

DRAFT
FOR DISCUSSION ONLY

PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For October 12-13, 2012 Drafting Committee Meeting

With Prefatory Note and Comments

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October 8, 2012

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PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

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PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

Prefatory Note

Some states have comprehensive criminal laws on human trafficking that address all facets of human trafficking and all crimes that contribute to human trafficking and modern-day slavery. Others have only minimal criminal provisions. Some cover all forms of labor and sex trafficking and protect all children under 18. Others may cover only sex trafficking or fail to protect all children under 18. Some states cover all methods that traffickers use to keep their workers as virtual slaves. Others fail to cover crimes that traffickers use to ensure their workers remain under their control and unable to escape, such as threatening to hurt or kill the workers' loved ones, confiscating the workers' immigration papers, or ensnaring them in ever-rising and often-fictitious debt to be repaid through physical labor that is never enough to satisfy the debt.

A comprehensive set of criminal laws are needed to stop human trafficking and modern-day slavery. But criminal laws are not sufficient to end human trafficking. Coordinated and effective action by many different actors is needed to achieve successful identification of victims and prosecution of traffickers. Victims are often without resources of any kind and if they do not receive housing, counseling, and other forms of help, they may be forced back to the traffickers. Without knowing who the victims are and getting their testimony in court, police and prosecutors cannot enforce the criminal laws. State and local agencies and non-governmental service providers need to work in a coordinated way to insure that they know who the victims are, where to find them, what services they need, and how to cooperate so that there is a network of providers making these services available and helping prosecute the crimes. The general public and the different actors need to be trained in how to recognize human trafficking and get help for the victims. Without some kind of coordinating body to bring together these different actors on a regular basis to conduct the necessary planning and coordination, all these steps will not take place. In short, a comprehensive set of victim services and remedies and a coordinating body is needed to prevent future trafficking and bring an end to modern-day slavery.

Some states provide a comprehensive set of victim services and remedies, but the majority of states do not. Similarly, some states have an overall coordinating body, but the majority of states do not. This Act thus seeks to provide the three components necessary for ending human trafficking and modern-day slavery: comprehensive criminal provisions; victim services and remedies; and a coordinating body.

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

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

4 Remedies for Human Trafficking.

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

6 (1) “Abuse of the law or legal process” means the use or threatened use of a law or legal
7 process, whether administrative, civil, or criminal, in a manner or for a purpose for which the law
8 or process was not designed, to exert pressure on an individual to take an action or refrain from
9 taking an action.

10 (2) “Business entity” means a corporation, business trust, estate, trust, partnership,
11 limited liability company, association, joint venture, or any other legal or commercial entity.
12 The term does not include a public corporation or government or governmental subdivision,
13 agency, or instrumentality.

14 (3) “Coercion” means:

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

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

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

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

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

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

1 (G) the destruction of, taking of, or the threat to destroy or take an individual's
2 identification document; or

3 (H) the use of an individual's personal services as payment or satisfaction of a
4 real or purported debt if:

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

7 (ii) the length of the services is not limited and the nature of the services
8 is not defined;

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

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

13 (4) "Commercial sexual services" means sexual services for which anything of value is
14 given to, promised to, or received by a person.

15 (5) "Deception" means:

16 (A) a person's creation or confirmation of an individual's impression of a material
17 fact or event which is false and which the person knows or has reason to believe is false,
18 including:

19 (i) the nature of labor or services to be provided;

20 (ii) the fundamental conditions of labor; or

21 (iii) the extent to which the individual will be free to leave the individual's
22 place of residence; or

23 (B) the promise of a benefit to or performance of a service for an individual which

1 the person does not intend to be delivered or performed.

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

3 (7) “Identification document” means a passport, driver’s license, immigration document,
4 travel document, or any other government-issued identification document, including a document
5 issued by a foreign government.

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

7 (9) “Person” means an individual, corporation, business trust, estate, trust, partnership,
8 limited liability company, association, joint venture, or any other legal or commercial entity.
9 The term does not include a public corporation or government or governmental subdivision,
10 agency, or instrumentality.

11 (10) “Serious harm” means harm, whether physical or nonphysical, including
12 psychological, economic, or reputational, to an individual which would compel a reasonable
13 person of the same background and in the same circumstances as the individual to perform or
14 continue to perform labor or services or sexual services to avoid incurring the harm.

15 (11) “Sexual activity” means [sexual intercourse, cunnilingus, fellatio, anal intercourse,
16 intrusion by any object into the genital or anal opening of another individual’s body, and the
17 stimulation by hand or an object of another individual’s genitals or breasts, for the purpose of
18 arousing or gratifying the sexual desire of any individual] [the acts set forth in [citation to
19 sections of state law defining unlawful sexual activity]].

20 (12) “Sexual services” means sexual activity or sexually-explicit performances, such as
21 erotic dancing and participation in the production of pornographic images.

22 (13) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
23 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of

1 the United States.

2 (14) “Victim” means an individual who has been subjected to an offense that violates this
3 [act], regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

4 **Comment**

5
6 [Reserved]

7 **Sources for Definitions**

8
9
10 1. Introduction: All definitions are drawn from the state laws on human trafficking and
11 the federal Victims of Trafficking and Violence Protection Act of 2000 and its subsequent
12 amendments of 2003, 2005, and 2008. Victims of Trafficking and Violence Protection Act of
13 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in scattered sections of 18
14 U.S.C. and 22 U.S.C.) [hereinafter TVPA]. The definitions in paragraphs (1), (3), (5), and (10)
15 concern abuse of the law, coercion, deception, and serious harm. These concepts are central to
16 how traffickers control individuals. They concern the *means* used to force people to provide
17 labor or services against their will.

18
19 2. “Coercion.” Virtually all states include some of the elements of this definition of
20 coercion in their statutes, but they do so under definitions of different words and they range from
21 a limited selection of means to a comprehensive one. This definition draws from states with
22 expansive definitions (such as Alabama, Oklahoma, and Vermont) and from the TVPA in order
23 to capture the broad range of techniques used by traffickers. See, e.g., ALA. CODE § 13A-6-
24 151(1); VT. STAT. ANN. tit. 13 §§ 2652(a)(5), 2651(7), 2651(2); 18 U.S.C. §§ 1589(a)(1),
25 1591(a), 1591(e)(2) (2006). Coercion through access to drugs in (F) is covered by at least eight
26 states (Alabama, Arizona, Washington, D.C., Georgia, Guam, North Carolina, Oklahoma, and
27 Vermont). Coercion through control of identification documents in (G) uses language that
28 mirrors that used by at least twenty states (Arizona, Colorado, Delaware, Guam, Illinois, Iowa,
29 Kansas, Michigan, Mississippi, Nevada, New Jersey, New Mexico, New York, North Dakota,
30 Oregon, Pennsylvania, Tennessee, Rhode Island, Utah, Vermont). Many states (again including
31 Alabama, Oklahoma, and Vermont) also address the coercion in (H) that someone must work to
32 pay off a debt where either the work is not applied to actually pay off the debt or the debt is
33 grossly inflated in value. See ALA. CODE § 13A-6-151(2)(b).

34
35 3. “Abuse of the law or legal process.” This term is used in the definition of “coercion”
36 in paragraph (C), and so must be defined. It is taken from the Washington, D.C., law and the
37 TVPA. See D.C. CODE § 22-1831(1); 18 U.S.C. §§ 1589(c)(1) (2006) (method of coercion in
38 relation to forced labor) and § 1591(e)(1) (in relation to the “sex trafficking of children or by
39 force, fraud, or coercion”). At least twenty-five states include the phrase in human trafficking
40 statutes as a form of coercion or force, but without defining it.

41
42 4. “Serious harm.” The concept of “serious harm” is used twice in the definition of

1 “coercion” in subparagraphs (A) and (B), and so is defined in paragraph (10). The definition is
2 from the TVPA. 18 U.S.C. § 1589(c)(2).

3
4 5. “Deception.” The definition is derived in part from provisions contained in the laws
5 of Alabama, Georgia, and North Carolina. See ALA. CODE § 13A-6-151(2)(a); GA. CODE ANN. §
6 16-5-46; N.C. GEN. STAT. § 14-43.10(a)(2).

7
8 6. “Person.” The standard ULC definition is used in paragraph (9).

9
10 7. “Business entity.” The definition in paragraph (2) is the same as that for “person,”
11 minus the word, “individual.”

12
13 8. “Sexual activity.” The paragraph (11) definition is modified from Rhode Island’s
14 definition of “sex act.” R.I. GEN. LAWS § 11-67-6.

15
16 **SECTION 3. TRAFFICKING.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment

In typical state criminal laws dealing with trafficking, different levels of intent
correspond to differing criminal penalties. In order to indicate different felony levels, one each
for an intentional, knowing, and reckless state of mind (*mens rea*), subsections (a), (c), and (e)
repeat the same language to define the offense except for inserting the different word for each
state of mind. Subsections (b), (d), and (f) then state what the felony level should be for that
state of mind. A class “a” felony indicates the most serious felony other than one calling for the
death penalty. The following felony levels of “b”, “c”, and “d” denote lower levels of felony.
This structure is used throughout the offenses created by this act.

Sources

Forty-six states have sex trafficking crimes and forty-nine states have labor trafficking
crimes that address the *process* of trafficking by the ways the persons are recruited, moved, and

received into forced labor or sex work. The TVPA criminalizes both labor and sex trafficking. 18 U.S.C. §§ 1590(a), 1591(a)(1) (2006). Twenty-three states reach the same processes as the TVPA. This draft is comprehensive in addressing the many actions traffickers take to get their victims into the forced labor situation.

SECTION 4. SUBJECTING AN INDIVIDUAL TO INVOLUNTARY

SERVITUDE OR FORCED LABOR.

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

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

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

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

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

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

Comment

[Reserved]

1 **Sources**

2 Twenty-five states currently have specific criminal provisions for forced labor or
3 servitude as part of their human trafficking statutes, but distinct from the movement or *process*
4 aspect of human trafficking. Delaware provides an example of a state law with comparable
5 language. 11 DEL. CODE ANN. tit. 11 § 787(b)(1). This provision closely parallels the crime of
6 forced labor created by the TVPA. See 18 U.S.C. § 1589(a) (2006) (criminalizing “whoever
7 knowingly provides or obtains the labor or services of a person by any one of . . . the following
8 means . . .,” including, e.g., the means of “force, threats of force. . .”).
9

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

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

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

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

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

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

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

23 **Comment**

24 [Reserved]

25 **Sources**

26 Thirteen states explicitly criminalize sexual servitude of adults separately from the
27 process or movement of adults for the purpose of sexual servitude. Alabama provides an
28 example: “(a) A person commits the crime of human trafficking in the first degree if: (1) He or

1 she knowingly subjects another person to . . . sexual servitude through use of coercion or
2 deception.” ALA. CODE § 13A-6-152(a). The other states include Delaware, Georgia, Guam,
3 Illinois, Kentucky, Michigan, Montana, Nebraska, New Hampshire, North Carolina, Rhode
4 Island, and Tennessee.

5
6 **SECTION 6. SUBJECTING A MINOR TO SEXUAL SERVITUDE.**

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

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

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

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

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

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

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

22 **Comment**

23 [Reserved]

24 **Sources**

25 Several states make sexual servitude of a minor a separate offense, in addition to the
26 offense of trafficking a minor for sexual servitude. Delaware provides an example: “A person is

1 guilty of sexual servitude of a minor when the person knowingly . . . [c]auses a minor to engage
2 in commercial sexual activity or a sexually explicit performance. . . .” DEL. CODE ANN. tit. 11 §
3 787(b)(2)(b). Georgia, Mississippi, Missouri, Nebraska, the Northern Mariana Islands, Oregon,
4 and Tennessee have a similar provision, while New Jersey and Florida prohibit procuring
5 prostitution of a child under 18.

6 7 **SECTION 7. PATRONIZING VICTIM OF SEXUAL SERVITUDE.**

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

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

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

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

20 **Comment**

21 This section does not preclude a prosecution under [state statutory rape law]. It is
22 designed to deal with the “demand” side of sex trafficking and to reduce the demand through
23 criminal penalties for patrons of victims. The Committee seeks guidance on the level of penalty
24 required to achieve an effective deterrent. The draft makes a *knowing violation* a *class d* felony
25 offense and raises it to class c if the victim is a minor. Should it instead be a *class b* offense and
26 raised to class a if the victim is a minor? The same question holds for a *reckless violation*. The
27 draft sets the basic penalty as a *class a misdemeanor*, raised to a class d felony for a minor.
28 Should it instead be a *class c* felony offense, raised to class b for a minor?

1 items or services for which the debt was incurred; or

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

4 (d) Debt bondage in the second degree is a [class a misdemeanor] but if the victim is less
5 than 18 years of age, it is a [class d felony].

6 **Comment**

7 Debt bondage essentially refers to requiring that an individual work to pay off a debt
8 where either the work is not applied to actually pay off the debt or the debt is grossly inflated in
9 value.

10 **Sources**

11
12
13 At least fifteen states have incorporated debt bondage into their servitude or trafficking
14 statutes as either a means of coercing someone into forced labor, the form of exploitation to
15 which trafficking is directed, or a separate crime like forced labor. The District of Columbia
16 provides an example of making it a separate crime, as Section 8 proposes, in D.C. CODE § 22-
17 1832(b): “It is unlawful for an individual or a business knowingly to place or keep a person in
18 debt bondage.” The other states criminalizing debt bondage in one of these ways are Alabama,
19 Arkansas, Florida, Guam, Hawaii, Idaho, Iowa, Kansas, Michigan, Missouri, New Hampshire,
20 New York, North Carolina, and Utah. The federal law equivalent is the prohibition of peonage,
21 18 U.S.C. § 1581(a), whose penalty level was raised from 10 years to 20 years by the Victims of
22 Trafficking and Violence Protection Act of 2000.

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

24
25 (a) A person commits abuse of an identification document if the person, while
26 committing, or with intent to commit, an offense under this [act]:

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

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

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

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

Comment

[Reserved]

Sources

At least twenty states include misuse of an identification document as a method of coercion or deception within human trafficking statutes. Section 9 is modified from language in the TVPA which punishes unlawful conduct with respect to documents in furtherance of trafficking, peonage, involuntary servitude, or forced labor. 18 U.S.C. § 1592(a).

SECTION 10. BUSINESS LIABILITY.

(a) In this section, “agent” means a person authorized to act on behalf of a business entity.

Alternative A

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

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

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

(c) It is an affirmative defense to a prosecution of a business entity under subsection (b)(2) if the entity proves by a preponderance of the evidence that the entity had in place adequate procedures, including an effective complaint procedure, designed to prevent persons associated with the entity from engaging in the conduct under subsection (b)(2) and to correct

1 promptly a violation of this [act].

2 **Alternative B**

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

4 (1) either

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

8 (B) an employee of the entity engages in conduct that constitutes an
9 offense under this [act] and the commission of the offense was part of a pattern of illegal activity
10 for the benefit of the entity, which an agent of the entity knew was occurring or recklessly
11 disregarded, and the agent failed to take effective action to stop the illegal activity; and

12 (2) the entity did not have in place adequate procedures, including an effective
13 complaint procedure, designed to prevent persons associated with the entity from engaging in the
14 conduct in paragraph (1) and to correct promptly a violation of this [act].

15 **End of Alternatives**

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

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

19 (2) disgorgement of profit; or

20 (3) debarment from government contracts.

21 **Comment**

22 Many states have provisions specifically addressing business liability for criminal
23 trafficking offenses within their general human trafficking offense statutes. These fall into three
24 categories: providing the liability standard for when a business may be found liable; naming

1 additional penalties for businesses convicted of human trafficking; and specifying that both
2 persons and businesses can commit the offenses. Section 10 draws on all three, by establishing
3 the standard to be used in deciding whether a business entity is liable, naming additional
4 penalties for business entities found criminally liable, and specifying that businesses can be
5 liable.

6
7 Section 10 also provides for a defense to business liability, drawing from the U.K.
8 Bribery Act 2010. In considering whether a business entity has the “adequate procedures”
9 needed to establish the affirmative defense (under subsection (c) of Alternative A) or that the
10 prosecution has the burden to prove a lack thereof (under subsection (b)(2) of Alternative B),
11 prosecutors and courts should consider certain kinds of fact-specific issues. This list of such
12 issues was developed pursuant to the U.K. Bribery Act:

- 13
- 14 • Are the company’s procedures proportionate to the exploitation risks it faces and the
- 15 nature, scale, and complexity of the company’s business?
- 16 • Are the procedures practical, clear, and accessible?
- 17 • Are the procedures effectively implemented and enforced?
- 18 • Has the company, through trainings or otherwise, promoted a meaningful, top-down
- 19 culture of compliance, and is the anti-exploitation policy communicated clearly to all
- 20 levels of management, the employees, and transaction partners (namely, agents,
- 21 intermediaries, joint venture partners, etc.)?
- 22 • Does the company engage in regular and comprehensive assessments of the [supply
- 23 chain] risks it is facing and of its anti-exploitation policies and procedures? Does the
- 24 company engage in appropriate due diligence relating to its actual and potential
- 25 transaction partners?

26 27 Sources

28
29 It is generally accepted that criminal statutes applying to the actions of a “person” reach
30 business entities, but four states (the District of Columbia, Guam, Hawaii, and Rhode Island)
31 specifically name businesses as subject to criminal liability within their trafficking offenses. For
32 example, the District of Columbia specifies that forced labor, debt bondage, labor or sex
33 trafficking, and sex trafficking of children are “unlawful for an individual or a business.” D.C.
34 CODE §§ 22-1832—22-1836.

35
36 Three states (Alabama, Georgia, and Tennessee) specify the liability standard for
37 businesses, and Section 10 draws on these statutes. See, e.g., GA. CODE ANN. § 16-5-
38 46(j). Seven states (Guam, Hawaii, Massachusetts, Minnesota, Missouri, Vermont, and
39 Wisconsin) provide that *in addition* to the sanctions provided within the trafficking offenses
40 themselves, other sanctions may be imposed on businesses convicted of violating human
41 trafficking criminal laws. See, e.g., MINN. STAT. § 609.284 (permitting dissolution, revocation
42 of a state license, or surrender of a state charter). Massachusetts permits a fine of up to
43 \$1,000,000 for both sex and labor trafficking. MASS. GEN. LAWS. ch. 265 §§ 50(c), 51(c).

44
45 **[SECTION 11. PAST SEXUAL BEHAVIOR OF VICTIM.** In a prosecution or civil

1 action for damages for an offense under this [act] in which there is evidence that the alleged
2 victim was subjected to sexual servitude, reputation or opinion evidence of past sexual behavior
3 of the alleged victim is not admissible. Evidence of a specific instance of the alleged victim's
4 past sexual behavior is not admissible unless the evidence is admitted in accordance with [state
5 rape shield evidence rule] or is constitutionally required to be admitted.]

6 **Comment**

7 Section 11 is designed to ensure that the state rape shield law applies in prosecutions and
8 civil actions under this act.
9

10 **Sources**

11 During the prosecution of a defendant for human trafficking violations, at least four states
12 (Georgia, New Hampshire, Virginia, and Washington, D.C.) specifically bar evidence of the
13 alleged victim's previous sexual commercial history or sexual activity. This version is drawn
14 from the D.C. human trafficking provision on this issue, D.C. CODE § 22-1839. Alabama and
15 Guam provide that such evidence is not a defense to a trafficking violation and does not preclude
16 a conviction.
17
18

19 **SECTION 12. VICTIM DEFENSES.**

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

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

23 (1) is a victim; and

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

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

1 **Comment**

2 [Reserved]

3 **Sources**

4
5 Subsection (a) is modified from Guam law and protects victims coerced into committing
6 illegal commercial sex acts from prosecution for those acts. 9 GUAM CODE ANN. § 26.03 (“A
7 victim of trafficking in persons is not criminally liable for any commercial sex act or illegal
8 sexually-explicit performance committed as a direct result of, or incident or related to, being
9 trafficked”). Tennessee and Vermont provide that children under 18 are immune from
10 prosecution for prostitution.

11
12 Eleven states (Alabama, Connecticut, Guam, Massachusetts, Minnesota, New Jersey,
13 Ohio, Oregon, Vermont, and Washington) provide affirmative defenses for victims of human
14 trafficking who are being criminally prosecuted. Subsection (b) closely follows Minnesota’s
15 affirmative defense, which requires the victim to prove victim status during the time the crime
16 was committed and that the victim acted under compulsion of the trafficker. MINN. STAT. ANN.
17 § 609.325. Vermont also provides that children under 18 who are victims of trafficking may be
18 treated as persons in need of care or supervision, as subsection (c) provides. VT. STAT. ANN. tit.
19 13 § 2652(e).

20
21 **SECTION 13. MOTION TO VACATE CONVICTION.** At any time after a
22 conviction, the court in which the conviction was entered may vacate the conviction if the court
23 finds the defendant’s participation in the offense was the result of being a victim. Official
24 documentation from a federal, state, or local government agency of the defendant’s status at the
25 time of the offense as a victim creates a presumption that the defendant’s participation in the
26 offense was a result of being a victim, but official documentation is not required to grant a
27 motion under this section.

28 **Comment**

29 [Reserved]

30 **Sources**

31 At least three states (Maryland, New York, and Washington) offer victims an opportunity
32 to ask the court to vacate their conviction for the offense of prostitution if the offense is found to
33 have been the result of their status as a victim. See, e.g., N.Y. CRIM. PRO. § 440.10. Oregon

1 permits expunging the juvenile delinquency record of a child under 18 for prostitution.

2
3 **SECTION 14. COMPENSATION.**

4 (a) The court shall order a person convicted of an offense under this [act] to pay
5 compensation to a victim, including:

6 (1) except as otherwise provided in paragraph (2), an amount equal to the greater
7 of:

8 (A) the gross income to the defendant of the victim's labor or services,
9 including sexual services, not reduced by expenses the defendant incurred as a result of
10 maintaining the victim;

11 (B) the value to the defendant of the victim's labor or services, including
12 sexual services, not reduced by expenses the defendant incurred as a result of maintaining the
13 victim;

14 (C) the value of the victim's labor or services calculated under the
15 minimum wage and overtime provisions of the Fair Labor Standards Act, 29 U.S.C. Section 201
16 et seq.; or

17 (D) the value of the victim's labor or services calculated under the [state
18 minimum wage and overtime provisions];

19 (2) if it is not possible or in the best interest of the victim to compute a value
20 under paragraph (1), the equivalent of the value of the victim's labor or services if the victim had
21 provided labor or services that were subject to the minimum wage and overtime provisions of the
22 Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., or [state minimum wage and overtime
23 provisions], whichever is higher; and

24 (3) costs and expenses incurred or needed by the victim as a result of the offense

1 for:

2 (A) medical services;

3 (B) therapy or psychological counseling;

4 (C) temporary housing;

5 (D) transportation;

6 (E) childcare;

7 (F) physical and occupational therapy or rehabilitation;

8 (G) funeral, interment, and burial services;

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

10 (I) other services needed by the victim.

11 (b) In determining value under subsection (a)(1)(B), the court shall use the prevailing
12 wage for the labor or services in the area if there is one, and if not, the average amount actually
13 paid for such labor or services, both as established by expert evidence.

14 (c) The court shall order compensation under subsection (a) even if the victim is absent
15 from the jurisdiction or unavailable.

16 (d) In the event the victim is absent or unavailable, the court shall order that the
17 compensation be paid to the Human Trafficking [Task Force] established under Section 20, and
18 that the [Task Force] attempt to locate and pay the victim or the victim's surviving family
19 member.

20 (e) If it is not possible to locate the victim or the victim's surviving family member after
21 one year, the Human Trafficking [Task Force] may use the funds for its work.

22 **Comment**

23 [Reserved]

1 **Sources**

2 At least fourteen states (Alabama, Delaware, Hawaii, Idaho, Illinois, Michigan, Missouri,
3 New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, and
4 Tennessee) mandate restitution to the victim upon the defendant's conviction of human
5 trafficking. This language expands on that provided in R.I. GEN. LAWS § 11-67-4. The TVPA
6 mandates restitution to the victim to cover the full amount of the victim's losses plus "the greater
7 of the gross income or value to the defendant of the victim's services or labor or the value of the
8 victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor
9 Standards Act." 18 U.S.C. § 1593(b)(1) (2006).

10
11 **SECTION 15. FORFEITURE.**

12 (a) The court shall order a person convicted of an offense under this [act] to forfeit:

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

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

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

19 (1) the amount necessary to pay court-ordered restitution must be applied to pay
20 the restitution;

21 (2) if a remainder exists after a distribution under paragraph (1), the amount
22 necessary to pay a civil award to a victim entered against the person before the forfeiture occurs
23 must be applied to pay the civil award;

24 (3) if a remainder exists after distributions under paragraphs (1) and (2), of the
25 remainder:

26 (A) 20 percent to the [state's crime victims compensation fund];

27 (B) 40 percent to providers of free or low-cost services to human

1 trafficking victims in the [county, parish, city, town, or municipality] where the conviction took
2 place; and

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

5 **Comment**

6 [Reserved]

7 **Sources**

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

16 **SECTION 16. AGGRAVATING CIRCUMSTANCES.**

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

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

1 (7) the defendant transported the victim across state or national borders;

2 (8) the defendant subjected the victim to the offense for more than 180 days;

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

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

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

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

13 **Comment**

14 The Committee also considered drafting this section to give the court permission to
15 enhance the sentence for the designated factors (Sentence Enhancement, rather than Aggravating
16 Circumstances). It decided, however, to require that the trier of fact find that the specific factor
17 occurred during the course of committing an offense, and thus labeled the section Aggravating
18 Circumstances.

19 **Sources**

20
21 The particular aggravating circumstances listed here are drawn from various sources.
22 The Federal Sentencing Guidelines impose a two level sentence increase where “the defendant
23 knew or should have known that a victim of the offense was a vulnerable victim.” U.S.
24 SENTENCING GUIDELINES MANUAL § 3A1.1(b) (2011). Vulnerable victim is defined in the
25 GUIDELINES as a victim “who is unusually vulnerable due to age, physical or mental condition, or
26 who is otherwise particularly susceptible to the criminal conduct.” *Id.* at § 3A1.1(b) cmt. n.2.
27 Section 16(a)(6) adopts this language, although age (victim less than 14) is listed separately in
28 paragraph (5). Similar factors include those in paragraphs (1) (defendant abused a position of
29 trust) and (9) (defendant enticed victims from shelters). The factor in paragraph (8) for the
30 duration of isolating victims is modeled after the Washington, D.C. law. *See* D.C. CODE § 22-
31 1837.

SECTION 17. STATUTE OF LIMITATIONS FOR CRIMINAL PROSECUTION.

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

Comment

[Reserved]

Sources

At least one state (Vermont) specifically provides that there is no statute of limitations for human trafficking crimes. VT. STAT. ANN. tit. 13 § 4501.

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

Comment

[Reserved]

Sources

Section 18 is drawn from Guam’s law, 9 GUAM CODE ANN. § 26.35. At least two other states or territories mandate confidentiality of victim identification specifically for human trafficking victims. *See* 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); and OKLA. STAT. tit. 21, § 748.2 (requiring protecting the victim’s safety, including by “ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.”). Federal law provides the same protection through 28 C.F.R. § 1100.31(d).

SECTION 19. CIVIL ACTION.

(a) A victim may bring a civil action against a person that commits an offense under this [act] for damages caused to the victim by the offense and for injunctive relief, including relief to

1 prevent a future offense under this [act].

2 (b) In an action under this section, the trier of fact may award actual and punitive
3 damages.

4 (c) In an action under this section, the court shall award a prevailing victim reasonable
5 attorney's fees and costs and may award a prevailing defendant reasonable attorney's fees and
6 costs only if the court finds that that the plaintiff's action was frivolous, unreasonable, or without
7 foundation.

8 (d) The court may stay a civil action brought under this section during the pendency of a
9 criminal prosecution arising out of the same act as the civil action.

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

12 (1) was freed from subjection to the human trafficking that is the basis of the
13 action; or

14 (2) attains 18 years of age.

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

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

19 **Comment**

20 Permitting the victim to sue the trafficker for damages provides an important avenue for
21 the victim to gain economic resources needed for recovery and reintegration into society, an
22 avenue that is independent of whether a state prosecutor is willing to pursue the matter.
23 Injunctive relief is also important to stop future violations that may affect many victims.
24 Providing reasonable attorney's fees and costs to the prevailing plaintiff is indispensable to these
25 goals. The language concerning the standard for awarding attorney's fees to prevailing plaintiffs
26 and defendants is drawn from U.S. Supreme Court case law interpreting 42 U.S.C. §1988,

governing the award of attorney’s fees under civil rights cases. In its most recent and unanimous decision on this issue, *Fox v. Vice*, 563 U. S. 2 ___, 131 S.Ct. 2205 (2011), the Court stated the relevant standard and the reasons for it as follows:

The statute involved here, 42 U.S.C. § 1988, allows the award of “a reasonable attorney’s fee” to “the prevailing party” in various kinds of civil rights cases, including suits brought under § 1983. Most of our decisions addressing this provision have concerned the grant of fees to prevailing plaintiffs. When a plaintiff succeeds in remedying a civil rights violation, we have stated, he serves “as a ‘private attorney general,’ vindicating a policy that Congress considered of the highest priority.” *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968) (per curiam). He therefore “should ordinarily recover an attorney’s fee” from the defendant—the party whose misconduct created the need for legal action. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 416 (1978) (internal quotation marks omitted). Fee shifting in such a case at once reimburses a plaintiff for “what it cos[t][him] to vindicate [civil] rights,” *Riverside v. Rivera*, 477 U.S. 561, 577–578 (1986) (internal quotation marks omitted), and holds to account “a violator of federal law,” *Christiansburg*, 434 U.S., at 418. In *Christiansburg*, we held that § 1988 also authorizes a fee award to a prevailing defendant, but under a different standard reflecting the “quite different equitable considerations” at stake. *Id.*, at 419. In enacting § 1988, we stated, Congress sought “to protect defendants from burdensome litigation having no legal or factual basis.” *Id.*, at 420. Accordingly, § 1988 authorizes a district court to award attorney’s fees to a defendant “upon a finding that the plaintiff’s action was frivolous, unreasonable, or without foundation.” *Id.*, at 421; see also *Kentucky v. Graham*, 473 U.S. 159, 165 (1985).

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

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

Sources

At least fifteen states explicitly provide victims with a private right of action, as does the TVPA, and all the state and federal statutes make attorney’s fees and costs available to prevailing plaintiffs. The language in this section is largely modified from subsections of CAL. CIV. CODE § 52.5. The other states include Alabama, Connecticut, District of Columbia, Florida, Guam, Indiana, Maine, Minnesota, Missouri, Nevada, North Mariana Islands, Oklahoma, Washington, and Wisconsin. See also 18 U.S.C. § 1595, which also has a ten-year statute of limitations.

SECTION 20. HUMAN TRAFFICKING [TASK FORCE].

(a) The [Governor] shall appoint members of an [interagency task force on human

1 trafficking] who are state officials serving in the [departments] whose duties may bring them into
2 contact with victims or offenders, nongovernmental service providers, and victims.

3 (b) The [departments] [represented on the [task force] are authorized to provide staff to
4 the [task force] on a nonreimbursable basis.

5 (c) The [interagency task force] shall:

6 (1) coordinate the implementation of this [act];

7 (2) evaluate state efforts to combat human trafficking, collect data on the subject,
8 and submit an annual report to the Governor and [state legislative body];

9 (3) promote public awareness about human trafficking, remedies and services for
10 victims, and prevention efforts, and create a public awareness sign about these topics and local
11 and national hotline information;

12 (4) coordinate training relating to the recognition and prevention of human
13 trafficking; and

14 (5) conduct other appropriate activities to combat human trafficking within this
15 state .

16 **Comment**

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

27 Similarly, personnel in agencies devoted to health and human services, housing, child
28 abuse and neglect, and juvenile delinquency may oversee programs designed to bring services to
29 victims and be able to point law enforcement to situations where victims can be found. The state

1 transportation department may oversee state rest stops on the public highways where victims
2 could learn of sources of help. Personnel in state education departments may learn of trafficking
3 victims in schools and be able to help develop plans to train educators on how to recognize the
4 signs and bring help to the victims.

5 In the nongovernmental sector, there are many service providers that help trafficking
6 victims recover and can help law enforcement by providing information about where to find
7 trafficking victims and giving the victims the support they need to recover and help bring down
8 the traffickers by testifying in criminal cases against the traffickers. Finally, having surviving
9 victims represented will also give the task force vital information about the real situation faced
10 by trafficking victims.

11 Subsection (b) reduces the fiscal impact by providing that existing staff can be assigned
12 to work with the task force.

13 Subsection (c) sets out the duties needed for effective coordination of prosecution,
14 prevention, and remedial actions. Paragraph 1 provides that the task force is responsible for
15 coordinating all activities needed to implement the act

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

22 Paragraph 3 sets forth the task force's authority in raising public awareness. To promote
23 public awareness, it can be helpful to create a public-awareness sign about these topics and local
24 and national hotline information, and also to create and maintain a website to publicize the task
25 force's work. The Polaris Project, the leading research organization in the United States on anti-
26 trafficking law and policy, operates a National Human Trafficking Resource Center, with a
27 national, toll-free hotline, available to answer calls from anywhere in the country, 24 hours a
28 day, 7 days a week, every day of the year. It recommends that states create a poster of no
29 smaller than 8½ by 11 inches in size that states the following:

30 "If you or someone you know is being forced to engage in any activity and cannot leave –
31 whether it is commercial sex, housework, farm work, or any other activity – call the National
32 Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services.

33 • Victims of human trafficking are protected under U.S. and [State] law.

34 • The Hotline is:

35 o Available 24 hours a day, 7 days a week

36 o Toll-free

37 o Operated by a non-profit, non-governmental organization

38 o Anonymous & Confidential

39 o Accessible in 170 languages

40 o Able to provide help, referral to services, training, and general information."

41
42 A final key responsibility of the task force is insuring that the state personnel who may
43 come in contact with traffickers and victims are trained in the law,

Sources

At least twelve states currently have legislation creating a task force or similar structure. 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. See, e.g., CONN. GEN. STAT. § 46a-170. Similarly, the TVPA created a permanent interagency task force, the President's Interagency Task Force (PITF), which includes the Secretary of State, Attorney General, and the heads of other relevant departments, including Education, Labor, Health and Human Services, National Intelligence, Defense, Homeland Security, USAID, and others the President may designate. 22 U.S.C. § 7103(b).

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

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

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

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

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

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

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

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

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

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

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

Comment

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

Subsection (b) requires that employers post the sign. This is designed to help victims who are forced into employment against their will in establishments such as massage parlors, factories, strip clubs, and hotels and motels. Requirements for employers to post such signs are already common, as many state and federal laws require them so that employees will know their rights. The amount of the fine required under subsection (c) should be similar to the state fines imposed for similar workplace rules, and should ordinarily be not less than \$300.

Sources

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(b) Services enumerated in subsection (a) must be provided in a language the victim understands.

[Reserved]

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

1. [Choice for Drafting Committee:

3. Delete Section 23.

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

(b) As soon as practicable after a first encounter with an individual who reasonably

1 appears to [the appropriate state or local agency] to be a victim, the [agency] shall notify the [
2 [interagency task force] that the individual may be eligible for a benefit or service under this
3 [act].

4 **Comment**

5 [Reserved]

6 **Sources**

7 At least seven states (California, Florida, Guam, Missouri, New Mexico, New York, and
8 North Carolina) have statutes specifically ensuring victims of human trafficking access to state-
9 provided benefits and services. See, e.g., N.Y. SOC. SERV. § 483-cc(a); MO. REV. STAT. §
10 566.223(4).
11

12 **SECTION 24. STATE LAW ENFORCEMENT AGENCY PROTOCOL.**

13 (a) On request from a victim who may qualify for a [T Visa, U Visa, or Continued
14 Presence], and associated federal benefits, the [law enforcement agency] shall not later than [10]
15 days after receiving the request:

16 (1) complete, sign, and give to the victim the [law enforcement agency] form
17 required by the United States Citizenship and Immigration Services for the [T Visa or U Visa] if
18 the victim has been subjected to a severe form of trafficking or crime listed on the form and is
19 assisting in its investigation or prosecution; and

20 (2) ask a federal [law enforcement agency] to request [Continued Presence] if the
21 victim has been subjected to a severe form of trafficking as defined by 22 U.S.C. § 7102(8) and
22 is assisting in its investigation or prosecution.

23 (b) If the [law enforcement agency] determines that the victim does not meet the legal
24 requirements for the [agency] to comply with subsection (a), the [agency] shall provide the
25 victim with a letter explaining the grounds for the determination not later than [15] days after the

determination and permit the victim to submit additional evidence to the [agency]. The [agency] must reconsider its determination not later than [10] days after receiving the evidence.

Comment

This section helps states prosecute traffickers and reduces the costs of helping victims by ensuring that foreign victims of severe forms of trafficking are eligible for the visas that enable them to stay in the country and help police and prosecutors in their investigations and prosecutions of traffickers. Without the victims to provide information and testify, it is virtually impossible to have effective criminal actions against traffickers. Since federal law also provides monetary and other benefits to victims who qualify for T Visas, U Visas, or Continued Presence, an outside source of funding for the services victims need is also provided. Finally, there is a simple form, available on-line from the United States Citizenship and Immigration Services, that local law enforcement personnel can fill out, considerably simplifying the work involved. It has boxes to check off for the relevant severe forms of trafficking and other qualifying crimes, as well as for information on victims assisting in investigations and prosecutions. See <http://www.uscis.gov/files/form/i-914supb.pdf> (USCIS Form I-918 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons); and <http://www.uscis.gov/files/form/i-918supb.pdf> (USCIS Form I-918 Supplement B, U Nonimmigrant Status Certification). The federal TVPA provides for this relief in 22 U.S.C. § 7015(b); regulations concerning Continued Presence are authorized in 22 U.S.C. § 7015(c)(3), and are found at 28 C.F.R. § 1100.35.

Sources

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

SECTION 25. STATE GRANT TO SERVICE PROVIDER.

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

(b) A recipient of a [grant] [contract] under subsection (a):

(1) must be equipped to serve victims; and

(2) shall report to the [interagency task force] created by Section 20 the number

1 and demographic information of all trafficking victims served.

2 **Comment**

3 Indian tribes are bracketed so that a state may define which Indian tribes, whether they
4 are federally-recognized or meet a broader definition, should be eligible for grants.

5 **Sources**

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

9
10 **SECTION 26. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
11 applying and construing this uniform act, consideration must be given to the need to promote
12 uniformity of the law with respect to its subject matter among states that enact it.

13 **[SECTION 27. SEVERABILITY.** If any provision of this [act] or its application to
14 any person or circumstance is held invalid, the invalidity does not affect other provisions or
15 applications of this [act] which can be given effect without the invalid provision or application,
16 and to this end the provisions of this [act] are severable.]

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

19
20 **SECTION 28. EFFECTIVE DATE.** This [act] takes effect....