



Colorado Commission on Criminal and Juvenile Justice

**Human Trafficking and Slavery—Report to the Judiciary Committees
of the House of Representatives and the Senate per C.R.S. 18-3-504
(House Bill 13-1195)**

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Human Trafficking and Slavery—Report to the Judiciary Committees of the House of Representatives and the Senate (House Bill 13-1195)

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BACKGROUND

The Colorado General Assembly passed House Bill 2013-1195, requiring the Colorado Commission on Criminal and Juvenile Justice to report on the following on or before January 1, 2014:

- The number of cases prosecuted and convicted of C.R.S. 18-3-501 (Trafficking in Adults), C.R.S. 18-3-502 (Trafficking in Children), and C.R.S. 18-3-503 (Coercion of Involuntary Servitude);
- The number of cases prosecuted and convicted for attempts, solicitations, and conspiracies to commit the offenses above;
- The circumstances involved in these cases, including any circumstances that seem consistently present in multiple cases;
- The sentence imposed for each conviction, including consideration of the appropriateness of each sentence; and
- Any other information that the Commission deems relevant concerning the implementation of these statutes since their enactment in 2006.

Data were obtained from the Colorado Judicial Branch for cases filed between July 1, 2006 and August 15, 2013. In addition, police reports, arrest affidavits or grand jury indictments were reviewed for a majority of the cases. Finally, a literature review was conducted to identify current trends and best practices in law enforcement, prosecution and public policy related to the crime of human trafficking.

This report is organized as follows: First, findings from a review of the cases charged with human trafficking between July 1, 2006 and August 15, 2013 are presented, including circumstances that seem consistently present in multiple cases. These findings are followed by a discussion of additional relevant information. The appendices contain model anti-trafficking legislation from two national organizations, along with information about juveniles charged with prostitution in Colorado, and the Polaris Project's Model Provisions of comprehensive state legislation to combat human trafficking.

Please note that this report does not answer some of the questions raised by the HB13-1195. While this report provides substantial comparative information about state and international level anti-trafficking policies, the Colorado Commission on Criminal and Juvenile Justice and the Division of Criminal Justice were given inadequate resources to support extensive case file reviews that are necessary to determine the circumstances of each Colorado case, as directed by the legislation. Therefore, within the constraints of the allowed funding, this report is presented with minimal information about offenders, victims, and similarities across cases. In addition, anecdotal information systematically gathered from stakeholders would have provided context and explanations for convictions for offenses originally charged as human trafficking. Resources were unavailable to collect this important information.

CASE FILE REVIEW: FINDINGS

There were 38 cases filed with charges of Human Trafficking (C.R.S. 18-6-402, 18-13-127, 18-3-501, 18-3-502, and 18-3-503) between July 1, 2006 and August 15, 2013 (see Table 1) (see Appendix A for a table summary).¹ Four individuals had two cases, meaning that 34 defendants were charged with these crimes. For seven cases, no disposition had yet been reached, and one case involved a conviction for a misdemeanor crime but information on the sentence was unavailable. No cases charged with Coercion of Involuntary Servitude (C.R.S. 18-3-503) were found. Table 2 shows the age and race distribution of the defendants charged with human trafficking.

Of the 38 cases charged with Human Trafficking, two cases resulted in a conviction for human trafficking. A 38 year old African American male received a 16 year prison sentence for Trafficking in Adults (resulting from a plea), and an 18 year old Hispanic male received an 8 year prison sentence for Trafficking in Children (resulting from a trial).

There were few convictions for inchoate offenses. Five conviction crimes were for conspiracy to commit pimping, and 1 conviction crime was for attempted pimping. In four of these cases, the inchoate charge was the only conviction offense. There were no convictions for inchoate human trafficking offenses.

Table 1: Human trafficking cases charged between January 1, 2006 and August 15, 2013 by judicial district

Judicial District	%	N
1	24%	9
2	58%	22
8	5%	2
10	8%	3
18	5%	2
Total	100%	38

Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

The majority of those charged with trafficking offenses were convicted of crimes related to pimping and child prostitution. Two cases were convicted of Colorado Organized Crime Control Act (COCCA). Table 3 shows the 50 conviction charges for those cases originally charged with Human Trafficking and for which a disposition had been reached (note that seven cases had not yet been resolved and one case lacked sentencing information).

¹ Note that only the first sentence for the most serious conviction offense was included in the analysis.

Four cases went to trial, one of which has not yet been resolved. The other three cases received sentences to the Department of Corrections.

Table 2: Age and race* of defendants in cases charged with Human Trafficking

	Asian	Black	Hispanic	White	N
Male		20	3	6	29
18		1	1		2
19		2		3	5
20				2	2
21		1			1
22		1			1
23		1			1
24		1			1
25		1			1
26		2			2
28		1			1
29		1		1	2
31		1			1
32		1			1
33		1			1
36		1			1
38		2			2
39		1	1		2
41		1			1
47			1		1
Female	1	2	2	4	9
19		1			1
22		1		1	2
23			1		1
24				1	1
25				1	1
27			1		1
28				1	1
51	1				1
Total	1	22	5	10	38

Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

*Judicial race data often does not distinguish between race and ethnicity (particularly "White" and "Hispanic"). As a result, the ability to accurately interpret this data is limited.

Table 3: Most serious conviction offense for cases charged with Human Trafficking

Conviction Charge Description	Statute	N
CONTRIBUTING TO THE DELINQUENCY OF MINOR	18-6-701	6
PIMPING	18-7-206	6
PIMPING-CONSPIRACY	18-7-206	5
PIMPING OF A CHILD	18-7-405	4
CHILD PROSTITUTION-INDUCEMENT	18-7-405.5	3
OFFERING FALSE INSTRUMENT/RECORDING ²	18-5-114(3)	3
PANDERING-INDUCE BY MENACING	18-7-203(1)(a)	3
PANDERING-ARRANGING PROSTITUTION	18-7-203(1)(b)	2
COCCA-PATTERN OF RACKETEERING	18-17-104(3)	2
PANDERING OF A CHILD-ARRANGE PROSTITUT	18-7-403(1)(b)	2
VIOLENT CRIME-SEX OFFENSE	18-1.3-406(2)(b)	2
WEAPON-POSS/PREVIOUS OFFEND-ANY PRIOR FELONY	18-12-108(1)	1
PIMPING-ATTEMPT	18-7-206	1
ASSAULT 3-KNOW/RECKLESS CAUSE INJURY	18-3-204(1)(a)	1
PROCUREMENT OF A CHILD	18-7-403.5	1
KEEPING A PLACE OF PROSTITUTION	18-7-204	1
FORGERY-PUBLIC RECORD/FILED W/PUBLIC OFF	18-5-102(1)(d)	1
FORGERY-GOVERNMENT ISSUED DOCUMENT	18-5-102(1)(e)	1
CONTROLLED SUBST-DISTRIBUTE SCHEDULE 2	18-18-405(1),(2)(a)(I)(A)	1
TRAFFICKING ADULTS - SELLS/BARTERS	18-3-501(1)(a)	1
TRAFFICKING IN CHILDREN - SELL CHILD	18-3-502(1)(a)	1
CHILD PROSTITUTION-KEEP PLACE-GRANTS USE	18-7-404(1)(a)	1
PANDERING OF A CHILD-MENACING	18-7-403(1)(a)	1

Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

Twenty-five defendants who were originally charged with human trafficking have incurred the following sentences to date (note that only two were convicted of human trafficking):²

- 11 were sentenced to DOC
 - Sentences ranged from 2 to 24 years
- 2 were sentenced to intensive supervision probation, and each also received a 90 day jail sentence
- 10 received probation sentences
 - Sentences ranged from 1 to 5 years

² Note that only the first sentence for the most serious conviction offense was included in the analysis.

- 2 received 1.5 year deferred judgments

Table 4 shows the gender, ethnicity and age for 25 victims in cases where this information was available. In general, the victims' ages ranged from 13 to 25; one victim was less than a year old and the conviction crime was procurement of a child. Twenty-three of the victims were females; information was missing on the gender of one victim. Some victims appeared in multiple cases: Two victims appeared in 4 cases, 2 victims appeared in 3 cases, 5 were victims in 2 cases, 1 victim appeared in 3 cases, and 2 victims appeared in 6 cases. No information regarding victims was available for the two cases that resulted in convictions for human trafficking.

Table 4: Gender, age and race* of victims, when this information was available

Gender	Asian	Black	Other	White	Total
Female	1	1	7	14	23
13		1			1
14				1	1
15				2	2
16			2	3	5
17			1	2	3
18			1	2	3
19				1	1
22	1		2	3	6
25			1		1
Male				1	1
<1**				1	1
Unknown			1		1
23			1		1
Total	1	1	8	15	25

Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

*Judicial race data often does not distinguish between race and ethnicity (particularly "White" and "Hispanic") As a result, the ability to accurately interpret this data is limited.

**This case involved a baby.

Circumstances of the cases. The majority of these crimes were uncovered using law enforcement sting operations. In over half of the cases, law enforcement officers used advertisements in the escort section of "Backpage.com" to set up the operation. In one affidavit, an officer with the Denver Police Department stated that Backpage.com is a prostitution web site where pictures can be posted. In a

March 31, 2012 column entitled “Financiers and Sex Trafficking”,³ the New York *Times* stated the following:

THE [emphasis in original] biggest forum for sex trafficking of under-age girls in the United States appears to be a Web site called Backpage.com. This emporium for girls and women—some under age or forced into prostitution—is in turn owned by ...Village Voice Media.

In 2012, Washington State Legislature sought to address this issue and passed Senate Bill 6251 that required internet sites within the state to obtain documentation that escorts advertised there were at least 18. Signed by the governor in March of that year, the bill created the new crime of "advertising commercial sex abuse of a minor," a Class C felony, an offense punishable by up to one year in prison and/or a fine of up to \$10,000. The bill was crafted with input from the American Civil Liberties Union. To defend against prosecution, the law required a website to prove it made a good-faith attempt to determine the true age of an advertiser before publishing an ad by requiring government ID and keeping a copy of the ID on record.

Within weeks, Backpage.com attorneys filed suit in federal court, arguing that the law violates Section 230 of the 1996 federal Communications Decency Act (CDA), which grants Internet content and service providers broad immunity from liability for content posted by third parties. The company also challenged the law under the First and Fifth Amendments, along with the commerce clause in the U.S. Constitution. By December 2012, Washington State agreed to resolve the lawsuit filed by Backpage.com by providing \$200,000 in attorneys' fees to Backpage and work with the Legislature to repeal the law. The state attorney general's office said it would not appeal the ruling and urged Congress to revise Section 230 of the Communications Decency Act.⁴

OTHER RELEVANT INFORMATION

Definitions of human trafficking. According to the U.S. State Department's annual *Trafficking in Persons Report*, social scientists estimate that as many as 27 million men, women, and children are trafficking victims at any given time.⁵ The State Department defines human trafficking as follows:⁶

- a. Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or

³ See http://www.google.com/search?sourceid=navclient&ie=UTF-8&rlz=1T4WQIB_enUS545US545&q=%e2%80%9cFinanciers+and+Sex+Trafficking%e2%80%9d%2c+the+New+York+Times.

⁴ For more information, see <http://q13fox.com/2012/12/07/state-agrees-to-work-to-repeal-law-opposed-by-backpage-com-provide-200k-in-attorneys-fees/#axzz2c4vuq4xO>.

⁵ The report may be accessed at <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>.

⁶ U.S. State Department (2013). *Trafficking in Persons Report*. See www.state.gov/j/tip. Page 8.

- b. The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Note that a victim need not be physically transported from one location to another for the crime to fall within these definitions.

The United Nations Office on Drugs and Crime refers to its *Protocol to Prevent, Suppress and Punish Trafficking in Persons* in its definition of Trafficking in Persons:

...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the 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, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁷

In 2002, the Office of the United Nations High Commissioner for Human Rights (UNHCHR) issued a set of Recommended Principles and Guidelines on Human Rights and Human Trafficking, emphasizing that the human rights of trafficked persons should be at the center of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.⁸ This victim-centered approach is a cornerstone of the State Department's 2013 Trafficking in Persons Report. Indeed, the following is the first principle of the United Nation's Office of the High Commissioner for Human Rights and Human Trafficking, Recommended Principles and Guidelines on Human Rights and Human Trafficking:

The human rights of trafficked persons shall be at the center of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.

The 4Ps Paradigm. In the late 1990s, the President's Interagency Council on Women developed a policy to combat human trafficking. This policy was based on the "3Ps" of Prevention, Protection for victims, and Prosecution of traffickers. This language was integrated into federal legislation and also the United Nation's *Protocol to Prevent, Suppress and Punish Trafficking in Persons*. In 2009, the U.S. State

⁷ United Nations. (2000). Article 3(a) of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations convention Against Transnational Organized Crime*. This document is commonly referred to as the "Polermo Protocol."

⁸ United Nations. (2002). Principle 1 of the *Recommended Principles* contained in the report of the United Nations High Commissioner for Human Rights. Page 1. Available at <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>. Attached as Appendix B.

Department added Partnership as the 4th P.⁹ The following is a brief description of the 4 Ps, which advocates believe should be part of any strategy to address human trafficking:

Prevention—This involves the promotion of education about trafficking for vulnerable populations, for employers whose business practices may facilitate trafficking, and for first responders in a position to identify and help rescue or support trafficking victims, including police, health care professionals, and social workers.

Protection—The protection of trafficked persons is the cornerstone of a victim-centered approach. Protection programs focus on the identification of trafficked persons and the development of referral mechanisms that ensure that victims of human trafficking are provided shelter, food, counseling, health care, legal assistance and reintegration services. Services should be provided in ways that protect victims' rights, dignity and psychological well-being.

Prosecution—These interventions include increasing the capacity of police, prosecutors, judges and court officials to identify, rescue, interview and refer victims for appropriate care and to identify, investigate, prosecute and convict traffickers. Prosecution measures ensure the development and implementation of laws that address the continuum of labor exploitation and the pursuit of criminal punishments. In particular, this means treating human trafficking as exploitation of victims rather than recruitment/transportation of workers or people in prostitution.¹⁰

Partnership—Successful efforts to combat human trafficking requires effective coordination across a range of stakeholders including government, labor unions, private businesses, survivors, advocates, media, and faith-based organizations. These partnerships bring together diverse experiences, amplify messages, and leverage resources.

*Local efforts to address human trafficking.*¹¹ The Federal Bureau of Investigation's Innocence Lost Task Force partners with local police departments, operating within the FBI's Rocky Mountain Safe Streets Task Force (RMSSTF), a violent crimes task force. The RMSSTF works with investigators from the Denver, Aurora, and Lakewood Police Departments; Colorado State Patrol; and Jefferson County and Arapahoe County Sheriff's Offices.

Several organizations exist to raise awareness and combat human trafficking, including Colorado's non-profit Laboratory to Combat Human Trafficking which provides training, community awareness events, and research regarding human trafficking. Since 2005, the Laboratory has trained more than 13,000

⁹ United States Agency for International Development (USAID). February 2012. *Counter-trafficking in Persons Policy*. Washington, D.C. Parts of this section are excerpted from Page 3 of the USAID report.

¹⁰ See <http://www.compathumantrafficking.org/history/4pframework>.

¹¹ Note that this brief description of local efforts is necessarily brief and incomplete. Many local stakeholders are working on the issue of human trafficking.

community members, law enforcement officers, and social service providers.¹² The Laboratory is a member of the Colorado Network to End Human Trafficking (CoNEHT). CoNEHT, founded in 2005 by the Colorado Organization for Victims Assistance (COVA), is a statewide network of agencies dedicated to providing comprehensive legal, compassionate care, advocacy and medical services for human trafficking victims in Colorado. The Rocky Mountain Children's Law Center has also made this issue a public policy priority. The Denver Anti-Trafficking Alliance in the Denver District Attorney's Office, the Colorado Network to End Human Trafficking, and the University of Denver's Task Force on Modern Slavery and Human Trafficking are examples of other local organizations focusing on this issue.

Polaris Project State Assessments. Among the efforts to fight human trafficking, the non-profit Polaris Project offers a 24 hour toll-free hotline for reporting human trafficking, training, resources and advocacy. The Polaris Project has identified ten categories or criteria by which it ranks state laws as they relate to human trafficking. The 2013 report ranked Colorado as meeting four of the ten criteria it considers critical for fighting human trafficking.¹³ Colorado was credited with have adequate laws pertaining to the following:

- Labor Trafficking Statute (C.R.S. 18-3-503) *Coercion of involuntary servitude*
- Asset Forfeiture (C.R.S. 16-13-303) *Class 1 public nuisance*
- Investigative Tools (C.R.S. 18-17-103) *Colorado Organized Crime Control Act*
- Civil Remedy (C.R.S. 13-21-127) *Civil damages for human trafficking and involuntary servitude*

Colorado was deemed deficient in the following categories:

1. **Sex Trafficking:** A statute that criminalizes sex trafficking and includes elements of inducing another through force, fraud, or coercion to engage in a commercial sex act. Some states have related laws in the prostitution code and were given credit if they had the same criminal elements.
2. **(a) Training on Human Trafficking for Law Enforcement:** A statute that mandates or encourages law enforcement to be trained in human trafficking issues and the law.¹⁴
(b) Human Trafficking Commission or Task Force: A statute that creates, establishes, or encourages a task force, commission or advisory committee dedicated to addressing human trafficking.
3. **Posting a Human Trafficking Hotline:** A statute that mandates or encourages the public posting of a human trafficking hotline, such as the National Human Trafficking Resource Center hotline or a state human trafficking hotline.

¹² See <http://www.combathumantrafficking.org/what-we-do/training-education>.

¹³ For more information, see <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/state-ratings-on-human-trafficking-laws>.

¹⁴ A February 2012 study entitled *Prostitution and Denver's Criminal Justice System: Who Pays?*, prepared for the Women's Foundation of Colorado and conducted by the Laboratory to Combat Human Trafficking, found a need for training for law enforcement officers.

4. **Safe Harbor - Protecting Sexually Exploited Minors:** A statute that recognizes sexually exploited individuals under 18 years of age as victims of a crime in need of protection and services by granting immunity from prosecution or diverting minors from juvenile delinquency proceedings, and instead directing them to child welfare services. In order to receive full credit, the state must have provisions that relate to both immunity or diversion and services for the child.¹⁵ Please see Appendix D for more information about Safe Harbor.
5. **Lower Burden of Proof for Sex Trafficking of Minors:** A statute that ensures that the elements of force, fraud, or coercion are not required for a trafficker to be prosecuted for the sex trafficking of a minor. This statute must be under the sex trafficking section in order for the state to receive credit.
6. **Victim Assistance:** A statute that provides victim assistance and that mandates the creation of a victim services plan, or that funds programs to help victims of human trafficking. Victim services and protection may include counseling, job assistance, housing, continuing education, legal services, and/or a human trafficking caseworker privilege.
7. **Vacating Convictions for Sex Trafficking Victims:** A statute that permits victims to have convictions for prostitution that were committed as a result of being trafficked vacated from their criminal records.¹⁶

The Polaris Project has developed a model law entitled *Model Provisions of Comprehensive State Legislation to Combat Human Trafficking*. This publication is attached as Appendix E.

Additionally, the Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws, established in 1892, provides states with non-partisan drafted legislation for the purpose of bringing clarity and stability to critical areas of state statutory law.¹⁷ The Uniform Law Commission is comprised of lawyers from across the country, and in 2013 it published the *Uniform Act on Prevention and Remedies for Human Trafficking*. The uniform act has the three components necessary for ending human trafficking: (1) comprehensive human trafficking penalties; (2) essential protections for human trafficking victims; and (3) public awareness, training, and planning processes needed to combat human trafficking. The American Bar Association House of Delegates unanimously approved document in August 2013. The document is attached as Appendix F.

¹⁵ Between July 1, 2006 and August 20, 2013, 53 cases involving 42 girls had a Prostitution (C.R.S. 18-7-201) charge filed. See Appendix C for more information about these cases.

¹⁶ For more information see the entire Colorado report at

http://www.polarisproject.org/storage/documents/Colorado_State_Report_2013_08_01_16_51_50_143.pdf.

¹⁷ Two of the nine Uniform Law Commissioners from Colorado are also members of the Colorado Commission on Criminal and Juvenile Justice: Claire Levy and Brandon Shaffer.

SUMMARY

This report is intended to comply with House Bill 2013-1195 regarding human trafficking. A review of 38 cases originally charged with human trafficking (C.R.S. 18-3-501, Trafficking in Adults; C.R.S. 18-3-502, Trafficking in Children; and C.R.S. 18-3-503, Coercion of Involuntary Servitude) between July 1, 2006 and August 15, 2013 found the following:

- No cases were charged with C.R.S. 18-3-503, Coercion of Involuntary Servitude;
- 38 cases were charged with trafficking in adults or trafficking in children
 - Two cases were convicted of trafficking, one for trafficking in adults and one for trafficking in children
 - Both defendants received sentences to the Department of Corrections;
- Six defendants were charged with inchoate offenses; these were attempt or conspiracy to commit pimping;
- A review of more than half the offenses revealed that these cases were the results of law enforcement sting operations, most of which used the Internet site Backpage.com to target the operation;
- 42 juveniles were charged with prostitution during the period these cases were filed;
- The Polaris Project identified gaps in Colorado's laws pertaining to the prosecution of defendants and the protection of victims;
- Model protocols from the Polaris Project and the National Conference of Commissioners on Uniform State Laws, along with the United Nations Recommended Principles and Guidelines on this topic, are included as appendices to this report.

Appendix A

Summary of 38 cases charged with Human Trafficking, July 1, 2006 – August 15, 2013.

Defendant			Victims		Convictions			Sentences		
Sex	Race	Age	#	Ages	Statute	Class	Description	Placement	Years	Trial
M	H	18	n/a	n/a	18-3-502(1)(a)	F2	TRAFFICKING IN CHILDREN - SELL CHILD	Dept of Corrections	8	Yes
M	B	24	1	16	18-7-403(1)(a)	F2	PANDERING OF A CHILD-MENACING	Dept of Corrections	24	Yes
M	W	20	2	16,18						
M	W	19	3	16,16,18						
M	B	26	2	18,23	18-7-203(1)(a)	F5	PANDERING-INDUCE BY MENACING	Probation/Deferred	3	
M	W	20	4	15,16,17, 18	18-7-405	F3	PIMPING OF A CHILD	Dept of Corrections	4	
M	W	19	4	15,16,17, 18	18-7-405	F3	PIMPING OF A CHILD	Dept of Corrections	4	
M	B	19	4	15,16,17, 18	18-6-701	F4	CONTRIBUTING TO THE DELINQUENCY OF MINOR	Jail+Sex Offender Intensive Supervision	4	
M	W	19	4	15,16,17, 18	18-6-701	F4	CONTRIBUTING TO THE DELINQUENCY OF MINOR	Probation/Deferred	4	
M	B	32	n/a	n/a	18-7-206	F3	PIMPING	Dept of Corrections	8	
F	W	28	n/a	n/a	18-17-104(3)	F2	COCCA-PATTERN OF RACKETEERING	Dept of Corrections	8	
M	B	19	n/a	n/a	18-17-104(3)	F2	COCCA-PATTERN OF RACKETEERING	Dept of Corrections	8	
F	W	25	n/a	n/a	18-7-203(1)(a)	F5	PANDERING-INDUCE BY MENACING	Probation/Deferred	3	
M	B	28	n/a	n/a	18-7-206	F4	PIMPING-CSP	Dept of Corrections	4	
F	W	24	n/a	n/a	18-7-203(1)(a)	F5	PANDERING-INDUCE BY MENACING	Probation/Deferred	5	
M	B	38	n/a	n/a						
M	B	38	n/a	n/a	18-3-501(1)(a)	F3	TRAFFICKING ADULTS - SELLS/BARTERS	Dept of Corrections	16	
M	W	29	n/a	n/a	18-7-206	F4	PIMPING-ATT	Probation/Deferred	2	
M	B	36	1	22	18-7-206	F4	PIMPING-CSP	Probation/Deferred	4	
M	B	31	n/a	n/a	18-12-108(1)	F6	WEAPON-POSS/PREVIOUS OFFEND-ANY PRIOR FE	Dept of Corrections	2	
M	B	22	n/a	n/a	18-7-403(1)(b)	F3	PANDERING OF A CHILD-ARRANGE PROSTITUT	Dept of Corrections	8	Yes
M	B	23	1	17	18-7-206	F3	PIMPING	Probation/Deferred	3	
M	H	39	n/a	n/a	18-7-206	F4	PIMPING-CSP	Jail+Intensive Supervision	2	
M	B	21	n/a	n/a						

M	B	18	n/a	n/a						Yes
M	B	41	n/a	n/a						
F	B	22	n/a	n/a	18-6-701	F4	CONTRIBUTING TO THE DELINQUENCY OF MINOR	Probation/Deferred	4	
M	B	39	1	25						
F	W	22	1	13						
M	B	26	1	13						
M	B	29	1	13						
M	B	33	3	19,22,22	18-7-206	F4	PIMPING-CSP	Unsupervised Probation	1.5	
F	B	19	3	19,22,22	18-7-206	F4	PIMPING-CSP	Unsupervised Probation	1.5	
F	H	23	1	<1	18-5-114(3)	M1	Offering False Instrument/Recording 2	Unsupervised Probation	147 days	
M	H	47	1	<1	18-5-114(3)	M1	Offering False Instrument/Recording 2	Probation/Deferred	1	
F	H	27	1	<1	18-5-114(3)	M1	Offering False Instrument/Recording 2	Probation/Deferred	1	
F	A	51	1	22	18-7-206	F3	Pimping	Probation/Deferred	3	
M	B	25	1	16						

Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records. Note that only the first sentence for the most serious conviction offense was included in the analysis.

Appendix B

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

Recommended Principles and Guidelines on Human Rights and Human Trafficking*

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* Text presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1).

Trafficking in human persons is a particularly abusive form of migration. In the Millennium Declaration, States resolved to take measures to ensure respect for the protection of the rights of migrants and to intensify their efforts to fight trafficking.

The *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, which are included as an addendum to my report to the Economic and Social Council (E/2002/68/Add.1), have been developed in order to provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking. Their purpose is to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking laws, policies and interventions.

The *Principles and Guidelines* serve as a framework and reference point for the work of OHCHR on this issue. I encourage States and intergovernmental organizations to make use of the *Principles and Guidelines* in their own efforts to prevent trafficking and to protect the rights of trafficked persons.

Mary Robinson
High Commissioner for Human Rights

Recommended Principles on Human Rights and Human Trafficking¹

The primacy of human rights

1. The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.
2. States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.
3. Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.

Preventing trafficking

4. Strategies aimed at preventing trafficking shall address demand as a root cause of trafficking.
5. States and intergovernmental organizations shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination.
6. States shall exercise due diligence in identifying and eradicating public-sector involvement or complicity in trafficking. All public officials suspected of being implicated in trafficking shall be investigated, tried and, if convicted, appropriately punished.

Protection and assistance

7. Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.
8. States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.

¹ The term “trafficking”, as used in the present Principles and Guidelines, refers to the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the 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, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Source: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (article 3 (a)).

9. Legal and other assistance shall be provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers. States shall provide protection and temporary residence permits to victims and witnesses during legal proceedings.
10. Children who are victims of trafficking shall be identified as such. Their best interests shall be considered paramount at all times. Child victims of trafficking shall be provided with appropriate assistance and protection. Full account shall be taken of their special vulnerabilities, rights and needs.
11. Safe (and, to the extent possible, voluntary) return shall be guaranteed to trafficked persons by both the receiving State and the State of origin. Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or to the safety of their families.

Criminalization, punishment and redress

12. States shall adopt appropriate legislative and other measures necessary to establish, as criminal offences, trafficking, its component acts² and related conduct.³
13. States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors.
14. States shall ensure that trafficking, its component acts and related offences constitute extraditable offences under national law and extradition treaties. States shall cooperate to ensure that the appropriate extradition procedures are followed in accordance with international law.
15. Effective and proportionate sanctions shall be applied to individuals and legal persons found guilty of trafficking or of its component or related offences.
16. States shall, in appropriate cases, freeze and confiscate the assets of individuals and legal persons involved in trafficking. To the extent possible, confiscated assets shall be used to support and compensate victims of trafficking.
17. States shall ensure that trafficked persons are given access to effective and appropriate legal remedies.

² For the purposes of the present Principles and Guidelines, the “component acts” and “component offences” of trafficking are understood to include the recruitment, transportation, transfer, harbouring or receipt of persons over eighteen years of age by means of threat, force, coercion or deception for the purpose of exploitation. The recruitment, transportation, transfer, harbouring or receipt of a person under eighteen years of age constitute component acts and component offences of trafficking in children. Source: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, articles 3 (a) and 3 (c).

³ For the purposes of the present Principles and Guidelines, conduct and offences “related to” trafficking are understood to include: exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery and servitude. Source: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, article 3 (a).

Recommended Guidelines on Human Rights and Human Trafficking

Guideline 1: Promotion and protection of human rights

Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Taking steps to ensure that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including those who have been trafficked.
2. Consulting with judicial and legislative bodies, national human rights institutions and relevant sectors of civil society in the development, adoption, implementation and review of anti-trafficking legislation, policies and programmes.
3. Developing national plans of action to end trafficking. This process should be used to build links and partnerships between governmental institutions involved in combating trafficking and/or assisting trafficked persons and relevant sectors of civil society.
4. Taking particular care to ensure that the issue of gender-based discrimination is addressed systematically when anti-trafficking measures are proposed with a view to ensuring that such measures are not applied in a discriminatory manner.
5. Protecting the right of all persons to freedom of movement and ensuring that anti-trafficking measures do not infringe upon this right.
6. Ensuring that anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including trafficked persons, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through the effective application of the principle of non-refoulement.
7. Establishing mechanisms to monitor the human rights impact of anti-trafficking laws, policies, programmes and interventions. Consideration should be given to assigning this role to independent national human rights institutions where such bodies exist. Non-governmental organizations working with trafficked persons should be encouraged to participate in monitoring and evaluating the human rights impact of anti-trafficking measures.
8. Presenting detailed information concerning the measures that they have taken to prevent and combat trafficking in their periodic reports to the United Nations human rights treaty-monitoring bodies.⁴

⁴ The human rights treaty-monitoring bodies include the Human Rights Committee; the

9. Ensuring that bilateral, regional and international cooperation agreements and other laws and policies concerning trafficking in persons do not affect the rights, obligations or responsibilities of States under international law, including human rights law, humanitarian law and refugee law.
10. Offering technical and financial assistance to States and relevant sectors of civil society for the purpose of developing and implementing human rights-based anti-trafficking strategies.

Guideline 2: Identification of trafficked persons and traffickers

Trafficking means much more than the organized movement of persons for profit. The critical additional factor that distinguishes trafficking from migrant smuggling is the presence of force, coercion and/or deception throughout or at some stage in the process — such deception, force or coercion being used for the purpose of exploitation. While the additional elements that distinguish trafficking from migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation. A failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. States are therefore under an obligation to ensure that such identification can and does take place.

States are also obliged to exercise due diligence in identifying traffickers,⁵ including those who are involved in controlling and exploiting trafficked persons.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Developing guidelines and procedures for relevant State authorities and officials such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, to permit the rapid and accurate identification of trafficked persons.
2. Providing appropriate training to relevant State authorities and officials in the identification of trafficked persons and correct application of the guidelines and procedures referred to above.
3. Ensuring cooperation between relevant authorities, officials and non-governmental organizations to facilitate the identification and provision of assistance to trafficked persons. The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness.
4. Identifying appropriate points of intervention to ensure that migrants and potential migrants are warned about possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required.

Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Discrimination against Women; the Committee on the Elimination of Racial Discrimination; the Committee against Torture; and the Committee on the Rights of the Child.

⁵ The term “traffickers”, where it appears in the present Principles and Guidelines, is used to refer to: recruiters; transporters; those who exercise control over trafficked persons; those who transfer and/or maintain trafficked persons in exploitative situations; those involved in related crimes; and those who profit either directly or indirectly from trafficking, its component acts and related offences.

5. Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.
6. Ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.
7. Ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulement is respected and upheld at all times.

Guideline 3: Research, analysis, evaluation and dissemination

Effective and realistic anti-trafficking strategies must be based on accurate and current information, experience and analysis. It is essential that all parties involved in developing and implementing these strategies have and maintain a clear understanding of the issues.

The media has an important role to play in increasing public understanding of the trafficking phenomenon by providing accurate information in accordance with professional ethical standards.

States and, where appropriate, intergovernmental and non-governmental organizations, should consider:

1. Adopting and consistently using the internationally agreed definition of trafficking contained in the Palermo Protocol.⁶
2. Standardizing the collection of statistical information on trafficking and related movements (such as migrant smuggling) that may include a trafficking element.
3. Ensuring that data concerning individuals who are trafficked is disaggregated on the basis of age, gender, ethnicity and other relevant characteristics.
4. Undertaking, supporting and bringing together research into trafficking. Such research should be firmly grounded in ethical principles, including an understanding of the need not to re-traumatize trafficked persons. Research methodologies and interpretative techniques should be of the highest quality.
5. Monitoring and evaluating the relationship between the intention of anti-trafficking laws, policies and interventions, and their real impact. In particular, ensuring that distinctions are made between measures which

⁶ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), supplementing the United Nations Convention against Transnational Organized Crime, defines trafficking in persons as: "... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the 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 for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (article 3 (a)). The Protocol further states that the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth above (article 3 (c)).

actually reduce trafficking and measures which may have the effect of transferring the problem from one place or group to another.

6. Recognizing the important contribution that survivors of trafficking can, on a strictly voluntary basis, make to developing and implementing anti-trafficking interventions and evaluating their impact.
7. Recognizing the central role that non-governmental organizations can play in improving the law enforcement response to trafficking by providing relevant authorities with information on trafficking incidents and patterns taking into account the need to preserve the privacy of trafficked persons.

Guideline 4: Ensuring an adequate legal framework

The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation.

States should consider:

1. Amending or adopting national legislation in accordance with international standards so that the crime of trafficking is precisely defined in national law and detailed guidance is provided as to its various punishable elements. All practices covered by the definition of trafficking such as debt bondage, forced labour and enforced prostitution should also be criminalized.
2. Enacting legislation to provide for the administrative, civil and, where appropriate, criminal liability of legal persons for trafficking offences in addition to the liability of natural persons. Reviewing current laws, administrative controls and conditions relating to the licensing and operation of businesses that may serve as cover for trafficking such as marriage bureaux, employment agencies, travel agencies, hotels and escort services.
3. Making legislative provision for effective and proportional criminal penalties (including custodial penalties giving rise to extradition in the case of individuals). Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by State officials.
4. Making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences. Where possible, the legislation should specify that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund.
5. Ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons.

6. Ensuring that the protection of trafficked persons is built into anti-trafficking legislation, including protection from summary deportation or return where there are reasonable grounds to conclude that such deportation or return would represent a significant security risk to the trafficked person and/or her/his family.
7. Providing legislative protection for trafficked persons who voluntarily agree to cooperate with law enforcement authorities, including protection of their right to remain lawfully within the country of destination for the duration of any legal proceedings.
8. Making effective provision for trafficked persons to be given legal information and assistance in a language they understand as well as appropriate social support sufficient to meet their immediate needs. States should ensure that entitlement to such information, assistance and immediate support is not discretionary but is available as a right for all persons who have been identified as trafficked.
9. Ensuring that the right of trafficking victims to pursue civil claims against alleged traffickers is enshrined in law.
10. Guaranteeing that protections for witnesses are provided for in law.
11. Making legislative provision for the punishment of public sector involvement or complicity in trafficking and related exploitation.

Guideline 5: Ensuring an adequate law enforcement response

Although there is evidence to suggest that trafficking in persons is increasing in all regions of the world, few traffickers have been apprehended. More effective law enforcement will create a disincentive for traffickers and will therefore have a direct impact upon demand.

An adequate law enforcement response to trafficking is dependent on the cooperation of trafficked persons and other witnesses. In many cases, individuals are reluctant or unable to report traffickers or to serve as witnesses because they lack confidence in the police and the judicial system and/or because of the absence of any effective protection mechanisms. These problems are compounded when law enforcement officials are involved or complicit in trafficking. Strong measures need to be taken to ensure that such involvement is investigated, prosecuted and punished. Law enforcement officials must also be sensitized to the paramount requirement of ensuring the safety of trafficked persons. This responsibility lies with the investigator and cannot be abrogated.

States and, where applicable, intergovernmental and non-governmental organizations should consider:

1. Sensitizing law enforcement authorities and officials to their primary responsibility to ensure the safety and immediate well-being of trafficked persons.
2. Ensuring that law enforcement personnel are provided with adequate training in the investigation and prosecution of cases of trafficking. This training should be sensitive to the needs of trafficked persons, particularly those of women and children, and should acknowledge the practical value of providing incentives for trafficked persons and others to come forward

to report traffickers. The involvement of relevant non-governmental organizations in such training should be considered as a means of increasing its relevance and effectiveness.

3. Providing law enforcement authorities with adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers. States should encourage and support the development of proactive investigatory procedures that avoid over-reliance on victim testimony.
4. Establishing specialist anti-trafficking units (comprising both women and men) in order to promote competence and professionalism.
5. Guaranteeing that traffickers are and will remain the focus of anti-trafficking strategies and that law enforcement efforts do not place trafficked persons at risk of being punished for offences committed as a consequence of their situation.
6. Implementing measures to ensure that “rescue” operations do not further harm the rights and dignity of trafficked persons. Such operations should only take place once appropriate and adequate procedures for responding to the needs of trafficked persons released in this way have been put in place.
7. Sensitizing police, prosecutors, border, immigration and judicial authorities, and social and public health workers to the problem of trafficking and ensuring the provision of specialized training in identifying trafficking cases, combating trafficking and protecting the rights of victims.
8. Making appropriate efforts to protect individual trafficked persons during the investigation and trial process and any subsequent period when the safety of the trafficked person so requires. Appropriate protection programmes may include some or all of the following elements: identification of a safe place in the country of destination; access to independent legal counsel; protection of identity during legal proceedings; identification of options for continued stay, resettlement or repatriation.
9. Encouraging law enforcement authorities to work in partnership with non-governmental agencies in order to ensure that trafficked persons receive necessary support and assistance.

Guideline 6: Protection and support for trafficked persons

The trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked. Appropriate protection and support should be extended to all trafficked persons without discrimination.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Ensuring, in cooperation with non-governmental organizations, that safe and adequate shelter that meets the needs of trafficked persons is made available. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Trafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses.

2. Ensuring, in partnership with non-governmental organizations, that trafficked persons are given access to primary health care and counselling. Trafficked persons should not be required to accept any such support and assistance and they should not be subject to mandatory testing for diseases, including HIV/AIDS.
3. Ensuring that trafficked persons are informed of their right of access to diplomatic and consular representatives from their State of nationality. Staff working in embassies and consulates should be provided with appropriate training in responding to requests for information and assistance from trafficked persons. These provisions would not apply to trafficked asylum-seekers.
4. Ensuring that legal proceedings in which trafficked persons are involved are not prejudicial to their rights, dignity or physical or psychological well-being.
5. Providing trafficked persons with legal and other assistance in relation to any criminal, civil or other actions against traffickers/exploiters. Victims should be provided with information in a language that they understand.
6. Ensuring that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard.
7. Ensuring the safe and, where possible, voluntary return of trafficked persons and exploring the option of residency in the country of destination or third-country resettlement in specific circumstances (e.g. to prevent reprisals or in cases where re-trafficking is considered likely).
8. In partnership with non-governmental organizations, ensuring that trafficked persons who do return to their country of origin are provided with the assistance and support necessary to ensure their well-being, facilitate their social integration and prevent re-trafficking. Measures should be taken to ensure the provision of appropriate physical and psychological health care, housing and educational and employment services for returned trafficking victims.

Guideline 7: Preventing trafficking

Strategies aimed at preventing trafficking should take into account demand as a root cause. States and intergovernmental organizations should also take into account the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice. Effective prevention strategies should be based on existing experience and accurate information.

States, in partnership with intergovernmental and non-governmental organizations and where appropriate, using development cooperation policies and programmes, should consider:

1. Analysing the factors that generate demand for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues.
2. Developing programmes that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups.
3. Improving children's access to educational opportunities and increasing the level of school attendance, in particular by girl children.
4. Ensuring that potential migrants, especially women, are properly informed about the risks of migration (e.g. exploitation, debt bondage and health and security issues, including exposure to HIV/AIDS) as well as avenues available for legal, non-exploitative migration.
5. Developing information campaigns for the general public aimed at promoting awareness of the dangers associated with trafficking. Such campaigns should be informed by an understanding of the complexities surrounding trafficking and of the reasons why individuals may make potentially dangerous migration decisions.
6. Reviewing and modifying policies that may compel people to resort to irregular and vulnerable labour migration. This process should include examining the effect on women of repressive and/or discriminatory nationality, property, immigration, emigration and migrant labour laws.
7. Examining ways of increasing opportunities for legal, gainful and non-exploitative labour migration. The promotion of labour migration by the State should be dependent on the existence of regulatory and supervisory mechanisms to protect the rights of migrant workers.
8. Strengthening the capacity of law enforcement agencies to arrest and prosecute those involved in trafficking as a preventive measure. This includes ensuring that law enforcement agencies comply with their legal obligations.
9. Adopting measures to reduce vulnerability by ensuring that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons.

Guideline 8: Special measures for the protection and support of child victims of trafficking

The particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the child must be a primary consideration in all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs.

States and, where applicable, intergovernmental and non-governmental organizations, should consider, in addition to the measures outlined under Guideline 6:

1. Ensuring that definitions of trafficking in children in both law and policy reflect their need for special safeguards and care, including appropriate legal protection. In particular, and in accordance with the Palermo Protocol, evidence of deception, force, coercion, etc. should not form part of the definition of trafficking where the person involved is a child.
2. Ensuring that procedures are in place for the rapid identification of child victims of trafficking.
3. Ensuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.
4. In cases where children are not accompanied by relatives or guardians, taking steps to identify and locate family members. Following a risk assessment and consultation with the child, measures should be taken to facilitate the reunion of trafficked children with their families where this is deemed to be in their best interest.
5. In situations where the safe return of the child to his or her family is not possible, or where such return would not be in the child's best interests, establishing adequate care arrangements that respect the rights and dignity of the trafficked child.
6. In both the situations referred to in the two paragraphs above, ensuring that a child who is capable of forming his or her own views enjoys the right to express those views freely in all matters affecting him or her, in particular concerning decisions about his or her possible return to the family, the views of the child being given due weight in accordance with his or her age and maturity.
7. Adopting specialized policies and programmes to protect and support children who have been victims of trafficking. Children should be provided with appropriate physical, psychosocial, legal, educational, housing and health-care assistance.
8. Adopting measures necessary to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation.
9. Protecting, as appropriate, the privacy and identity of child victims and taking measures to avoid the dissemination of information that could lead to their identification.
10. Taking measures to ensure adequate and appropriate training, in particular legal and psychological training, for persons working with child victims of trafficking.

Guideline 9: Access to remedies

Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to

enable them to realize their right to adequate and appropriate remedies.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Ensuring that victims of trafficking have an enforceable right to fair and adequate remedies, including the means for as full a rehabilitation as possible. These remedies may be criminal, civil or administrative in nature.
2. Providing information as well as legal and other assistance to enable trafficked persons to access remedies. The procedures for obtaining remedies should be clearly explained in a language that the trafficked person understands.
3. Making arrangements to enable trafficked persons to remain safely in the country in which the remedy is being sought for the duration of any criminal, civil or administrative proceedings.

Guideline 10: Obligations of peacekeepers, civilian police and humanitarian and diplomatic personnel

The direct or indirect involvement of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic personnel in trafficking raises special concerns. States, intergovernmental and non-governmental organizations are responsible for the actions of those working under their authority and are therefore under an obligation to take effective measures to prevent their nationals and employees from engaging in trafficking and related exploitation. They are also required to investigate thoroughly all allegations of trafficking and related exploitation and to provide for and apply appropriate sanctions to personnel found to have been involved in trafficking.

States and, where appropriate, intergovernmental and non-governmental organizations, should consider:

1. Ensuring that pre- and post-deployment training programmes for all peacekeeping, peace-building, civilian policing, humanitarian and diplomatic staff adequately address the issue of trafficking and clearly set out the expected standard of behaviour. This training should be developed within a human rights framework and delivered by appropriately experienced trainers.
2. Ensuring that recruitment, placement and transfer procedures (including those of private contractors and sub-contractors) are rigorous and transparent.
3. Ensuring that staff employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic missions do not engage in trafficking and related exploitation or use the services of persons in relation to which there are reasonable grounds to suspect they may have been trafficked. This obligation also covers complicity in trafficking through corruption or affiliation with any person or group of persons who could reasonably be suspected of engaging in trafficking and related exploitation.

4. Developing and adopting specific regulations and codes of conduct setting out expected standards of behaviour and the consequences of failure to adhere to these standards.
5. Requiring all personnel employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic missions to report on any instances of trafficking and related exploitation that come to their attention.
6. Establishing mechanisms for the systematic investigation of all allegations of trafficking and related exploitation involving personnel employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic missions.
7. Consistently applying appropriate criminal, civil and administrative sanctions to personnel shown to have engaged in or been complicit in trafficking and related exploitation. Intergovernmental and non-governmental organizations should, in appropriate cases, apply disciplinary sanctions to staff members found to be involved in trafficking and related exploitation in addition to and independently of any criminal or other sanctions decided on by the State concerned. Privileges and immunities attached to the status of an employee should not be invoked in order to shield that person from sanctions for serious crimes such as trafficking and related offences.

Guideline 11: Cooperation and coordination between States and regions

Trafficking is a regional and global phenomenon that cannot always be dealt with effectively at the national level: a strengthened national response can often result in the operations of traffickers moving elsewhere. International, multilateral and bilateral cooperation can play an important role in combating trafficking activities. Such cooperation is particularly critical between countries involved in different stages of the trafficking cycle.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Adopting bilateral agreements aimed at preventing trafficking, protecting the rights and dignity of trafficked persons and promoting their welfare.
2. Offering, either on a bilateral basis or through multilateral organizations, technical and financial assistance to States and relevant sectors of civil society for the purpose of promoting the development and implementation of human rights-based anti-trafficking strategies.
3. Elaborating regional and subregional treaties on trafficking, using the Palermo Protocol and relevant international human rights standards as a baseline and framework.
4. Adopting labour migration agreements, which may include provision for minimum work standards, model contracts, modes of repatriation, etc., in accordance with existing international standards. States are encouraged effectively to enforce all such agreements in order to help eliminate trafficking and related exploitation.

5. Developing cooperation arrangements to facilitate the rapid identification of trafficked persons including the sharing and exchange of information in relation to their nationality and right of residence.
 6. Establishing mechanisms to facilitate the exchange of information concerning traffickers and their methods of operation.
 7. Developing procedures and protocols for the conduct of proactive joint investigations by law enforcement authorities of different concerned States. In recognition of the value of direct contacts, provision should be made for direct transmission of requests for assistance between locally competent authorities in order to ensure that such requests are rapidly dealt with and to foster the development of cooperative relations at the working level.
 8. Ensuring judicial cooperation between States in investigations and judicial processes relating to trafficking and related offences, in particular through common prosecution methodologies and joint investigations. This cooperation should include assistance in: identifying and interviewing witnesses with due regard for their safety; identifying, obtaining and preserving evidence; producing and serving the legal documents necessary to secure evidence and witnesses; and the enforcement of judgements.
 9. Ensuring that requests for extradition for offences related to trafficking are dealt with by the authorities of the requested State without undue delay.
 10. Establishing cooperative mechanisms for the confiscation of the proceeds of trafficking. This cooperation should include the provision of assistance in identifying, tracing, freezing and confiscating assets connected to trafficking and related exploitation.
 11. Exchanging information and experience relating to the implementation of assistance, return and integration programmes with a view to maximizing impact and effectiveness.
 12. Encouraging and facilitating cooperation between non-governmental organizations and other civil society organizations in countries of origin, transit and destination. This is particularly important to ensure support and assistance to trafficked persons who are repatriated.
-

Appendix C

Juveniles Charged With Prostitution - C.R.S. 18-7-201

There were 53 cases involving 42 girls with a Prostitution (C.R.S. 18-7-201) charge filed from July 01, 2006 to August 20, 2013.

Table 1. Age and Case File Year for Filings

Age at Offense	Year Case Filed								N
	2006	2007	2008	2009	2010	2011	2012	2013	
14	1	1	3		1				6
15			1	1					2
16	2	1	3	6	1	1	4	2	20
17	1	4	10		1	5		4	25
Total	4	6	17	7	3	6	4	6	53

Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

Table 2. Filing District by Year

Filing District	2006	2007	2008	2009	2010	2011	2012	2013	N
1			1	1	2	1	1		6
2	3	3	9	3	1	5	2	5	31
4				1				1	2
17	1	1	4						6
18		2	2	2			1		7
21			1						1
Total	4	6	17	7	3	6	4	6	53

Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

There were 29 cases involving 23 girls convicted of Prostitution (C.R.S. 18-7-201) as the highest charge.

Table 3. Age and Case File Year for Convictions

Age at Offense	Year Case Filed							N
	2006	2007	2008	2009	2010	2011	2013	
14	1		1					2
15			1	1				2
16	2	1	3	3	1			10
17	1	2	6		1	4	1	15
Total	4	3	11	4	2	4	1	29

Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

Table 4. Age and Initial Sentence Received

Age at Offense	Division of Youth Corrections	Juvenile Detention	Probation/Deferred	N
14		1	1	2
15			2	2
16	1	1	8	10
17	1		14	15
Total	2	2	25	29

Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

Table 5. Conviction District by Year

Conviction District	Year Case Filed							N
	2006	2007	2008	2009	2010	2011	2013	
1			1	1	1			3
2	3	1	6	1	1	4	1	17
4				1				1
17	1	1	3					5
18		1		1				2
21			1					1
Total	4	3	11	4	2	4	1	29

Data source: Records were extracted from Judicial Branch's Integrated Colorado Online Network (ICON) information management system via the Colorado Justice Analytics Support System (CJASS) and analyzed by DCJ/ORS. Excludes Denver County court records.

Appendix D

Overview of State Legislative Policy to Address the Commercial Sexual Exploitation of Children – State “Safe Harbor” Laws | Polaris Project

INTRODUCTION AND OVERVIEW

The signing into law of the New York State Safe Harbour for Exploited Children Act in September 2008 was a watershed moment in the fight against the commercial sexual exploitation of children (CSEC) in the United States. The law is the result of years of advocacy work in New York and around the country advancing the simple proposition that children in prostitution are not criminals or delinquents but victims of a brutal form of child sexual abuse who need special services. A related law was signed in California, also in September 2008, creating a similar pilot program for Alameda County in the San Francisco Bay Area. Passage of the New York and California laws has helped spark the serious consideration of similar laws in others states, which are commonly referred to within the anti-trafficking movement as “Safe Harbor” laws.

OBJECTIVES OF SAFE HARBOR LAWS

The basic objectives of the Safe Harbor laws are two-pronged:

- **Remove minor victims of commercial sexual exploitation from the jurisdiction of the criminal justice and juvenile delinquency systems.**

This step can be achieved through modifying the criminal prostitution statutes to decriminalize children in prostitution while ensuring that other legal mechanisms are in place for the state to take temporary protective custody of these children. The goal is to remove the victim from the control of the pimp and help to break any unhealthy emotional attachment that has formed. A legislative alternative to technical decriminalization of these children may involve diversion of arrested children from juvenile delinquency proceedings to child protection proceedings.

- **Protect these children and provide them with specialized services, in recognition of their status as victims of crime and of the unique trauma that child victims of sex trafficking endure.**

Child victims of sex trafficking have very specialized needs that may include: safe houses, longer-term residential options, mental health care, access to GED or other remedial education programs, and life skills learning. Experienced practitioners have learned that mainstream programs of the child abuse and neglect system routinely fail these children. The most successful programs have shown that three ingredients are especially useful in the protection and recovery of these child victims: (1) placement separately from other children who have not experienced the same form of abuse and who may stigmatize these

victims because of their past involvement with commercial sex; (2) mentorship by survivors of the same crime or, when that is not possible, by other caring professionals who are familiar with the special trauma associated with commercial sexual abuse; and (3) protocols that ensure immediate placement of these victims in appropriate, pre-identified locations, without undue questioning from untrained law enforcement officers or other officials.

State legislators and other policymakers should consider two other aspects of the law in order to address comprehensively the sex trafficking of children:

- **Amend state statutes prohibiting sex trafficking of children or pimping and pandering of children, to ensure that stiff penalties apply and that force or coercion is not a required element of the crime.**

Similarly to statutory rape laws, our criminal law should recognize the basic fact that children do not have the legal, psychological or emotional capacity to consent to engage in commercial sex acts. Therefore, we should severely penalize child predators without requiring evidence that they used force or coercion to induce the child victim to engage in commercial sex acts.

While all states prohibit acts of pimping and pandering, the penalties attached when the victim is a child are often inappropriately low. The majority of states also now have a relatively new crime on the books – human trafficking – but around two-thirds of those laws require an element of force or coercion with respect to sex trafficking of minors. The pimping and pandering laws and the human trafficking laws should be harmonized to ensure that commercial sexual exploitation of children is always punished appropriately without any requirement to prove force, coercion or fraud.

Purchasers of commercial sex acts with children should also be viewed as child sexual predators and their acts punished as severely as other forms of child sexual abuse.

- **Prevent commercial sexual exploitation of children through training of law enforcement officers and other state officials and educating the general public about its dangers.**

Training and public awareness programs are crucial to changing perceptions about this problem and preventing it from occurring. Law enforcement officers, judges, social workers, school officials and the broader community need to learn about the problem of commercial sexual exploitation of children, in order to identify victims, recognize children at risk and prevent sex trafficking.

NOTE ON TERMINOLOGY

This document generally uses the terms “commercial sexual exploitation of children” and “sex trafficking of a minor” interchangeably. The commercial sexual exploitation of children refers generally to exploitation committed by any person, whether the pimp, the purchaser of sex acts or some other knowing beneficiary of a child’s commercial sex acts. Under federal law and some state laws, sex trafficking of a minor is defined as the recruiting, enticing, harboring, transporting, providing or obtaining of a minor knowing that the minor will be caused to engage in a commercial sex act.ⁱ Sex trafficking is often viewed as an act committed only by a pimp or her/his associates – not by the purchaser of the commercial sex act (colloquially known as a “john”). However, the language of the federal sex trafficking law appears to allow for the possibility of prosecuting the purchaser of sex acts as well.

ⁱ 18 U.S.C. 1591

Appendix E



**MODEL PROVISIONS OF COMPREHENSIVE STATE LEGISLATION
TO COMBAT HUMAN TRAFFICKING**

August 2010

Dear Colleagues,

Polaris Project is happy to present a new edition of Model Provisions of Comprehensive State Legislation to Combat Human Trafficking, in order to assist state legislators and anti-trafficking activists in improving their state's strategy to fight human trafficking – a modern form of slavery. Polaris first published model state anti-trafficking legislation in July 2004, and published a second edition in November 2006. This newest version of the model legislation contains revised criminal provisions and new provisions addressing the prevention of human trafficking and protection and services to survivors. We have also adjusted the title and format of the model law provisions to reflect the reality that state legislatures will not pass all provisions as one large, single piece of legislation. Instead, state legislators and anti-trafficking advocates may select and adapt those provisions that are best suited to their states' needs and political realities.

Polaris Project's model provisions comprehensively address the “three Ps” of combating human trafficking: prosecution, prevention and protection of victims. Since the original date of publication, many states have passed legislation that addresses human trafficking. At our last count, 44 states and one territory have some form of human trafficking law. Some of these states have enacted comprehensive laws, while others have begun with changes to the criminal code, leaving open the possibility of further improvements down the line. We hope this model legislation will be useful both to the few states that are crafting their first human trafficking law, as well as to states that are amending their law to add new prevention and protection measures or to improve the criminal provisions.

This third edition of the model provisions draws on the research and support of many Polaris Project fellows, pro bono attorneys at private law firms, volunteer students at universities across the country, and current and former staff. We would like to particularly thank Kaylan Sliney, Kristin Fortin, Karen Stauss, Andrea Lindemann, Joyce Yeager, Esther Goldschlager, Bridgette Carr and students at the University of Michigan Law School Human Trafficking Clinic, students at the University of Virginia School of Law, and attorneys at the law firms of King & Spalding, Jones Day, DLA Piper, Covington & Burling, and Ballard Spahr. Language from numerous sources, including the Trafficking Victims Protection Act (TVPA) of 2000 and its reauthorizations, Pub. L. No. 106-386; Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. No. 108-21; the Department of State's Model Anti-trafficking Law, released March 12, 2003; the Department of Justice's Model State Anti-trafficking Criminal Statute, released July 16, 2004; and many proposed and enacted state laws related to human trafficking.

Polaris Project's U.S. Policy Program is pleased to offer technical assistance to state legislators, their staff, and others working on state legislation to combat human trafficking. Please contact our policy team at (202) 745-1001 ext. 130 or at policy@polarisproject.org with any requests for technical assistance or questions and comments about the revised Model Provisions of Comprehensive State Legislation to Combat Human Trafficking. The development of this model legislation is an on-going project, so please notify us of any corrections or suggested improvements you have.

Sincere Regards,

Bradley Myles
Executive Director and CEO
Polaris Project

**MODEL PROVISIONS OF COMPREHENSIVE STATE LEGISLATION
TO COMBAT HUMAN TRAFFICKING**

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**MODEL PROVISIONS OF COMPREHENSIVE STATE LEGISLATION
TO COMBAT HUMAN TRAFFICKING**

PROSECUTION

DEFINITIONS

- (1) “Commercial sex act” means any sex act on account of which anything of value is given, promised to, or received, directly or indirectly, by any person.
- (2) “Debt coercion” means exploitation of the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his or her control as a security or payment for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined or if the principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.
- (3) “Extortion” is to be given its ordinary meaning as defined by [state extortion and/or blackmail statute, if any] or defined as the obtaining of property, labor or services, commercial sex acts, or sexually explicit performances from another, or of an official act of a public officer, through a wrongful use of force or fear, or under color of official right.
- (4) “Financial harm” includes credit extortion as defined by [state extortionate credit statute, if any], criminal violation of the usury laws as defined by [state statute defining usury, if any], or employment contracts that violate relevant statutes of frauds as defined by [state statute of frauds, if any].
- (5) “Labor” means work of economic or financial value.
- (6) “Minor” refers to any natural person less than 18 years of age.
- (7) “Person”, for purposes of this Act, means any individual, corporation (including a government corporation), partnership, association, trust, firm, joint stock company, state, municipality, commission, political subdivision of a State, interstate body, any other government body, or any other legal entity.
- (8) “Serious harm” means any harm, whether physical or nonphysical, including, but not limited to, psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances as the victim to perform or to continue performing labor or a service, a commercial sex act, or a sexually explicit performance in order to avoid incurring that harm.
- (9) “Services” means any act committed at the behest of, under the supervision of, or for the benefit of another.
- (10) “Sex act” means any touching of the sexual or other intimate parts of another person for the purpose of gratifying sexual desire of any person. It includes touching of the person as well as touching by the person, whether directly or through clothing.
- (11) “Sex trade,” for purposes of the *Civil Cause of Action for Victims of the Sex Trade* provision, means an act which if proven beyond a reasonable doubt could support a conviction for violation or attempted violation of any of the following: [insert existing state statutes that cover solicitation for a prostitute, keeping a place of prostitution, pimping, pandering, obscenity, child pornography, or any other related crimes].
- (12) “Sexually explicit performance” means an act or show, whether public or private, live, photographed, recorded, or videotaped intended (a) to appeal to the prurient interest, (b) to depict, in a patently offensive way, sexual conduct, and (c) to do so in a way that lacks literary, artistic, political, or scientific value. Sexually explicit performance also includes any performance that depicts sexual conduct by a minor or that would create criminal liability under [the state’s child pornography statutes].
- (13) “Victim of human trafficking” means any person, whether a U.S. citizen or foreign national, who has been subjected to [state human trafficking offenses].

- (14) “Victim of the sex trade,” for purposes of the *Civil Cause of Action for Victims of the Sex Trade* provision, means any person who has been the object of the solicitation for prostitution, has intended or been compelled to engage in an act of prostitution, or, in the case of obscenity or child pornography, has appeared in or been described or depicted in the offending conduct or material.

HUMAN TRAFFICKING CRIMINAL PROVISIONS

- (1) INVOLUNTARY SERVITUDE. Any person who knowingly subjects, or attempts to subject, another person to:

- (i) commercial sex acts or sexually explicit performance, or
- (ii) labor or services

through use of any of the following means, or any combination of such means:

- (a) causing or threatening to cause serious harm to any person;
- (b) physically restraining or threatening to physically restrain another person;
- (c) kidnapping or attempting to kidnap any person;
- (d) abusing or threatening to abuse the law or legal process;
- (e) taking another’s personal property or real property;
- (f) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;
- (g) extortion or blackmail;
- (h) deception or fraud;
- (i) coercion or duress or menace;
- (j) debt coercion;
- (k) causing or threatening to cause financial harm to, or exerting or threatening to exert financial control over, any person;
- (l) facilitating or controlling a victim’s access to an addictive controlled substance; or
- (m) using any scheme, plan, or pattern, whether overt or subtle, intended to cause any person to believe that, if the person did not perform such labor, services, acts or performances, that person or another person would suffer serious harm or physical restraint,

commits a [Class A felony or felony in the first degree].

- (2) SEXUAL SERVITUDE OF A MINOR. Any person who knowingly
- (A) recruits, entices, solicits, isolates, harbors, transports, provides, obtains, or maintains, or so attempts, any minor for the purposes of commercial sex acts or sexually explicit performance through any means, or

(B) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in paragraph (A),

commits a [Class A felony or felony in the first degree].

For purposes of this section, it is not required that the defendant have knowledge of the victim’s age, nor is reasonable mistake of age a defense to liability under this provision.

- (3) HUMAN TRAFFICKING. Any person who knowingly
- (A) recruits, entices, solicits, isolates, harbors, transports, provides, obtains, or maintains, or so attempts, another person knowing that the person will be subjected to involuntary servitude, or
- (B) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in paragraph (A),

commits a [Class B felony or felony in the second degree].

(4) UNLAWFUL CONDUCT WITH RESPECT TO DOCUMENTS. Any person who knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported government identification document of another person

(A) in the course of a violation of or with intent to violate [state human trafficking offenses], or

(B) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the ability of the person to move or travel, in order to maintain the labor or services or commercial sex acts of that person, when the person is or has been a victim of [state human trafficking offenses],

commits a [Class C felony or felony in the third degree].

(5) OBSTRUCTION. Any person who obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of [state human trafficking offenses], shall be fined and/or imprisoned to the same extent as the underlying crime.

PATRONIZING A HUMAN TRAFFICKING VICTIM

(A) Any person who engages in a commercial sex act with another person knowing or in reckless disregard that the person is a victim of human trafficking, as defined by [state human trafficking offenses], commits a [Class B felony].

(B) A conviction under this section shall be in addition to any conviction which might be brought for the crime of patronizing a person who is a prostitute, as set forth in [state prostitution statutes].

JOHN SCHOOLS: PATRONIZING PROSTITUTION

(A) In addition to any other penalties that apply under [state solicitation offenses that apply to purchasers of sex acts], the following penalties shall also apply:

(1) As part of the penalty, the judge shall order, as one of its conditions, that the defendant shall pay for and satisfactorily attend and complete a court-approved educational course on the effects of prostitution.

(2) In addition, a person who violates this section shall be assessed a civil penalty if the violation results in any judicial disposition other than acquittal or dismissal. The proceeds from penalties assessed under [state solicitation offenses that apply to purchasers of sex acts] shall be paid to the [District Attorney's office] for the sole purpose of paying the administrative costs of treatment-based prostitution programs.

NON-PAYMENT OF WAGES

(A) Any employer who willfully or with intent to defraud fails or refuses to pay wages is guilty of a felony [or: shall be fined not less than \$2,000 nor more than \$10,000 or imprisoned not less than 2 years nor more than 10 years or both, for each offense].

(B) Any employer who without a good faith [reasonable/legal] basis fails or refuses to pay wages to a worker is guilty of:

(1) A felony if the amount owed is equal to or greater than \$2,000 or if such failure or refusal constitutes a subsequent violation of this section or if the employer falsely denies the amount or

- validity of the debt owed [or: shall be fined not less than \$2,000 nor more than \$5,000 or imprisoned not more than 5 years or both], or
- (2) A misdemeanor if the amount owed is less than \$2,000 [or: shall be fined not more than \$2,500 or imprisoned for not more than 12 months or both].
- (C) An employer commits a separate offense under paragraph (B) for each pay period [or: calendar month] during which the worker earned wages that the employer failed to pay.
- (D) In addition to any fine, an employer found in violation of paragraphs (A) or (B) must pay mandatory restitution to the worker in the form of all wages owed to that worker.
- (E) An individual who is a victim of non-payment of wages may bring a civil action in the appropriate state court to recover all wages owed by the employer.

CRIMINAL LIABILITY OF BUSINESS ENTITIES

- (A) Any business entity, including a corporation, partnership, association, government body, municipal corporation or any other legal entity, that aids or participates in any crime in violation of [state human trafficking offenses], shall be criminally liable for such offense.
- (B) If a business entity is convicted of violating [state human trafficking offenses], the court shall
- (1) order it to pay a fine of not more than \$1,000,000; or
 - (2) order the suspension or revocation of any license, permit, or prior approval granted to it by a state or local government agency;
- or both; and may, when appropriate:
- (3) order its dissolution or reorganization; or
 - (4) such and further relief as is equitable, including ordering the forfeiture of assets or otherwise making provision for restitution.

RACKETEERING ACTIVITY

The definition of racketeering activity in [state Racketeer Influenced and Corrupt Organizations (RICO) statute] is amended to include [state human trafficking offenses].

GUILTY PLEAS

Any plea of guilty entered under [state human trafficking offenses] by a defendant shall automatically entitle the victim of human trafficking to all benefits, rights, and compensation granted under state law to such victim, notwithstanding any existing law.

NON-DEFENSES TO HUMAN TRAFFICKING

Evidence of the following facts or conditions shall not constitute a defense in a prosecution for violations of [state human trafficking offenses], nor shall such evidence preclude a finding of a violation:

- (a) a victim of human trafficking's sexual history or history of commercial sexual activity;
- (b) a victim of human trafficking's connection by blood or marriage to a defendant in the case or to anyone involved in the victim's trafficking;
- (c) consent of or permission by a victim of human trafficking or anyone else on the victim's behalf to any commercial sex act or sexually explicit performance; or
- (d) age of consent to sex, legal age of marriage, or other discretionary age.

VICTIM IMMUNITY FROM PROSECUTION

- (A) A victim of human trafficking 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 subject to [state human trafficking offenses].

“SAFE HARBOR” LAW

Model language is not included for this type of provision, because the language will vary considerably depending on existing state laws. Please see the Commentary for further information.

RESTITUTION

- (A) A person convicted of a violation of [state human trafficking offenses], shall be ordered to pay mandatory restitution to the victim as provided in paragraph (C) of this section.
- (B) For purposes of this section, “victim” shall be defined as [state restitution statute definition of victim] or as a victim of human trafficking. If the victim dies as a result of being trafficked, a surviving spouse of the victim is eligible for restitution. If no surviving spouse exists, restitution shall be paid to the victim’s issue or their descendants per stripes. If no surviving spouse, issue, or descendants exist, restitution shall be paid to the victim’s estate. Any person named in this provision may not receive any funds from restitution if he or she engaged in violations of [state human trafficking offenses].
- (C) Restitution under this section shall include items covered by [state restitution statute] and [any of the following if not already included in the state restitution statute]:
- (1) costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court’s discretion;
 - (2) costs of necessary transportation, temporary housing, and child care, at the court’s discretion;
 - (3) attorney’s fees and other court-related costs such as victim advocate fees;
 - (4) the greater of (i) the value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or state equivalent; or (ii) the gross income or value to the defendant of the victim’s labor or services or of any commercial sex acts engaged in by the victim while in the human trafficking situation.
 - (5) return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair;
 - (6) compensation for emotional distress, pain, and suffering;
 - (7) expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim;
 - (8) repatriation of the victim to their home country, if applicable; and
 - (9) any and all other losses suffered by the victim as a result of violations of [state human trafficking offenses].
- (D) Restitution shall be paid to the victim promptly upon the conviction of the defendant, with the proceeds from property forfeited under this section applied first to payment of restitution. The return of the victim to her or his home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving restitution.

- (E) Nonpayment or delay in payment of restitution shall be governed by [state restitution statute governing non-payment or delay in restitution payments].

ASSET FORFEITURE

- (A) Any person who violates [state human trafficking offenses] shall forfeit to the State any profits or proceeds and any interest or property that the sentencing court determines to have been acquired or maintained as a result of committing [state human trafficking offenses].
- (B) The following shall be subject to forfeiture to the State, and no property right shall exist in them:
- (1) All assets, foreign, domestic, and within this State:
 - (a) of an individual, entity, or organization engaged in planning or perpetrating an act in this State which violates [state human trafficking offenses] and all assets, foreign or domestic, affording a person a source of influence over a trafficked individual;
 - (b) acquired or maintained by a person with the intent and for the purpose of supporting, planning, conducting, or concealing an act in this State which violates [state human trafficking offenses]; or
 - (c) derived from, involved in, or used or intended to be used to commit an act in this State which violates [state human trafficking offenses].
- (C) The court shall, upon petition by the Attorney General or State's Attorney [or: District Attorney/ County Prosecutor] at any time following sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this section.
- (D) Upon conviction of a person for [state human trafficking offenses], the court shall direct the Attorney General to seize all property or other interest declared forfeited under this section. All monies forfeited and the proceeds from sale of all property forfeited and seized under this section shall first be used to pay restitution to victims of human trafficking and subsequently to pay any damages awarded to victims in a civil action. Any remaining assets shall go to the state crime victims' fund and toward the reimbursement of any local police department which has used its own funds in the detection, investigation, apprehension, and prosecution of persons for the violation of [state human trafficking offenses].
- (E) Overseas assets of persons convicted of [state human trafficking offenses] shall also be subject to forfeiture to the extent they can be retrieved by the State.

STATUTE OF LIMITATIONS

- (A) An action for [state human trafficking offenses] where the victim is not a minor shall be brought within [see applicable state statute of limitations for sex offenses or kidnapping] years from the date the victim escaped from the human trafficking situation.
- (B) Any statute of limitations that would otherwise preclude prosecution for a violation of [state human trafficking offense] in which the victim is a minor shall be tolled until such time as the victim has reached the age of 18 years old.
- (C) The running of the statute of limitations may be tolled where a person entitled to bring a claim of [state human trafficking offenses] could not have reasonably discovered the crime due to circumstances resulting from the human trafficking situation, such as psychological trauma, social, cultural and linguistic isolation, and the inability to access services.

SENTENCING ENHANCEMENTS

- (A) Sentencing considerations in cases involving rape, extreme violence, or death. If a violation of [state human trafficking offenses] involves kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, or if death results, the defendant commits a [Class A felony or felony in the first degree].
- (B) Additional sentencing considerations.
- (1) Bodily injury. If, pursuant to a violation of [state human trafficking offenses], a victim suffered bodily injury, the sentence may be enhanced as follows: (i) bodily injury, an additional _ years of imprisonment; (ii) serious bodily injury, an additional _ years of imprisonment; (iii) permanent or life-threatening bodily injury, an additional _ years of imprisonment; (iv) if death results, defendant shall be sentenced in accordance with the homicide statute relevant for level of criminal intent.
 - (2) Time in servitude. In determining sentences within statutory maximums, the sentencing court should take into account the time in which the victim was held in servitude, with increased penalties for cases in which the victim was held for between 180 days and one year, and further increased penalties for cases in which the victim was held for more than one year.
 - (3) Number of victims. In determining sentences within statutory maximums, the sentencing court should take into account the number of victims and may provide for substantially increased sentences in cases involving more than two victims.

INFORMATION FOR VICTIMS

- (A) The state shall inform victims of human trafficking, in a language they can understand, of their legal rights and the progress of relevant court and administrative proceedings, as appropriate, including, but not limited to: progress in the prosecution of the defendants; information on the convicted persons' prison release dates; and the procedure for repatriating a victim to his/her country of citizenship or lawful residence. The state shall also provide victims of human trafficking with a directory of local victim service organizations, including legal services organizations that can assist victims in obtaining or maintaining legal immigration status.
- (B) The agency administering the state crime victims' compensation fund created under [relevant state statute] shall inform victims of human trafficking of benefits they may receive under federal and state laws and assist victims in obtaining such benefits.

OPPORTUNITY FOR PRESENTATION OF VICTIM'S VIEWS AND CONCERNS

The state shall provide an opportunity to a victim of human trafficking, if the victim so desires, to present the victim's views and concerns at appropriate stages of criminal proceedings against the human trafficker(s), in a manner not prejudicial to the rights of the defendant(s). An interpreter who speaks a language the victim understands should be made available to the victim during the course of legal proceedings.

PREVENTION OF HUMAN TRAFFICKING

STATE TASK FORCE FOR THE PREVENTION OF HUMAN TRAFFICKING

- (A) The Governor shall establish an inter-agency task force to develop and implement a State Plan for the Prevention of Human Trafficking (the “State Plan”). Such a task force shall meet at least four times annually and shall address all aspects of human trafficking, including sex trafficking and labor trafficking of both U.S. citizens and foreign nationals.
- (B) “Human trafficking” as used in this section refers to [state human trafficking offenses].
- (C) The Governor shall appoint the members of the task force, which shall include, at a minimum, representatives from:
 - (1) the office of the Governor;
 - (2) Attorney General’s Office;
 - (3) the Department of Labor;
 - (4) the Department of Juvenile Justice;
 - (5) the Department of Health;
 - (6) the Department of Social Services;
 - (7) the Department of Child Protection Services;
 - (8) the Police Chiefs’ Association;
 - (9) the State Sheriffs’ Association;
 - (10) the State Police;
 - (11) local law enforcement entities;
 - (12) members of the state legislature; and
 - (13) representatives from non-governmental organizations, especially those specializing in human trafficking, those representing diverse communities disproportionately affected by human trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of human trafficking.
- (D) The Governor shall invite representatives of the U.S. Attorneys’ offices and of federal law enforcement agencies operating within the state, including the Federal Bureau of Investigation, U.S. Immigration and Customs Enforcement, and the U.S. Department of Labor, to be members of the task force.
- (E) The task force shall carry out the following activities either directly or via one or more of its constituent agencies:
 - (1) Develop the State Plan.
 - (2) Coordinate the implementation of the State Plan.
 - (3) Coordinate the collection and sharing of human trafficking data among government agencies, which data collection shall respect the privacy of victims of human trafficking.
 - (4) Coordinate the sharing of information between agencies for the purposes of detecting individuals and groups engaged in human trafficking.
 - (5) Explore the establishment of state policies for time limits for the issuance of Law Enforcement Agency (LEA) endorsements as described in section 214.11(f)(1) of Chapter 8 of the Code of Federal Regulations.
 - (6) Establish policies to enable state government to work with non-governmental organizations and other elements of civil society to prevent human trafficking and provide assistance to U.S. citizen and foreign national victims of human trafficking.
 - (7) Review the existing services and facilities to meet the needs of victims of human trafficking and recommend a system that would coordinate such services, including but not limited to: health services, including mental health; housing; education and job training; English as a Second Language classes; interpreting services; legal and immigration services; and victim compensation.

- (8) Evaluate various approaches used by state and local governments to increase public awareness of human trafficking, including trafficking of U.S. citizen and foreign national victims.
- (9) Submit an annual report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before December 31st of each calendar year.

DATA COLLECTION AND DISSEMINATION

- (A) The State shall, in cooperation with other appropriate authorities, collect and periodically publish statistical data on human trafficking.
- (B) The State shall elicit the cooperation and assistance of other government agencies, non-governmental organizations, and other elements of civil society as appropriate to assist in the data collection required under paragraph (A) of this section.
- (C) The appropriate authorities in each agency that play a vital role in addressing human trafficking shall make best efforts to collect information relevant to tracking progress on human trafficking, including but not limited to:
 - (1) numbers of investigations, arrests, prosecutions, and successful convictions of human traffickers and those committing human trafficking-related crimes (pimping, pandering, procuring, maintaining a brothel, child pornography, visa fraud, document fraud, and other crimes related to human trafficking);
 - (2) the estimated number and characteristics of persons engaged in violations of [state human trafficking offenses], as well as persons who purchase or receive commercial sex acts or sexually explicit performances, or labor or services, performed by victims of human trafficking;
 - (3) statistics on the number and characteristics of victims of human trafficking, including nationality, age, method of recruitment, and city, state and country of origin;
 - (4) human trafficking routes and patterns (states or countries of origin, transit states or countries, and destination states or countries, methods of transportation), if any transportation took place; and
 - (5) social and economic factors that contribute to and foster the demand for all forms of exploitation of persons that leads to human trafficking.

TRAINING

- (A) The State shall provide mandatory training for law enforcement agencies, prosecutors, public defenders, judges, juvenile detention center staff and others involved in the juvenile justice system and criminal justice system, and other relevant officials in addressing human trafficking.
- (B) Such training shall focus on:
 - (1) [state human trafficking offenses];
 - (2) methods used in identifying U.S. citizen and foreign national victims of human trafficking, including preliminary interview techniques and appropriate questioning methods;
 - (3) methods for prosecuting human traffickers;
 - (4) methods of increasing effective collaboration with non-governmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case;
 - (5) methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and special needs of women and minors victims;
 - (6) the necessity of treating victims of human trafficking as crime victims rather than criminals; and
 - (7) methods for promoting the safety of victims of human trafficking.

- (C) The State shall seek the input and participation of appropriate non-governmental organizations and other relevant organizations in the preparation and presentation of training called for in this section.

PUBLIC AWARENESS

- (A) The State in cooperation with appropriate non-governmental organizations shall prepare public awareness programs designed to educate potential victims of human trafficking and their families on the risks of victimization. Such public awareness programs shall include, but shall not be limited to:
- (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.
- (B) The State in cooperation with other appropriate government agencies and appropriate non-governmental organizations or other elements of civil society shall prepare and disseminate general public awareness materials to educate the public on the extent of human trafficking of both U.S. citizens and foreign nationals within the United States and to discourage the demand that fosters the exploitation of persons and that leads to human trafficking.
- (C) General public awareness materials may include information on the impact of human trafficking on individual victims, whether U.S. citizens or foreign nationals; aggregate information on human trafficking worldwide and domestically; and warnings of the criminal consequences of engaging in human trafficking. Such materials may include pamphlets, brochures, posters, advertisements in mass media, and any other appropriate media.
- (D) Programs and materials described in this section shall preserve the privacy of the victim and the victim's family.
- (E) All public awareness programs shall be evaluated periodically to ensure their effectiveness.

GRANTS

Subject to the availability of appropriations, the state shall make grants to units of local government, Indian tribes, and non-governmental victims' service organizations to develop, expand, or strengthen victim service programs for victims of human trafficking, whether U.S. citizens or foreign nationals; to ensure the prevention of human trafficking; and to ensure protection for victims of human trafficking.

ROLE OF NON-GOVERNMENTAL ORGANIZATIONS

For each state initiative for the prevention of human trafficking [state task force; data collection and dissemination; training; public awareness], the State shall seek out and enlist the cooperation and assistance of non-governmental organizations, especially those specializing in human trafficking, those representing diverse communities disproportionately affected by human trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of human trafficking.

PROTECTION OF HUMAN TRAFFICKING VICTIMS

CIVIL CAUSE OF ACTION FOR VICTIMS OF HUMAN TRAFFICKING

- (A) An individual who is a victim of human trafficking may bring a civil action in the appropriate state court. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Treble damages shall be awarded on proof of actual damages where defendant's acts were willful and malicious.
- (B) Statute of limitations.
- (1) Any statute of limitation period imposed for the filing of a civil action under this section will not begin to run until the plaintiff discovers both that the human trafficking incident occurred and that the defendant caused, was responsible for, or profited from the human trafficking incident.
 - (2) If the plaintiff is a minor, then the limitation period will not commence running until he or she has reached the age of majority.
 - (3) If the plaintiff is under a disability at the time the cause of action accrues, so that it is impossible or impracticable for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.
 - (4) If the plaintiff's injury is caused by two or more incidents that are part of a human trafficking situation caused by the same defendant, then the limitation period will not commence running until the last human trafficking incident in the continuing series occurs.
 - (5) If the plaintiff is subject to threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant, then the time period during which these acts occurred will not be part of the time limited for the commencement of this action.
 - (6) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action or placing the plaintiff under duress.
 - (7) In the discretion of the court, two or more persons may join in one action under this section as plaintiffs if their respective actions involve at least one defendant in common. In the discretion of the court, two or more persons may be joined in one action under this section as defendants if those persons may be liable to at least one plaintiff in common.
 - (8) No person may avoid liability under this section by any means of any conveyance of any right, title, or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement that purports to show consent of the victim of human trafficking.

CIVIL CAUSE OF ACTION FOR VICTIMS OF THE SEX TRADE

- (A) An individual who is a victim of the sex trade¹ may bring a civil action in the appropriate state court.
- (1) A victim of the sex trade has a cause of action against a person or entity who recruits, profits from, or maintains the victim in any sex trade act; intentionally abuses or causes bodily harm to the victim in any sex trade act; or knowingly advertises or publishes advertisements for purposes of recruitment into sex trade activity.
 - (2) This section shall not be construed to create liability for any person or entity who provides goods or services to the general public, and who also provides those goods or services to persons who would be liable under paragraph (A)(1) of this section, absent a showing that the person or entity either knowingly markets or provides its goods or services to, knowingly receives a higher level of compensation from, or supervises or exercises control over, persons or entities liable under paragraph (A)(1) of this section.

¹ For purposes of this provision, use the definitions of "sex trade" and "victim of the sex trade" above, under *Definitions*, paragraphs (11) and (14).

(B) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Treble damages shall be awarded on proof of actual damages where defendant's acts were willful and malicious.

(C) It is not a defense to an action brought under this section that:

- (1) the victim of the sex trade and the defendant had a consenting sexual relationship;
- (2) the defendant is related to the victim of the sex trade by blood or marriage, or has lived with the victim in any formal or informal household arrangement;
- (3) the victim of the sex trade was paid or otherwise compensated for sex trade activity;
- (4) the victim of the sex trade engaged in sex trade activity prior to any involvement with the defendant;
- (5) the victim of the sex trade continues to engage in sex trade activity following any involvement with the defendant;
- (6) the victim of the sex trade made no attempt to escape, flee, or otherwise terminate the contact with the defendant;
- (7) the victim of the sex trade consented to engage in sex trade activity;
- (8) the victim of the sex trade engaged in only a single incident of sex trade activity;
- (9) there was no physical contact involved in the sex trade activity;
- (10) as a condition of employment, the defendant required the victim of the sex trade to agree not to engage in prostitution;
- (11) the defendant's place of business was posted with signs prohibiting prostitution or prostitution-related activities; or
- (12) the victim of the sex trade has been convicted or charged with prostitution or prostitution-related offenses.

(D) Statute of limitations.

- (1) Any statute of limitation period imposed for the filing of a civil action under this section will not begin to run until the plaintiff discovers both that the sex trade act occurred and that the defendant caused, was responsible for, or profited from the sex trade act.
- (2) If the plaintiff is a minor, then the limitation period will not commence running until he or she has reached the age of majority.
- (3) If the plaintiff is under a disability at the time the cause of action accrues, so that it is impossible or impracticable for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.
- (4) If the plaintiff's injury is caused by two or more acts that are part of a continuing series of sex trade acts by the same defendant, then the limitation period will not commence running until the last sex trade act in the continuing series occurs.
- (5) If the plaintiff is subject to threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant, then the time period during which these acts occurred will not be part of the time limited for the commencement of this action.
- (6) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action or placing the plaintiff under duress.
- (7) In the discretion of the court, two or more persons may join in one action under this section as plaintiffs if their respective actions involve at least one defendant in common. In the discretion of the court, two or more persons may be joined in one action under this section as defendants if those persons may be liable to at least one plaintiff in common.
- (8) No person may avoid liability under this section by any means of any conveyance of any right, title, or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement that purports to show consent of the victim of the sex trade.

APPLICABILITY OF LABOR STANDARDS

- (A) Standards for working conditions specified in [insert reference to appropriate law] shall apply equally to persons with or without the legal right to work in the United States.
- (B) The state shall investigate complaints of unlawful working conditions without regard to the immigration status of complainants and without regard to the nature of the work or services involved.

PROTECTION OF VICTIMS

An investigative, prosecutorial or other appropriate law enforcement authority shall interview all persons arrested on charges of prostitution and take all other steps necessary to identify victims of human trafficking, including U.S. citizens and foreign nationals. Once victims of human trafficking are identified, authorities shall provide reasonable protection to these victims to prevent recapture by the human traffickers and their associates; secure the victims and the victims' families from threats, reprisals, or intimidation by the human traffickers and their associates; and ensure that the victims have an opportunity to consult with a victim advocate or other appropriate person to develop a safety plan. Such protection and security shall be subject to consent of the victim and the victim's family.

APPROPRIATE IMPLEMENTATION FOR CHILD VICTIMS

The provision of services to a minor victim of human trafficking by the State, or by any institution or entity established or licensed by the State, shall be carried out in a manner that is in the best interests of the child and appropriate to her or his situation. Special procedures shall be developed to accommodate minor witnesses during the investigation and prosecution of [state human trafficking offenses] including, but not limited to:

- (1) facilities that allow the testimony of a minor to be conducted outside the court setting or by video;
- (2) the presence of the parent, legal guardian or foster parent during all testimony and court proceedings, if it is in the best interests of the minor; and
- (3) reuniting the child with family members, whether within or outside the United States, whenever safe and possible.

WITNESS PROTECTION PROGRAM

Victims of human trafficking and their family members, whether U.S. citizens or foreign nationals, who are witnesses or potential witnesses to [state human trafficking offenses] are eligible for applicable witness relocation and protection programs for victims of organized criminal activity or other serious offenses, if it is determined that an offense involving a crime of violence directed at the witness or potential witness is likely to be committed. The programs may include:

- (1) relocation;
- (2) new identity and documents establishing such identity;
- (3) new residence;
- (4) employment and work authorization; and
- (5) protection of confidentiality of identity and location.

PROTECTION OF THE PRIVACY OF VICTIMS

In 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.

DEVELOP A STATE PLAN TO PROVIDE SERVICES TO VICTIMS OF HUMAN TRAFFICKING

- (A) The State shall develop a plan, in consultation with non-governmental organizations and other elements of civil society, for the provision of appropriate services by governmental and non-governmental sources to victims of human trafficking, whether U.S. citizens or foreign nationals, and any dependents accompanying the victims, or parents or guardians of minor victims, including, but not limited to:
- (1) appropriate housing, taking into account the victim's status as a victim of crime and including safe conditions for sleeping, food, and personal hygiene;
 - (2) psychological counseling in a language the victim can understand;
 - (3) medical assistance;
 - (4) childcare;
 - (5) other material assistance as appropriate;
 - (6) access to employment, educational, language, and training opportunities; and
 - (7) legal assistance in a language the victim understands.
- (B) The governmental service providers described in the State Plan developed under paragraph (A) shall take into account the age, gender, and special needs of victims and accompanying dependent children in formulating plans to provide services to them and in delivering such services.
- (C) Plans developed in accordance with paragraph (A) shall be submitted for approval to appropriate state authorities, which shall also undertake periodic reviews of the plans and their implementation to ensure compliance with the requirements of this section and to ensure that all victims are treated with respect for their human rights and dignity.

ACCESS TO THE STATE CRIME VICTIMS' COMPENSATION FUND

Victims of human trafficking are entitled to forms of compensation under [applicable State Crime Victims' Compensation Fund].

REFUGEE BENEFITS

Foreign national victims of human trafficking and their accompanying dependent children shall be entitled to receive benefits in the same manner and to the same extent as refugees.

RIGHTS OF HUMAN TRAFFICKING VICTIMS IN SHELTERS

- (A) Victims of human trafficking shall not be given shelter in prisons or other detention facilities for accused or convicted criminals. Child victims of human trafficking shall not be detained in prisons or other detention facilities for accused or convicted criminals or juvenile delinquents under any circumstances.
- (B) Residence of victims of human trafficking in shelters or other facilities established or licensed by the State shall be voluntary, and victims may decline to stay in shelters or other facilities.
- (C) Victims of human trafficking residing in shelters or other facilities established or licensed by the State shall have the option to communicate with and receive visits from family, friends, attorneys, and advocates.

PROTECTION OF HUMAN TRAFFICKING AND DOMESTIC VIOLENCE SHELTERS

- (A) Any person who maliciously or with criminal negligence publishes, disseminates, or otherwise discloses the location of any victim of human trafficking, any human trafficking shelter or domestic violence shelter, or any place designated as a human trafficking shelter or domestic violence shelter, without the

authorization of that victim, human trafficking shelter, or domestic violence shelter, is guilty of a misdemeanor.

- (B) For purposes of this section, “domestic violence shelter” means a confidential location, appropriately licensed by the state, which provides emergency housing for victims of sexual assault, spousal abuse, or both, and their families. For purposes of this section, “human trafficking shelter” means a confidential location, appropriately licensed by the State, which provides emergency housing for victims of human trafficking.

HUMAN TRAFFICKING VICTIM-CASEWORKER PRIVILEGE

- (A) A victim of human trafficking, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a human trafficking caseworker if the privilege is claimed by any of the following persons:
- (1) the holder of the privilege;
 - (2) a person who is authorized to claim the privilege by the holder of the privilege; or
 - (3) the person who was the human trafficking caseworker at the time of the confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.
- (B) The human trafficking caseworker who received or made a communication subject to the privilege granted by this section shall claim the privilege whenever he or she is present when the communication is sought to be disclosed and he or she is authorized to claim the privilege under this section.
- (C) A human trafficking caseworker shall inform a victim of human trafficking of any applicable limitations on confidentiality of communications between the victim and the caseworker. This information may be given orally.
- (D) As used in this section, “human trafficking caseworker” means a person who is employed by any organization whether financially compensated or not, for the purpose of rendering advice or assistance to victims of human trafficking, who has received specialized training in the counseling of victims of human trafficking, and who meets one of the following requirements:
- (1) holds a master’s degree or higher in counseling or a related field; or has one year of counseling experience, at least six months of which is in the counseling of victims of human trafficking; or
 - (2) has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a counselor under subparagraph (1) or by a psychotherapist. The training, supervised by a person qualified under subparagraph (1), shall include, but need not be limited to, the following areas: history of human trafficking; civil and criminal law as it relates to human trafficking; societal attitudes towards human trafficking; peer counseling techniques; housing, public assistance, and other financial resources available to meet the needs of victims of human trafficking; and referral services available to victims of human trafficking. A portion of this training must include an explanation of privileged communication.
- (E) As used in this section, “confidential communication” means information transmitted between the victim and the human trafficking caseworker in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the human trafficking caseworker is consulted. It includes all information regarding the facts and circumstances involving all incidences of human trafficking.

- (F) As used in this section, “holder of the privilege” means the victim when he or she has no guardian or conservator, or a guardian or conservator of the victim when the victim has a guardian or conservator.

POST THE NATIONAL HUMAN TRAFFICKING HOTLINE

- (A) Every [targeted establishment, including any of the following: massage parlor, spa, or any similar establishment that does or does not require a license; any establishment that receives a liquor license; every strip club and other sexually-oriented business; restaurant; airport; train station; bus station; highway truck stop; highway rest stop; hospital, HMO, and urgent care center; farm [over a certain size]; high school; and job recruitment center] shall post in a conspicuous place near the entrance of the business or where such posters and notices are customarily posted, a poster of no smaller than 8½ by 11 inches in size that states the following:

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

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

- (B) The poster referred to in paragraph (A) shall be printed in English, Spanish, and any other languages mandated by the Voting Rights Act in the county where the poster will be posted.
- (C) The licensing authority shall provide each establishment with notice of this section and with the required poster upon licensing and shall place the poster described in subdivision (A) on its public website for mandated establishments to print as needed.

Appendix F

UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SECOND YEAR
BOSTON, MASSACHUSETTS
JULY 6 - JULY 12, 2013

WITHOUT PREFATORY NOTE OR COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 16, 2013

*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

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

ARTICLE I

GENERAL PROVISIONS

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

SECTION 2. DEFINITIONS. In this [act]:

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

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

(3) “Coercion” means:

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

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

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

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

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

(F) use of debt bondage;

(G) the use of an individual’s physical or mental impairment, where such impairment has substantial adverse effects on the individual's cognitive or volitional functions;

or

(H) the commission of civil or criminal fraud.

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

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

(A) commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

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

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

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

(6) “Human trafficking” means the commission of any of the offenses created in Sections 3 through 7 of this [act].

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

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

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

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

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

- (A) owned by a government, or a governmental subdivision, agency, or instrumentality; or
- (B) created to perform a governmental function or to operate under the control of a government or governmental subdivision, agency, or instrumentality.

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

(13) “Sexual activity” means [to be defined in each state by cross-referencing existing state statutory provisions or listing specific sexual activity, either or both], or sexually-explicit performances.

(14) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

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

Legislative Note: For Section 2(13), states can cite their state laws on prostitution and similar crimes, or name specific sex acts, such as, for example, sexual intercourse, cunnilingus, fellatio, anal intercourse, intrusion by any object into the genital or anal opening of another’s body and the stimulation by hand or an object of another individual’s genitals or breasts, for the purpose of arousing or gratifying the sexual desire of any individual.

ARTICLE II

PENALTIES

SECTION 3. TRAFFICKING AN INDIVIDUAL.

(a) A person commits trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

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

(2) sexual servitude in violation of Section 5.

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

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

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

SECTION 4. FORCED LABOR.

(a) A person commits forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except where such conduct is permissible under federal law or law of this state other than this [act].

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

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

SECTION 5. SEXUAL SERVITUDE.

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

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

(2) uses coercion or deception to compel an adult to engage in commercial sexual

activity.

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

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

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

SECTION 6. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.

(a) A person commits patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.

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

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

[SECTION 7. PATRONIZING A MINOR.

(a) A person commits patronizing a minor if:

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

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

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

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

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

language in bracketed Section 7 should be inserted.

SECTION 8. BUSINESS ENTITY LIABILITY.

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

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

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

- (1) a fine of not more than \$[1,000,000] per offense;
- (2) disgorgement of profit from illegal activity in violation of the [act]; and
- (3) debarment from state and local government contracts.

[SECTION 9. AGGRAVATING CIRCUMSTANCE.

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

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

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

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

Legislative Note: A state will need to examine its existing aggravating circumstances provisions to ensure that they cover the human trafficking offenses created by this act. If a state has no general statutory provision covering aggravating circumstances, the bracketed Section 9 provides a model, where states would insert additional circumstances. The circumstance set forth in Section 9(a)(1) is specific to human trafficking and a state should include along with other aggravating circumstances.

SECTION 10. RESTITUTION.

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

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

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

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

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

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

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

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

compensation fund] to help human trafficking victims].

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

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

[SECTION 11. FORFEITURE.

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

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

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

(b) In any proceeding against real or personal property under this section, the owner may assert a defense, and has the burden of establishing, by a preponderance of the evidence, that the forfeiture is manifestly disproportional to the seriousness of the offense.

(c) Proceeds from the public sale or auction of property forfeited under subsection (a) must be distributed in the manner otherwise provided for the distribution of the proceeds of [criminal forfeitures] [judicial sales].]

Legislative Note: A state will need to examine its existing forfeiture provisions to ensure that they cover the human trafficking offenses created by this act. States with such provisions should: (1) follow the procedures outlined in those provisions to proceed against real and personal property used as an instrumentality in committing the offense and real and personal property derived from the proceeds of the offense; (2) rely on existing procedures and judicial discretion to determine whether the seizure of assets is proportional to the criminal activity at issue; and (3) ensure proceeds from the public sale or auction of property forfeited are distributed first to victims awarded restitution or civil judgments by courts. If a state has no general forfeiture statute, the bracketed section provides a model for inclusion in this act.

ARTICLE III

VICTIM PROTECTIONS

[SECTION 12. STATUTE OF LIMITATIONS. A prosecution for an offense under this [act] must be commenced within 20 years after commission of the offense.

SECTION 13. VICTIM CONFIDENTIALITY. In an investigation of or a prosecution for an offense under this [act], [law-enforcement officers and prosecuting agencies] shall keep the identity and pictures or images of the victim and the victim's family confidential, except to the extent that disclosure is necessary for the purpose of investigation or prosecution, is required by law or court order, or is necessary to ensure provision of services and benefits for the victim and the victim's family.

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

- (1) admitted in accordance with [cite state's rape shield evidence rule or statute]; or
- (2) offered by the prosecution in a criminal case to prove a pattern of trafficking by the defendant.

Legislative Note: A state will need to ensure that the state's rape shield evidence rule or statute, including the relevant procedures, apply to civil and criminal proceedings and contain no provision that would conflict with the purpose of this section.

SECTION 15. IMMUNITY OF MINOR.

(a) An individual who was a minor at the time of the offense is not criminally liable or subject to a [juvenile delinquency proceeding] for [prostitution] and [insert other non-violent offenses] committed as a direct result of being a victim of human trafficking.

(b) An individual who was a minor at the time of the offense who has engaged in commercial sexual activity is not criminally liable or subject to a [juvenile delinquency proceeding] for [prostitution].

(c) A minor who is immune from criminal liability or [juvenile delinquency] under subsection (a) or (b) is presumed to be a [child in need of services] under [cite child protection statutes].

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

Legislative Note: A state should determine the other non-violent offenses to be immunized by subsection (a). Examples of non-violent offenses might include such offenses as forgery, possession of stolen property, shoplifting, or uttering worthless checks. Those offenses selected by the enacting state should be added to the provision in place of the second bracketed language. In those states where a term is used other than “prostitution” and “patronizing a prostitute,” those terms should be substituted within bracket one.

SECTION 16. DEFENSE TO CHARGE OF [PROSTITUTION]. An individual charged with [prostitution] or [insert other non-violent offenses] committed as a direct result of being a victim of human trafficking may assert as an affirmative defense that the individual is a victim.

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

SECTION 17. MOTION TO VACATE CONVICTION.

(a) An individual convicted of [prostitution] or [insert other non-violent offenses] committed as a direct result of being a victim of human trafficking may apply to [insert name of appropriate court] to vacate the applicant’s record of conviction for the offense. A court may grant such motion on a finding that the defendant’s participation in the offense was a direct result

of being a victim of human trafficking.

(b) No official determination or documentation is required to grant a motion under this section, but official documentation from a federal, state, local, or tribal government agency indicating that the defendant was a victim at the time of the offense creates a presumption that the defendant's participation in the offense was a direct result of being a victim.

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

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

Because some, but not all, states specify the sentencing court as the proper entity to hear post-conviction motions, a state also should identify the appropriate court to hear a motion to vacate a conviction under this section by inserting the appropriate court in place of the third bracket. A state should cite the appropriate statute or rule governing post-conviction relief procedures in subsection (c) in place of the fourth bracket.

SECTION 18. CIVIL ACTION.

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

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

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

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

(2) attained 18 years of age.

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

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

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

ARTICLE IV

STATE COORDINATION

[SECTION 19. HUMAN TRAFFICKING [COUNCIL].

(a) The [Governor] shall appoint the chair and members of a [council] on human trafficking within the [state department], including designees from [state, local, or tribal agencies] that have contact with victims or perpetrators, nongovernmental organizations that represent or work with victims, and other organizations and individuals, including victims, whose expertise would benefit the [council].

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

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

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

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

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

(4) create a public-awareness sign that contains the [state, local, and] National Human Trafficking Resource Center hotline information;

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

(6) conduct other appropriate activities.

Legislative Note: *In States where a state or local hotline is in operation and is comparable to the national hotline operated by the National Human Trafficking Resource Center, the language in the bracket should be added.]*

Legislative Note: *States will determine the proper authority for appointing members of the Human Trafficking Council. This may not in all cases be relegated exclusively to the executive branch.*

[SECTION 20. DISPLAY OF PUBLIC-AWARENESS SIGN; PENALTY FOR FAILURE TO DISPLAY.

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

(b) A public awareness sign [created under Section 19(c)(4)] shall be displayed at the following locations in a place that is clearly conspicuous and visible to employees:

(1) a strip club and any other sexually-oriented business;

(2) an entity found to be a nuisance for prostitution under [cite state nuisance law];

(3) a job recruitment center;

(4) a hospital; and

(5) an emergency care provider.

(c) The [state labor department] shall impose a [fine] of \$[300] per violation on an

employer that knowingly fails to comply with subsection (b). The [fine] is the exclusive remedy for failure to comply.]

SECTION 21. ELIGIBILITY FOR SERVICES.

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

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

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

SECTION 22. LAW-ENFORCEMENT AGENCY PROTOCOL.

(a) On request from an individual whom a [law-enforcement officer] reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. Section 1101(a)(15)(T)[, as amended,] or 8 U.S.C. Section 1101(a)(15)(U)[, as amended], or for continued presence, under 22 U.S.C. Section 7105(c)(3) [,as amended], the [law-enforcement officer], as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website, and ask a federal [law enforcement officer] to

request continued presence.

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

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

[SECTION 23. GRANT TO OR CONTRACT WITH SERVICE PROVIDER.

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

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

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

ARTICLE V

MISCELLANEOUS PROVISIONS

SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

[SECTION 25. SEVERABILITY. If any provision of this [act] or its application to

any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

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

SECTION 26. EFFECTIVE DATE. This [act] takes effect....

Legislative Note: *States may need to consider amending or repealing existing law.*

Appendix G

Guidance Note on ‘abuse of a position of vulnerability’ as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

1. Introduction

1.1. The purpose of this Guidance Note is to assist criminal justice practitioners in understanding and applying ‘abuse of a position of vulnerability’ (APOV) as a means of trafficking in persons, as this concept is included in the definition of trafficking in persons in the Trafficking in Persons Protocol (Trafficking Protocol).¹

1.2. The Guidance Note draws on the UNODC Issue Paper on the same subject,² and practitioners are encouraged to consult that document for further information, including insight into national law and practice.

2. Key points

2.1. As the crime of trafficking in children is constituted by the ‘act’ of recruitment, harbouring, etc. for an exploitative ‘purpose’, APOV or any other means is not required to be shown in relation to any prosecution for child trafficking.

2.2. Establishing the existence of victim vulnerability will be important for many aspects of a trafficking case. For example, vulnerability can be a critical indicator when identifying victims; and accurate assessment of vulnerability can help to ensure that victim witnesses are appropriately supported and protected. However, more is required in criminal prosecutions. The mere existence of proven vulnerability is not sufficient to support a prosecution that alleges APOV as the means by which a specific ‘act’ was undertaken. In such cases both the **existence** of vulnerability and the **abuse** of that vulnerability must be established by credible evidence.

¹Article 3(a) of the Trafficking in Persons Protocol states that “Trafficking in Persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the 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, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

² United Nations Office on Drugs and crime, Issue Paper on Abuse of a Position of Vulnerability and Other Means within the Definition of Trafficking in Persons, October 2012, available from: <http://www.unodc.org/unodc/en/human-trafficking/publications.html?ref=menuaside>

2.3. The **existence** of vulnerability is best assessed on a case-by-case basis, taking into consideration the personal, situational or circumstantial situation of the alleged victim. Personal vulnerability for instance, may relate to a person's physical or mental disability. Situational vulnerability may relate to a person being irregularly in a foreign country in which he or she is socially or linguistically isolated. Circumstantial vulnerability may relate to a person's unemployment or economic destitution. Such vulnerabilities can be pre-existing and can also be created by the trafficker. Pre-existing vulnerability may relate (but not be limited) to poverty; mental or physical disability; youth or old age; gender; pregnancy; culture; language; belief; family situation or irregular status. Created vulnerability may relate (but not be limited) to social, cultural or linguistic isolation; irregular status; or dependency cultivated through drug addiction or a romantic or emotional attachment or through the use of cultural or religious rituals or practices.

2.4. Critically, a victim's vulnerability may be an indicator of APOV, but it will not constitute a means of trafficking in persons unless that situation of vulnerability has also been abused to the extent that the victim's consent is negated.

2.5. **Abuse** of a position of vulnerability occurs when *an individual's personal, situational or circumstantial vulnerability is intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive that person for the purpose of exploiting him or her, such that the person believes that submitting to the will of the abuser is the only real or acceptable option available to him or her, and that belief is reasonable in light of the victim's situation.* In determining whether the victim's belief that he or she has no real or acceptable option is reasonable, the personal characteristics and circumstances of the victim should be taken into account.

3. Relationship of APOV to the 'act' element of the trafficking definition

3.1. APOV can be the means by which any of the trafficking 'acts' (recruitment, transportation, transfer, harbouring or receipt of persons) are committed.

3.2. The Trafficking Protocol definition establishes a clear link between the 'act' and the 'means'. Accordingly, where APOV is being alleged as the 'means', an offender should be shown to have abused the victim's vulnerability *in order to* recruit, transport, transfer, harbour, or receive that person.

4. Relationship of APOV to the exploitative 'purpose' element of the definition

4.1. APOV, like any other 'means', is relevant to all forms of trafficking and to all exploitative purposes listed in the Trafficking Protocol. It is also relevant to other exploitative purposes that have been identified in national and international laws including begging and exploitation in criminal activities.

4.2. APOV should not be more or less easily found in relation to certain exploitative purposes than in relation to others. A finding of APOV depends only on credible evidence that establishes the existence of a position of vulnerability on the part of the victim and an abuse of that position of vulnerability by the trafficker for the purpose of exploiting the victim. The particular form of the exploitative purpose in a specific case is not relevant to that analysis.

5. Evidentiary challenges and considerations in establishing APOV

5.1. The standard of proof to establish APOV should be the same as for establishing the elements of any crime under national law, including the other elements of the crime of trafficking in persons. Specifically, credible evidence must prove that the perpetrator intended to use APOV to commit an act (recruiting, transporting, transferring, harbouring, or receiving) for the purpose of exploitation.

5.2. As indicated above, evidence must show that the individual's personal, situational or circumstantial vulnerability was intentionally used or otherwise taken advantage of, to recruit, transport, transfer, harbour or receive that person for the purpose of exploiting him or her, such that the person believed that submitting to the will of the abuser was the only real or acceptable option available to him or her, and that this belief was reasonable in light of the victim's situation. The use of "means" must be of a sufficiently serious nature and extent as to vitiate the consent of the victim.

5.3. Evidence of APOV may be less tangible than for other means of trafficking (such as use of force). Furthermore, victims may not identify themselves as victims, particularly where they continue to remain dependent on or otherwise attached to those who have abused their vulnerability. Practitioners should be able to access the cooperation of specialists (e.g. psychologists, social workers, anthropologists and cultural advisers) at the investigative phase to ensure that evidence is effectively and appropriately collected, and brought to trial at the prosecutorial phase for instance, through or supported by expert witness testimony. Such cooperation may also be essential to gain the trust of victims and empower them to testify at trial. Evidence of APOV may be located in a jurisdiction other than that in which prosecutions are taking place. Procedures should be in place to facilitate and support cross-border cooperation between practitioners to ensure such evidence is identified and made available.

6. Identifying and managing risks

6.1. The lack of a clear definition of APOV and resulting ambiguities create certain risks that should be identified and managed. Misapplication of the concept could potentially compromise the rights of victims to be recognized as such, as well as the rights of accused persons to a fair trial. There is also a risk that misapplication could lead to an expansion of the concept of trafficking that detracts from its essential nature as an extremely serious crime and violation of human rights.

6.2. Where the concept of APOV is explicitly included in the definition of trafficking in domestic legislation, it should be carefully defined to provide clarity and guidance to practitioners and to protect against the risks outlined above. The definition should confirm the necessity of establishing both the existence of a position of vulnerability and the offender's abuse of that position of vulnerability. The definition should also take into account the issue of consent so that APOV, however it is defined, is of a sufficiently serious character as to negate consent.

6.3. Trafficking in persons is a serious crime that carries severe penalties. Safeguards should be put in place to ensure that a common sense approach can be taken to understanding and applying APOV, to promote an effective criminal justice response to trafficking and protect against the risks outlined above.

7. Improving practitioner understanding of APOV

7.1. The effective investigation and prosecution of trafficking in persons cases requires that criminal justice practitioners keep abreast of the methods used by traffickers to subjugate victims to one of the acts required by the definition of trafficking. Irrespective of whether or not APOV is part of the domestic definition of trafficking, it is crucial to ensure practitioner understanding of how a victim's position of vulnerability may exist or arise and how its abuse may operate in the context of trafficking crimes.

7.2. Specific training and guidance on abuse of a position of vulnerability should be provided to criminal justice practitioners to ensure that potential victims are appropriately identified, alleged perpetrators are effectively investigated, suspects are fairly prosecuted, and convicted traffickers are subject to sanctions that are proportionate to the gravity of their offence.

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