of labor trafficking); N.Y. PENAL LAW
23 §§230.34(4), 135.35(2) (West, Westlaw through 2011 legislation, ch. 1-54 and 57-495) (used as
24 a means of both labor and sex trafficking); N.H. REV. STAT. ANN. § 633:6(11) (West, Westlaw
25 through Chapter 269 of the 2011 Reg. Sess.) (used as a method of coercion); IDAHO CODE ANN.
26 §18-8602 (West, Westlaw through 2011 ch. 1-335) (used as means of trafficking); FLA. STAT. §
27 787.06(2) (West, Westlaw through 2011 ch. 236) (used as means for forced labor); N.C. GEN.
28 STAT. §14-43.10(a)(3) (West, Westlaw through ch. 18) (used as means for involuntary
29 servitude); ALA. CODE § 13A-6-151(2) (West, Westlaw through 2011 Reg. Sess.) (part of
30 deception definition, therefore means of trafficking); 9 GUAM CODE ANN. § 26.01(b) (West,
31 Westlaw through Pub. Law 31-074) (used as means for involuntary servitude); HAW. REV. STAT.
32 §707(B)(1)(g) (West, Westlaw through Act 235 [End] of the 2011 Reg. Sess.) (used as a means
33 of labor trafficking); KAN. STAT. ANN. § 21-3446(4) (West, Westlaw through 2011 Reg. Sess.)
34 (used as means for human trafficking); UTAH CODE ANN. § 76-5-308 (West, Westlaw through
35 2011 Second Special Sess.) (used as means of human trafficking). Three states consider debt
36 bondage as a purpose or intended result of trafficking. IOWA CODE §710A.1 (West, Westlaw
37 through 2011 Reg. Sess.) (used as purpose for trafficking); MO. REV. STAT. § 566.200 (West,
38 Westlaw through 2011 First Extraordinary Sess.) (used as a purpose for trafficking); D.C. CODE
39 § 22-1832 (West, Westlaw through Sept.13, 2011) (a way to commit forced labor); ARK. CODE
40 ANN. § 5-11-108(b)(1)(B-C) (West, Westlaw through end of the 2011 Reg. Sess.) (used as
41 purpose for trafficking). However, because this method is used so often, it is best to make it a
42 crime in and of itself and penalize it appropriately. This is parallel to criminalizing Unlawful
43 Conduct with Respect to Identification Documents as a separate crime, because it is such a
44 common tactic to exploit others. *See* Comment to Section 207.

1 The elements of this crime come from the Supplemental Slavery Convention definition of
2 debt bondage and Polaris Project’s Model Law. Supplemental Slavery Convention, *supra*, at art.
3 (1)(a); POLARIS MODEL LAW § I Definitions (2) (Debt Coercion). Each of these describes a
4 situation where the victim has little or no control over the terms of repayment, thus requiring
5 them to render their services indefinitely to a trafficker. Also, the language in (a) makes clear
6 that the one who pledges personal services as security for a debt does not need to be the same
7 individual whose services are used. This would apply, for example, whether parents offered
8 their own services or that of their child for the parents’ debt. Finally, the penalty suggested for
9 this section mirrors the federal peonage statute in order to promote uniformity between state and
10 federal law. 18 U.S.C. 1581 (2006, Supp. III 2007-2009).

11
12 **SECTION 207. UNLAWFUL CONDUCT WITH RESPECT TO**
13 **IDENTIFICATION DOCUMENTS.**

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

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

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

22 (d) A person who violates this section is guilty of a crime and upon conviction may be
23 imprisoned for not more than [5] years, fined up to [\$250,000], or both.

24 **Comment**

25 This section is modified from language from the TVPA, the Global Rights Model Law,
26 and the UNODC Model Law. 18 U.S.C. § 1592 (2006) (unlawful conduct with respect to
27 documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced
28 labor); GLOBAL RIGHTS MODEL LAW B(4); UNODC MODEL LAW art. 15. Though misuse of
29 identification documents is also considered a form of coercion as the term is applied in this act, it
30 is important to recognize that it is a crime within itself for a person to destroy, take, possess, or
31 so threaten, another person’s identification document within the context of a human trafficking
32 violation. Thus, misuse of identification documents as outlined in this section does not create a
33 derivative offense that is dependant on a violation of another section in this article. A person

1 may be convicted under this section without having committed other offenses under the article if
2 the misuse of identification documents was committed with intent to commit an offense violating
3 a section in this article. *See, e.g., Sabhnani*, 599 F.3d at 244, 245 (ruling that the defendant was
4 properly convicted of document servitude in violation of 18 U.S.C. § 1592(a)(2) and rejecting
5 the argument that document servitude claim was dependant on success of forced labor and
6 peonage convictions). However, while not a derivative offense, misuse of identification
7 documents “is frequently combined with any number of other control tactics, including, but not
8 limited to, intimidation, debt coercion, deception, and social isolation.” POLARIS MODEL LAW
9 Commentary to Unlawful Conduct with Respect to Documents.

10
11 Subsection (a) addresses both actual and purported identification documents, as control
12 over a purported identification document can have the same coercive effect on a victim if the
13 victim does not know the identification document is not valid. Because this section focuses on
14 the use of identification documents as a tool to control a victim in the context of a human
15 trafficking violation, the crime does not depend on the validity of the identification document.
16 Subsection (d) provides penalties for violations of this section, and the provided suggestions
17 mirrors the penalties provided by 18 U.S.C. § 1592 (unlawful conduct with respect to documents
18 in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor).
19

20 **SECTION 208. BENEFITING FROM TRAFFICKING OFFENSES.** A person may
21 not purposely benefit from another person’s violation of Sections 201 - 212. A person who
22 violates this section is guilty of a crime, and upon conviction may be imprisoned for not more
23 than [5] years, fined up to [\$250,000], or both.

24 **Comment**

25 The Trafficking Protocol requires States Parties to “adopt or strengthen legislative or
26 other measures ... to discourage the demand that fosters all forms of exploitation of persons,
27 especially women and children, that leads to trafficking.” Trafficking Protocol, *supra*, at art.
28 9(5). This section is intended to meet demand for the goods, services, and profits of human
29 trafficking offenses head on by making certain consumers liable alongside those more actively
30 involved in the offenses.

31
32 To effectively combat human trafficking, the consumer market for services and labor
33 obtained through human trafficking must be addressed and confronted in statutory law in order to
34 enable law enforcement “to arrest and prosecute all who participate in the chain of trafficking.”
35 WOMEN POLICY STUDIES MODEL LAW Discussion to The Crime of Human Trafficking. This
36 section creates liability for persons who purposely benefit from the human trafficking trade.
37 This can include the purchase of discounted goods from a factory by an individual with the
38 knowledge that the factory utilizes forced labor and the intent to profit directly from that forced
39 labor. Enjoyment of a lifestyle by an individual who purposely takes advantage of the profits
40 afforded by human trafficking offenses to create and enjoy that lifestyle could also fall under the
41 realm of this section. Active participation in an act constituting the offense of human trafficking

1 is not necessary for liability under this section. Liability applies both to individual and corporate
2 consumers, but is limited by the specific requirement that the person, in receiving the benefit,
3 had the purpose of benefitting from a human trafficking offense.
4

5 The language in this section is modified from similar language in state statutes. Most
6 states address benefitting from human trafficking offenses, though the level of participation
7 required for a penalty to apply varies. *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-1308(A)(2) (West,
8 Westlaw through 2011 First Reg. Sess. and Third Special Sess.) (“[k]nowingly benefit,
9 financially or by receiving anything of value, from participation in a venture that has engaged in
10 an act in violation of [labor trafficking statute] or [sex trafficking statute]”); 9 GUAM CODE ANN.
11 § 26.02 (West, Westlaw through Pub. Law 31-074) (“benefits, financially or by receiving
12 anything of value, from participation in a venture which has engaged in [a human trafficking
13 crime]”); KAN. STAT. ANN. § 21-5426(a)(2) (West, Westlaw through 2011 Reg. Sess.)
14 (“intentionally benefitting financially or by receiving anything of value from participation in a
15 venture that the person has reason to know has engaged in [the crime of human trafficking]”);
16 UTAH CODE ANN. § 76-5-309(4) (West, Westlaw through 2011 Second Special Sess.)
17 (benefitting “financially or materially by receiving anything of value from knowing
18 participation” in a human trafficking offense). The TVPA provides that “[w]hoever knowingly
19 benefits, financially or by receiving anything of value, from participation in a venture which has
20 engaged in any act” in violation of certain sections of the TVPA, in “knowing or in reckless
21 disregard of the fact that the venture has engaged in such violation,” is subject to a fine or
22 imprisonment mirroring the penalties provided for the violation from which the person
23 benefitted. 18 U.S.C. § 1593A (2006).
24

25 Unlike the TVPA, the UNODC Model Law does not require participation in a venture,
26 instead providing that:
27

28 Anyone who makes use of the services or labour of a person or profits in any form
29 from the services or labour of a person with the prior knowledge that such labour
30 or services are performed or rendered under one or more of the conditions
31 described in [the trafficking in persons statute] shall be guilty of an offence...
32

33 UNODC MODEL LAW art. 11.
34

35 In the comments accompanying this proposed language, the UNODC notes that including
36 the *mens rea* of “knowingly” “ensure[s] that once a person learns that he or she will be using the
37 services of a victim of trafficking, and nevertheless decides to go ahead and benefit from the
38 exploitation of another person, he or she will be punished.” *Id.* Additionally, providing a
39 deterrent for consumers may encourage would-be consumers to report potential human
40 trafficking offenses to law enforcement authorities. *Id.*
41

42 By including the term “purposely,” this section reflects the policy that to purposely
43 receive a benefit of human trafficking is, in itself, to actively participate in the offense. Such a
44 person takes a share of responsibility for the human trafficking offense that created the received
45 benefit. Thus, this section should be understood to expand liability and reach not only cases of
46 active participation in an offense, but the market for the benefits of human trafficking crimes,

1 creating an effective deterrent for those who would purposely support human trafficking by
2 providing the demand for its tainted goods, services, and profits. This strong disincentive is in
3 line with the grave nature of these offenses and appropriately stresses the great cost to society
4 that is incurred by the practice of human trafficking.

5
6 **[SECTION 209. ACCOMPLICE.]**
7

8 (a) A person may not knowingly participate as an accomplice in a violation of a section in
9 this article.

10 (b) A person who violates this section is guilty of a crime and upon conviction is subject
11 to the same penalty as provided for the offense that was the object of the complicity.]

12 **Comment**

13 Due to the complex and multifaceted nature of human trafficking, states must expressly
14 criminalize all forms of participation. This section provides an option for any state lacking a
15 general statute imposing a penalty for being an accomplice to a crime. The penalties for being an
16 accomplice should uniformly match the underlying crime to make offenses consistent. The
17 penalties should be consistent to reflect the grave nature of human trafficking crimes and the
18 deep importance to society deterring and punishing these crimes. The Trafficking Protocol
19 requires that the United States and the states criminalize participation in a human trafficking
20 offense as an accomplice. Trafficking Protocol, *supra*, at art. 5(2)(b) (requiring criminalization
21 of “[p]articipating as an accomplice in an offence established in accordance with paragraph 1 of
22 this article”). The federal government punishes an accomplice to any criminal offense as though
23 the person was the principal offender. 18 U.S.C. § 2(a) (2006) (“whoever commits an offense
24 against the United States or aids, abets, counsels, commands, induces or procures its
25 commission, is punishable as a principal”). The Global Rights Model Law also recommends
26 making both complicity and conspiracy to violate a human trafficking offense a crime. GLOBAL
27 RIGHTS MODEL LAW § 5 (“whoever knowingly aids, abets... with one or more persons to violate
28 Section 1, 2, 3 or 4 of this Division shall be punishable in the same manner as for a completed
29 violation of that section”).
30

31 Being an accomplice is synonymous with aiding and abetting. At least eight states
32 criminalize being an accomplice, aider, or abettor specifically in the context of a human
33 trafficking violation. *See* CAL. PEN. CODE § 181 (West, Westlaw through 2011 ch. 745 of Reg.
34 Sess. and all 2011-2012 1st Ex. Sess. laws) (aiding and assisting infringement of personal
35 liberty); 9 GUAM CODE ANN. § 26.02 (West, Westlaw through Pub. Law 31-074) (“aiding [or]
36 abetting” human trafficking); HAW. REV. STAT § 707-C (West, Westlaw through Act 235 [End]
37 of the 2011 Reg. Sess.) (using a business to aid another in labor trafficking); LA. REV. STAT.
38 ANN. §§ 14:46.2, 14:46.3, 14:83.1 (West, Westlaw through the 2011 1st Extraordinary Session)
39 (“facilitates, helps, aids, abets, or conspires” for human trafficking and sexual trafficking of
40 children); MD. CODE ANN., CRIM. LAW § 11-303 (West, Westlaw through 2011 Acts) (aiding and
41 abetting human trafficking); MISS. CODE ANN. § 97-3-54.3 (West, Westlaw through 2011 Reg.

Sess.) (same); S.C. CODE ANN. § 16-3-930 (West, Westlaw through End of 2010 Reg. Sess.) (same); VT. STAT. ANN. tit. 13, § 2635 (West, Westlaw through the laws of First Sess. of the 2011-2012 VT Gen. Assemb. (2011)) (aiding slave traffic).

[SECTION 210. CONSPIRACY.

(a) A person may not knowingly conspire with one or more persons to violate a section in this article.

(b) A person who violates this section is guilty of a crime and upon conviction is subject to the same penalty as provided for the offense that was the object of the conspiracy.]

Comment

To effectively prosecute all types of perpetrators and comprehensively combat human trafficking, states must uniformly criminalize being a co-conspirator in a human trafficking offense. The penalties for being a co-conspirator should uniformly match the underlying crime to make offenses consistent. A co-conspirator should be equally liable as the principal and should have the same underlying sentence due to the gravity of human trafficking. The federal government makes conspiracy in human trafficking an offense. 18 U.S.C. § 1594 (2006). The Global Rights Model Law also recommends criminalizing conspiracy to violate a human trafficking offense. GLOBAL RIGHTS MODEL LAW § 5 (“[w]hoever knowingly... conspires with one or more persons to violate Section 1, 2, 3 or 4 of this Division shall be punishable in the same manner as for a completed violation of that section”). At least seven states criminalize being a co-conspirator to a human trafficking offense. *See* 9 GUAM CODE ANN. § 26.02 (West, Westlaw through Pub. Law 31-074) (conspiring to commit human trafficking); 720 ILL. COMP. STAT. § 10-9 (West, Westlaw through 2011 P.A. 97-530, with exception of P.A. 97-333, 97-334, and 97-463 of 2011 Reg. Sess.) (conspiring to commit forced labor or services); LA. REV. STAT. ANN. §§ 14:46.2, 14:46.3, 14:83.1 (West, Westlaw through the 2011 1st Extraordinary Session) (conspiring to commit human trafficking and sexual trafficking of children); MISS. CODE ANN. § 97-3-54.3 (West, Westlaw through 2011 Reg. Sess.) (conspiring to commit human trafficking); 6 N. MAR. I. CODE § 1503 (2005) (conspiring for involuntary servitude); R.I. GEN. LAWS § 11-67-2 (West, Westlaw through 2011 ch. 188 of Jan. Sess.) (same); S.C. CODE ANN. §16-3-930 (West, Westlaw through End of 2010 Reg. Sess.) (conspiring to commit labor trafficking).

A recent criminal case involving a husband and wife convicted of human trafficking offenses for maintaining two women as domestic servants illustrates the circumstances required to find a person’s actions sufficient to constitute conspiracy under the TVPA. In *United States v. Sabhnani*, the Second Circuit upheld Mahender Sabhnani’s conviction of conspiracy to commit forced labor and peonage with his wife because:

the evidence [wa]s ample that Mahender assisted his wife in bringing the maids to his home, that he did so to benefit from their labor, which he helped to direct, and that, knowing of his wife’s threats and punishments, he aided her in meting them

1 out. This evidence provides more than a sufficient basis on which to conclude
2 that there was a ‘tacit understanding’ between Mahender and [his wife] that the
3 maids would be held in involuntary servitude and peonage in the Sabhnanis’
4 home.

5
6 599 F.3d at 244.
7

8 It is possible, that the circumstances surrounding a human trafficking crime could be such
9 that a participatory activity would be the only way to subject a perpetrator to criminal liability.
10 An illustration of this problem is apparent in the 2000 case of the Florida citrus workers, which
11 has been analyzed by Free the Slaves and Human Rights Center. Hidden Slaves, at 8. In May of
12 2000, a Florida based NGO, the Coalition of Immokalee Workers (CIW), began investigating the
13 plight of migrant workers employed by R&A Harvesting. Shortly after receiving a tip, CIW
14 urged the Department of Justice to investigate what seemed to be a clear case of forced labor in
15 Florida’s citrus groves. Federal investigators, however, initially declined to pursue the case
16 because, without adequate resources to investigate, they felt they could not prove involuntary
17 servitude without victims who would be willing to testify. After a CIW agent went undercover
18 in the citrus grove and helped workers escape, the government agreed to go forward with the
19 case. With the help of the escaped victims, prosecutors convicted Ramos, his two brothers, and a
20 cousin of a host of charges, including conspiracy to hold workers in indentured servitude.
21 According to federal government sources, violations of the Trafficking Act could not be charged
22 in this case because of the time frame of the events. Almost a year had elapsed between the time
23 when CIW first brought the case to the attention of prosecutors and the time when prosecutors
24 had the evidence they wanted to charge the Ramos family. Meanwhile, the workers had
25 continued to toil under slave-like conditions. If not for the federal conspiracy charge, defendants
26 would have been charged only with extortion and firearms offenses. *Id.*
27

28 **[SECTION 211. OBSTRUCTION.]**

29 (a) A person may not obstruct, in any way interfere with, or prevent the enforcement of a
30 section of this article.

31 (b) A person who violates this section is guilty of a crime and upon conviction is subject
32 to the same penalty as provided for the offense, the enforcement of which was the object of the
33 obstruction.]

34 **Comment**

35 A stand-alone statute that criminalizes obstruction of all crimes under this article acts as
36 an umbrella statute and allows for broad application. The penalties for obstructing a human
37 trafficking enforcement or investigation should uniformly match the underlying crime to reflect
38 the grave nature of human trafficking crimes and the deep importance to society of investigations
39 into these crimes. This section provides an option for states lacking a general statute imposing a

penalty for obstruction of justice or enforcement. Subsection (a) mirrors language in federal law, which includes obstruction provisions within other human trafficking offenses. *See* 18 U.S.C. § 1581(b) (2006) (peonage; obstructing enforcement); 18 U.S.C. § 1583(a)(3) (2006) (enticement into slavery); 18 U.S.C. § 1584(b) (2006) (sale into involuntary servitude); 18 U.S.C. § 1590(b) (2006) (trafficking with respect to labor services, including peonage, slavery, involuntary servitude, or forced labor); 18 U.S.C. § 1591(d) (2006) (sex trafficking of children or by force, fraud, or coercion); 18 U.S.C. § 1592(c) (2006) (unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, forced labor, forced sex trafficking, sex trafficking of minors, or attempts to commit any of these crimes). At least two states have also taken the federal government's approach and provide a subsection for an obstruction violation within other offenses. *See, e.g.,* R.I. GEN. LAWS § 11-67-6 (West, Westlaw through 2011 ch. 188 of Jan. Sess.) (within offense for sex trafficking of a minor); ALA. CODE § 13A-6-152 and § 13A-6-153 (West, Westlaw through 2011 Reg. Sess.) (within offense for human trafficking). The Polaris Project also endorses including a separate provision addressing obstruction of a human trafficking violation. POLARIS MODEL LAW § I Human Trafficking Criminal Provisions (5) (obstruction).

All methods of obstruction laid out in state law apply to the human trafficking context. In *Martinez v. Calimlim*, a victim brought a civil action against her perpetrators, including one perpetrator who a federal jury had already convicted of illegally harboring an alien. Where the defendant was convicted of harboring the plaintiff and was accused of having lied to a federal agent in an attempt to obstruct the agent's effort to find the plaintiff, the court found that the plaintiff sufficiently alleged a civil action for obstruction of a human trafficking investigation. *Martinez v. Calimlim*, 651 F. Supp. 2d 852, 864 (E.D. Wis. 2009).

[SECTION 212. ATTEMPTS.

(a) A person may not attempt to commit a violation of this article.

(b) A person who violates this section is guilty of a crime and upon conviction is subject to the same penalty as provided for the offense that was the object of the attempt.]

Comment

It is necessary to have a criminal offense for attempts of all of the trafficking offenses in this article. Unfortunately, the states do not currently make attempts to commit human trafficking an offense in all necessary forms. Instead of only criminalizing attempts as to discrete provisions, states should criminalize all provisions within this article. Also, the penalties for attempting to commit a human trafficking violation should uniformly match the underlying crime to reflect the grave nature of human trafficking crimes and the deep importance to society of investigations into these crimes.

This section provides an option for a state that does not have a general statute imposing a penalty for attempting to commit a crime. The Trafficking Protocol requires

1 that the United States and the states criminalize attempts to violate a human trafficking
2 offense. Trafficking Protocol, *supra*, at art. 5(2)(a). This general attempt provision
3 tracks the federal government’s provision in the TVPA where the TVPA includes
4 attempting to commit a violation within each substantive offense. 18 U.S.C. § 1594
5 (2006).

6
7 At least twenty-five states or territories have criminalized attempts in their human
8 trafficking (including forced labor or sexual services) offenses. However, states criminalize it in
9 different ways depending on their existing human trafficking statute scheme. For example, while
10 some statutes only criminalize an attempt to commit trafficking for forced labor, others
11 criminalize an attempt to commit human trafficking generally (as defined by each specific state
12 statute).

13
14 At least eleven states criminalize an attempt to commit human trafficking generally. *See*
15 ALA. CODE 1975 § 13A-6-152 (West, Westlaw through 2011 Reg. Sess.) (attempt to violate
16 human trafficking); FLA. STAT. § 787.06 (West, Westlaw through 2011 ch. 236) (same); KAN.
17 STAT. ANN. § 21-3447 (West, Westlaw through 2011 Reg. Sess.) (attempt to violate aggravated
18 human trafficking offense); KY. REV. STAT. ANN. § 529.110 (West, Westlaw through the end of
19 2011 legis.) (attempt to violate “promoting” human trafficking offense); 6 MISS. CODE ANN. §
20 97-3-54.1 (West, Westlaw through 2011 Reg. Sess.) (attempt to violate human trafficking
21 offense); N.D. CENT. CODE § 12.1-40-01 (West, Westlaw through 2011 Reg. Sess.) (same); OHIO
22 REV. CODE ANN. § 2905.32 (West, Westlaw through 2011 Files 1 to 27, 29 to 47, and 49 of the
23 129th GA (2011-2012), apv. by 9/26/2011, and filed with the Sec. of State by 9/26/2011) (same);
24 18 PA. CONST. STAT. § 3002 (West, Westlaw through 2011 Acts 1 to 81) (same); S.D. CODIFIED
25 LAWS § 22-49-2 (West, Westlaw through the 2011 Special Sess., Exec. Order 11-1, and Supreme
26 Court Rule 11-17) (same); WASH. REV. CODE § 9A.40.100 (West, Westlaw through all 2011
27 Legis.) (same); WIS. STAT. § 940.302 and Wis. Stat. § 940.051 (same and also pertaining to
28 minor offenses) (West, Westlaw through 2011 Act 31, Acts 33 to 36, and Acts 38 to 44,
29 published 08/23/2011).

30
31 At least three states have criminalized only attempts to commit trafficking for forced
32 labor. *See* HAW. REV. STAT. § 707 (West, Westlaw through Act 235 [End] of the 2011 Reg.
33 Sess.) (attempt to violate labor trafficking in the first degree); S.C. CODE ANN. § 16-3-930 (West,
34 Westlaw through End of 2010 Reg. Sess.) (attempt to violate trafficking persons for forced labor
35 or services); TENN. CODE ANN. § 39-13-308 (West, Westlaw through 2011 Reg. Sess.) (same).

36
37 At least nine states criminalize an attempt to commit both a human trafficking offense
38 and also a forced labor or services offense. *See* DEL. CODE ANN. tit. 11, § 787 (West, Westlaw
39 through 2011 chs. 1-125 of 78 Laws) (attempt to violate human trafficking and involuntary
40 servitude); 9 GUAM CODE ANN. § 26.02 (West, Westlaw through Pub. Law 31-074) (attempt to
41 trafficking in persons, sexual servitude of a minor, and involuntary servitude provisions); 720
42 ILL. COMP. STAT. § 10-9 (West, Westlaw through 2011 P.A. 97-530, with exception of P.A. 97-
43 333, 97-334, and 97-463 of 2011 Reg. Sess.) (attempt to involuntary servitude, involuntary
44 sexual servitude of a minor, and trafficking persons for forced labor or services offenses); MICH.
45 COMP. LAWS § 750.462 (West, Westlaw through 2011 P.A. No. 209 Reg. Sess.) (attempt to
46 forced labor or services offenses and human trafficking); NEB. REV. STAT. ANN. § 28-831 (West,

Westlaw through the 102nd Legislature First Reg. Sess. 2011) (same); NEV. REV. STAT. ANN. 200.464 (West, Westlaw through 2009 75th Reg. Sess. and 2010 26th Special Sess. and technical corrections from 2010 Leg. Counsel Bureau) (attempt to human trafficking and involuntary servitude offense); 6 N. MAR. I. CODE §§ 1502, 1503, 1504 (2005) (attempt to violate involuntary servitude, human trafficking for involuntary servitude, and sexual servitude of a minor); OR. REV. STAT. §§ 163.263, 163.266 (West, Westlaw through 2011 Reg. Sess. legislation effective through 9/29/11) (attempt to violate involuntary servitude and trafficking in persons offenses); R.I. GEN. LAWS §§ 11-67-2, 11-67-3, 11-67-6 (West, Westlaw through 2011 ch. 188 of Jan. Sess.) (attempt to violate involuntary servitude, trafficking of persons for forced labor or sexual activity, and sex trafficking of a minor offenses). There are also other ways states criminalize attempts to commit a human trafficking offense that are more particular to that state's statutory scheme. *See, e.g.*, CAL. PEN. CODE § 181 (West, Westlaw through 2011 ch. 745 of Reg. Sess. and all 2011-2012 1st Ex. Sess. laws) (attempt to assume ownership of persons); MO. REV. STAT. § 566.215 (West, Westlaw through 2011 First Extraordinary Sess.) (attempt to restrict movement).

Additionally, at least four states have criminalized attempt relating to handling documents to further human trafficking. *See* D.C. CODE §22-1837 (West, Westlaw through Sept. 13, 2011) (attempt to violate forced labor, trafficking in labor or sex acts, sex trafficking of children, and unlawful conduct regarding documents offenses); HAW. REV. STAT. § 707 (West, Westlaw through Act 235 [End] of the 2011 Reg. Sess.) (attempt to violate unlawful conduct of documents offense); MD. CODE ANN., CRIM. LAW § 11-303(a)(1)(vi) (confiscating identification document in attempt to violate human trafficking); MINN. STAT. § 609.283(3) (West, Westlaw through 2011 Reg. Sess.) (attempt to violate unlawful conduct regarding documents in furtherance of labor or sex trafficking offense).

Mirroring federal law, this attempt provision not only covers situations in which a person attempts to pimp, but situations in which a person attempts to purchase sex. In *United States v. Roberts*, the defendant negotiated a meeting to have sex with minors through a fake travel agency set up by federal investigators, repeatedly expressed desire for a 16-year-old sexual companion, and then requested sexual services. No children were involved and the defendant did not have sexual contact with any minor. Nonetheless, the 11th Circuit affirmed the defendant's conviction under 18 U.S.C. §1594(a) for attempting to engage a person under the age of 18 for commercial sex purposes. *United States v. Roberts*, 174 Fed. Appx. 475 (11th Cir. 2006).

SECTION 213. BUSINESS LIABILITY.

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

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

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

1 business entity; or

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

6 **Alternative A**

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

11 **Alternative B**

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

15 **Alternative C**

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

19 **End of Alternatives**

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

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

23 (2) suspension or revocation of any license or permit;

- 1 (3) dissolution or reorganization;
- 2 (4) disgorgement of profit;
- 3 (5) debarment from government contracts; or
- 4 (6) any other equitable measure as justice so requires.

5 **Comment**

6 States must uniformly confront corporate liability with respect to human trafficking
7 violations so that business entities cannot easily avoid liability for, or acquiesce to, human
8 trafficking offenses within their corporate reach. The strong incentive to find labor, services, or
9 products at the cheapest possible cost tempts business entities to authorize, engage in, or
10 willfully ignore forced labor and services. In order to counter this strong incentive to knowingly
11 permit forced labor and servitude, it is imperative that business entities be held liable for such
12 offenses.

13
14 The definition of “person” under subsection 102(10) includes business entities; therefore,
15 business entities can be liable under all sections within this article. However, this section is a
16 way to limit liability for business entities. This section does not create a new liability; rather, it
17 identifies the limited circumstances under which business entities may be found accountable for
18 the actions of its operative personnel when they violate the other sections. Subsection (b)(1) is
19 when the business entity knowingly violates its section. The agent must be both acting within
20 the scope of his/her employment and on behalf of the entity. Subsection (b)(2) covers liability
21 when the business entity has a rogue employee and knowingly fails to stop or recklessly avoids
22 stopping the rogue employee from engaging in a pattern of human trafficking violations and the
23 pattern of violations represents the business entity. To take into account a potential rogue
24 employee’s behavior (as opposed to an agent’s knowing violation of this act), the business entity
25 is provided with an affirmative defense under subsection (c). If the business is found to either
26 commit a violation of subsection (b)(1) or commit a violation under subsection (b)(2) and fails to
27 satisfy the affirmative defense under subsection (c), the defendant shall be liable for any or all of
28 the penalties.

29
30 Subparagraph (b)(2) codifies the Willful Blindness or Deliberate Ignorance doctrine.
31 "Under the doctrine of willful blindness or deliberate ignorance..., knowledge can be imputed to a
32 party who knows of a high probability of illegal conduct and purposely contrives to avoid
33 learning of it." *Williams v. Obstfeld*, 314 F.3d 1270, 1278 (11th Cir. 2002) (explaining the
34 doctrine of Willful Blindness). Legislators have used the Willful Blindness doctrine to hold a
35 business entity liable where a corporate agent became suspicious of a criminal violation but
36 deliberately took no action in an attempt to mitigate or investigate potential criminal activity.
37 *See A.E. Staley Mfg. Co. v. Sec'y of Labor*, 295 F.3d 1341, 1350-53 (D.C. Cir. 2002) (holding
38 that corporate defendant, through the "willful blindness" doctrine, possessed knowledge of
39 OSHA violations); *United States v. Bank of New England*, 821 F.2d 844, 856-57 (1st Cir. 1987)
40 (holding a bank criminally liable because it willfully and knowingly disregarded federally-
41 required filing and subsequently remained consciously indifferent to reporting requirements).

1 Therefore, a business entity may be liable if there is proof of either actual knowledge or
2 conscious avoidance of acknowledging the pattern of illegal activity, even if outside the scope of
3 employment. *See United States v. Baxter Int'l*, 345 F.3d 866, 902 (11th Cir. 2003) (stating that
4 "[a] party that willfully blinds itself to a fact... can be charged with constructive knowledge of
5 that fact" and finding that if defendants had either actual or constructive knowledge that some
6 recipients of the funds they were paying out had received medical treatment for which Medicare
7 already paid, then defendants would be liable.). For an instruction on how corporations and
8 business entities may prevent violating a human trafficking offense, *see* UNGift's e-tool to the
9 private sector *available at* [http://www.ungift.org/knowledgehub/en/tools/elearning-tool-for-the-](http://www.ungift.org/knowledgehub/en/tools/elearning-tool-for-the-private-sector.html)
10 [private-sector.html](http://www.ungift.org/knowledgehub/en/tools/elearning-tool-for-the-private-sector.html). For example, businesses may train their employees on human trafficking
11 offenses so that they can better identify signs of human trafficking situations. Another example
12 is a company may adopt a reporting system where employees are encouraged to report signs of
13 human trafficking situations within the business.

14
15 An example of an activity covered by subsection (b)(2) could be within the supply or
16 contracting context: while the activities of a supplier or subcontractor may not obviously fall
17 within the scope of employment by the business' entity, the business agent has a duty to ensure
18 that the subcontractor's labor or services are not in violation of this act. For example, if a
19 supplier can consistently produce qualitatively similar materials at a significantly lower cost than
20 competitors, this should flag the business agent's attention and the business agent should look
21 further into the supplier's practices before continuing to have a business relationship with the
22 supplier.

23
24 Under subsection (c), the state has the option of adopting one of three alternatives for an
25 affirmative offense. Alternative A is mirrored after the United Kingdom's Bribery Act. Bribery
26 Act, 2010, c. 23, § 7 (U.K.) ("But it is a defence for [commercial organization] to prove that
27 [commercial organization] had in place adequate procedures designed to prevent persons
28 associated with [commercial organization] from undertaking such conduct.").

29
30 Alternatives B and C derive from the Supreme Court's holding for an affirmative defense
31 in the sexual harassment context where there is no tangible harm. *Burlington Indus., Inc. v.*
32 *Ellerth*, 524 U.S. 742 (1998). Examples of a tangible harm in the sexual harassment context
33 include a "significant change in employment status, such as discharge, demotion, or undesirable
34 reassignment." *Id.* at 745. Where there is a tangible harm, the Supreme Court has held that
35 there is no affirmative defense available to the employer. *Id.* at 744-45 (distinguishing it from
36 where there is no tangible action and stating that this "Court imposes the significant, tangible
37 employment action concept for resolution of the vicarious liability issue... An employer is
38 therefore subject to vicarious liability for such actions."). However, when there is no tangible
39 benefit, the Supreme Court subjects the employer to an affirmative defense because "it is not
40 obvious the agency relationship aids in commission" of the violation. *Id.* at 745. This section
41 analogizes making available an affirmative defense to the human trafficking context: where there
42 is a direct business agent acting on behalf of the company and within scope of employment
43 (subsection (b)(1)) there is no affirmative defenses, however, where there is a rogue employee
44 and the relationship of the rogue employee to the business entity is not obvious the business
45 entity aids in the violation of the human trafficking there is an affirmative defense for the
46 business entity.

1
2 Alternative A’s language directly mirrors the holding. *Id.* at 765 (concluding that in a
3 Title VII sexual harassment case that an affirmative defense can be asserted by the employer if
4 “(a) that the employer exercised reasonable care to prevent and correct promptly any sexually
5 harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of
6 any preventive or corrective opportunities provided by the employer or to avoid harm
7 otherwise.”). In the Supreme Court’s holding, however, it strongly suggested that a business
8 would need to promulgate a company policy with a complaint procedure. While Alternative B
9 captures the more flexible “reasonable care” standard of the Supreme Court, Alternative C
10 captures the specific actions that the Supreme Court intended would satisfy the reasonable care
11 standard. *Id.* at 765 (stating that “the need for a stated policy suitable to the employment
12 circumstances may appropriately be addressed in any case when litigating the first element of the
13 defense.... [and] a demonstration of [an employee failing to use the complaint procedure] will
14 normally suffice to satisfy the employer's burden under the second element of the defense.”).
15

16 To identify and prevent human trafficking violations, business enterprises should carry
17 out due diligence. Conducting appropriate human trafficking due diligence should help business
18 entities address the risk of legal claims against them by showing that they took every reasonable
19 step to avoid involvement with an alleged human rights abuse. The Human Rights Council
20 provides that due diligence should include “assessing actual and potential human [trafficking]
21 impacts, integrating and acting upon the findings, tracking responses, and communicating how
22 impacts are addressed.” Human Rights Council, Report of the Special Representative of the
23 Secretary-General on the issue of human rights and transnational corporations and other business
24 enterprises, (17th Sess., 2011) U.N. Doc. A/HRC/17/31 (2011), at 15, *available at*
25 <http://www.ohchr.org/Documents/Issues/Business/A.HRC.17.31.Add.3.pdf>. The due diligence
26 should cover adverse human rights impacts that the business enterprise may cause or contribute
27 to through its own activities, or which may be directly linked to its operations, products or
28 services by its business relationships. Due diligence will vary in complexity with the size of the
29 business enterprise, the risk of severe human rights impacts, and the nature and context of its
30 operations. Due diligence should be ongoing, recognizing that the human rights risks may
31 change over time as the business enterprise’s operations and operating context evolve. *Id.*
32 Human trafficking due diligence can be included within broader risk-management systems
33 within the business entity.
34

35 Subsection (d) includes a list of common remedies that the existing statutes already
36 provide. Several states or territories provide for criminal corporate liability for violating a
37 human trafficking offense in a separate provision. In Hawaii, the court “shall” order that all
38 business licenses issued by the state be revoked for all violations related to labor trafficking.
39 HAW. REV. STAT. § 707 (West, Westlaw through Act 235 [End] of the 2011 Reg. Sess.). This
40 subsection gives the court discretion to order remedies based on the facts and circumstances of
41 the particular case. Three states permit the state court to order a corporate-defendant’s
42 dissolution or reorganization; order the suspension or revocation of any license, permit, or prior
43 approval granted to it by a state agency; or, order the surrender of its charter or the revocation of
44 its certificate. *See, e.g.*, 9 GUAM CODE ANN. § 26.05 (West, Westlaw through Pub. Law 31-074);
45 MINN. STAT. § 609.284 (West, Westlaw through 2011 Reg. Sess.); MO. REV. STAT. § 566.265
46 (West, Westlaw through 2011 First Extraordinary Sess.). In Nevada, corporations engaging in

1 trafficking will be found guilty of a gross misdemeanor. NEV. REV. STAT. ANN. § 613.080
2 (West, Westlaw through 2009 75th Reg. Sess. and 2010 26th Special Sess. and technical
3 corrections from 2010 Leg. Counsel Bureau).

4
5 Some states define “person” in a way that includes business entities specifically within its
6 human trafficking section. *See, e.g.*, R.I. GEN. LAWS § 11-67-6 (West, Westlaw through 2011
7 ch. 188 of Jan. Sess.) (“[p]erson” includes an individual, corporation, partnership, association, a
8 government body, a municipal corporation, or any other legal entity). Other states allow
9 corporations to be dissolved for human trafficking violations in their administrative dissolution
10 section. *See, e.g.*, WIS. STAT. §181.1420(7) (West, Westlaw through 2011 Act 31, Acts 33 to 36,
11 and Acts 38 to 44, published 08/23/2011). Other jurisdictions assert that it is unlawful for “an
12 individual or a business” to violate human trafficking statutes. D.C. CODE §§ 22-1832, 22-1834,
13 22-1835, 22-1836 (West, Westlaw through Sept. 13, 2011).

14
15 The definition of agent under subsection (a) is expansive and state law and jurisprudence
16 should determine its scope. For example, a state may charge a corporation for a crime under this
17 act if its board of directors recklessly allowed the employees to confiscate workers’ passports;
18 however, the law permits the corporation to assert a due diligence defense if it undertook
19 reasonable measures to prevent, deter, or illuminate such illegal practices.

20
21 **SECTION 214. EVIDENCE EXCLUDED.** [The state rape shield law] applies to
22 exclude commercial sexual services of the alleged victim that do not concern the defendant in
23 proceedings brought under charges of Sections 201-212 that allege sexual activity or services:

24 (1) induced by coercion, deception, or fraud; or

25 (2) by a victim under the age of 18.

26 **Comment**

27 This section ensures that any evidence exclusions used for sexual misconduct crimes also
28 apply to sexual servitude and the derivative crimes created in this act. This shield should be
29 extended to alleged victims of sexual servitude because, like victims of rape, sexual assault or
30 harassment, they are also at risk of “the invasion of privacy, potential embarrassment and sexual
31 stereotyping that is associated with public disclosure of intimate sexual details,” which is what
32 rape shield laws are designed to protect against. *Wilson v. City of Des Moines*, 442 F.3d 637,
33 643-44 (8th Cir. 2006) (quoting FED. R. EVID. 412 Advisory Committee Notes as the underlying
34 policy of rape shield laws).

35
36 This section codifies caselaw that extends the federal rape shield law in sex trafficking
37 proceedings. These jurisdictions have recognized sex trafficking crimes as “sexual misconduct”
38 for the purposes of FED. R. EVID 412, and also have appropriately applied the exclusions to
39 sexual activity not engaged in during the alleged offense. *See United States v. Elbert, II*, 561 F.
40 3d 771 (8th Cir. 2009); *USA v. Valenzuela*, 2008 U.S. Dist. LEXIS 73137 (C.D. Cal. July 21,

2008) (both holding that prior sexual conduct to the trafficking situation fell under excluded evidence of the applicable rape shield law); *United States v. Shamsud-Din*, 2011 U.S. Dist. LEXIS 124449 (N.D. Ill. E.D. 2011) (holding that prostitution prior to or after the trafficking situation was properly excluded under FRE 412).

At least three states specifically bar previous sexual commercial history or activity for trafficking crimes. D.C. CODE ANN. § 22-1839 (West, Westlaw through 2011 Reg. and Special Sess.) (prohibits reputation or opinion evidence of the past sexual behavior of victim, and bars such evidence for purposes other than reputation or opinion unless it is constitutionally required); GA. CODE ANN. § 16-5-46. (West, Westlaw through 2011 Reg. and Special Sess.); VA. CODE ANN. § 18.2-37.7 (West, Westlaw through End of 2011 Reg. Sess. and includes 2011 Sp. S. I, c. 1.) (rape shield law specifically applies to kidnapping statute where involuntary sexual servitude provisions are found).

SECTION 215. PROHIBITED DEFENSES. A defendant charged with a violation of Sections 201—212 shall not use an alleged victim’s consent as a defense where the labor, services, sexual activity, or sexual services were maintained by coercion, deception, or fraud.

Comment

This section prohibits a defense to crimes in Article 2 that would unjustly distract from the severity of the alleged crime. Section 218(b) is required by the Trafficking Protocol, *supra*, at art. 3(b). It clarifies that, though a person may consent to perform a labor, service or sexual service, where coercion, deception, or fraud are used, that consent does not express the free will of the person. This would be true in the situation where a person initially consents to travel somewhere to take a particular job, but the person was deceived and the work is not what was promised, or the victim is forced to continue working after the victim wishes to cease. Despite consent in such circumstances, the labor or services are still acquired illegally in violation of Section 201(a).

SECTION 216. VICTIM IMMUNITY AND DEFENSES.

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

(b) It is an affirmative defense in a prosecution for a criminal violation if the defendant proves by [a preponderance of the evidence] that the defendant:

(1) is a victim, as defined in Section 101(17); and

(2) committed the violation under a reasonable apprehension in the mind of the

defendant created by another person that if the defendant did not commit the act, that person would inflict serious harm upon the defendant or a member of the defendant's family.

Comment

This section provides victims, once they have been removed from a human trafficking situation, with protections appropriate to their status as victims. These protections can be essential in situations where a victim is initially held by law enforcement as a potential criminal. Subsection (a) is modified from Guam law and is intended to provide a level of protection to victims coerced into committing illegal acts. 9 GUAM CODE ANN. § 26.03 (West, Westlaw through Pub. Law 31-074) ("A victim of trafficking in persons is not criminally liable for any commercial sex act or illegal sexually-explicit performance committed as a direct result of, or incident or related to, being trafficked").

The defense in subsection (b) is to protect victims who find themselves prosecuted for crimes they committed under compulsion by their trafficker. While similar to the affirmative defense of duress, this is specifically written for the types of coercion and control tactics, *see* Comment to Section 101, used within a trafficking situation that would not meet the requirements of duress. Duress requires several elements that do not fit many trafficking situations including the use of or threat of *physical* violence. *See, e.g., U.S. v. Bravo*, 489 F.3d 1 (1st Cir. 2007) (requires acting under immediate threat of serious bodily injury); *U.S. v. Lewis*, 641 F.3d 773 (7th Cir. 2011) (requires reasonably fearing immediate death or serious bodily injury); OR. REV. STAT. § 161.270 (1-2) (West, Westlaw through 2011 Reg. Sess. Legis. effective through 9/29/11) (requiring the "use or threatened use of unlawful physical force"). Also, the violence must be imminent. *See, e.g., U.S. v. Bonilla-Siciliano*, 643 F.3d 589 (8th Cir. 2011) (holding that one element of duress is that the threat be unlawful and present, imminent, and impending); TEX. PENAL CODE ANN. § 8.05(a) (West, Westlaw through 2011 Reg. Sess. and 1st Called Sess. of the 82d Legis.) ("compelled to do so by threat of imminent death or serious bodily injury"). A victim of Section 203, for example, might commit acts of prostitution because of a history of abuse by her trafficker, although the violence might not be "imminent" in the particular act in which she was apprehended by law enforcement. Because such coercion would not be covered under duress, this affirmative defense is necessary to keep victims from unjustly suffering the consequences for acts they were coerced to commit.

This subsection closely follows Minnesota's affirmative defense, which requires the victim to prove victim status during the time the crime was committed and that the victim acted under compulsion of the trafficker. MINN. STAT. ANN. § 609.325 (West, Westlaw through 2011 Reg. Sess.). Minnesota is among at least nine states that have an affirmative defense for trafficking victims. ALA. CODE § 13A-6-159 (West, Westlaw Current through End of 2011 Regular Session) (applicable to charges of prostitution or sexually explicit performances committed "as a result" or labor or sex servitude); OKLA. STAT. tit. 21 § 748(D) (West, Westlaw Current through End of First Regular Session of the 53rd Legislature 2011) (applies to any criminal offense where defendant is victim of trafficking during the time of the alleged offense); 9 GUAM CODE ANN. § 26.03(a) (West, Westlaw through Pub. Law 31-074) (applies to all crimes for those who are "victims of trafficking in persons" and where victim was under duress or

1 coerced); MO. ANN. STAT. § 566.223 (West, Westlaw Current through 2011 First Regular
2 Session of the 96th General Assembly 2011) (applies to prostitution charges, although it requires
3 force or threat of force in the context of the situation); IOWA CODE § 710A.3 (West, Westlaw
4 Current with legislation from 2011 Regular Session) (applies to crimes that are “directly related”
5 to the defendant’s victim of trafficking status, also requiring compulsion of another’s threat of
6 serious injury with a subjective standard of belief of the injury’s imminence); N.H. Rev. Stat. §
7 645:2(IV) (West, Westlaw Current through Chap. 269 of 2011 Regular Session) (applies to
8 prostitution charges to those who meet the definition of a “victim of trafficking”); N.J. STAT.
9 ANN. §2C:13-8(c) (West, Westlaw Current with laws effective through L.2011, c.136 and J.R.
10 No. 8) (applies to trafficking prosecutions to allow defendant to raise the defense of being a
11 victim of trafficking); OR. REV. STAT. § 163.269 (2009) (applies to prosecutions for conduct
12 constituting “services” that person was forced to provide as a victim of crimes described in
13 trafficking statutes); R.I. GEN. LAWS. ANN. § 11-34.1-2 (West, Westlaw Current through Ch. 407
14 of the Jan. 2011 Session) (applies to prostitution charges, requires proving coercion methods of
15 state trafficking statute); VT. STAT. ANN. tit. 13 § 2652(a) (West, Westlaw Current through First
16 Session of 2011-12 Vt. General Assembly) (applies to victims of sex trafficking for offenses that
17 benefit the trafficker or arise out of sex trafficking excluding prostitution and obscenity charges,
18 committed as a result of force, fraud, or coercion of the trafficker).

19
20 The scope of this affirmative defense is meant to apply generally to all crimes, since
21 traffickers can compel their victim to commit a variety of crimes, from carrying drugs for them,
22 to recruiting other victims, to engaging in prostitution. For a defendant to use this affirmative
23 defense, two elements must be proven. Paragraph (1) requires that the crime was committed
24 while the victim was being subjected to an offense under Article 2. This affirmative defense
25 should not be interpreted to depend on the prosecution of a trafficker. Paragraph (2) requires that
26 the defendant causally connect his or her victim status to the commission of the crime with
27 which the defendant is charged. This requires demonstrating “serious harm” as defined in
28 Section 101(13). These two requirements together limit the accessibility of this defense to
29 victims.

30
31 **SECTION 217. MOTION TO VACATE JUDGMENT.** At any time after the entry of
32 a judgment, the court in which it was entered may vacate such judgment if the defendant’s
33 participation in the offense is found to have been the result of having been a victim. Official
34 documentation of the defendant's status as a victim at the time of the offense from a federal,
35 state, or local government agency shall create a presumption that the defendant's participation in
36 the offense was a result of having been a victim, but shall not be required for granting a motion
37 under this section.

38 **Comment**

1 This section is taken from New York law. N.Y. CRIM. PRO. § 440.10 (West, Westlaw
2 through 2011 legislation, ch. 1-54 and 57-495). Even after being freed from a trafficking
3 situation, a victim with a criminal record directly resulting from the trafficking situation may
4 continue to suffer emotionally and financially. This section allows the court to take victim status
5 into account retrospectively in the application of justice. *See People v. G.M.*, 922 N.Y.S.2d 761
6 (City Crim. Ct. 2011) (prostitution convictions in a victim’s criminal record cleared where the
7 offenses of which she was convicted were a direct result of her trafficking situation). In ruling,
8 the court in *G.M.* noted that the victim would “be otherwise vulnerable to having her background
9 exposed to future employers, creating further embarrassment, humiliation and financial
10 hardship.” *Id.* at 277. This section helps victims to rebuild their lives after removal from a
11 trafficking situation and become successfully employed and self-sufficient by removing the
12 obstacle of a criminal record.

13
14 **SECTION 218. RESTITUTION.**

15 (a) The court shall order a person convicted of an offense under Sections 201- 212 to pay
16 restitution to the victims including:

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

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

21 (B) the value of the victim’s labor or services as guaranteed under the
22 minimum wage and overtime provisions of the Fair Labor Standards Act;

23 (C) the value of the victim’s labor or services as guaranteed under [state
24 minimum wage and overtime provisions]; or

25 (2) if it is not possible or not in the best interest of the victim to compute any of
26 the values under (A), (B), and (C), the equivalent of the value of the victim’s labor or services if
27 the victim had provided labor or services that are subject to the minimum wage and overtime
28 provisions of the Fair Labor Standards Act or [state minimum wage and overtime provisions];

29 (3) costs incurred by the victim as a result of the offense for:

30 (A) medical services;

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

(b) The immigration status or the return of the victim to the victim's country of
citizenship or other absence of the victim from the jurisdiction shall not prevent the court from
ordering or the victim from receiving restitution.

Comment

Restitution is an important tool to provide compensation to victims of human trafficking. Victims have many needs, such as housing, medical care, transportation, and food, that can be both urgent and expensive, and the trafficker who created their situation should contribute to those costs, especially since human trafficking is a crime motivated mainly by financial gain and can be very lucrative. Restitution will not only provide justice to the victim who was not compensated for the labor or services provided to the trafficker but will help fund the vital services victims need as a result of their victimization and transfer some of the burden of funding victim services from governments to perpetrators.

Subsection (a) describes the costs that restitution should cover. Because people convicted of human trafficking exploited their victims' labor or services without properly compensating their victims, human traffickers should have to compensate their victims for all rendered labor or services. The first measure of this compensation is the value of the victim's labor or services to the trafficker. Where the illegal and hidden nature of the trafficker's activities make it impossible to calculate this value, the court should calculate compensation for wages under the minimum wage and overtime provisions of federal or state law. *See, e.g., Sabhnani*, 599 F.3d at 254-260 (affirming award of restitution including net back pay calculated under the FLSA minimum wage provisions and liquidated damages doubling the net back pay). However, where victims are forced to provide certain types of service, such as prostitution, domestic service, or agricultural labor, which may not be subject to the full range of federal or

1 state labor regulations, the court should apply the same minimum wage and overtime provisions
2 as if the victim had provided services normally subject to those provisions in order to calculate a
3 fair amount of compensation to the victim.

4
5 Besides compensating for wages that victims should have received for their services,
6 restitution should also cover additional costs victims incur as a result of being subjected to
7 human trafficking. These costs will vary from victim to victim depending on the type and extent
8 of the exploitation, and the court should order compensation for all reasonable costs in the
9 context of the victim's situation. Additionally, victims who are not legally present in the United
10 States should receive compensation, even if they return to their country of origin.

11
12 By mandating restitution for other costs incurred by the victim, restitution also has a
13 deterrent effect. If a trafficker only has to repay wages when caught, it will be worth the risk to
14 the trafficker to not pay his victims; it is only a matter of paying wages at the time the victims are
15 serving the trafficker or paying them later when the trafficker is caught. However, if the costs of
16 trafficking upon conviction are much higher, the trafficker will be less inclined to risk being
17 caught. In this way, deterrence is one theory of punishment that can be effectuated by
18 restitution.

19
20 The Trafficking Protocol obligates state parties to provide measures for victims of human
21 trafficking to obtain "compensation for damage suffered." Trafficking Protocol, *supra*, at art.
22 6(6). The UNODC Model Law includes a provision for court-ordered restitution. UNODC
23 MODEL LAW art. 28(1). It specifies that compensation may include, among other things, costs
24 of: medical, physical, psychological or psychiatric treatment; physical and occupational therapy
25 or rehabilitation; necessary transportation; temporary childcare; temporary housing; lost income
26 and wages; legal fees; and any other costs incurred as a direct result of being trafficked. *Id.* The
27 costs covered by this restitution provision, together with the civil action provision, *see* Section
28 307, cover the costs enumerated by the UNODC Model Law.

29
30 The TVPA mandates restitution to the victim to cover the full amount of the victim's
31 losses plus "the greater of the gross income or value to the defendant of the victim's services or
32 labor or the value of the victim's labor as guaranteed under the minimum wage and overtime
33 guarantees of the Fair Labor Standards Act." 18 U.S.C. § 1593(b)(1) (2006). The "full amount
34 of the victim's losses" includes costs incurred by the victim for:

- 35
36 (A) medical services relating to physical, psychiatric, or psychological care;
37 (B) physical and occupational therapy or rehabilitation;
38 (C) necessary transportation, temporary housing, and child care expenses;
39 (D) lost income;
40 (E) attorneys' fees, as well as other costs incurred; and
41 (F) any other losses suffered by the victim as a proximate result of the offense.

42
43 18 U.S.C. § 2259(b)(3).

44
45 Fourteen states also mandate restitution to the victim upon conviction of human
46 trafficking. ALA. CODE § 13A-6-155 (West, Westlaw through 2011 Reg. Sess.) ("a person or

entity convicted of any violation of this article shall be ordered to pay mandatory restitution to the victim, prosecutorial, or law enforcement entity”); DEL. CODE ANN. tit. 11, § 787(c) (West, Westlaw through 2011 chs. 1-125 of 78 Laws) (“the court shall order restitution, including the greater of: (1) The gross income or value to the defendant of the victim's labor or services; or (2) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA), whichever is greater”); HAW. REV. STAT. § 707-F (West, Westlaw through Act 235 [End] of the 2011 Reg. Sess. 1) (the court shall order restitution to be paid to the victim, consisting of an amount that is the greater of: (a) The total gross income or value to the defendant of the victim's labor or services; or (b) The value of the victim's labor or services, as guaranteed under the minimum wage provisions of chapter 387 or the Fair Labor Standards Act of 1938 . . . whichever is greater.”); IDAHO CODE ANN. §18-8604 (West, Westlaw through 2011 ch. 1-335) (“(1) In addition to any other amount of loss resulting from a human trafficking violation, the court shall order restitution, as applicable, including the greater of: (a) The gross income or value to the defendant of the victim's labor or services; or (b) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the federal fair labor standards act. (2) In addition to any order for restitution as provided in this section, the court shall order the defendant to pay an amount determined by the court to be necessary for the mental and physical rehabilitation of the victim or victims.”); 720 ILL. COMP. STAT. 5/10-9(g) (West, Westlaw through 2011 P.A. 97-530, with exception of P.A. 97-333, 97-334, and 97-463 of 2011 Reg. Sess.) (“in addition to any other amount of loss identified, the court shall order restitution including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act (FLSA) or the Minimum Wage Law, whichever is greater”); MICH. COMP. LAWS § 750.462j (West, Westlaw through 2011 P.A. No. 209 Reg. Sess.) (“the court shall order a person convicted of violating this section to pay restitution to the victim.”); MO. REV. STAT. § 566.218 (West, Westlaw through 2011 First Extraordinary Sess.) (“A court . . . shall order the offender to pay restitution to the victim of the offense.”); N.J. STAT. ANN. § 2C:13-8(e) (West, Westlaw through 2011 legis.) (“the court shall award to the victim restitution which is the greater of: (1) the gross income or value to the defendant of the victim's labor or services; or (2) the value of the victim's labor or services as determined by the ‘New Jersey Prevailing Wage Act,’ . . . the ‘New Jersey State Wage and Hour Law,’ . . . the Seasonal Farm Labor Act, . . . the laws concerning the regulation of child labor, . . . or any other applicable State law, and the ‘Fair Labor Standards Act of 1938,’ . . . or any other applicable federal law.”); N.M. STAT. ANN. § 30-52-1 (West, Westlaw through 2011 First Reg. Sess.) (“a person convicted of human trafficking shall . . . be ordered to make restitution to the victim for the gross income or value of the victim's labor or services and any other actual damages”); N.D. CENT. CODE § 12.1-40-01(4) (West, Westlaw through 2011 Reg. Sess.) (“in addition to any sentence or fine imposed for a conviction of [human trafficking], the court shall order the person convicted to make restitution to the victim of the crime”); OKLA. STAT. tit. 21, § 748; tit. 22, § 991f(a)(1) (West, Westlaw through 2011 ch. 385 of First Reg. Sess.) (“the court shall also order the defendant to pay restitution to the victim” in an amount “up to three times the amount of the economic loss suffered as a direct result of the criminal act of the defendant”); PENN CONS. STAT. § 3003(a) (West, Westlaw through 2011 Acts 1 to 81) (“a person convicted of an offense under this chapter shall . . . be sentenced to pay the victim restitution, including the greater of: (1) the gross income or value to the person to whom the labor or services were performed by the victim; or (2) the value of the victim's labor based on the

1 minimum wage of this Commonwealth”); R.I. GEN. LAWS § 11-67-4 (West, Westlaw through
2 2011 ch. 188 of Jan. Sess.) (“in addition to any other amount of loss identified, the court shall
3 order restitution including the greater of: (a) The gross income or value to the defendant of the
4 victim's labor or commercial sexual activity; or (b) The value of the victim's labor as guaranteed
5 under the minimum wage law and overtime provisions of the Fair Labor Standards Act (FLSA)
6 or the minimum wage law, whichever is greater.”); TENN. CODE ANN. § 39-13-308(B) (West,
7 Westlaw through 2011 Reg. Sess.) (“in addition to any other amount of loss identified or any
8 other punishment imposed, the court shall order restitution to the victim or victims in an amount
9 equal to the greater of: (1) The gross income or value of the benefit received by the defendant as
10 the result of the victim's labor or services; or (2) The value of the victim's labor as guaranteed
11 under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) . . .
12 or the minimum wage required in this state, whichever is higher”).

13
14 Alabama has a comprehensive restitution provision that provides compensation for a
15 wide variety of incurred costs, including:

16
17 (1) Costs of medical and psychological treatment, including physical and
18 occupational therapy and rehabilitation, at the court's discretion.

19 (2) Costs of necessary transportation, temporary housing, and child care, at the
20 court's discretion.

21 (3) Cost of the investigation and prosecution, attorney's fees, and other court-
22 related costs such as victim advocate fees.

23 (4) The greater of a. the value of the human trafficking victim's labor as
24 guaranteed under the minimum wage and overtime provisions of the Fair Labor
25 Standards Act; or b. the gross income or value to the defendant of the victim's
26 labor servitude or sexual servitude engaged in by the victim while in the human
27 trafficking situation.

28 (5) Return of property, cost of damage to property, or full value of property if
29 destroyed or damaged beyond repair.

30 (6) Expenses incurred by a victim and any household members or other family
31 members in relocating away from the defendant or his or her associates,
32 including, but not limited to, deposits for utilities and telephone service, deposits
33 for rental housing, temporary lodging and food expenses, clothing, and personal
34 items. Expenses incurred pursuant to this section shall be verified by law
35 enforcement to be necessary for the personal safety of the victim or household or
36 family members, or by a mental health treatment provider to be necessary for the
37 emotional well-being of the victim.

38 (7) Any and all other losses suffered by the victim as a result of any violation of
39 this article.

40
41 ALA. CODE § 13A-6-155 (West, Westlaw through 2011 Reg. Sess.). States should follow this
42 example and mandate that courts to order restitution to cover a wide range of potential costs that
43 may be incurred as a result of being a victim of human trafficking.

44
45 **SECTION 219. FORFEITURE.**

1 (a) The court shall order a person convicted of an offense under Sections 201-212 to
2 forfeit:

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

5 (2) any interest in real or personal property constituting or derived from any
6 proceeds that the person obtained, directly or indirectly, as a result of the offense.

7 (b) The proceeds of a public sale or auction of the forfeited property shall be distributed
8 as follows:

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

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

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

14 (A) twenty percent (20%) shall be applied to the state's crime victims
15 compensation fund for the purposes of crime victim services;

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

19 (C) forty percent (40%) shall be given to the law enforcement and
20 prosecuting agencies who obtained the conviction.

21
22 **Comment**

23 Forfeiture is an integral tool to make traffickers pay for the cost of services for victims, to
24 make traffickers contribute to the cost of investigation and prosecution, and to deter people from

engaging in human trafficking because they will face a large financial penalty. POLARIS MODEL LAW § I Asset Forfeiture. Furthermore, “[i]n order for restitution to be effective, the defendant’s assets must be secured so that they may be re-directed to the victim,” and a forfeiture statute accomplishes this important goal. *Id.* at § I(1). Therefore, states should enact both restitution and forfeiture provisions, since they work together to ensure that the trafficker fully compensates the victim for harm done.

Though a forfeiture provision specifically for human trafficking may distinguish human trafficking from other violent crimes, it is important to remember that the primary motive for engagement in human trafficking is financial gain; it is a lucrative crime. *See Hidden Slaves, supra*, at 5. In this way human trafficking is unlike most traditional violent crimes such as rape or homicide and is more akin to the crime of drug trafficking and other crimes committed for financial gain. Criminal forfeiture is commonly used to punish someone convicted of such financially-motivated crimes. *See* 18 U.S.C. 982 (2006). The TVPA provides for forfeiture of any interest in real or personal property used or intended to be used to commit a human trafficking crime or that was derived from such crime. 18 U.S.C. § 1594(b) (2006).

The federal forfeiture provision was applied in *Sabhnani*. 599 F.3d at 260. The defendants who were convicted of forced labor, peonage, and document servitude, were ordered to forfeit their ownership interest in their home, where their victims had been held as domestic servants. *Id.* at 224. On appeal, the defendant challenged the forfeiture of his office space that was part of the home on the grounds that it was not part of the actual property used to commit the offenses. *Id.* at 261. The Second Circuit, however, upheld the forfeiture order under 18 U.S.C. § 1594, finding that the victims were forced to do labor in the office. *Id.* at 262. The defendant also argued that the forfeiture was grossly disproportionate to his culpability in the crime; however, the court found that the defendant had willfully participated in the crime, so the forfeiture was justified and constitutional. *Id.* at 262-263.

Twenty-three states provide for forfeiture upon conviction of a human trafficking offense. However, few state forfeiture provisions specify that proceeds should go first to the victim before being distributed to governmental agencies. *See* ALA. CODE § 13A-6-156 (West, Westlaw through 2011 Reg. Sess.) (“Any assets seized shall first be used to pay restitution to trafficking victims and subsequently to pay any damages awarded to victims in a civil action”); H. 3808, 187th Gen. Court, Reg. Sess. (Ma. 2011) (“All monies furnished or intended to be furnished by any person in exchange for forced labor or services or sexual servitude, and all monies used or intended to be used to facilitate any [human trafficking] violation. . . shall be subject to forfeiture to the commonwealth and 393 shall be made available by the court to any victim ordered restitution by the court”); N.H. REV. STAT. ANN. § 633:8 (West, Westlaw through Chapter 269 of the 2011 Reg. Sess.) (after paying for the costs of the forfeiture proceeding, “any forfeited money and the proceeds of any sale or public auction of forfeited items shall first be used to satisfy any order of restitution or compensation imposed by the court. Any remaining funds shall go to the victims’ assistance fund.”). Minnesota law mandates forfeiture, with some proceeds distributed to providers of services to human trafficking victims. MINN. STAT. § 609.5315 (5b) (West, Westlaw through 2011 Reg. Sess.) (“40 percent of the proceeds must be forwarded to the commissioner of public safety . . . for distribution to crime victims services organizations that provide services to victims of trafficking offenses.”). In Illinois, half of the forfeited funds go to

1 the crime victim's compensation fund for the purpose of serving victims of involuntary servitude
2 and trafficking. 720 ILL. COMP. STAT. 5/10-9 (West, Westlaw through 2011 P.A. 97-530, with
3 exception of P.A. 97-333, 97-334, and 97-463 of 2011 Reg. Sess.).
4

5 Section 218(b) mandates a mix of recipients of forfeiture assets. First, proceeds should
6 go to the person individually victimized by the criminal defendant by covering restitution and
7 civil awards. By distributing the rest among the state victim compensation fund, local service
8 providers, and the law enforcement agencies whose efforts enabled the conviction and resulting
9 forfeiture, forfeiture becomes a tool to comprehensively combat trafficking. The statute diverts
10 funds specifically to service providers in the locale where the conviction took place in order to
11 further a working relationship and coordination efforts between law enforcement and service
12 providers who are working together in the same area. However, it is also important to give some
13 forfeiture assets to the general state crime victims compensation so that victims located in areas
14 without service providers are not left without services. By distributing some of the forfeited
15 funds to the investigating and prosecuting agencies in a particular case, forfeiture provides an
16 incentive for law enforcement to pursue human trafficking offenses.
17

18 **SECTION 220. SENTENCE ENHANCEMENTS.** Except as otherwise provided, in
19 imposing a sentence for a violation of Sections 201-212, the court may impose an enhanced
20 penalty of:

21 (1) up to 5 years where:

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

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

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

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

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

29 (2) up to 10 years where:

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

32 (B) the defendant knew or should have known the victim was particularly

1 vulnerable due to physical or mental condition or otherwise particularly susceptible to the
2 criminal conduct;

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

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

6 (ii) child abuse, neglect, or endangerment in violation of [state laws on
7 child abuse, neglect, or endangerment];

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

9 (E) the defendant transported the victim across national borders;

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

11 (G) the defendant subjected more than two victims to the offense;

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

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

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

17 (3) for any term of years or life, where in the course of committing the offense for which
18 the defendant was convicted, the defendant also committed:

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

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

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

23 or

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

(4) where the defendant attempted to commit any of the crimes for which an enhancement should be considered under this section, the term of years specified for the completed commission of that crime.

Comment

These sentence enhancements incorporate human trafficking into existing state criminal provisions, recognizing that human trafficking can accompany more common crimes and substantial violence, and provide a mechanism for acknowledging that human trafficking can happen to different types of victims and on a variety of scales. These enhancements are grouped according to the severity of the aggravating circumstances.

Defendants who isolate victims for long periods of time should be punished more harshly as the victims who are subjected to forced labor, services, or commercial sexual activity for longer periods of time will suffer more and likely have a more difficult recovery. This particular enhancement is modeled after Washington, D.C. laws. *See* D.C. CODE § 22-1837 (West, Westlaw through Sept. 13, 2011) (“when the victim is held or provides services for more than 180 days shall be fined not more than 1 1/2 times the maximum fine authorized for the designated act, imprisoned for not more than 1 1/2 times the maximum term authorized for the designated act, or both). Where a defendant has inflicted the pain of human trafficking victimization on several victims, the defendant should be punished in a way that recognizes the additional harm caused.

The Trafficking Protocol requires State Parties to criminalize “organizing or directing other persons to commit [a human trafficking] offence.” Trafficking Protocol, *supra*, at art. 5(2)(c). While organizing and directing will likely be prosecuted as conspiracy, a sentencing enhancement of ten years should be considered for those who are the mastermind and instigators of these offenses as opposed to lower-level participants in a conspiracy. This enhancement will deter potential traffickers from creating larger schemes by directing others to commit human trafficking, schemes that could inflict more harm by having a more powerful hold over victims.

Subparagraph (2)(B) is a vulnerable victim enhancement, recognizing that certain groups of people are particularly vulnerable to exploitation and restraints of their liberty due to circumstances that might render them more dependent on others for care. The language of this provision follows the language of the Federal Sentencing Guidelines, which impose a two level sentence increase where “the defendant knew or should have known that a victim of the offense was a vulnerable victim.” U.S. SENTENCING GUIDELINES MANUAL § 3A1.1(b) (1990). Vulnerable victim is defined in the Guidelines as a victim “who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct.” *Id.* at § 3A1.1(b) cmt. n.2 (1990). The commentary to the federal vulnerable victim

1 enhancement provides the examples of where the enhancement would apply, including “a fraud
2 case in which the defendant marketed an ineffective cancer cure or in a robbery in which the
3 defendant selected a handicapped victim.” *Id.* This enhancement should not apply where the
4 characteristic that makes the victim vulnerable is already incorporated in another enhancement,
5 such as age. *Accord id.* (“Do not apply [the vulnerable victim enhancement] if the factor that
6 makes the person a vulnerable victim is incorporated in the offense guideline.”). The vulnerable
7 victims enhancement of the U.S. Sentencing Guidelines was applied and affirmed in the
8 Sabhnani case. 599 F.3d at 252-254. The defendants challenged the enhancements on the
9 grounds that the TVPA already incorporates the same factors on which the judge relied to
10 determine the victims were vulnerable. *Id.* at 252. The court found that the fact that “Congress
11 made findings in the VTVPA that the victims of “trafficking” offenses would frequently possess
12 particular characteristics making them vulnerable” did not preclude the application of the
13 vulnerable victims enhancement. *Id.* at 254.

14
15 This section also specifies vulnerabilities that are particularly susceptible to human
16 trafficking. Children under fourteen years of age are particularly vulnerable and impressionable,
17 and defendants who take advantage of younger children should be subject to harsher penalties.
18 Victims who are taken from their home country to the United States are especially vulnerable.
19 Trafficking a person from his or her country of residence to a different country is traumatizing to
20 a victim, especially when the victim does not speak the language of the new country. A victim in
21 an unfamiliar country is further isolated by not having any family or friends in the country, by
22 not being familiar with the government or laws, and by not having knowledge of the services and
23 resources available to support victims. This makes foreign victims an easy target for traffickers.
24 The sentencing enhancement for recruiting victims from shelters is also directed at protecting
25 vulnerable populations. Traffickers will often use shelters as a source of victims who are minor
26 runaways, former trafficking victims, or otherwise seeking shelter due to particular needs. Each
27 of these groups of vulnerable victims should be given extra protection through enhanced
28 sentences that will deter traffickers from targeting them as easy victims.

29
30 Traffickers often use violence, particularly sexual violence, as a way to control their
31 victims. *See, e.g., United States v. Udeozor*, 515 F.3d 260, 264 (4th Cir. 2008) (man sexually
32 assaulted his domestic servant whom he and his wife had smuggled into the United States); Press
33 Release, Dep’t of Justice, Cameroonian Couple Sentenced on Human Trafficking Charges (May
34 31, 2007), http://www.justice.gov/opa/pr/2007/May/07_crt_390.html (“The judge found that in
35 addition to forcing her to work as a domestic servant, [the defendant] sexually abused the
36 victim.”). Sentence enhancements for sex crimes are meant to punish traffickers who inflict this
37 further harm on the victim and deter them from using such methods of force to control their
38 victims.

39
40 The TVPA provides for an increased penalty for forced labor, and labor trafficking where
41 “death results from [the violation], or if the violation includes kidnapping, an attempt to kidnap,
42 aggravated sexual abuse, or an attempt to kill.” 18 U.S.C. § 1589(d) (2006); § 1590(a) (2006). If
43 the violation included these further harms, the defendant may be “imprisoned for any term of
44 years or life,” instead of a maximum of twenty years. § 1589(d) (2006); § 1590(a) (2006).
45 These enhancements are similarly provided in paragraph (3) in this provision.

Model laws uniformly support the use of sentence enhancements for human trafficking crimes. Specifically, model laws support enhancements where the victim is under the age of eighteen. *See* UNODC MODEL LAW art. 9(e); GLOBAL RIGHTS MODEL LAW div. (B)(6)(b)(5); WOMEN POLICY STUDIES MODEL LAW Creating Enhanced Penalties for Traffickers. Additionally, model laws support enhancements where the victim is held for more than 180 days. DOJ MODEL LAW (A)(XXX.02)(4)(B)(2); GLOBAL RIGHTS MODEL LAW div. (B)(6)(b)(2); WOMEN POLICY STUDIES MODEL LAW Creating Enhanced Penalties for Traffickers; POLARIS MODEL LAW § I Sentencing Enhancements (B)(2). Lastly, model laws suggest enhancements for defendants who victimized multiple individuals. POLARIS MODEL LAW § I Sentencing Enhancements (B)(3) (more than two victims); GLOBAL RIGHTS MODEL LAW div. (B)(6)(b)(4) (more than ten victims); DOJ MODEL LAW (A)(XXX.02)(4)(B)(3) (more than ten victims); UNODC MODEL LAW art. 9(f) (more than one victim).

Sentencing enhancements are common in criminal codes. They have been upheld by the United States Supreme Court, though, generally an enhancement above the statutory maximum must be based on facts submitted to the jury in order to comply with the Sixth Amendment. *See Blakely v. Washington*, 542 U.S. 296, 301 (2004). This aspect of sentence enhancements is within the realm of judicial procedure, and it is the job of the courts to ensure that statutorily authorized sentence enhancements such as these are implemented in a way that respects the constitutional rights of defendants.

SECTION 221. STATUTE OF LIMITATIONS FOR CRIMINAL PROSECUTION.

Alternative A

There shall be no statute of limitations for a prosecution for a violation of Sections 201 - 205.

Alternative B

(a) A prosecution for a violation of Sections 201 - 205 shall be brought within [30 years or the longest statute of limitations available in the state] from either the date the victim became free of the trafficking situation or the date the victim reaches 18 years of age, whichever is later.

(b) The statute of limitations shall be tolled where the violation could not have reasonably been discovered by authorities due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

Comment

1 Statutes of limitation are “measures of public policy entirely subject to the will of the
2 legislature,” and serve to “protect individuals from defending themselves against stale charges;
3 prevent punishments for acts committed in the remote past; and ensure that the accused are
4 informed of the decision to prosecute and the general nature of the charges with sufficient
5 promptness to allow them to prepare their defenses before evidence of their innocence is
6 weakened by age.” 22 C.J.S. Criminal Law § 250 (2011). This public policy, however, must be
7 balanced with the gravity of the crime the statute of limitations addresses. This section provides
8 two alternatives for establishing a statute of limitations for human trafficking crimes. Alternative
9 A would establish no statute of limitation for violations of Sections 201 (Human Trafficking),
10 202 (Forced Labor and Servitude), 203 (Forced Commercial Sexual Exploitation), 204
11 (Commercial Sexual Exploitation of a Minor), and 205 (Debt Bondage).
12

13 Where a crime, such as the crime of labor or sex trafficking, is sufficiently grave, the
14 policy goals that usually support a statute of limitation are no longer served. Due to the extreme
15 trauma trafficking situations often inflict upon victims, victims may need substantial time to
16 recovery before they can testify against a trafficker. Investigations into trafficking crimes are
17 often particularly lengthy as it can take time to identify victims and confirm their trafficking
18 situation.
19

20 Currently, Vermont is the only state to specifically provide that there be no statute of
21 limitations for human trafficking crimes, stating that: “[p]rosecutions for aggravated sexual
22 assault, aggravated sexual assault of a child, human trafficking, aggravated human trafficking,
23 murder, arson causing death, and kidnapping may be commenced at any time after the
24 commission of the offense.” VT. STAT. ANN. tit. 13 § 4501 (West, Westlaw Current through
25 First Session of 2011-12 Vt. General Assembly). Additionally, 18 U.S.C. § 3299 provides that
26 there is no statute of limitations for abduction and sex offenses involving children (with few
27 exceptions).
28

29 Alternative B suggests a 30-year statute of limitations for the same violations listed
30 above. As with Alternative A, other crimes in this act not addressed by subsection (a) would be
31 subject to state default statutes of limitation. At least three states set statutes of limitation for
32 human trafficking crimes. *See* ALA. CODE § 13A-6-158 (West, Westlaw through 2011 Reg.
33 Sess.) (action shall be brought within five years from date victim was removed or escaped from
34 human trafficking situation, and, in the case of a victim who is a minor, shall be tolled from the
35 time the victim has reached age of 18 years); D.C. CODE § 23-113 (West, Westlaw through
36 Sept.13, 2011) (ten year statute of limitations for human trafficking crimes, and, in the case of a
37 victim who is a minor, shall be tolled from the time the victim has reached age of 21 years); 9
38 GUAM CODE ANN. § 26.08 (West, Westlaw through Pub. Law 31-074)(action for trafficked adult
39 shall be brought within applicable territorial statutes of limitations for sex offenses or
40 kidnapping); *see also* POLARIS MODEL LAW § I Statute of Limitations (aligns statute of
41 limitations with applicable state statute of limitations for sex offenses or kidnapping, and, in the
42 case of a victim who is a minor, statute of limitations tolls from the time the victim has reached
43 age of 18 years).
44

45 It is recommended that states adopt Alternative A, which recognizes both the severity of
46 the crime of human trafficking, and the difficulties inherent in prosecuting these crimes. Should

1 states adopt Alternative B, it is recommended that the state adopt either 30 years as the statute of
2 limitations or the longest statute of limitation available in the state, in order to better balance
3 between the policy goals behind statutes of limitations and the grave nature of human trafficking
4 crimes.
5
6

1 **ARTICLE 3**

2 **BENEFITS, SERVICES, AND PROTECTIONS**

3 **SECTION 301. VICTIM SERVICES.**

4 (a) The [interagency task force, council, or coordinator] shall develop a plan for a
5 coordinated response system, in consultation with non-governmental organizations and other
6 elements of civil society, to provide victims with the following services and information
7 regarding accessing those services, including, but not limited to:

8 (1) appropriate housing, taking into account the victim's status as a victim of
9 crime and including safe conditions for sleeping, food, and personal hygiene, ensuring to the
10 extent possible that the potential victim is not held in a detention facility;

11 (2) psychological counseling;

12 (3) medical assistance, including confidential testing for Sexually Transmitted
13 Diseases and the Human Immunodeficiency Virus;

14 (4) substance abuse counseling;

15 (5) childcare;

16 (6) access to employment, educational, and training opportunities;

17 (7) legal assistance and case management; and

18 (8) social case management, including information about and help with access to
19 victim services.

20 (b) Services enumerated in subsection (a) shall be provided to the extent possible in a
21 language that the victim understands.

22 (c) [Subject to the availability of appropriations or other funding,] The state shall ensure
23 the provision of services enumerated in subsection (a) to a victim identified pursuant to Section

101(17).

Comment

This section focuses on the needs victims once they have escaped the trafficking situation. It mandates that states develop a plan for a response system to provide victims in their state with the enumerated services in a “one-stop-shop” approach that coordinates access to various service providers. This approach allows for assessment of services, coordination and training of service providers, and flexibility for a state to meet victims’ needs in the most efficient and effective way within that particular state.

Due to the variation among states in providing services, the limitations on what the federal system can provide, and the great injustice done to victims when they are not given the basic resources needed for recovery, a coordinated and unified approach is needed to fully serve victims. Not only is helping victims recover a goal in itself, but successful prosecutions are highly dependent on rehabilitated victims to be key witnesses. Testimony of Mary Lou Leary, Principal Deputy Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice before the Committee on the Judiciary U.S. Senate Regarding “Reauthorization of the Trafficking Victims Protection Act”, 4 (Sep. 14, 2011), *available at* http://www.ojp.usdoj.gov/newsroom/testimony/2011/11_0914mleary.pdf. [Hereinafter Testimony of Mary Lou Leary].

I. *Current Services Available at State and Federal levels*

The general framework of available services to human trafficking victims at state and federal levels is necessary to understand the need for further services at the state level. As well, this understanding helps states design their service provision systems to supplement existing federal services and benefits.

While states have recognized the need for human trafficking victim services, the approaches to providing such services are extremely varied. Three states have evaluated how their public benefits serve victims. IDAHO CODE ANN. §18-8605 (West, Westlaw through 2011 ch. 1-335); NEB. REV. STAT. ANN. § 28-832 (West, Westlaw through the 102d Leg. First Reg. Sess. 2011); DEL. CODE ANN. tit. 11, § 708(d) (West, Westlaw through 2011 chs. 1-125 of 78 Laws). Some states merely provide information about services to victims, N.J. STAT. § 52:4B-44 (West, Westlaw through 2011 legislation) (mandating that the state provide victims information about access to services), while others direct victims to available federal services, MO. REV. STAT. § 566.223 (West, Westlaw through 2011 First Extraordinary Sess.); OHIO REV. CODE ANN. § 5101:1-2-30.3 (West, Westlaw through 2011 Files 1 to 27, 29 to 47, and 49 of the 129th GA (2011-2012), apv. by 9/26/2011, and filed with Sec. of State by 9/26/2011). Four states suggest that states provide services. N.Y. SOC. SERV. LAW § 447-b (West, Westlaw through 2011 legislation, ch. 1-54 and 57-495) (suggesting long term services); IDAHO CODE ANN. § 18-8604 (West, Westlaw through 2011 ch. 1-335); MINN. STAT. § 299A.795 (West, Westlaw through 2011 Reg. Sess.); WASH. REV. CODE § 19.320.050 (West, Westlaw through 2011 Leg.); 720 ILL. COMP. STAT. 720 Ill. Comp. Stat. Ann. 5/10-9 (h) (West, Westlaw through 2011 P.A. 97-530, with exception of P.A. 97-333, 97-334, and 97-463 of 2011 Reg. Sess.). Five states *require*

1 services be provided to trafficking victims. IND. CODE § 5-2-6-3 (West, Westlaw through 2011
2 Reg. Sess.); MD. CODE ANN. HUM. SERVS §§ 07.03.23.02-07 (West, Westlaw through 2011
3 Acts); N.Y. SOC. SERV. LAW § 447-b (West, Westlaw through 2011 legislation, ch. 1-54 and 57-
4 495) (requiring short term services); OKLA STAT. tit. 21, §78.2 (West, Westlaw through 2011 ch.
5 385 of First Reg. Sess.); 9 GUAM CODE ANN. § 26.33 (West, Westlaw through Pub. Law 31-
6 074). Finally, at least four states have combined these models by mandating formulating *a plan*
7 for providing services for victims. CONN. GEN. STAT. § 54-234 (West, Westlaw through 2011
8 Jan. Reg. Sess.); N.J. STAT. § 52:4B-44 (West, Westlaw through 2011 legislation); TEX. SOC.
9 SERV. ANN. §531.382 (West, Westlaw through 2011 Reg. Sess. and 1st Called Sess. of the 82d
10 Legis.); FLA. STAT. § 402.87 (West, Westlaw through 2011 ch. 236); 9 GUAM CODE ANN. §
11 26.38 (West, Westlaw through Pub. Law 31-074).

12 The federal government has several mechanisms in place to provide trafficking victims
13 with needed services. Both the Department of Justice (DOJ) and Health and Human Services
14 (HHS) have been appropriated funds every year through the TVPA for this purpose. The DOJ
15 currently gives grants to about 40 local service providers to provide emergency, short term
16 services around the country. *Grants and Funding*, OFFICE FOR VICTIMS OF CRIME,
17 <http://www.ojp.usdoj.gov/ovc/grants/traffickingmatrix.html> (last visited Nov. 11, 2011). The
18 Office of Refugee Resettlement (ORR) distributes the funds appropriated to HHS and manages
19 the processes for certification and letters of eligibility for interim services for foreign national
20 victims to have access to federal sources of funding otherwise reserved for citizens and
21 permanent residents. Once certified, or once a child has a letter of eligibility, foreign national
22 victims can receive the following federal benefits through state programs: Temporary Assistance
23 for Needy Families (TANF), Medicaid, State Children's Health Insurance Programs (SCHIP),
24 Substance Abuse and Mental Health Services Administration (SAMHSA) Programs,
25 Supplemental Nutrition Assistance Program (SNAP), Special Supplemental Nutrition Program
26 for Women, Infants, and Children (WIC), and public housing programs. *Fact Sheet: Child*
27 *Victims*, ADMINISTRATION FOR CHILDREN & FAMILIES, H.H.S.
28 http://www.acf.hhs.gov/trafficking/about/child_victims.htm (Last updated Nov. 29, 2009).

29 However, there is confusion about what federal benefits appropriated for trafficking
30 victims reach domestic and which reach foreign national victims. The grant program funded
31 through ORR technically allows funding of providers that would serve domestic victims as well,
32 but the 2008 Attorney General's Annual Report to Congress on U.S. Government Activities to
33 Combat Trafficking in Persons stated that funds for direct services provided under the TVPA are
34 only for foreign national victims. Liana Sun Wyler & Alison Siskin, *Trafficking in Persons:*
35 *U.S. Policy and Issues for Congress*, CONGRESSIONAL RESEARCH SERVICE, 33-34 (2010),
36 available at <http://www.ilw.com/immigrationdaily/news/2010,1018-crs.pdf>. Also, because HHS
37 funds are distributed through the Office of Refugee Resettlement, the focus of the funding has
38 been to serve foreign national victims. For example, the Per Capita Service Contracts for case
39 management issued by HHS have thus far been directed towards foreign national victims
40 because of HHS's choice of grant recipients, the U.S. Conference of Catholic Bishops from 2006
41 through this year (focusing on services to international victims), and now Heartland Human Care
42 Services (a Midwestern organization that seems to serve all victims), Tapestri (an organization
43 that serves immigrant communities) and the U.S. Committee for Refugees and Immigrants. Jerry
44 Markon, *Health, Abortion Issues Split Obama Administration and Catholic Groups*,

WASHINGTON POST, Oct. 31, 2011, http://www.washingtonpost.com/politics/health-abortion-issues-split-obama-administration-catholic-groups/2011/10/27/gIQAXV5xZM_story.html.

II. *Need for further Services*

Regardless of their legal status within the United States, many victims leave their traffickers with few opportunities to rebuild their lives in a way that mitigates revictimization and promotes their reintegration into society. Victims have been forced to work for the benefit of another and have little or no resources of their own to restart their life. Victims have been robbed of their personal autonomy and ability to make decisions in their own lives; it takes a period of adjustment for many victims to relearn independence. Victims are usually isolated from anyone who could help them once they escape. To compound this isolation, victims might be vulnerable to legal sanctions because they have been forced to commit crimes by their trafficker.

While many of these needs can be served through state and federal funding or service structures that already exist, federal grants for private service providers are limited and very competitive. Case management needed to provide the “one-stop-shop” that most victims need should be extended to domestic victims as well as to more foreign victims. Federal grant funding focuses on short-term services, and the funded “emergency services” providers are limited in capacity, so more long-term services are needed. While citizens, permanent residents, and foreign nationals with certification or letters of eligibility can access already existing long-term federal benefits, these were not designed with trafficking victims in mind and may not meet the breadth and depth of their needs. Finally, child victims have special needs, including long-term, secure, and rehabilitative care and supervision. Existing homeless youth emergency shelters, foster care, or even sexual assault rehabilitative group homes are usually not equipped to handle the level and type of trauma these victims have experienced, and oftentimes the victims entered their trafficking situation after having left one of these types of shelters.

III. *Section 301*

Subsection (a) is very similar to the Polaris Project Model Law provision for a plan for services, POLARIS MODEL LAW § III Develop a State Plan to Provide Services to Victims of Human Trafficking, and is meant to provide states with flexibility in the coordination and implementation of providing services to victims while ensuring that victims’ needs will be addressed. States can utilize existing structures or create new structures as necessary to best fit the needs of victims in their state. For example, existing state services found in crime victim services, refugee services, or general public benefits can be used to address needs of a trafficking victim. Training for already existing service providers can help equip them to effectively serve trafficking victims. *See* Comment to Section 402.

The types of services listed under (a) also come from the Polaris Project Model Law. *Id.* Because of the protracted and exploitative nature of this crime, victims often have a variety of needs after they escape. For example, medical care is a major need for trafficking victims; both labor and sex trafficking victims may be undernourished and denied appropriate medical care by those exploiting them. *See, e.g. United States v. Sabhnani*, 599 F.3d 215, 224-30 (2 Cir. 2010).

1 In the case of victims exploited for sexual services, genital trauma, a high risk of Sexually
2 Transmitted Diseases, and exposure to H.I.V. are common. R. BARRI FLOWERS, PROSTITUTION
3 IN THE DIGITAL AGE: SELLING SEX FROM THE SUITE TO THE STREET, 98-99 (2011).

4
5 Safe housing is also a very important need for trafficking victims. Access to shelter is
6 one of the two most utilized services offered by New York to trafficking victims. When
7 designating shelter services, special attention must be paid to whether available shelters are safe
8 environments for trafficking victims. SHARED HOPE INTERNATIONAL, THE NATIONAL REPORT ON
9 DOMESTIC MINOR SEX TRAFFICKING: AMERICA'S PROSTITUTED CHILDREN, 67-68 (2009). Sex
10 traffickers often recruit minor victims at homeless runaway shelters, group homes, or other
11 locations where a minor without a support network would be, and a disclosed shelter location
12 puts victims at risk for retaliation or revictimization from their trafficker or the trafficker's
13 associates. *See* Comment to 207. For those victims who were in trafficking situations for many
14 years, and especially those who were trafficked during their childhood, the quality of shelter and
15 care provided at the shelter is immensely important to their recovery.

16
17 The clause in paragraph (1) providing that victims should not be held in a detention
18 facility unless necessary is modified from language in the Polaris Model Law stating that victims
19 "shall not be given shelter in prisons or other detention facilities for accused or convicted
20 criminals. Child victims of human trafficking shall not be detained in prisons or other detention
21 facilities for accused or convicted criminals or juvenile delinquents under any circumstances."
22 POLARIS MODEL LAW § III Rights of Human Trafficking Victims in Shelters. Though it is
23 understood that state resources and practicalities may vary such that detention may be the only
24 available location to place a victim in order to keep the victim away from the trafficker, states
25 should work towards both identifying existing safe shelters for victims and providing safe
26 shelters that do not result in the victim being treated like a criminal. In addition, the coordinated
27 response system should direct appropriate authorities who first come across victims to bring
28 potential victims to designated shelters instead of detention facilities.

29
30 Subsection (b) provides the authorization to enact the plan enumerated in subsection (a)
31 and provide those services to victims as the state is able. As designed, subsections (a) and (b)
32 together encourages evaluation and coordination of services before appropriations are applied to
33 enact the plan, therefore facilitating efficient use of resources and the rehabilitation of victims.

34 35 **SECTION 302. VICTIM ELIGIBILITY FOR SERVICES.**

36 (a) A victim shall be eligible for victim benefits and services available through the state,
37 including forms of compensation under [applicable State Crime Victims' Compensation Fund],
38 regardless of immigration status.

39 (b) As soon as practicable after a first encounter with an individual who reasonably
40 appears to a state law enforcement agency or a district attorney's office to be a victim, that

1 agency or office shall notify the [appropriate state agency or department] in accordance with
2 protocol established by the [interagency task force, council, or coordinator] that the individual
3 may be eligible for services under this article.

4 **Comment**

5 Once identified, victims should be able to avail themselves of victim benefits and
6 services available through the state as soon as possible, to help ensure the victim's mental and
7 physical health and improve the ability of the victim to aid in an ongoing investigation. The
8 UNODC Model Law recognizes the importance victim identification and notes that a person
9 "should be considered and treated as a victim of trafficking in persons, irrespective of whether or
10 not there is already a strong suspicion against an alleged trafficker or an official
11 granting/recognition (sic) of the status of victim." UNODC MODEL LAW art. 18.

12
13 At least seven states have statutes specifically ensuring victims of human trafficking
14 access to state-provided benefits and services. *See* MO. REV. STAT. § 566.223(4) (West, Westlaw
15 through 2011 First Extraordinary Sess.) (department of social services and, where applicable,
16 juvenile justice authorities will determine eligibility for state or federal services, programs, or
17 assistance); N.M. STAT. ANN. § 30-52-2 (West, Westlaw through 2011 First Reg. Sess.) (victims
18 eligible for state-provided benefits until they are eligible for benefits under the TVPA, provided
19 they cooperate with law enforcement); FLA. STAT. § 402.87 (West, Westlaw through 2011 ch.
20 236) (Department of Children and Family Services shall establish protocol for providing services
21 to immigrant victims waiting for a visa or certification); 9 GUAM CODE ANN. 26.03(c) (West,
22 Westlaw through Pub. Law 31-074) (victims eligible for state-provided benefits regardless of
23 immigration status); N.Y. SOC. SERV. § 483-cc(b) (West, Westlaw through 2011 legislation, ch.
24 1-54 and 57-495) (division of criminal justice services, in consultation with the office of
25 temporary and disability assistance and referring agency or office, shall make preliminary
26 assessment of individual's status as a victim and eligibility for federal, state, and local benefits
27 and services); N.C. GEN. STAT. § 14-43.11 (West, Westlaw through ch. 18) (non-residents of the
28 state remains eligible for state benefits and services if a victim of human trafficking offense);
29 CAL.WELF. & INST.CODE § 18945 (West, Westlaw through 2011 ch. 745 of Reg. Sess. and all
30 2011-2012 1st Ex.Sess. laws) (eligibility for services of noncitizen victims).

31
32 Subsection (a) ensures victims' access to victim benefits and services provided by the
33 state. The fifty U.S. states and Puerto Rico have a fund or system to help victims pay for the
34 costs of crime. *State Links*, National Association of Crime Victims Compensation Boards (Oct.
35 19, 2011, 4:35:03 AM), <http://www.nacvcb.org/index.asp?sid=6>. Many states also make funds
36 available via specific federally and state funded programs. *See* Florida Department of Children
37 & Families, <http://www.dcf.state.fl.us/about/> (last visited Dec. 12, 2011) (provides services and
38 temporary cash assistance to families threatened by homelessness and domestic violence).
39 Allowing access to an established fund renders a new fund, which would entail extra
40 administrative and oversight costs, unnecessary.

1 Subsection (b) ensures that, upon identifying an individual reasonably believed to be a
2 victim, the state law enforcement agency or district attorney's office communicates with the
3 relevant agency or agencies providing services for victims to alert them to the individual's likely
4 eligibility for services. Language similar to this can be found in the law of a number of the states
5 specifically ensuring victim eligibility for victim benefits and services provided by the state.
6 *See, e.g.,* N.Y. SOC. SERV. § 483-cc(b) (West, Westlaw through 2011 legislation, ch. 1-54 and
7 57-495) (law enforcement agency or district attorney's office shall notify office of temporary and
8 disability assistance and division of criminal justice services that an individual may be eligible
9 for victim services).

11 **SECTION 303. REFERRAL TO FEDERAL SERVICES.**

12 (a) Upon request of a foreign national victim or the victim's legal representative, the
13 [relevant state law enforcement agency] shall aid victims in obtaining federally funded services
14 by:

15 (1) providing a victim within 10 days of a request for documentation with either
16 of the following based on the preference of the victim or the victim's legal representative:

17 (i) a completed Supplement B to Form I-914, Declaration of Law
18 Enforcement Officer for Victims of Trafficking in Persons (LEA Declaration), as part of a
19 victim's application for a T-Visa in accordance with 8 C.F.R. § 214.11(f)(1);

20 (ii) a completed Supplement B to Form I-918, law enforcement U
21 Nonimmigrant Status Certification for victims of qualifying criminal activity as part of a victim's
22 application for a U-Visa in accordance with 8 C.F.R § 214.14(c);

23 (2) coordinating with federal law enforcement officials to submit an application
24 for "continued presence" under the Victims of Trafficking and Violence Protection Act (22
25 U.S.C. § 7105(c)(3)(A)) for a victim within 72 hours of determining an individual is more likely
26 than not a victim; and

27 (3) referring the victim to appropriate immigration legal services.

28 (b) Where a state law enforcement agency finds the grant of an LEA Declaration or a U

1 Nonimmigrant Status Certification to be inappropriate for a victim, the agency shall within 15
2 days of such determination provide the victim or the victim's legal representative with a letter
3 explaining the grounds for denial. The victim may submit additional evidence to the law
4 enforcement agency, which must reconsider the denial within 10 days of the receipt of additional
5 evidence.

6 **Comment**

7 The TVPA provides special nonimmigration statuses to certain qualifying victims to
8 remain in the United States and receive services related to their victimization. Victims of
9 trafficking may be eligible for continued presence status and for nonimmigrant status by either
10 obtaining a U-Visa or a T-Visa. *See generally* New York State Judicial Committee on Women
11 in the Courts, Supreme Court of the State of New York, Appellate Division, First Division,
12 Lawyer's Manual on Human Trafficking: Pursuing Justice for Victims (2011) (edited by Jill
13 Laurie and Dorchen A. Leidholdt).

14
15 These nonimmigrant statuses are important to help victims access services and rebuild
16 their lives. One of the requirements for certification to receive federal benefits from the U.S.
17 Department of Health and Human Services is a T-Visa or continued presence. 22 U.S.C. § 7105
18 (b)(1)(E)(i)(II) (2006). The U-Visa provides a victim with work eligibility and protection from
19 deportation. Office of the Citizenship and Immigration Services Ombudsman, Improving the
20 Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa, 6
21 (2009), [http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visarecommendation_2009-01-](http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visarecommendation_2009-01-26.pdf)
22 [26.pdf](http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visarecommendation_2009-01-26.pdf). When victims receive federally-funded benefits, they will be less likely to need state-
23 funded services; therefore, it is in the state's fiscal interest to help victims access these federal
24 benefits.

25 26 *I. T and U Visas are Federal Benefits That Help Victims and Law Enforcement.*

27
28 Congress established the nonimmigrant T-Visa and U-Visa to "provide temporary legal
29 status to victims of trafficking and enumerated crimes who assist with the investigations or
30 prosecutions of the criminal activity." Office of the Citizenship and Immigration Services
31 Ombudsman, Improving the Process for Victims of Human Trafficking and Certain Criminal
32 Activity: The T and U Visa, 2 (2009),
33 http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visarecommendation_2009-01-26.pdf.
34 Applications for both visas require a declaration or certification by law enforcement that the
35 applicant is a victim of human trafficking.

36
37 The U-Visa is available to a foreign national who is a victim of certain qualifying
38 criminal activity, including trafficking, prostitution, sexual exploitation, peonage, or involuntary
39 servitude. 8 U.S.C. § 1101(a)(15)(U) (2006). The government may issue up to 10,000 U-Visas,
40 8 U.S.C. § 1184(p) (Supp. 2007-2010), which permit the victim to remain in the country for up

1 to four years and cannot be renewed unless exceptional circumstances are present. Office of the
2 Citizenship and Immigration Services Ombudsman, Improving the Process for Victims of
3 Human Trafficking and Certain Criminal Activity: The T and U Visa 6 (2009),
4 http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visa_recommendation_2009-01-26.pdf.
5

6 The T-Visa is available to a foreign national who is a victim of sex or labor trafficking. 8
7 U.S.C. § 1101(a)(15)(T) (2006); 22 U.S.C. § 7102(8). Up to 5,000 T-Visas may be issued
8 annually. 8 U.S.C. § 1184(o) (2006). A T-Visa permits the victim to remain in country for up to
9 four years. Office of the Citizenship and Immigration Services Ombudsman, Improving the
10 Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa 4
11 (2009), [http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visa_recommendation_2009-01-](http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visa_recommendation_2009-01-26.pdf)
12 [26.pdf](http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visa_recommendation_2009-01-26.pdf). The United States has never issued the maximum 5,000 T-Visas statutorily available in a
13 year. As of October 2008, the United States had received fewer than 2,300 T-Visa principal
14 applications. Office of the Citizenship and Immigration Services Ombudsman, Improving the
15 Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa 5
16 (2009), [http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visa_recommendation_2009-01-](http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visa_recommendation_2009-01-26.pdf)
17 [26.pdf](http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visa_recommendation_2009-01-26.pdf).
18

19 The wide availability of these Visas indicates that Congress contemplated that many
20 victims need and should have access to these Visas. Local law enforcement should facilitate
21 victims' access to the T and U-Visas to effectuate the policy goal of providing human trafficking
22 victims an opportunity to remain in the country for a period of time.
23

24 *II. Continued Presence is a More Immediate Benefit for Victims That Also Aids Law* 25 *Enforcement.* 26

27 Continued presence is a temporary immigration status provided to individuals identified
28 by law enforcement as victims of human trafficking. 22 U.S.C. § 7105(c)(3) (Supp. 2007-2010).
29 This status allows victims of human trafficking to remain in the U.S. temporarily during the
30 ongoing investigation into the human trafficking-related crimes committed against them. *Id.*
31

32 Continued Presence is not just a benefit to victims but an important tool for federal, state
33 and local law enforcement. As explained by United States Immigration and Customs
34 Enforcement:
35

36 Victims of human trafficking often play a central role in building a case against a
37 trafficker. Continued Presence affords victims a legal means to temporarily live
38 and work in the U.S., providing them a sense of stability and protection. These
39 conditions improve victim cooperation with law enforcement, which leads to
40 more successful prosecutions and the potential to identify and rescue more
41 victims.
42

43 U.S. Immigration and Customs Enforcement, Continued Presence: Temporary Immigration
44 Status for Victims of Human Trafficking (2010), [http://www.ice.gov/doclib/human-](http://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf)
45 [trafficking/pdf/continued-presence.pdf](http://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf). Continued presence is initially granted for one year and
46 may be renewed in one-year increments. *Id.* A request for continued presence places only a

1 small burden on law enforcement officers. Only federal law enforcement can submit a request
2 for Continued Presence, so a local or state officer must only contact the federal law enforcement
3 in their area and ask them to put in a request on behalf of a foreign national who is more likely
4 than not a victim of human trafficking. Continued presence applications should be submitted
5 immediately upon identification of a victim, regardless of their cooperation initially, *id.*, so local
6 law enforcement officers should coordinate with federal law enforcement as soon as possible
7 after identifying a victim.

8 9 *III. The Federal Government Encourages State and Local Law Enforcement to Provide This* 10 *Information.*

11
12 The law enforcement forms that accompany the visa applications are short and
13 straightforward. The primary information provided by law enforcement officers on these forms
14 is their belief that the applicant is a victim of trafficking and a statement of the crimes to which
15 the victim was subjected. The federal government takes the position that state and local law
16 enforcement should, upon request, provide law enforcement certifications for human trafficking
17 victims applying for T-Visas and U-Visas. U.S. Immigration and Customs Enforcement,
18 Continued Presence: Temporary Immigration Status for Victims of Human Trafficking (2010),
19 available at <http://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf>. United
20 States Citizenship and Immigration Services undertakes a comprehensive review of all
21 applications before issuing a T-Visa or U-Visa, *id.*, so local and state law enforcement should not
22 be deterred from providing these certifications out of concern that they might be improperly
23 granting a federal benefit to someone not so entitled. Copies of the law enforcement forms that
24 accompany the T-Visa or U-Visa applications are attached to this act as Appendix A and
25 Appendix B.

26 27 *IV. The Trafficking Protocol Requires Temporary Immigration Relief, and 6 States Already* 28 *Require Law Enforcement to Assist With This Process.*

29
30 The Trafficking Protocol requires state parties to consider adopting mechanisms that
31 allow victims of human trafficking to remain in the state. Trafficking Protocol, *supra*, art. 7(a)
32 (“[E]ach State Party shall consider adopting legislative or other appropriate measures that permit
33 victims of trafficking in persons to remain in its territory, temporarily or permanently, in
34 appropriate cases.”). While this provision is primarily carried out by the federal government
35 which generally controls immigration policy, states should assist the government in complying
36 with this provision by facilitating victims’ access to the established Continued Presence and visa
37 processes.

38
39 Only six states currently have similar provisions requiring local law enforcement or other
40 government agencies to assist victims in applying for special status with the federal government.
41 CAL. PEN. CODE § 236.5 (2011); 9 GUAM CODE ANN. § 26.03 (2011); 720 ILL. COMP. STAT. 5/10-
42 9(l) (2011); IOWA CODE § 710A.5 (2011); N.J. STAT. ANN. § 52:4B-44(e) (2011); N.Y. SOC. SERV.
43 § 483-dd (West, Westlaw through 2011 legislation); H.153, 2011 Leg (Vt. 2011). By assisting
44 immigrants with the visa application process, law enforcement agencies facilitate the victim’s
45 access to existing federal services, which can lessen the financial burden on the state to provide
46 services, and the rest of the states should follow the example of these states and implement this

1 immigration assistance provision.

2
3 Victims who are not from the United States and who may not speak English will likely be
4 unaware of these special nonimmigration statuses available to them. Law enforcement officers
5 are often the first contacts for victims once they escape their traffickers. Therefore, law
6 enforcement officers are in a good position to connect the victim with programs already in place
7 to assist them. The training in accordance in Section 402 should include information to help law
8 enforcement understand the immigration options available to victims and how local officers can
9 help victims access these options.

10 11 **SECTION 304. STATE GRANTS TO SERVICE PROVIDERS.**

12 (a) [Subject to the availability of appropriations,] The state is authorized to make grants
13 to units of state and local governments, Indian tribes, and non-governmental victims' service
14 organizations to develop, expand, or strengthen victim service programs for victims of human
15 trafficking, and to ensure protection and rehabilitation for victims of human trafficking.

16 (b) Recipients of grants pursuant to subsection (a) should

17 (1) be equipped to serve human trafficking victims; and

18 (2) report of the number and demographic information of all trafficking victims
19 served to [the interagency task force, council, or coordinator] and in accordance with subsections
20 403(a)(3) and (d).

21 **Comment**

22 This section allows the state to support all types of service providers that serve human
23 trafficking victims. Federal grants are available for service providers, but they are becoming
24 increasingly competitive and difficult to get. *See* Comment to Section 301. At least two states
25 authorize grants to service providers for subsets of human trafficking victims. CAL. PEN. CODE §
26 181 (West, Westlaw through 2011 ch. 745 of Reg. Sess. and all 2011-2012 1st Ex. Sess. laws)
27 (establishing a grant for service providers that serve sex trafficking victims); TEX. GOV'T CODE
28 ANN. § 531.383 (West, Westlaw through 2011 Reg. Sess. and 1st Called Sess. of the 82d Legis.)
29 (establishing a grant for service providers that serve domestic victims).

30 While providing benefits can be expensive, profits made by traffickers when exploiting
31 the victims can be used in a public redistribution scheme to help rehabilitate victims. The
32 commercial exploitation of human beings is an incredibly profitable venture. SHARED HOPE
33 INTERNATIONAL, THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA'S
34 PROSTITUTED CHILDREN (2009). If a portion of the forfeiture funds are allocated for grants to

1 qualified service providers, in accordance with Section 218, this can help alleviate state funding
2 burdens and provide a just result for victims.

3
4 Paragraph (1) provides a general requirement to ensure that service providers who receive
5 grants for human trafficking victims are equipped to serve these victims. This should provide
6 flexibility to fit states' needs, grant processes, and allow for the developing knowledge of
7 rehabilitating victims to be taken into account. More specific requirements for grant recipients
8 could include having a protocol for identifying and providing services for trafficking victims,
9 staff trained to specifically work with human trafficking victims, safety procedures for
10 residential facilities aimed to protect trafficking victims from their trafficker or the trafficker's
11 associates, and reasonable documentation of the use of grant funding to the agency that oversees
12 grant distribution.

13
14 Paragraph (2) involves grant recipients in the data gathering process enumerated in
15 Section 403. Since the lack of data about human trafficking is a widespread problem, having
16 service providers gather information in a uniform and systematic way will provide much
17 information about who the victims are, how many there are, and what their needs are. This in
18 turn should encourage efficient distribution of resources.

19 20 **SECTION 305. VICTIM AND COUNSELOR PRIVILEGE.**

21
22 (a) "Human trafficking counselor" means a person who provides advice or assistance to
23 victims, who has received specialized training in the counseling of victims, and who meets one
24 of the following requirements:

25 (1) holds a bachelor's degree or higher in counseling or a related field; or has one
26 year of counseling experience, at least six months of which is in the counseling of crime victims;
27 or

28 (2) has at least 40 hours of training as specified in this paragraph and is
29 supervised by an individual who qualifies as a counselor under paragraph (1) or by a
30 psychotherapist. The training shall include, but need not be limited to, the following areas:
31 history of human trafficking, civil and criminal law as it relates to human trafficking, societal
32 attitudes towards human trafficking, peer counseling techniques, housing, public assistance and
33 other financial resources available to meet the financial needs of victims, and referral services
34 available to victims. A portion of this training must include an explanation of privileged

1 communication.

2 (b) “Confidential communication” means information transmitted between the victim and
3 the counselor in the course of their relationship and in confidence by a means which, so far as the
4 victim is aware, does not disclose the information to third persons other than those who are
5 present to further the interests of the consultation or those to whom disclosures are reasonably
6 necessary for the transmission of the information.

7 (c) A victim and a victim’s counselor, whether or not a party to a criminal or civil action,
8 has the privilege to refuse to disclose, and to prevent another from disclosing, a confidential
9 communication between the victim and a human trafficking counselor.

10 (d) A legal guardian who is not accused of the human trafficking offense at issue may
11 assert or waive, on behalf of a victim who is a minor or is incapacitated, the privilege afforded by
12 subsection (c).

13 (e) A human trafficking counselor shall inform a victim of applicable limitations on
14 confidentiality of communications between the victim and the counselor.

15 (f) Confidential communications may be disclosed by a person other than the victim only
16 with the prior written consent of the victim.

17 **Comment**

18 I. *The human trafficking counselor privilege is necessary to combat human trafficking.*
19

20 It is essential for all states to uniformly recognize a counselor-client privilege for human
21 trafficking victims. Where states already recognize a counselor-client privilege, states should
22 ensure that human trafficking counselors are incorporated under it. UNODC MODEL LAW of §
23 25(3) cmt. Where states do not have such a privilege, states should ensure that the human
24 trafficking counselor privilege is recognized. Model law provisions recognize the importance of
25 privileges and consequently require counselor confidentiality. *See* GLOBAL RIGHTS MODEL LAW
26 § 9 (directing states to “add ‘trafficking victim counselor’ to the list of professionals who have a
27 privileged relationship with their clients.”); POLARIS MODEL LAW § III Protection of Human
28 Trafficking Victims (Human Trafficking Victim-Caseworker Privilege) (“A victim of human
29 trafficking, whether or not a party to the action, has a privilege to refuse to disclose, and to

1 prevent another from disclosing, a confidential communication between the victim and a human
2 trafficking caseworker..."); UNODC MODEL LAW § 25(3) ("All information exchanged between
3 a victim and a professional [counselor] providing medical, psychological, legal or other
4 assistance services shall be confidential and shall not be exchanged with third persons without
5 the consent of the victim.").

6
7 "It is... crucial for regulations to be in place to ensure the confidentiality of the client-
8 counsellor relationship and protect counselors from any obligation to pass on information to third
9 parties against the will and without the consent of the trafficked person." UNODC MODEL LAW,
10 § 25(3) cmt. Counseling is essential for victims of human trafficking to enable them to escape
11 abusive relationships. Victims may experience emotional, physical, and psychological trauma.
12 Counseling may be their only source of refuge and opportunity for recovery. "In order to gain
13 access to help and support, victims of trafficking must have a protected space in which they can
14 talk about their experiences." UNODC MODEL LAW § 25(3) cmt.

15
16 Human trafficking victims may be isolated from society, with the only personal
17 connection being to their trafficker. Many trafficking victims are foreign-born and do not know
18 anyone in the United States except for their trafficker. The extreme physical and psychological
19 coercion that can characterize human trafficking relationships often makes victims feel
20 completely dependent on their trafficker. To be abused by one's only connection to society
21 carries with it a particular agony, and trafficking victims wrestle with conflicting feelings of fear,
22 loyalty, love, betrayal, guilt, shame, lack of self worth and blame. A counselor that victims can
23 trust and with whom victims can communicate confidentially will help to heal some of this
24 isolation.

25
26 At least four states expressly recognize a trafficking counselor and victim privilege. CAL.
27 EVID. CODE § 1038 (West, Westlaw through 2011 ch. 745 of Reg. Sess. and all 2011-2012 1st
28 Ex. Sess. laws) ("A trafficking victim, whether or not a party to the action, has a privilege to
29 refuse to disclose, and to prevent another from disclosing, a confidential communication between
30 the victim and a human trafficking caseworker..."); D.C. CODE § § 14-311 (West, Westlaw
31 through Sept. 13, 2011) ("A human trafficking counselor shall not disclose a confidential
32 communication..."); 9 GUAM CODE ANN. 26.40 (West, Westlaw through Pub. Law 31-074) ("A
33 trafficking victim, whether or not a party to the action, has a privilege to refuse to disclose, and
34 to prevent another from disclosing, a confidential communication between the victim and a
35 human trafficking caseworker..."); KY. REV. STAT. ANN. § 422.295 (West, Westlaw through the
36 end of 2011 legis.) ("A human trafficking victim has a privilege to refuse to disclose and to
37 prevent any other person from disclosing confidential communications made to a trafficking
38 victim counselor for the purpose of receiving counseling, therapy, services, information, or
39 treatment related to human trafficking.").

40
41 *II. Human trafficking counselor privilege is a logical extension from the existing*
42 *psychotherapist privilege and is analogously necessary to protect the speaker.*

43 Trafficking counselors perform many services for victims similar to the services provided
44 by attorneys, social workers, psychotherapists, psychologists, or clergy. "Most states recognize
45 the need for confidentiality in these relationships and have codified attorney-client, social

worker-client, psychotherapist/psychologist-patient and priest-communicant privileges in their statutes.” U.S. Department of Justice, Report to Congress, *The Confidentiality of Communications between Sexual Assault or Domestic Violence Victims and their Counselors: Findings and Model Legislation*, at 17 (1995). Every state affords testimonial privilege to psychotherapists and their patients. Office of Victims of Crime, *Status of the Law: Victim-Counselor Privilege Laws*, available at https://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin8/2.html (last visited Oct. 23, 2011).

The United States Supreme Court has upheld the constitutionality of the psychotherapist patient privilege. *Jaffee v. Redmond*, 518 U.S. 1, 10 (1996). In recognizing the psychotherapist patient privilege, the Court reasoned that “[e]ffective psychotherapy... depends upon an atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories, and fears.” *Id.* at 2. Because of the sensitive nature of the problems for which individuals consult psychotherapists, disclosure of confidential communication made during counseling sessions may cause embarrassment or disgrace. For this reason, the mere possibility of disclosure may impede development of the confidential relationship necessary for successful treatment.” *Id.* at 10. Extending the privilege, the Illinois Supreme Court noted that “if a rape crisis counselor could not guarantee confidentiality to a victim, the effectiveness of rape crisis centers would be undermined.” *People v. Foggy*, 521 N.E.2d 86 (Ill. 1988), *cert. denied*, 486 U.S. 1046 (1988).

Similar societal interests exist in recognizing a human trafficking counselor privilege. In order to encourage victims to bring their cases to law enforcement’s attention and to receive full recovery, it is necessary to have counselor relationships grounded in confidence and trust. Trafficking victims are often reluctant to consult any therapy, services, or law enforcement agencies because they fear imprisonment, deportation, or harm from their trafficker. There is a pervasive distrust of authority among foreign trafficking victims due to either their experiences in their native country or lies that traffickers use to maintain control over their victims. Disclosure of confidential communications made during counseling sessions by the trafficked client may not only cause embarrassment or disgrace but also physical harm and mental anguish to the client and the client’s family, making it extremely important to have a privilege to avoid these harms.

Moreover, if not ensured that the discussions will remain confidential, the victims may not approach any law enforcement officer or counselor. In *Jaffee v. Redmond*, the Court reasoned that if there was no psychotherapist privilege, then people would decide not to seek treatment from a therapist and consequently the underlying facts of a claim would remain unknown, therefore keeping out the controverted evidence just as if it were privileged. Similarly, if trafficking victims are not assured that their communications will remain confidential, they will not reach out to counselors, thereby ultimately reducing the number of investigations and prosecutions. Thus, to increase investigations, prosecutions, and victim rehabilitation, states must recognize a counselor client privilege.

III. *Human trafficking counselor privilege models the existing domestic violence privilege and is equally necessary for society to protect.*

1
2 “The human trafficking victim-counselor privilege follows the precedent set by some
3 states’ domestic violence victim-counselor privilege. After escaping from a human trafficking
4 situation, the first important relationship that a victim may develop outside of the trafficking
5 network may be with a case manager.” POLARIS MODEL LAW Commentary to § II. Protection of
6 Human Trafficking Victims (m) (Human Trafficking Victim-Caseworker Privilege). “The
7 success of the counselor/victim relationship is based upon the development of the victims’ trust
8 that they may confide sensitive and intimate information fully and freely to their counselors.
9 Confidentiality is essential for effective counseling because without an assurance of
10 confidentiality, victims may avoid treatment altogether or may withhold certain personal feelings
11 and thoughts because they fear disclosure.” U.S. Department of Justice, Report to Congress, *The*
12 *Confidentiality of Communications between Sexual Assault or Domestic Violence Victims and*
13 *their Counselors: Findings and Model Legislation*, 19 (December, 1995). The Report
14 accompanying the Office for Victims of Crime’s Proposed Model Legislation states:
15

16 Unfortunately, however, counseling may not benefit victims and, in fact, may add
17 to their trauma if the confidential communications exchanged between victims
18 and counselors during treatment are able to be utilized as evidence in court
19 proceedings. Victims often speak to their counselors about their fears and feelings
20 arising from the crime. Such reactions may be related to their personal histories
21 and psychological make-up. Victims who are under the impression that they are
22 revealing such information solely for therapeutic purposes are often dismayed and
23 feel betrayed when their counselors are compelled to disclose their
24 communications before the public at an open trial. Victims who realize in advance
25 that their communications may be subject to disclosure may avoid counseling
26 altogether.
27

28 U.S. Department of Justice, Report to Congress, *The Confidentiality of Communications*
29 *between Sexual Assault or Domestic Violence Victims and their Counselors: Findings*
30 *and Model Legislation*, 19 (December, 1995).
31

32 More than half of the states have passed laws extending privilege to sexual assault/rape
33 crisis and domestic violence counselors. OFFICE OF VICTIMS OF CRIME,
34 https://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin8/2.html - note¹⁰ (last visited
35 Oct. 23, 2011). See ALA. CODE §§ 15-23-40–45 (West, Westlaw through 2011 Reg. Sess.); CAL.
36 EVID. CODE § 181 §§ 1035–1036.2, 1037–1037.7 (West, Westlaw through 2011 ch. 745 of Reg.
37 Sess. and all 2011-2012 1st Ex. Sess. laws); FLA. STAT. CHS. 90.5035, .5036 (West, Westlaw
38 through 2011 ch. 236); IND. CODE §§ 35-37-6-1–11 (West, Westlaw through 2011 Reg. Sess.);
39 ME. REV. STAT. ANN. TIT. 16, §§ 53-A, -B (West, Westlaw through the 2011 First Reg. Sess. of
40 the 125th Legis.); MONT. CODE ANN. § 26-1-812 (2011); N.M. STAT. ANN. §§ 31-25-1–6 (West,
41 Westlaw through 2011 First Reg. Sess.); 23 PA. CONS. STAT. § 6102, 42 PA.CONST.STAT. §
42 5945.1 (West, Westlaw through 2011 Acts 1 to 81); VT. STAT. ANN. tit.12, § 1614 (West,
43 Westlaw through the laws of First Sess. of the 2011-2012 VT Gen. Assemb. (2011)). A few
44 states’ privilege laws apply to victim counselors in general. See e.g. ARIZ. REV. STAT. ANN. §
45 13-4430 (West, Westlaw through 2011 First Reg. Sess. and Third Special Sess.); IOWA CODE §
46 915.20A (West, Westlaw through 2011 Reg. Sess.); N.J. STAT. §§ 2A:84A-22.13–.16 (West,

Westlaw through 2011 legislation). In most states, counselors must complete a specified number of training hours to qualify for the privilege. (The number of training hours required varies, ranging from fifteen hours in Colorado to forty hours in most of the states with counselor privilege laws on the books, including Alaska, California, Illinois, Kentucky, Minnesota, New Jersey, New Mexico, Pennsylvania, and Wyoming). OFFICE OF VICTIMS OF CRIME, https://www.ncjrs.gov/ovc_archives/bulletins/legalseries/bulletin8/2.html - note10 (last visited Oct. 23, 2011).

IV. *The privilege extends to all confidential communications involving the human trafficking victim and the human trafficking counselor, except for mandatory reporting of child abuse.*

The definition of “confidential communication” protects the privilege if a third party is present for the communication to assist the victim or the counselor. The Supreme Court has stated that “[d]rawing a distinction between the counseling provided by costly psychotherapists and the counseling provided by more readily accessible social workers serves no discernible public purpose.” *Jaffee v. Redmond*, 518 U.S. 1, 17 (1996) (citing the Ct. App., 51 F.3d, at 1358, n.19). The same is true for human trafficking victims: trafficking victims often do not have access to cash or credit and cannot pay for a private psychotherapist. As a result, many victims are limited to public services. Applying the Supreme Court’s reasoning, human trafficking psychotherapists and human trafficking social workers or counselors should not be distinguished and both could satisfy the requirements within this section. Counselors can include social workers, case managers, caseworkers, and translators whose function is to assist the attorney in effectively communicating legal advice to the client. *See, e.g., Carter v. Cornell University*, 173 FRD 92, 94 (SDNY 1997). New York State Judicial Committee on Women in the Courts, Supreme Court of the State of New York, App. Div., First Division, Lawyer’s Manual on Human Trafficking: Pursuing Justice for Victims, 248 (2011) (edited by Jill Laurie Goodman and Dorchen A. Leidholdt).

When an attorney and counselor meet with a client, the presence of either professional shall not undermine the ability of the client to assert either the attorney-client privilege or the counselor-client privilege. Each professional shall be deemed an agent in the client relationship to preserve the privilege if he or she is necessary for the transmission of communications to and from the client. At times, the counselor may also be the attorney or caseworker. State courts have protected communications to and from a wide range of agents assisting lawyers in rendering legal advice to their clients.” *Id.* at 248 (referencing “*Urban Box Office Network, Inc. v. Interfase Managers, L.P.*, No. 1 Civ. 8854 (LTS)(THK), 2006 U.S. Dist. LEXIS 20648, at 20-32 (S.D.N.Y. Apr. 18, 2006) (protecting communications involving financial advisor who assisted attorney in providing advice to the client); *cf. Browne of N.Y. City, Inc. v. AmBase Corp.*, 150 F.R.D. 465, 494-92 (S.D.N.Y. 1993) (privilege does not attach to communications between client and her financial advisor because the agent was not assisting the attorney.”).

Subsection (e) covers the state limitations on privileges. For example, this privilege does not undermine a state duty to report child abuse or to report a serious threat to another person. Each counselor should be trained on the appropriate limitations on confidentiality of communications that is required by law.

SECTION 306. WITNESS CONFIDENTIALITY. In a prosecution for violations of Article 2, the [Attorney General] shall keep the identity of the victim and the victim's family confidential.

Comment

Confidentiality is necessary to ensure that victims are safe from harm by their perpetrators. Maintaining the confidentiality of trafficking victims' identification is essential to encourage victims to report crimes, incentivize victims to escape from their perpetrators, and ensure the victim's testimony. The Trafficking Protocol requires the United States and all the states to "protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential," and to provide "for the physical safety of victims of trafficking in persons while they are within its territory." Trafficking Protocol at arts. 6(1), 6(5).

This section’s language is taken from Guam’s law. 9 GUAM CODE ANN. § 26.35 (West, Westlaw through Pub. Law 31-074) (“[i]n a prosecution for violations of the criminal provisions of this article, the identity of the victim and the victim’s family should be kept confidential by ensuring that names and identifying information of the victim and victim’s family are not released to the public, including by the defendant.”). At least three states or territories mandate confidentiality of victim identification specifically for human trafficking victims. *See* 9 GUAM CODE ANN. § 26.35 (West, Westlaw through Pub. Law 31-074); 6 N. MAR. I. CODE § 15011 (2005) (requiring that the Attorney General take all reasonable measures in prosecutions to ensure that the victim and victim’s family’s identification remains confidential); OKLA STAT. tit. 21, § 748.2 (West, Westlaw through 2011 ch. 385 of First Reg. Sess.) (“ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.”)

Federal law extends this protection to victims’ families, and so should state law. Victims and their families’ names and identifying information are not disclosed to the public. 28 C.F.R. § 1100.31 (West, Westlaw through November 3, 2011; 76 FR 68118) (family members protected by the TVPA include “spouses, children, parents, or siblings who have been targeted or are likely to be targeted by traffickers and for whom protection from harm may be reasonably provided. At the discretion of the responsible official, protection may be extended to other family members not included in the above definition”). “The safety of survivors is critical to creating conditions under which they will be able to rebuild their lives and, if they choose, to cooperate fully with law enforcement.” Hidden Slaves Report, *supra*, at 50. The right to protection includes the protection of trafficking victims’ privacy, avoidance of contacts with the offenders in the court premises, and protection from the effect of giving evidence in open court.

Model Laws widely support keeping the victim and the victim’s family confidential. *See* UNODC MODEL LAW art. 26 (“[t]he [competent authority] may, when necessary to safeguard the physical safety of a victim or witness, at the request of the victim or witness or in consultation with him or her, take all necessary measures to relocate him or her and to limit the disclosure of

his or her name, address and other identifying personal information to the extent possible.”); GLOBAL RIGHTS MODEL LAW Division D Section 3(a)(ii) (“be provided law enforcement protection if her or his safety is at risk or if there is a danger of harm by recapture of the trafficked person by a trafficker, including... ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.”); WOMEN POLICY STUDIES MODEL LAW § Protections for Trafficked Victims (f)(ii) (“[h]uman trafficking victims shall... be provided protection if a victim’s safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker, including... ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public; POLARIS MODEL LAW at section Protection of the Privacy of Victims (Polaris Project, 2010) (“[i]n a prosecution for violations of [state human trafficking offenses], the identity of the victim and the victim’s family shall be kept confidential by ensuring that names and identifying information of the victim and victim’s family are not released to the public, including by the defendant”). The widespread support, from both international, federal, and model laws, underscores the states’ need to maintain the confidentiality of the victim and the victim’s family.

SECTION 307. CIVIL ACTION.

(a) For the purposes of this section, a “criminal prosecution” includes a prosecution and related investigation, and remains pending until final adjudication in the trial court.

(b) An individual may bring a civil action for alleged violations under Article 2 of this act against a perpetrator. The court may award actual damages, punitive damages, litigation costs reasonably incurred, and treble damages on proof of actual damage where defendant’s acts are willful and malicious. The court may award a prevailing plaintiff attorney’s fees.

(c) A court may grant a preliminary injunction prohibiting the sale or transfer of assets, and may grant any other order, injunction, notice, or lien as appropriate, including for purposes of ensuring the plaintiff’s safety.

(d) The court shall credit restitution paid by the defendant to the victim against a judgment, award, or settlement obtained pursuant to this section.

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

(f) An action brought pursuant to this section shall be commenced within ten years of the

1 date on which the victim was freed from the trafficking situation, or within ten years after the
2 victim attains 18 years of age, whichever comes later. The statute of limitations shall be tolled:

3 (1) for the duration of a disability, including insanity, imprisonment, or other
4 incapacity or incompetence, if a victim is under a disability at the time the cause of action
5 accrues, so that it is impossible or impracticable for the victim to bring an action;

6 (2) until the cause of action is discovered, if the victim could not have reasonably
7 discovered that a cause of action existed due to circumstances resulting from the trafficking
8 situation, such as psychological trauma, cultural and linguistic isolation, and the inability to
9 access services.

10 (g) A defendant is estopped from asserting a defense of the statute of limitations when the
11 expiration of the statute is due to conduct or threats by the defendant inducing the plaintiff to
12 delay the filing of the action.

13 **Comment**

14 The right to civil action “gives power to the powerless.” Daniel Werner and Kathleen
15 Kim, *CIVIL LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING*, xvii (Immigrant Justice
16 Project, 3rd ed. 2008). This right does not depend on whether a criminal investigation or
17 prosecution takes place. This section provides victims with relief that may not be available
18 through court-ordered restitution. A civil action can also provide an alternate way for victims to
19 hold their perpetrators accountable and achieve a level of self-determination after their ordeal.
20 The right to civil remedy is also required by the Trafficking Protocol, which provides that
21 “[e]ach State Party shall ensure that its domestic legal system contains measures that offer
22 victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”
23 Trafficking Protocol, *supra*, at art. 6(6). At least sixteen states explicitly provide victims with a
24 private right of action. *See* ALA. CODE § 13A-6-158 (West, Westlaw through 2011 Reg. Sess.);
25 CAL. CIV. CODE § 52.5; 21 (West, Westlaw through 2011 ch. 745 of Reg. Sess. and all 2011-2012
26 1st Ex. Sess. laws); CONN. GEN. STAT. § 52-571i (West, Westlaw through 2011 Jan. Reg. Sess.);
27 D.C. CODE § 22-1840 (West, Westlaw through Sept. 13, 2011); FLA. STAT. § 772.104 (West,
28 Westlaw through 2011 ch. 236); 9 GUAM CODE ANN. § 26.31 (West, Westlaw through Pub. Law
29 31-074); IND. CODE § 35-42-3.5-3 (West, Westlaw through 2011 Reg. Sess.); 6 N. MAR. I. §
30 1507 (2005); ME. REV. STAT. ANN. tit. 5 § 4701 (West, Westlaw through 2011 First Reg. Sess.);
31 MINN. STAT. § 609.284, sub 2 (West, Westlaw through 2010 2d Special Sess.); MO. STAT. §
32 566.223 (West, Westlaw through 2011 First Extraordinary Sess.); NEV. REV. STAT. ANN. 41.690
33 (West, Westlaw through 2009 75th Reg. Sess. and 2010 26th Special Sess. and technical

1 corrections from 2010 Leg. Counsel Bureau); OKLA. STAT. tit. 21 § 748.2 (West, Westlaw
2 through 2011 ch. 385 of First Reg. Sess.); WIS. STAT. § 940.302(3) (West, Westlaw through 2011
3 Acts 31, 33-36, 38-44); WIS. STAT. § 940.051(3) (private right of action for child victims) (West,
4 Westlaw through 2011 Acts 31, 33-36, 38-44).

5
6 Explicitly allowing for a private right of action expands victims' ability to recover both
7 emotionally and financially after being subjected to human trafficking. This right also allows
8 victims to sue third parties, including legal persons that purposely benefit from a violation of
9 Article 2. Providing victims with an empowering potential path to financial independence can be
10 beneficial to the state as well. Financially independent victims will no longer need to rely on
11 state funded services. Additionally, the potential for civil suit may act as an added deterrent for
12 would-be perpetrators of human trafficking.

13
14 Though a civil action requires a plaintiff to prove the elements of the crimes used as the
15 basis of the claim for relief, it requires a lower burden of proof than a criminal prosecution. A
16 victim bringing a civil action is required to show that the defendant committed the crime by a
17 preponderance of the evidence, as opposed to proof beyond a reasonable doubt. A victim may
18 bring a civil action for any violations in this act in addition to any statutory violations or other
19 tortious acts, such as state labor and wage laws, negligence, intentional infliction of emotional
20 distress, false imprisonment, assault, battery, fraud, conversion, invasion of privacy, as well as
21 contract claims such as unjust enrichment.

22
23 Subsection (b) allows for a variety of court-ordered remedies, including actual and
24 punitive damages, litigation costs, and treble damages. At least four states specifically provide
25 for treble damages within their civil action statutes, and the provision relating to treble damages
26 in paragraph (b) is taken from language in Alabama, D.C., and Guam law. ALA. CODE § 13A-6-
27 157 (West, Westlaw through 2011 Reg. Sess.); D.C. CODE § 22-1840 (West, Westlaw through
28 Sept.13, 2011); 9 GUAM CODE ANN. § 26.31(a) (West, Westlaw through Pub. Law 31-074); WIS.
29 STAT. § 940.302(3) (West, Westlaw through 2011 Acts 31, 33-36, 38-44) (punitive damages may
30 not exceed treble the amount of actual damages incurred). The availability of treble damages as
31 a civil remedy acts as both a deterrent to traffickers and a restitutive measure for victims unable
32 to be made whole via a criminal trial.

33
34 Subsection (e) does not prohibit the filing of a civil action before or during a criminal
35 investigation or prosecution, but allows the court to stay the action until the conclusion of a
36 related criminal prosecution. This delays, but does not prevent a civil action filed within the
37 statute of limitations. Staying a civil action until the conclusion of a parallel criminal action is
38 generally beneficial to both the criminal prosecution and the victim, and promotes the aims of
39 justice and fairness in proceedings. In the case of a conviction, the victim may use the
40 conviction as evidence in a civil trial.

41
42 However, some cases may necessitate an order requiring that the defendant preserve
43 evidence relevant to the civil action while it is stayed. Daniel Werner and Kathleen Kim, CIVIL
44 LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING, 6 (Immigrant Justice Project, 3rd
45 ed. 2008). Additionally, a victim or victim's attorney concerned that a defendant will hide or
46 dispose of assets during a criminal trial and in advance of a civil action may file a motion for a

1 temporary restraining order or preliminary injunction prohibiting the sale or transfer of assets.
2 *Id.* at 7. In some civil actions, a notice of pendency, mechanics or construction lien, or Order of
3 Attachment may be appropriate. *Id.* This pre-judgment action preserves assets so that
4 defendants are not judgment-proof, leaving victims with no remedy.

6 Plaintiffs have also been allowed to withhold their identities in a civil action for fear of
7 retribution. In the federal context, the use of a pseudonym by the parties at interest has been
8 deemed warranted in “matters of a highly sensitive and personal nature, real danger of psychological
9 harm, or where the injury litigated against would be incurred as a result of the disclosure of the
10 plaintiff’s identity.” *Does I-IV v. Rodriguez*, No. 06-CV-00805-LTB, 2007 WL 684114, at *2
11 (D. Colo. March 2, 2007) (allowing plaintiffs to proceed with civil suit anonymously where
12 credible evidence showed that defendants or agents of the defendants may engage in retaliation
13 against the plaintiffs) (citing *Femedeer v. Haun*, 227 F.3d 1244, 1246 (10th Cir. 2000)); *see also*
14 *Javier H. v. Garcia-Botello*, 211 F.R.D. 194 (2002) (ruling that plaintiffs’ substantial privacy
15 interests outweighed the customary and constitutionally-embedded presumption of openness in
16 judicial proceedings where migrant workers showed reasonable and well-founded fear of
17 retaliation due to previously threats of violence by defendants). In some cases, a motion for a
18 protective order to prevent discovery of the victim’s identification information or other
19 information, the disclosure of which may put the plaintiff in danger of harassment or
20 intimidation, may be necessary. *Werner, supra*, at 13. If the victim’s identity is already known,
21 a temporary restraining order to prevent a defendant from contacting the victim may be
22 appropriate. This identity protection is additionally supported by the Trafficking Protocol, which
23 provides that state parties shall, in appropriate cases, “protect the privacy and identity of victims
24 of trafficking in persons, including, inter alia, by making legal proceedings relating to such
25 trafficking confidential.” Trafficking Protocol, *supra*, at art. 6(1).

27 The statute of limitations provided in this section is ten years from the victim’s removal
28 from the trafficking situation, in contrast to the TVPA, which provides a statute of limitations of
29 10 years from the cause of action. 18 U.S.C. § 1595(c) (2006). Starting the clock from the time
30 the victim is freed from the trafficker, as opposed to the time of the actual offense, reflects the
31 policy that the cause of action continues to occur until the victim regains liberty of movement
32 and self-determination. Paragraphs (1) and (2) provide for tolling the statute of limitations in
33 certain cases. Subsection (g) precludes a victim plaintiff from losing the opportunity to bring a
34 civil action where the defendant obstructs the timely filing of the action. This subsection reflects
35 the concept of equitable tolling, which applies “where the complainant has been induced or
36 tricked by his adversary’s misconduct into allowing the filing deadline to pass.” *Deressa v.*
37 *Gobena*, No. 1:05CV1334(JCC), 2006 WL 335629, at *3, (E.D. Va. Feb. 13, 2006) (quoting
38 *Irwin v. Dep’t of Veterans*, 498 U.S. 89, 96 (1990)).

40 A recent decision awarding \$7.8 million to victims of labor trafficking in Denver
41 provides an example of a successful civil action. *See Does v. Rodriguez*, No. 06-cv-00805-LTB,
42 2007 WL 684117, at *1, 2 (D. Colo. March 2, 2007) (denying motion to dismiss of migrant farm
43 workers’ complaint against contractor defendants for violations of federal and state law in
44 relation to forced farm labor); Felisa Cardona and Kevin Vaughan, *Fields of Fear for Colorado*
45 *Laborers*, THE DENVER POST, (http://www.denverpost.com/ci_12387869) (migrant workers
46 awarded 7.8 million dollars in civil suit).

1 **ARTICLE 4**

2 **AWARENESS AND PREVENTION**

3 **SECTION 401. ESTABLISHMENT OF ANTI-HUMAN TRAFFICKING [TASK**
4 **FORCE, COUNCIL, OR COORDINATOR].**

5 (a) There is established [an interagency task force on human trafficking, human
6 trafficking council, or a human trafficking coordinator in an existing state agency] as the central
7 human trafficking resource.

8 (b) The [Governor] shall appoint the Chairperson and the [members of or consultants to]
9 the [interagency agency task force, council, or coordinator], which may include department
10 representatives from justice, law enforcement, labor, health and human services, child welfare,
11 juvenile justice, transportation, education, agriculture, housing, nongovernmental agencies,
12 service providers, and such other representatives as may be designated by the [Governor]. The
13 departments and agencies represented on the [interagency agency task force, council, or to the
14 designated agency and coordinator] are authorized to provide staff to the [interagency task force,
15 council, or designated agency and coordinator] on a non-reimbursable basis.

16 (c) The [interagency task force, council, or coordinator] shall:

17 (1) coordinate the implementation of this act, including establishing protocols
18 where appropriate, in accordance with Sections 301 (Victim Services), 302 (Victim Eligibility
19 for Services), 402 (Training), 403 (Data Collection and Reporting), and 406 (Awareness
20 Measures in Schools);

21 (2) evaluate the progress of and develop recommendations to strengthen state
22 efforts to increase awareness of human trafficking, prevent human trafficking, protect and
23 provide assistance to victims, and prosecute persons engaged in human trafficking;

1 (3) submit an annual report of its activities, including any recommendations, to
2 the [state legislative body];

3 (4) facilitate cooperation and consult with governmental and nongovernmental
4 organizations where appropriate and relevant to combating human trafficking;

5 (5) create and maintain a website to publicize the [interagency task force, council,
6 or coordinator]'s research, contact information, directory of resources and services, protocols,
7 partnerships with other organizations and agencies, and National Hotline information; and

8 (6) address other such matters related to the purposes of the act as the [Governor]
9 may determine.

10 (d) The state may contract with nongovernmental organizations to fulfill [interagency
11 task force, council, or coordinator] obligations under this section.

12 (e) [The members of or consultants to] the [interagency agency task force, council, or
13 coordinator] shall meet at least 4 times per year.

14 (f) The [interagency task force, council, or coordinator] shall meet with other state
15 [interagency task forces, councils, or relevant agencies] once every 2 to 4 years to discuss each
16 state [interagency task force, council, or coordinator]'s activities, accomplishments, protocols,
17 best practices, and data related to combating human trafficking.

18 (g) The [interagency agency task force, council, or coordinator] may collaborate with
19 other states' [interagency task force, council, or coordinator] and provide other states'
20 [interagency task force, council, or coordinator] with relevant information upon request.

Comment

I. Task forces are necessary to comprehensively combat human trafficking.

Human trafficking is multifaceted and complex. In order to take into consideration the variety of human trafficking offenses, it is necessary to bring together an array of professionals and experts to comprehensively combat the offenses. States need to address the deeper need for collaboration to combat human trafficking, which goes beyond adopting criminal laws. A 2008 study by the Northeastern University Institute on Race and Justice, the first comprehensive study on improving law enforcement responses to human trafficking, strongly recommended using task forces: “the goal of multi-agency partnerships is to bring law enforcement and victim service providers together to increase the likelihood that trafficking victims will be identified and provided the appropriate services with the ultimate goal of both restoring victims and enhancing prosecution of offenders.” Northeastern University Institute on Race and Justice, *Understanding and Improving Law Enforcement Responses to Human Trafficking 2008*, 85, available at www.ncjrs.gov/pdffiles1/nij/grants/222752.pdf (unpublished report submitted to the United States Department of Justice). Task forces mobilize public opinion and resources to successfully and efficiently combat human trafficking. POLARIS MODEL LAW § II Prevention of Human Trafficking (5) (State Task Force for the Prevention of Human Trafficking). Other benefits of a statewide task force are shared resources, increased communication among local communities, and greater understanding of the particular challenges of combating human trafficking within the state.

The Trafficking Protocol requires the United States and the states to undertake a comprehensive approach to combating human trafficking by adopting measures that would conventionally be delegated to a task force for execution. The UNODC has commented that the intent of the Protocol is best implemented through cooperative efforts. For example, the Trafficking Protocol requires that States Parties undertake research measures, information and mass media campaigns, social and economic initiatives, and incorporate nongovernmental organizations into such programs and measures. Trafficking Protocol, *supra*, at art. 9(1)-(3).

The federal government has adopted a comprehensive federal policy to human trafficking. The TVPA of 2000 created a permanent interagency task force, the President’s Interagency Task Force (PITF). The PITF includes representatives from many federal departments, including State, USAID, Justice, Labor, Health and Human Services, National Intelligence, Defense, and Homeland Security, Education, and others as the President may designate. 22 U.S.C. §7103(b) (2006 & Supp. III 2007-2010). PITF continues to be a fundamental vehicle for combating human trafficking. PITF provides a centralized focus that enables the federal government to more fully recognize and confront human trafficking crimes while simultaneously increasing identification of human trafficking victims. The federal government’s establishment of PITF can and should be mirrored on the state level, thus empowering the United States to cohesively and comprehensively combat human trafficking. Similar to the PITF, state interagency task forces should be permanent to ensure the abolition of human trafficking.

II. Task forces are effective and successful at combating human trafficking.

1
2 According to the Northeastern University study, interagency task forces are more
3 effective than non-interagency task forces at combating human trafficking. While the study
4 compares task forces made up of state and federal agencies, the comparison is nonetheless useful
5 and informative for state task forces including governmental and nongovernmental agencies.
6 There is a strong need for collaboration among levels of state, local, and municipal government
7 and also nongovernmental agencies. The Northeastern study highlights that:

8
9 law enforcement agencies participating in human trafficking task forces are more
10 likely to have training, protocols and specialized units or personnel devoted to
11 human trafficking investigations and are more likely to perceive human
12 trafficking of all kinds to be a more pervasive problem in their local community.
13 Additionally, these agencies are increasingly likely to identify proactive
14 approaches such as using information from other ongoing investigations to
15 identify cases of human trafficking... Agencies participating in federally funded
16 human trafficking task forces have identified, on average, more cases of human
17 trafficking than non-task force agencies and have made more arrests.

18
19 Northeastern University Institute on Race and Justice, *supra*, at 90.

20
21 The study's specific findings for the years 2000 through 2006 include: (1) local law
22 enforcement agencies participating in human trafficking task forces ("task force agencies")
23 identified and investigated more cases than law enforcement agencies not cooperating or
24 working with task force agencies ("non-task force agencies") (thirty-six on average for task force
25 agencies compared to fifteen on average for non-task force agencies); (2) task force agencies
26 made on average more arrests (twelve) for human trafficking than non-task force agencies
27 (eight); (3) cases identified by task force agencies were more likely to result in formal charges
28 following human trafficking related arrests than non-task force agencies (seventy-five percent
29 compared to forty-five percent); and (4) cases identified by task force agencies were twice as
30 likely to result in federal charges than non-task force agencies (fifty-five percent compared to
31 twenty-five percent). Northeastern University Institute on Race and Justice, *supra*, at 86.

32
33 Several states have already recognized the advantages and efficacy of a task force and
34 have implemented one in their state. At least twelve states currently have legislation addressing
35 an existing task force or similar structure. *See* COLO. REV. STAT. §18-1.8-101 (West, Westlaw
36 through 2011 Reg. Sess.) (creating an interagency task force on human trafficking); CONN. GEN.
37 STAT. § 46a-170 (West, Westlaw through 2011 Jan. Reg. Sess.) (establishing the Trafficking in
38 Persons Council); D.C. CODE § 22-1841 (West, Westlaw through Sept. 13, 2011) (establishing
39 the D.C. Human Trafficking Task Force where the Mayor was required to elicit "cooperation
40 and assistance" from various governmental and nongovernmental agencies, *see*
41 http://www.justice.gov/usao/dc/programs/cp/human_trafficking.html); FLA. STAT. § 168 (West,
42 Westlaw through 2011 ch. 236) (establishing the Florida Statewide Task Force on Human
43 Trafficking where the Department of Children and Family Services was mandated to establish a
44 "structure" to carry out duties, *see* <http://www.dcf.state.fl.us/initiatives/humantrafficking/>); 9
45 GUAM CODE ANN. § 26.20 (West, Westlaw through Pub. Law 31-074) (establishing an "inter-
46 agency task force"); N.M. STAT. ANN. § 30-52-3 (West, Westlaw through 2011 First Reg. Sess.)

(creating the “task force to combat human trafficking”); N.Y. SOC. SERV. § 483-ee (West, Westlaw through 2011 legislation, ch. 1-54 and 57-495) (establishing an “interagency task force on human trafficking”); H.B. No. 280, 127th Gen. Assemb. (Ohio 2008), *see* http://www.legislature.state.oh.us/bills.cfm?ID=127_HB_280 (authorizing Attorney General to establish Human Trafficking Commission; *see also*, <http://www.ohioattorneygeneral.gov/traffickingreport> (for the Commission’s report); News Releases, Attorney General DeWine, Attorney General DeWine Convenes New Human Trafficking Commission (Aug. 15, 2011), *available at* <http://www.ohioattorneygeneral.gov/getdoc/b82fac3e-b6f5-44d4-8d5a-3dee667419a5>) (for the announcement of the new commission); S. Res. 253 (Pa. 2010), <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?syear=2009&sind=0&body=S&type=R&bn=253> (directing the Joint State Government Commission to establish an advisory committee on human trafficking); R.I. GEN. LAWS ANN. § 11-67-7 (West, Westlaw through chapter 407 of the Jan. 2011 sess.) (creating an “interagency human trafficking of persons task force”); TEX. GOV’T CODE ANN. § 402.035 (West, Westlaw through 2011 Reg. Sess.) (West, Westlaw through the end of the 2011 Reg. Sess. and First Called Sess. of the 82nd Legis.) (requiring the Texas Fusion Center provide an annual report by the Texas Fusion Center regarding criminal street gangs that includes law enforcement strategies that have been proven effective in deterring gang involvement in human trafficking of persons”); UTAH CODE ANN. § 67-5-22.7 (West, Westlaw through 2011 Second Spec. Sess.) (authorizing creation of “a multiagency strike force”).

Moreover, additional state task forces exist without statutory establishment. For example, North Carolina has the voluntary North Carolina Coalition Against Human Trafficking (NCCAHT). NCCAHT works to raise awareness about human trafficking across North Carolina, supports efforts to prosecute traffickers, and identifies and assists victims. However, each state should offer full support to its task force by statutorily outlining its authority and duties.

III. *State task forces should include members from varied fields.*

Task forces do not have to be a fiscal burden. Subsection (b) provides that existing staff should be assigned from government agencies to work on the task force. This is modeled after the PITF’s language. 22 U.S.C. § 7103(e)(1) (“The agencies represented on the Task Force are authorized to provide staff to the Office on a nonreimbursable basis.”). This means that the state does not necessarily have to provide additional employees in order to staff it. This does not mean that employees should not be compensated for their time and labor.

Subsection (b) gives each state the flexibility to craft a task force consisting of varied members from governmental and nongovernmental sectors. Subsection (b) is modeled after the federal provision appointing task force members and gives discretion to state governors in appointing members. 22 U.S.C. § 7103 (2006 & Supp. III 2007-2010).

Task forces generally include representatives from state and local law enforcement, state prosecutors, labor regulators, inspectional service officers, victim service providers, nongovernmental agencies, and mental health professionals. Some states, including Connecticut and New York, provide a specific list of task force members. Connecticut provides a detailed

1 enumeration of members that includes representatives of nongovernmental agencies:

2
3 The council shall consist of the following members: The Attorney General, the
4 Chief State's Attorney, the Chief Public Defender, the Commissioner of
5 Emergency Services and Public Protection, the Labor Commissioner, the
6 Commissioner of Social Services, the Commissioner of Public Health, the
7 Commissioner of Mental Health and Addiction Services, the Commissioner of
8 Children and Families, the Child Advocate, the Victim Advocate, the chairperson
9 of the Commission on Children, the chairperson of the Permanent Commission on
10 the Status of Women, the chairperson of the Latino and Puerto Rican Affairs
11 Commission, the chairperson of the African-American Affairs Commission, three
12 representatives of the judicial branch appointed by the Chief Court Administrator,
13 one of whom shall represent the Office of Victim Services and one of whom shall
14 represent the Court Support Services Division, and a municipal police chief
15 appointed by the Connecticut Police Chiefs Association, or a representative of any
16 such member who has been designated in writing by such member to serve as
17 such member's representative, and seven public members appointed as follows:
18 The Governor shall appoint one member who shall represent Connecticut Sexual
19 Assault Crisis Services, Inc., the president pro tempore of the Senate shall appoint
20 one member who shall represent an organization that provides civil legal services
21 to low-income individuals, the speaker of the House of Representatives shall
22 appoint one member who shall represent the Connecticut Coalition Against
23 Domestic Violence, the majority leader of the Senate shall appoint one member
24 who shall represent an organization that deals with behavioral health needs of
25 women and children, the majority leader of the House of Representatives shall
26 appoint one member who shall represent an organization that advocates on social
27 justice and human rights issues, the minority leader of the Senate shall appoint
28 one member who shall represent the Connecticut Immigrant and Refugee
29 Coalition, and the minority leader of the House of Representatives shall appoint
30 one member who shall represent the Asian-American community.

31
32 CONN. GEN. STAT. § 46a-170 (West, Westlaw through 2011 Jan. Reg. Sess.).

33
34 New York also lists the specific members of their task force:

35
36 [The interagency task force] shall consist of the following members or their
37 designees: (1) the commissioner of the division of criminal justice services; (2)
38 the commissioner of the office of temporary and disability assistance; (3) the
39 commissioner of health; (4) the commissioner of the office of mental health; (5)
40 the commissioner of labor; (6) the commissioner of the office of children and
41 family services; (7) the commissioner of the office of alcoholism and substance
42 abuse services; (8) the director of the office of victim services; (9) the executive
43 director of the office for the prevention of domestic violence; and (10) the
44 superintendent of the division of state police; and others as may be necessary to
45 carry out the duties and responsibilities under this section. The task force will be
46 co-chaired by the commissioners of the division of criminal justice services and

1 the office of temporary and disability assistance, or their designees. It shall meet
2 as often as is necessary and under circumstances as are appropriate to fulfilling its
3 duties under this section.
4

5 N.Y. SOC. SERV. LAW § 483-ee (West, Westlaw through 2011 legislation, ch. 1-54 and
6 57-495).
7

8 IV. *The task force must have specific duties, as outlined by subsection (c).*
9

10 The following is a description and summary of task force duties authorized by this
11 section, with an explanation regarding why a state task force must be the entity that carries out
12 these duties. Each task is necessary to abolishing human trafficking.
13

14 Paragraph (1): Coordinate the implementation of this chapter pursuant to 301, 302, 402,
15 403, and 406.
16

17 A principal obstacle to agencies and organizations in confronting human trafficking is a
18 lack of awareness of efforts and benefits that other agencies and organizations are providing. It
19 is imperative that task forces identify all of the resources and providers that are available so that
20 appropriate protocols, plans, and reports can be created. The Committee on the Rights of the
21 Child specifically recommended that the United States “strengthen coordination among the
22 different agencies and governmental departments working in... [*inter alia*, human trafficking],
23 both at the federal and state levels.” Committee on the Rights of the Child, *Concluding*
24 *Comments: United States of America* (48th Sess., 2008), U.N. Doc. CRC/C/OPSC/USA/CO/1
25 (2008), available at
26 <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPSC.USA.CO.1.pdf>.
27

28 This subsection is modeled after the federal Presidential Task Force (PITF). 22 U.S.C. §
29 7103(d)(1) (2006 & Supp. III 2007-2010) (“[t]he task force shall... coordinate the
30 implementation of this chapter”). Other states have similar provisions. *See, e.g.*, 9 GUAM CODE
31 ANN. § 26.20(e)(1) (West, Westlaw through Pub. Law 31-074) (“[d]evelop the Guam Plan” and
32 “[c]oordinate the implementation of the Territorial Plan”).
33

34 The task force should create protocols, procedures, and guidelines to provide guidance to
35 law enforcement agents and other governmental and nongovernmental professionals. The
36 Department of Justice, speaking to the Senate, concluded that “collaboration between law
37 enforcement and victim services has been a critical part” in its efforts against human trafficking.
38 Testimony of Mary Lou Leary, *supra*, at 5. In examining law enforcement agencies’ response to
39 human trafficking, the Northeastern study found that protocols are highly effective: “formal
40 operating rules, such as protocols, are particularly important in circumstances where agencies
41 may not have specialized units or personnel that can be devoted to the investigation of human
42 trafficking cases or personnel change over the course of the lengthy periods of time often
43 required for many of these investigations.” Northeastern University Institute on Race and
44 Justice, *supra*, at 116. New Mexico, for example, mandates that the task force examine its
45 training program. *See* N.M. STAT. ANN. § 30-52-3(B)(5) (West, Westlaw through 2011 First
46 Reg. Sess.) (“[E]xamine the training protocols developed by federal, state and local law

1 enforcement agencies related to dealing with human trafficking victims and offenders”).

2
3 Identify and ensure provision of victim services in accordance with Section 301: The task force
4 should develop protocols that directs law enforcement to contact the appropriate agencies and
5 service providers upon encountering a human trafficking victim. A major obstacle to victims
6 receiving services is a lack of awareness among victims, victim advocates, and law enforcement
7 officials about available resources and services. The task force should identify all of the
8 available services available to human trafficking victims. One goal of task forces is to help
9 restore trust and dignity to victims’ with the hope that victims will be able to assist prosecutors in
10 testifying against perpetrators. Northeastern University Institute on Race and Justice, *supra*, at
11 85. At least four states’ task forces address identifying and providing services for victims. *See*
12 COLO. REV. STAT. § 18-1.8-101(3)(d) (West, Westlaw through 2011 Reg. Sess.) (“identify
13 available federal, state, and local programs that provide services to victims of trafficking that
14 include, but are not limited to, health care, human services, housing, education, legal assistance,
15 job training or preparation, interpreting services, English-as-a-second-language classes,
16 voluntary repatriation, and victim's compensation”); N.Y. SOC. SERV. § 483-ee(b)(2) (West,
17 Westlaw through 2011 legislation, ch. 1-54 and 57-495) (substantially the same); CONN. GEN.
18 STAT. § 46a-170(d)(2) (West, Westlaw through 2011 Jan. Reg. Sess.) (“identify criteria for
19 providing services to adult trafficking victims”); 9 GUAM CODE ANN. §26.20(7) (West, Westlaw
20 through Pub. Law 31-074) (“review the existing services and facilities to meet trafficking
21 victims' needs and recommend a system that would coordinate such services, including but not
22 limited to: health services, including mental health; housing; education and job training; English
23 as a second language classes; interpreting services; legal and immigration services; and victim
24 compensation”). *See also* Comment to Section 301.

25
26 Adopt procedures for identifying victims in accordance with Section 302: The task force should
27 develop protocols and procedures that facilitate the identification of human trafficking victims by
28 law enforcement. Due to the lack of training and general awareness about human trafficking,
29 victims often do not receive the benefits and services that they need. Instead, an official may
30 send a human trafficking victim to another agency, or even worse, to jail, without ever realizing
31 that the person is a human trafficking victim. For example, when a woman is initially thought to
32 be a prostitute, a law enforcement official should more closely examine the woman’s situation to
33 ensure that she is not actually a human trafficking victim who is being forced or coerced to
34 provide her sexual services. With the adoption of specific procedures for identifying victims,
35 more victims will be recognized appropriately and will consequently receive necessary services
36 and benefits. The first step to stopping human trafficking is being able to identify it. *See also*
37 Comment to Section 302.

38
39 Implement training in accordance with Section 402: The task force should develop training
40 procedures and educational materials for appropriate agencies and professionals to disseminate.
41 Increased training will produce greater awareness and understanding of human trafficking and
42 will consequently lead to more successful investigations and prosecutions. At least three states
43 implement training programs through their task forces. *See* N.M. STAT. ANN. §30-52-3(B)(4)
44 (West, Westlaw through 2011 First Reg. Sess.) (“develop and conduct training for law
45 enforcement personnel and victims services providers to identify victims of human trafficking”);
46 N.Y. SOC. SERV. § 483-ee(b)(5) (West, Westlaw through 2011 legislation, ch. 1-54 and 57-495)

1 (“evaluate the effectiveness of training programs on human trafficking that have been designed
2 for law enforcement personnel, criminal defense attorneys, social service providers and non-
3 governmental organizations, and make recommendations for improving the quality and
4 effectiveness of such programs”); TEX. GOV’T CODE ANN. § 402(d)(5),(7) (West, Westlaw
5 through 2011 Reg. Sess.) (“work with the Commission on Law Enforcement Officer Standards
6 and Education to develop and conduct training for law enforcement personnel, victim service
7 providers, and medical service providers to identify victims of human trafficking” and “examine
8 training protocols related to human trafficking issues, as developed and implemented by federal,
9 state, and local law enforcement agencies”). *See also* Comment to Section 402.

11 Collect and organize data in the state in accordance with Section 403: The task force should
12 develop a procedure for agencies to collect data and a protocol for organizing and aggregating
13 that data for the state. Currently, “no comprehensive data is available on state prosecutions and
14 convictions,” and “the lack of uniform nationwide data collection remained an impediment to
15 compiling fully accurate statistics.” OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS,
16 U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 373 (2011). A uniform data collection
17 scheme is necessary to address this problem and the federal government and all states must
18 address it. The TVPA requires the PITF to collect data. 22 U.S.C. § 7103(d)(3) (2006 & Supp.
19 III 2007-2010) (“[t]he task force shall... expand interagency procedures to collect and organize
20 data, including significant research and resource information on domestic and international
21 trafficking”). A state task force, similar to the PITF, will also be in the best position to aggregate
22 data within the state from all of the agencies that work with human trafficking issues. At least
23 five states already have a task force that is responsible for collecting and analyzing such data.
24 *See* COLO. REV. STAT. § 18-1.8-101(3)(a) (West, Westlaw through 2011 Reg. Sess.) (“collect and
25 organize data on the nature and extent of trafficking in persons in the state”); 9 GUAM CODE
26 ANN. § 26.20 (e)(3) (West, Westlaw through Pub. Law 31-074) (“coordinate the collection and
27 sharing of trafficking data among government agencies”); N.M. STAT. ANN. §30-52-3(B)(2)
28 (West, Westlaw through 2011 First Reg. Sess.) (“collect and organize data on the nature and
29 extent of human trafficking”); N.Y. CLS SOC. SERV. § 483-ee(b)(1) (West, Westlaw through
30 2011 legislation, ch. 1-54 and 57-495) (“collect and organize data on the nature and extent of
31 trafficking in persons in the state”); TEX. GOV’T CODE ANN. § 402(d)(2) (West, Westlaw through
32 2011 Reg. Sess.) (“collect, organize, and periodically publish statistical data on the nature and
33 extent of human trafficking in this state”).

35 Develop education measures in accordance with Section 406: This section ensures that task
36 forces work with the educational system to inform both students and staff about human
37 trafficking warning signs, including behavioral signs, and to educate them on child labor rights.
38 It is important for children in particular to be educated about human trafficking. Children may
39 have the opportunity to help other human trafficking victims. For example, in the situation of
40 domestic workers, often children are in the home and have the opportunity to alert someone if a
41 domestic worker is being exploited. Children also have the opportunity to help themselves or
42 others in a forced labor or services situation. By educating students on the gravity of human
43 trafficking, educators can equip children with the tools to help stop human trafficking crimes
44 before they occur. *See also* Comment to Section 406.

46 Paragraph (2): Evaluate the state’s progress and make recommendations.

1
2 It is important that there be a centralized force that monitors the progress of the state and
3 offers recommendations for improving state efforts. The task force should be consistently
4 evaluating the state's progress and should discuss the state's successes and challenges. This
5 paragraph is modeled after the TVPA. 22 U.S.C. § 7103(d)(2) (2006 & Supp. III 2007-2010)
6 (“[t]he task force shall... [m]easure and evaluate progress of the United States and other countries
7 in the areas of trafficking prevention, protection, and assistance to victims of trafficking, and
8 prosecution and enforcement against traffickers”). *See also* COLO. REV. STAT. § 18-1.8-
9 101(3)(c) (West, Westlaw through 2011 Reg. Sess.) (“measure and evaluate the progress of the
10 state in preventing trafficking, protecting and providing assistance to victims of trafficking, and
11 prosecuting persons engaged in trafficking”); CONN. GEN. STAT. § 46a-170(d)(1) (West,
12 Westlaw through 2011 Jan. Reg. Sess.) (“hold meetings to provide updates and progress
13 reports”); N.M. STAT. ANN. § 30-52-3(A)(8) (West, Westlaw through 2011 First Reg. Sess.)
14 (“develop recommendations on how to strengthen state and local efforts to prevent human
15 trafficking, protect and assist human trafficking victims and prosecute human trafficking
16 offenders”); N.Y. CLS SOC. SERV. § 483-ee(b)(7) (West, Westlaw through 2011 legislation, ch.
17 1-54 and 57-495) (“measure and evaluate the progress of the state in preventing trafficking,
18 protecting and providing assistance to victims of trafficking, and prosecuting persons engaged in
19 trafficking”); H.B. No. 280 §3(B)(1), 127th Gen. Assem. (Ohio 2008) (“study and review the
20 problem of trafficking in persons, particularly as it affects this state or occurs in this state”); S.
21 Res. 253 (Pa. 2010) (“to study the problem of human trafficking” and “to propose policies and
22 procedures to assist in the prevention and prosecution of human trafficking” and “to make
23 recommendations on how to strengthen State and local efforts”); TEX. GOV'T CODE ANN. §§
24 402.035(d)(9)(2) (West, Westlaw through the end of the 2011 Reg. Sess. and First Called Sess.
25 of the 82nd Leg.) (“develop recommendations on how to strengthen state and local efforts to
26 prevent human trafficking, protect and assist human trafficking victims, and prosecute human
27 trafficking offenders”... “periodically publish statistical data”).
28

29 The task force should focus on establishing programs and policies that heighten local
30 awareness. Human trafficking is a hidden industry that requires heightened awareness to be
31 effectively confronted. Each task force should focus on how to heighten community awareness
32 given each locality's specific situation and circumstances, as each community may have different
33 human trafficking situations and environments. At least four states require their task forces to
34 take measures to build awareness. *See* COLO. REV. STAT. § 18-1.8-101(3)(e) (West, Westlaw
35 through 2011 Reg. Sess.) (“evaluate approaches to increase public awareness in trafficking”); 9
36 GUAM CODE ANN. § 26.20(e)(8) (West, Westlaw through Pub. Law 31-074) (“evaluate various
37 approaches used by the government of Guam and state governments to increase public awareness
38 of the trafficking in persons, including U.S. citizen and foreign national victims of trafficking in
39 persons”); N.M. STAT. ANN. § 30-52-3(B)(7) (West, Westlaw through 2011 First Reg. Sess.)
40 (“implement a media awareness campaign in communities affected by human trafficking”); N.Y.
41 SOC. SERV. § 483-ee(b)(5) (West, Westlaw through 2011 legislation, ch. 1-54 and 57-495)
42 (“evaluate approaches to increase public awareness about trafficking and make recommendations
43 on such approaches”).
44

45 The task force should be creative in developing awareness campaigns and should take
46 into consideration its individual localities. Model laws offer examples of different state

measures to increase awareness. For example, Polaris Projects recommends the following programs:

(1) information about the risks of becoming a victim of human trafficking, including information about common recruitment techniques, use of debt bondage and other coercive tactics, risk of maltreatment, rape, exposure to HIV/AIDS and other sexually transmitted diseases, and psychological harm related to victimization in human trafficking cases; (2) information about the risks of engaging in commercial sex and possible punishment; and (3) information about victims' rights under [state] and U.S. law; (4) methods for reporting suspected recruitment activities, including information on relevant hotlines; and (5) information on the types of services available to victims of human trafficking and how to access such services, including information on relevant hotlines, such as the National Human Trafficking Resource Center hotline.

POLARIS MODEL LAW § II Prevention of Human Trafficking (A) (Public Awareness).

Another model law suggests the state create a resource center to “develop and disseminate throughout the state information and materials concerning human trafficking.” GLOBAL RIGHTS MODEL LAW § 5.

Paragraph (3): Submit an annual report of its activities and recommendations.

To build awareness and strengthen understanding of the problem, task forces should be required to publish their data, findings, and recommendations. This paragraph is modeled after the TVPA. 22 U.S.C. § 7103(d)(7) (2006 & Supp. III 2007-2010). At least eight states have required a task force to submit a report summarizing the task force's findings. *See* COLO. REV. STAT. § 18-1.8-101(5) (West, Westlaw through 2011 Reg. Sess.) (“task force shall report its findings and recommendations”); CONN. GEN. STAT. § 46a-170(f) (West, Westlaw through 2011 Jan. Reg. Sess.) (“... the council shall [annually] submit a report of its activities, including any recommendations for legislation, to the General Assembly”); 9 GUAM CODE ANN. § 26.20(e)(9) (West, Westlaw through Pub. Law 31-074) (“submit an annual report of its findings and recommendations... each calendar year”); N.M. STAT. ANN. § 30-52-3(A)(9) (West, Westlaw through 2011 First Reg. Sess.) (“submit an annual report of its activities, findings and recommendations, including any proposed legislation”); N.Y. SOC. SERV. § 483-ee(c) (West, Westlaw through 2011 legislation, ch. 1-54 and 57-495) (“shall issue such reports and recommendations as it deems necessary to carry out its duties and responsibilities”); H.B. No. 280 §§ 3(B)(3),(C), 127th Gen. Assemb. (Ohio 2008), (“develop recommendations to address the problem of trafficking in persons”... “prepare a report that summarizes its findings and its recommendations for changes in the law of this state”); S. Res. 253 (Pa. 2010) (“make a report to the Senate on the issue of human trafficking, including a proposed State plan for the prevention of human trafficking and any recommendations for changes in State law, policies and procedures”); TEX. GOV'T CODE ANN. § 402(g) (West, Westlaw through 2011 Reg. Sess.) (“task force shall submit a report regarding the task force's activities, findings, and recommendations, including any proposed legislation”); UTAH CODE ANN. § 67-5-22.7(6) (West, Westlaw through 2011 Second Special Sess.) (“make an annual report on its activities... together with any

1 proposed recommendations for modifications to this section”).

2
3 Paragraph 4: Facilitate cooperation among and consult with organizations.

4
5 It is necessary for the state government to work with other governmental agencies and
6 nongovernmental organizations to combat human trafficking. In order to best understand the
7 complexity of human trafficking, many professionals in different fields must work together to
8 comprehensively address the problem. In speaking to Congress regarding the Department of
9 Justice’s efforts to combat trafficking, the DOJ emphasized collaboration and cooperation among
10 many sectors: “another key element in assisting trafficking victims is a multidisciplinary
11 response to human trafficking that encourages close partnerships among state and local law
12 enforcement, victim service providers, and federal law enforcement officials.” Testimony of
13 Mary Lou Leary, *supra*, at 4. While the DOJ was discussing federal collaboration with other
14 entities, states must also use a multidisciplinary approach to fight human trafficking. The DOJ
15 further explained that “due to the complex nature of these victims’ needs, most agencies cannot
16 solely provide every service needed by minor and adult trafficking victims; so cross-agency
17 collaboration is essential for a successful rescue.” Victim service providers, law enforcement
18 and other key community partners must work closely with one another to ensure that all victim
19 service needs—from emergency medical assessment and treatment and long-term mental health
20 care to appropriate housing—are met. For the task force to be most effective, it is necessary for
21 it to have a multidisciplinary approach to fulfilling all of its duties. The purpose of bringing
22 together law enforcement professionals with governmental and nongovernmental organizations
23 which specialize in serving victims is to provide the most comprehensive services possible for
24 victims.

25
26 The TVPA requires facilitation. 22 U.S.C. § 7103(d)(4) (2006 & Supp. III 2007-2010)
27 (“[e]ngage in efforts to facilitate cooperation among countries of origin, transit, and destination.
28 Such efforts shall aim to strengthen local and regional capacities to prevent trafficking, prosecute
29 traffickers and assist trafficking victims”). At least four states’ task forces require cooperation
30 among different governmental and nongovernmental agencies. *See* COLO. REV. STAT. §18-1.8-
31 101(3)(b) (West, Westlaw through 2011 Reg. Sess.) (“investigate collaborative models for
32 protecting victims of trafficking”); 9 GUAM CODE ANN. § 26.24 (West, Westlaw through Pub.
33 Law 31-074) (“[f]or each initiative for the prevention of trafficking, the government of Guam
34 shall seek out and enlist the cooperation and assistance of non-governmental organizations,
35 especially those specializing in trafficking in persons, those representing diverse communities
36 disproportionately affected by trafficking, agencies devoted to child services and runaway
37 services, and academic researchers dedicated to the subject of trafficking”); N.M. STAT. ANN. §
38 30-52-3(B)(6) (West, Westlaw through 2011 First Reg. Sess.) (“assist in coordinating federal,
39 state and local government agencies [in implementing the act]”; TEX. GOV’T CODE ANN. §
40 402(d)(3), (8) (West, Westlaw through 2011 Reg. Sess.) (“solicit cooperation and assistance
41 from state and local governmental agencies, political subdivisions of the state, nongovernmental
42 organizations, and other persons, as appropriate, for the purpose of collecting and organizing
43 statistical data” and “collaborate with state and local governmental agencies, political
44 subdivisions of the state, and nongovernmental organizations to implement a media awareness
45 campaign in communities affected by human trafficking.”).

1 The TVPA also requires consultation and advocacy. 22 U.S.C. § 7103(d)(6) (2006 &
2 Supp. III 2007-2010) (“[t]he task force shall... [e]ngage in consultation and advocacy with
3 governmental and nongovernmental organizations, among other entities, to advance the purposes
4 of this chapter”). At least four states’ task forces require consultation with organizations and
5 agencies. See Colo. REV. STAT. § 18-1.8-101(3)(g) (West, Westlaw through 2011 Reg. Sess.)
6 (“consult with governmental and nongovernmental organizations in developing
7 recommendations to strengthen state and local efforts to prevent trafficking, protect and assist
8 victims of trafficking, and prosecute traffickers”); CONN. GEN. STAT. § 46a-170(d)(4) (West,
9 Westlaw through 2011 Jan. Reg. Sess.) (same); N.Y. CLS SOC. SERV. § 483-ee(b)(3) (West,
10 Westlaw through 2011 legislation, ch. 1-54 and 57-495) (same); 9 GUAM CODE ANN.
11 §26.20(e)(6) (West, Westlaw through Pub. Law 31-074) “establish policies... to work with non-
12 governmental organizations and other elements of civil society to prevent trafficking and provide
13 assistance to U.S. citizen and foreign national victims”).

14
15 Paragraph (5): Create and maintain a website.
16

17 In order for everyone to have access to the task force’s information, protocols, and
18 services, it is essential for each task force to maintain a website. In the modern era, it is
19 necessary for both victims and law enforcement officials to have quick and informative access to
20 all of the state’s resources on human trafficking. The most efficient way to provide information
21 to such a broad audience is through websites. A directory of services can be very useful and
22 helpful, to both professionals and victims, in becoming familiar with available options for
23 victims. For example, New York City’s Mayor Committee against Human Trafficking operates
24 a website that provides a directory of human trafficking service providers and also has a section
25 listing training and education materials for community-based organizations and professionals
26 (including police, hospital workers, social service workers, lawyers, teachers, and businesses).
27 See NYC Let’s End Human Trafficking,
28 <http://www.nyc.gov/html/endht/html/resources/resources.shtml> (last visited Dec. 14, 2011).
29

30 Paragraph (6): Address other matters as the [Governor] may determine.
31

32 This paragraph is intended to capture any other measures or programs that the state
33 determines are useful additions to its efforts to combat human trafficking. This subsection is
34 modeled after the TVPA. 22 U.S.C. § 7103(h) (2006 & Supp. III 2007-2010) (“[t]he task force
35 shall...“address such other matters related to the purposes of the Act as the President may
36 determine”).
37

38 *V. It is important for state task forces to meet with other state task forces.*
39

40 Each state task force will approach human trafficking within its state in slightly different
41 ways and it is important for task forces to learn from one another. To this end, the task forces
42 should consistently discuss human trafficking issues and resolutions, while updating their
43 information so that other task forces may have access to it. By more cohesively working
44 together, the task forces can strengthen their own efforts to combat trafficking in each state and
45 in the nation as a whole.
46

1 VI. *State task forces should take advantage of DOJ grants.*

2
3 Another option for state tasks is to include federal authorities in its task force so that it
4 can be eligible to receive Department of Justice grants. “It is important to note that the U.S.
5 Department of Justice’s Bureau of Justice Assistance (BJA), in cooperation with the Office for
6 Victims of Crime (OVC), funds other anti-human trafficking task forces organized at the local
7 (or in some cases statewide) level.” POLARIS MODEL LAW Commentary to § II Prevention of
8 Human Trafficking (a). As part of the federal strategy to improve local investigation efforts and
9 enhance prosecution of human trafficking, the federal government currently funds 42 anti-
10 trafficking task forces as of Sept., 2011. Testimony of Mary Lou Leary, *supra*, at 6. The 2011
11 brochure and application to receive DOJ grants is attached as an appendix to this act.
12 Department of Justice units have funded a number of victim service providers to form
13 collaborative relationships in order to serve victims in local communities.
14

15 **SECTION 402. TRAINING.** The [interagency task force, council, or coordinator],
16 within a year of the passage of this act and in consultation with appropriate agencies, groups, and
17 individuals, shall:

18 **Alternative A**

19 (1) establish minimum standards for a course of study on human trafficking that is
20 required for each person accepted for training at a law enforcement training school or academy
21 and available for in-service training programs for law enforcement officers. The course must
22 cover the following topics:

- 23 (A) examination of the human trafficking laws in this act;
24 (B) identification of human trafficking and victims;
25 (C) rights, protections, and resources available to victims;
26 (D) collaboration with federal and state law enforcement officials and victim
27 service providers; and
28 (E) provision of documentation to victims in accordance with Section 305.

29 (2) make available a course of instruction for judges, district attorneys, medical service
30 providers, administrators and faculty in primary and secondary schools, code and licensing

officials, social service providers, and other victim service providers on the recognition and prevention of human trafficking; and

Alternative B

(1) develop and conduct training for law enforcement officers, victim service providers, medical service providers, and others as appropriate to identify victims; and

End of Alternatives

[(2 or 3)] evaluate existing training programs related to human trafficking and make recommendations for improving the quality, effectiveness, and availability of such programs.

Comment

This section provides that the interagency task force, council, or coordinator collaborate with appropriate agencies, groups, or individuals to create a course of anti-trafficking training for law enforcement officers and others on the frontline of anti-human trafficking efforts. The importance of training is underlined in the Trafficking Protocol, which requires States Parties to “provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons.” Trafficking Protocol, *supra*, at art. 10(2). The Trafficking Protocol also provides that such training

should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

Id.

At least sixteen states currently have statutes addressing training on human trafficking issues. *See*, CAL. PEN. CODE § 13519.14 (West, Westlaw through 2011 ch. 745 of Reg. Sess. and all 2011-2012 1st Ex.Sess. laws) (guidelines for law enforcement training); CONN. GEN. STAT. § 46a-4b (West, Westlaw through 2011 Jan. Reg. Sess.) (training available to the Department of Emergency Services and Public Protection, the office of the Chief State's Attorney, local police departments, and community organizations); CONN. GEN. STAT. § 46b-38b (West, Westlaw through 2011 Jan. Reg. Sess.) (training for law enforcement officers); COLO. REV. STAT. § 24-33.5-211 (West, Westlaw through 2011 Reg. Sess.) (chief of Colorado state patrol may establish training for highway patrol); FLA. STAT. § 787.06 (West, Westlaw through 2011 ch. 236) (training provision in general human trafficking statute), 9 GUAM CODE ANN. § 26.22 (West, Westlaw through Pub. Law 31-074) (training for law enforcement agencies, prosecutors, and

1 other relevant officials), 9 GUAM CODE ANN. § 26.24 (West, Westlaw through Pub. Law 31-
2 074) (cooperation of nongovernmental organizations in creation of training); IDAHO CODE ANN.
3 § 18-8601 (West, Westlaw through 2011 ch. 1-335) (legislative intent that it may be appropriate
4 for law enforcement officials to receive training); IND. CODE § 5-2-1-9 (West, Westlaw through
5 2011 Reg. Sess.) (minimum standards for course on human trafficking for persons accepted for
6 training at a law enforcement training school or academy and for inservice training programs for
7 law enforcement officers); IOWA CODE § 80B.11 (West, Westlaw through 2011 Reg. Sess.)
8 (training standards to include curricula on cultural sensitivity and means to deal with victims);
9 MD. CODE ANN., EDUC. § 7-432 (West, Westlaw through 2011 Acts) (Departments of Education
10 and Health and Mental Hygiene shall provide training for Directors of Student Services in local
11 education agencies); MINN. STAT. § 299A.79 (West, Westlaw through 2011 Reg. Sess.)
12 (establishment of training program following data analysis on human trafficking within the
13 state); MO. REV. STAT. § 566.223 (West, Westlaw through 2011 First Extraordinary Sess.)
14 (authorizing the department of public safety to establish training programs for appropriate
15 agencies); N.M. STAT. ANN. § 30-52-3 (West, Westlaw through 2011 Reg. Sess.) (training
16 provision in task force statute); N.Y. SOC. SERV. LAW § 447-b (West, Westlaw through 2011
17 legislation, ch. 1-54 and 57-495) (local social services commissioner may contract with not-for-
18 profit agencies to train law enforcement officials likely to encounter sexually exploited children
19 in the course of duty); TENN. CODE ANN. § 39-13-312 (West, Westlaw through 2011 Reg. Sess.)
20 (training on enforcement of human trafficking laws funded in part by judicial forfeiture funds);
21 TEX. GOV'T CODE ANN. § 402.035 (West, Westlaw through 2011 Reg. Sess.) (develop and
22 conduct training with the Commission on Law Enforcement Officer Standards and Education);
23 WASH. REV. CODE § 18.83.090 (West, Westlaw through 2011 legislation) (training for licensed
24 psychologists).

25
26 Paragraph (1) of Alternative A is modified from Indiana law and provides a non-
27 exclusive list of topics that should be addressed in training. IND. CODE § 5-2-1-9 (West,
28 Westlaw through 2011 Reg. Sess.). Though each state should consider tailoring training
29 opportunities to that state's unique experiences combating human trafficking, there exist core
30 concepts constituting a uniform foundation upon which effective anti-human trafficking training
31 should be developed. Some states have chosen to provide specific topics training must cover
32 within the training statute. For example, California law provides that training

33
34 shall stress the dynamics and manifestations of human trafficking, identifying and
35 communicating with victims, providing documentation that satisfy the law
36 enforcement agency endorsement (LEA) required by federal law, collaboration
37 with federal law enforcement officials, therapeutically appropriate investigative
38 techniques, the availability of civil and immigration remedies and community
39 resources, and protection of the victim.

40
41 CAL. PEN. CODE § 13519.14 (West, Westlaw through 2011 ch. 745 of Reg. Sess. and all 2011-
42 2012 1st Ex.Sess. laws).

43
44 Guam law also provides guidance on the proper focus of training addressing human
45 trafficking:
46

1 (b) Such training shall focus on:

- 2 (1) the new crimes and other provisions created by this article;
3 (2) methods used in identifying U.S. citizen and foreign national victims
4 of trafficking in persons, including preliminary interview techniques and
5 appropriate questioning methods;
6 (3) methods for prosecuting traffickers;
7 (4) methods of increasing effective collaboration with non-governmental
8 organizations and other relevant social service organizations in the course
9 of investigating and prosecuting a trafficking case;
10 (5) methods for protecting the rights of victims, taking into account the
11 need to consider human rights and special needs of women and minors
12 victims, and that victims should be treated as victims rather than criminals;
13 and
14 (6) methods for promoting the safety of victims.
15

16 9 GUAM CODE ANN. § 26.22 (West, Westlaw through Pub. Law 31-074).
17

18 The training provided for in this section may be conducted in person, by video, by
19 telecommunication, or other practical means. *See, e.g.*, CAL. PEN. CODE § 13519.14 (West,
20 Westlaw through 2011 ch. 745 of Reg. Sess. and all 2011-2012 1st Ex.Sess. laws). Proper
21 training should incentivize law enforcement officers to identify victims and arrest traffickers. To
22 this end, states are encouraged to develop and implement training in consultation with
23 appropriate groups and individuals having expertise in the field of human trafficking so that the
24 course of training may be informed by those who have experience with the crime and its victims.
25 Appropriate groups can include advocacy groups, service providers, and other relevant
26 organizations with expertise on human trafficking, and many such organizations already offer
27 educational programming and training materials. *See, e.g.*, POLARIS PROJECT, TRAINING FAQ,
28 <http://www.polarisproject.org/what-we-do/training-and-technical-assistance/faqs> (last visited
29 Dec. 12, 2011) (featuring information on specialized training services and available materials).
30

31 Training law enforcement officials will facilitate the detection of human trafficking
32 crimes, the identification of victims, and the arrest and prosecution of traffickers. More
33 prosecutions will likely yield more convictions, which in turn would increase the potential funds
34 accessible to the state via forfeiture proceedings. Thus, there is the potential for an effective
35 training program to fund itself. Comprehensive training will also allow those who encounter
36 victims to provide them with effective guidance as to next steps after removal from a trafficking
37 situation.
38

39 Identification of victims, addressed by subparagraph (B), is vital to any effective human
40 trafficking training course. Identification of a victim is often the first step to removal from a
41 trafficking situation and receipt of needed medical and other services, as well as the
42 identification, arrest, and prosecution of traffickers. The important role victim identification
43 plays is recognized, for example, in California law, which provides specifically for indicators to
44 help law enforcement officers (often the first point of contact for a victim) identify victims:
45

46 Law enforcement agencies shall use due diligence to identify all victims of human

1 trafficking, regardless of the citizenship of the person. When a peace officer
2 comes into contact with a person who has been deprived of his or her personal
3 liberty, a person suspected of violating [prostitution laws], or a victim of a crime
4 of domestic violence or rape, the peace officer shall consider whether the
5 following indicators of human trafficking are present:

- 6 (1) Signs of trauma, fatigue, injury, or other evidence of poor care.
- 7 (2) The person is withdrawn, afraid to talk, or his or her communication is
8 censored by another person.
- 9 (3) The person does not have freedom of movement.
- 10 (4) The person lives and works in one place.
- 11 (5) The person owes a debt to his or her employer.
- 12 (6) Security measures are used to control who has contact with the person.
- 13 (7) The person does not have control over his or her own government-
14 issued identification or over his or her worker immigration documents.

15
16 CAL PEN CODE § 236.2 (West, Westlaw through 2011 ch. 745 of Reg. Sess. and all 2011-2012
17 1st Ex. Sess. laws).

18
19 After identification, referral to and cooperation with the correct agency or office is often
20 key to providing victim with needed services, protections, and documentation. Subparagraph (C)
21 provides that training address the rights, protections, and resources available to victims,
22 subparagraph (D) addresses collaboration with other offices and agencies, and (E) addresses the
23 documentation that may be necessary to establishing a victim's immigration status. The
24 importance of acting on the identification of a victim is embodied, for example, in Missouri law
25 requiring law enforcement officers or their agency to notify the department of social services that
26 an individual may be a victim of trafficking so the department may determine eligibility for state
27 or federal services. MO. REV. STAT. § 566.223(4) (West, Westlaw through 2011 First
28 Extraordinary Sess.). Though this section does not include a similar provision, it intends,
29 through training, to create a system by which identification and processing of victims can be
30 streamlined.

31
32 Alternative B provides a summarized version of Alternative A, but it is recommended
33 that states adopt Alternative A, which ensures that new trainees at law enforcement schools and
34 academies will be familiarized with the basics of human trafficking and armed with the
35 knowledge to combat human trafficking in their state.

36
37 A state may want to draft its own training materials tailored to the state's experiences
38 with human trafficking and particular needs or look to materials that have already been prepared
39 by several organizations for various training needs. An excellent example of a state-specific
40 guide is New Mexico's Human Trafficking Law Enforcement Training Guide, which is available
41 on the website for the New Mexico Attorney General and includes information about labor and
42 sex trafficking, identifying victims, the victim certification process, New Mexico anti-trafficking
43 law, and contacts for relevant state agencies, law enforcement personnel, and service providers.
44 Office of the New Mexico Attorney General, New Mexico's Human Trafficking Law
45 Enforcement Training Guide (2011), *available at* [http://www.nmag.gov/pdf/ht-](http://www.nmag.gov/pdf/ht-lawenforcement%20manual.pdf)
46 [lawenforcement%20manual.pdf](http://www.nmag.gov/pdf/ht-lawenforcement%20manual.pdf). There are also many general resources available via the

1 Department of Homeland Security website, including directories, videos, and printable materials
2 (http://www.dhs.gov/files/programs/gc_1298390940581.shtm). Additionally, the U.S.
3 Citizenship and Immigration Services division of the Department of Homeland Security offers
4 training to law enforcement and community based organizations upon request (see the “Contact
5 Us” section at www.uscis.gov/humantrafficking).
6

7 **SECTION 403. DATA COLLECTION AND REPORTING.**

8 (a) The [interagency task force, council, or coordinator] shall collect data on the
9 following aspects of human trafficking:

10 (1) Numbers of investigations, arrests, prosecutions, and convictions of persons
11 for human trafficking offenses;

12 (2) Number and demographic characteristics of persons arrested for, prosecuted
13 for, and convicted of human trafficking offenses, including age, race, sex, national origin, current
14 citizenship, and social and economic background;

15 (3) Number and demographic characteristics of victims, including age, race, sex,
16 national origin, current citizenship and social and economic background;

17 (4) Human trafficking routes and patterns in, out of, and within the state;

18 (5) The types of human trafficking offenses that are the subject of investigation,
19 arrest, and prosecution, specifically those offenses in Article 2; and

20 (6) The types of services provided to victims and the number of victims who
21 receive services from the state and from nongovernmental organizations.

22 (b) The state shall publish on the internet, not less than once a year, the following data:

23 (1) Numbers of investigations of, arrests for, prosecutions of, and convictions of
24 human trafficking offenses;

25 (2) Number and demographic characteristics of persons prosecuted for and
26 convicted of human trafficking offenses, including age, race, sex, national origin, current

1 citizenship, and social and economic background;

2 (3) Number of victims and the following characteristics of the victims:

3 (A) sex;

4 (B) whether the victim is over or under 18 years of age;

5 (C) whether the victim is a United States citizen or a foreign national;

6 (4) The types of human trafficking offenses that are the subject of investigation,
7 arrest, and prosecution, specifically those offenses in Article 2

8 (5) The types of services provided to victims and the number of victims who
9 receive services from the state and from nongovernmental organizations.

10 (c) The state shall report to the Federal Bureau of Investigation data on human trafficking
11 offenses in the state and otherwise cooperate with the Federal Bureau of Investigation's Uniform
12 Crime Reporting system in its efforts to collect human trafficking data.

13 (d) The identity of the victim shall be kept confidential.

14 **Comment**

15 Currently, "no comprehensive data is available on state prosecutions and convictions,"
16 and "the lack of uniform nationwide data collection remained an impediment to compiling fully
17 accurate statistics." STATE DEP'T TRAFFICKING REPORT, *supra*, at 373. The data gap is due to:
18 (1) the hidden nature of the crime, (2) the desire of traffickers to conceal the crime, (3) victim
19 vulnerability and fear of reporting the crime, and (4) the difficulty of developing a uniform and
20 widely used system. POLARIS MODEL LAW Commentary to § II Data Collection and
21 Dissemination (b). Anecdotal evidence is most frequently used to identify the human trafficking
22 problem, but "obtaining dependable information on the scope and characteristics of the crime is
23 needed to mobilize an effective response." *Id.*

24
25 Uniformity is especially important in this area, so states can share information. For
26 example, states can learn from other states whose human trafficking incidents have decreased or
27 whose human trafficking patterns might overflow into the state, given geographic proximity.
28 Additionally, because statistics are used to make policy decisions and direct funding to certain
29 societal needs, accurate and more complete statistics lead to more effective policies and efficient
30 use of funding.

31
32 In collecting data, the task force should elicit the cooperation of all state agencies related

1 to human trafficking and nongovernmental organizations working with human trafficking
2 victims or on human trafficking policy. This will enable the state to create a complete picture of
3 the problem and ensure that the statistics are thoroughly accounting for the different aspects of
4 human trafficking. Cooperation among the different groups involved in combating human
5 trafficking will also lead to growing awareness of the problem of human trafficking in the
6 particular state and allow the various players access to the information so it can be used
7 effectively.

8
9 The 2008 amendments to the TVPA direct the Federal Bureau of Investigation (FBI) to
10 include the crime of human trafficking in its Uniform Crime Reports. William Wilberforce
11 Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat.
12 5044. The Uniform Crime Report collects statistics from police forces nationwide. Subsection c
13 directs states to participate in the FBI's collection of data, allowing states to work within an
14 existing uniform data protocol. This participation will enable the FBI to more successfully
15 collect and report data, putting some of the burden for filling the data gap on the federal
16 government.

17
18 The UNODC recommends human trafficking data collection and also disaggregation "for
19 personal data, by age, sex, nationality, social and economic background; for acts of trafficking,
20 different means utilized, forms of exploitation and duration of exploitation; for service provision,
21 whether services are provided by state or nonstate actors." United Nations Office on Drugs and
22 Crime, International Framework for Action To Implement the Trafficking in Persons Protocol,
23 13 n.19 (2009), [http://www.unodc.org/documents/human-](http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf)
24 [trafficking/Framework_for_Action_TIP.pdf](http://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf). The disaggregation provided for in Section 403(a)
25 will provide information on perpetrators and victims that will enable law enforcement to more
26 effectively identify human trafficking crimes. Published in this manner, the data will be a useful
27 tool to not only demonstrate the magnitude of the problem, but also identify the different forms
28 of trafficking crimes, perpetrators, and victims and will serve to educate the public about human
29 trafficking.

30
31 Much of the language in this section is taken from the District of Columbia's current
32 human trafficking laws. See D.C. CODE § 22-1841 (West, Westlaw through 2011 Reg. Sess.).
33 That statute requires the District to collect statistical data including:

- 34
35 (1) Numbers of investigations, arrests, prosecutions, and convictions of traffickers
36 and those committing human trafficking-related crimes;
37 (2) Numbers of and demographic characteristics of persons engaged in human
38 trafficking or human trafficking-related crimes, including age, race, sex;
39 (3) Numbers of and demographic characteristics of victims, including age, race,
40 sex, national origin, and current citizenship; and
41 (4) Human trafficking routes and patterns in and out of the District of Columbia.

42 *Id.*

43
44 The statute also requires interagency governmental cooperation and cooperation between
45 government and nongovernmental organizations and mandates periodic publication of current
46 statistical data. *Id.* Uniform data will lead to an improved understanding of the magnitude of

the problem of human trafficking in the United States and present a clearer picture of the effective techniques for combatting human trafficking.

SECTION 404. DISSEMINATION OF HOTLINE INFORMATION.

(a) The [relevant state department] shall create an informational sign on human trafficking.

(1) The sign must state:

"REPORT HUMAN TRAFFICKING: National Human Trafficking Resource Center - **1-888-373-7888** and [at least one local law enforcement agency or state Human Trafficking Resource Information]. CALL FOR HELP IF YOU OR SOMEONE YOU KNOW:

- Is being forced to provide sexual services
- Wants to leave a job but cannot freely do so
- Has had an ID or passport taken away
- Is being threatened by or is in debt to an employer

TOLL-FREE. 24/7. ANONYMOUS AND CONFIDENTIAL. INTERPRETERS AVAILABLE. This sign is required under State law."

(2) The sign shall be at least eight and one-half inches by eleven inches (8 1/2" x 11").

(3) The sign shall be in English, Spanish, and any other languages mandated by the Voting Rights Act in the county where the sign will be posted. The state may also produce the sign in other languages, taking into account local ethnic populations.

(4) All employers of five employees or more shall display the sign in a manner clearly visible to employees within the establishment.

(5) The [state's transportation department] shall display the sign in all rest areas, welcome centers, and transportation stations within the state. The sign shall be prominently placed in bathroom stalls or on a bulletin board near the entrance of the rest area.

(6) The [state's labor department and any other relevant state department] shall display the sign on its Internet web site for business entities to print as needed.

(b) The [state’s labor department] shall fine an employer who willfully does not comply with Section 404 not less than \$300.

Comment

Posting signs is the fundamental way for the state to build awareness among all citizens. The Trafficking Protocol requires the United States and the states to endeavor “to undertake measures such as... information and mass media campaigns and social... initiatives to prevent and combat trafficking in persons.” Trafficking Protocol, *supra*, at art. 9(2). Requiring posting of a standard human trafficking sign is an effective and efficient awareness tool. It is necessary for all states to create and publish the same sign. A uniform sign will give legitimacy to governmental efforts, increase public awareness, and create a human trafficking symbol manifesting the seriousness of the crime. Especially since human trafficking crosses state borders, it is important to reach victims in a consistent manner throughout the country. The Polaris Project includes a provision that similarly requires every establishment to post a sign with the National Human Trafficking Hot Line information on it. *See* POLARIS MODEL LAW § III. Protection of Human Trafficking Victims (A), (B) (Post the National Human Trafficking Hotline). Private citizens have reported cases of forced labor, suggesting that raising awareness among the general public can increase identification of victims. Furthermore, public awareness about the link between the demand for cheap products and services and the crime of forced labor can put public pressure on companies and industry to take responsibility for the treatment of workers in the production of components or ingredients in the products they sell in the United States. Hidden Slaves, *supra*, at 52.

“The National Human Trafficking Resource Center (NHTRC) is a national, 24-hour, toll-free, anti-human trafficking hotline currently operated by Polaris Project and funded primarily by the U.S. Department of Health and Human Services (HHS). The NHTRC works to improve the national response to human trafficking in the United States. The NHTRC maintains a national database of anti-human trafficking agencies as well as a library of available anti-human trafficking resources and materials.” Polaris Project National Human Trafficking Resource Center, *available at* www.nhtrc.polarisproject.org (last visited Oct. 23, 2011).

Subsection (a) requires posting information about the national hotline in all rest areas within the state, by all employers, and on the Internet website of the relevant state agency. The language and stipulations of the sign, found within subsection (a)(1)(A), is a compilation from Maryland and proposed Tennessee law. *See* MD. CODE ANN., BUS. REG. § 15-207 (West, Westlaw through 2011 Acts) (requiring the State to design an informational poster and also permitting a state, county, or municipal law enforcement agency to issue a civil citation to any lodging establishment to post the sign in each of its guest rooms, subject to a \$1,000 fine); National Human Trafficking Resource Center Hotline Act, H.B. 172, 107th Gen. Ass., 2011 Sess. 2011, TENN. LAWS PUB. CH. 435 (2011). Since human trafficking is an inherently hidden industry, it is important that the signs target places that victims or traffickers may frequently visit. Targeting rest areas is common in existing state law. *See, e.g.,* WASH. REV. CODE §47.38.080 (West, Westlaw through all 2011 Legis.) (Washington’s statute on “Human trafficking informational posters at rest areas”). As the sign will be available on the Internet,

1 each employer and rest area supervisor should be able to print and post the information at
2 virtually no cost to either the state or business.

3
4 Subsection (b) imposes a fine on establishments that do not willfully comply with this
5 section. It is not uncommon for federal or state law to either require a sign to be posted or to
6 impose a penalty for non-compliance. *See, e.g.*, 42 U.S.C. § 2000e-10 (2006) (“Every
7 employer, employment agency, and labor organization, as the case may be, shall post and keep
8 posted in conspicuous places upon its premises where notices to employees, applicants for
9 employment, and members are customarily posted a notice to be prepared or approved by the
10 [Equal Employment Opportunity] Commission setting forth excerpts from or, summaries of, the
11 pertinent provisions of this subchapter and information pertinent to the filing of a complaint.”);
12 29 U.S.C. § 2619 (2006) (“Each employer shall post and keep posted, in conspicuous places on
13 the premises of the employer where notices to employees and applicants for employment are
14 customarily posted, a notice, to be prepared or approved by the Secretary of Labor, setting forth
15 excerpts from, or summaries of, the pertinent provisions of this title and information pertaining
16 to the filing of a charge.”); Posting Requirements, New York State,
17 <http://www.labor.ny.gov/workerprotection/laborstandards/employer/posters.shtml> (last visited
18 Nov. 11, 2011); Employment Related Posters, Maryland.gov,
19 <http://www.dllr.state.md.us/oeope/poster.shtml> (last visited Nov. 11, 2011). Title VII of the
20 1964 Civil Rights Act and the Family and Medical Leave Act both impose fines for employers
21 who do not comply with their posting requirements. 42 U.S.C. § 2000e-10 (2006) (“A willful
22 violation of this section shall be punishable by a fine of not more than \$100 for each separate
23 offense.”); 29 U.S.C. § 2619 (2006) (“Any employer that willfully violates this section may be
24 assessed a civil money penalty not to exceed \$ 100 for each separate offense”). Employers are
25 generally accustomed to required postings with respect to labor practices, and a human
26 trafficking posting requirement fits smoothly within this practice.

27 28 **SECTION 405. LABOR DEPARTMENT REGULATION.**

29 (a) The [state’s labor department] shall, in the course of its regular inspections, refer
30 suspected human trafficking offenses to the appropriate law enforcement agency.

31 (b) [The Department of Labor or other appropriate labor agency] shall ensure that
32 employees have the opportunity to present complaints of forced labor, commercial sexual
33 servitude, and human trafficking to the [state’s labor department]; shall keep a record of all
34 complaints; and, when appropriate, shall refer complaints to the appropriate law enforcement
35 agency.

36 **Comment**

37 “Trafficking is as much a labor issue as it is a criminal one.” Hidden Slaves, at 28. A

1 state's labor department is in a good position to identify problematic labor practices since it is
2 already involved in inspections and licensing of businesses. This provision incorporates some
3 regulation of human trafficking into a state's existing labor regulatory process, so a state does not
4 have to create a new structure to address these problems.

5
6 The federal Department of Labor engages in regulation that ensures compliance with
7 federal laws that are designed in part to prevent the use of forced labor. For example, the Wage
8 and Hour Division conducts investigations, usually initiated by complaints, of the Fair Labor
9 Standards Act. U.S. Dep't of Labor Wage and Hour Division, Investigative Process Under
10 SCA/CWHSSA/FLSA (2010), at 1,
11 <http://www.dol.gov/whd/recovery/pwrb/Tab11SCAInvestgtns.pdf>. State labor departments
12 should similarly investigate complaints alleging a violation of the criminal prohibitions in Article
13 2. Additionally, the state labor departments should not rely on complaints alone to initiate
14 investigations but should target investigations toward industries that are known to use forced
15 labor in that state. *See Hidden Slaves, supra*, at 17 ("The Wage and Hour Division . . . has found
16 that relying on complaints alone to investigate labor law violations is not effective in ensuring
17 compliance. In response, the Wage and Hour Division has moved to directed investigations of
18 employers in targeted industries").

19
20 Household workers and agricultural workers are not given the same protections under
21 federal law as other employees. *Hidden Slaves, supra*, at 15-16. Therefore; state labor agencies
22 should make special efforts to ensure employers in these industries are not violating the
23 provisions of Article 2 and should provide resources for workers in these industries to file
24 complaints.

25
26 Under this provision, the state's labor department is free to develop its own protocol to
27 identify human trafficking through its regular inspections and to receive and investigate
28 complaints of human trafficking. However, the goal of any protocol should be to increase the
29 number of human trafficking violations that are identified and to provide victims of human
30 trafficking a resource in the labor department to report human trafficking.

31 32 **SECTION 406. AWARENESS MEASURES IN SCHOOLS.**

33 (a) The [state's education department] shall ensure that administrators and faculty in
34 primary and secondary schools are educated about warning signs of human trafficking and how
35 to respond to a possible trafficking situation.

36 (b) The [state's education department] may arrange for students to learn in an age-
37 appropriate manner about:

38 (1) warning signs of human trafficking;

39 (2) how to respond to possible human trafficking threats;

(3) their rights under federal and state labor laws; and

(4) their right to refuse to engage in sexual activity.

Comment

This section addresses increasing awareness of human trafficking in primary and secondary schools. The two goals of this section are to protect child victims by mandating training for educators in identifying victims, and also prevent human trafficking by teaching teachers and children about how to identify and respond to human trafficking.

Many states call for public awareness measures, *see* Comment to Section 401, and at least one state specifically addresses awareness in schools. MD. CODE ANN., EDUC. § 7-432 (West, Westlaw through 2011 Acts) (mandates awareness and training for certain staff members, and that these staff are given educational materials to distribute at the school). The importance of increasing public awareness of human trafficking in schools is shown by the 2008 reauthorization of the TVPA specifically adding the Secretary of Education to the President's Interagency Task Force to Monitor and Combat Trafficking. 22 U.S.C. §7103(b) (2006, Supp. 2007-2010). Also, states have obligations under the Child Prostitution Protocol to

1....adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences.

Child Prostitution Protocol, *supra*, at art. 9(1-2).

Middle and high school children make up a group of potential victims; therefore, training adults who work closely how to identify human trafficking, as they are trained about identifying different forms of child abuse, should add another way to protect potential victims and rescue victims. The scope of this law is not to create another duty to report child abuse or neglect, but to train teachers that certain subsets of abuse and neglect are actually trafficking crimes and that there are specialized recourses available to deal with human trafficking. The U.S. Department of Education has a reference sheet for educators. OFFICE OF SAFE AND DRUG-FREE SCHOOLS, HUMAN TRAFFICKING OF CHILDREN IN THE UNITED STATES: A FACT SHEET FOR SCHOOLS, *available at* <http://www2.ed.gov/about/offices/list/osdfs/factsheet.html>. Educators can also work with local advocates to equip school staff to identify and respond to trafficking situations affecting their students.

Furthermore, because these children are a group of potential victims, if done in an age-appropriate manner, educating children about human trafficking could help prevent and bring existing trafficking situations to light. Just as students learn about the dangers of drugs and alcohol, sexual abuse, and other crimes that affect them, children could learn about trafficking.

1 Advocacy organizations such as Fair Fund, Inc., are pioneering human trafficking curriculum for
2 students and have conducted classes in schools such as the Anacostia Senior High School in
3 Washington, D.C. *In the Schools*, FAIR GIRLS: PREVENTING EXPLOITATION WITH EDUCATION
4 AND EMPOWERMENT, (copyright 2011), <http://fairgirls.org/page/in-the-schools>. Similar issues of
5 violence have been successfully addressed in schools by organizations such as Break the Cycle,
6 which teaches secondary students about domestic violence. BREAK THE CYCLE: EMPOWERING
7 YOUTH TO END DOMESTIC VIOLENCE (copyright 2009, last visited Dec. 16, 2011),
8 <http://www.breakthecycle.org/>.
9

10 Paragraphs (3) and (4) encourage teaching students about human trafficking from a
11 human rights approach. Teaching students about their rights in the workplace is suggested to
12 help students find healthy employment situations and identify victims of forced labor they might
13 encounter at their jobs. Also, teaching students about their right not to be pressured into sexual
14 activity gives a healthy framework from which to understand the gravity of sexual servitude.
15
16

1 **ARTICLE 5**

2 **MISCELLANEOUS**

3 **SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

6 **[SECTION 502. SEVERABILITY.** If any provision of this [act] or its application to
7 any person or circumstance is held invalid, the invalidity does not affect other provisions or
8 applications of this [act] which can be given effect without the invalid provision or application,
9 and to this end the provisions of this [act] are severable.]

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

12
13 **SECTION 503. EFFECTIVE DATE.** This [act] takes effect...