

**HUMAN TRAFFICKING
IN PENNSYLVANIA:
POLICY RECOMMENDATIONS
AND PROPOSED LEGISLATION**

JUNE 2012



General Assembly of the Commonwealth of Pennsylvania
JOINT STATE GOVERNMENT COMMISSION
108 Finance Building
Harrisburg, Pennsylvania 17120

The Joint State Government Commission was created by the act of July 1, 1937 (P.L.2460, No.459), as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 253 Session of
2010

INTRODUCED BY GREENLEAF, ORIE, FONTANA, ERICKSON, TARTAGLIONE,
LEACH, STACK, O'PAKE, M. WHITE, PILEGGI, WASHINGTON,
WILLIAMS, DINNIMAN, ALLOWAY AND RAFFERTY, FEBRUARY 26, 2010

REFERRED TO JUDICIARY, FEBRUARY 26, 2010

A RESOLUTION

1 Directing the Joint State Government Commission to establish an
2 advisory committee to study the problem of human trafficking
3 and to make a report to the Senate on the issue of human
4 trafficking, including a proposed State plan for the
5 prevention of human trafficking and any recommendations for
6 changes in State law, policies and procedures.

7 WHEREAS, Human trafficking is defined by Federal law to

8 include:

9 (1) sex trafficking in which a commercial sex act is
10 induced by force, fraud or coercion, or in which the person
11 induced to perform such an act is under 18 years of age; and

12 (2) the recruitment, harboring, transportation,
13 provision or obtaining of a person for labor or services,
14 through the use of force, fraud or coercion for the purpose
15 of involuntary servitude, peonage, debt bondage or slavery;

16 and

17 WHEREAS, More generally, human trafficking is the modern-day
18 practice of slavery and is one of the fastest growing criminal
19 industries in the world, generating billions of dollars by using

1 force, fraud and coercion to subject United States citizens and
2 foreign nationals, both minors and adults, to sexual or labor
3 exploitation; and

4 WHEREAS, Human trafficking does not always involve movement
5 of victims but may encompass both transnational trafficking that
6 crosses borders and domestic or internal trafficking that occurs
7 within a country or a state; and

8 WHEREAS, According to Pennsylvania law enforcement,
9 prosecutors and numerous advocacy organizations at the national,
10 state and local levels, there is both sex trafficking and labor
11 trafficking in Pennsylvania and victims include children and
12 adults, United States citizens and foreign nationals; and

13 WHEREAS, Examples of sex trafficking include:

14 (1) runaway teenage girls who are preyed upon by pimps;

15 (2) adult women who are held against their will and
16 forced into prostitution; and

17 (3) women and girls from other countries who are
18 promised jobs as waitresses but instead are trafficked for
19 prostitution;

20 and

21 WHEREAS, Victims of labor trafficking are typically found in
22 domestic servitude, agriculture, service industries and other
23 low-wage labor industries, where they are threatened, beaten,
24 raped, starved, chained or locked up, isolated and manipulated
25 or psychologically tortured; and

26 WHEREAS, In 2006 the General Assembly enacted 18 Pa.C.S. Ch.
27 30 (relating to trafficking of persons), making human
28 trafficking a second degree felony, unless the perpetrator
29 injures the victim or the victim is under 18 years of age, in
30 which case it is a first degree felony, and including forfeiture

1 provisions; and

2 WHEREAS, Since enactment, the 2006 law has not been utilized
3 because:

4 (1) there is a lack of knowledge by community members
5 and law enforcement on how to identify and respond to human
6 trafficking cases;

7 (2) there is no centralized venue to convey information
8 on responding to the crime of human trafficking for law
9 enforcement, victim service providers and the public; and

10 (3) traffickers keep victims highly isolated from
11 society, attempting to ensure that the victims do not find
12 out where to turn for help;

13 and

14 WHEREAS, While there are existing coalitions to combat human
15 trafficking in Philadelphia, Pittsburgh and York, there is a
16 need to create a comprehensive Statewide approach to ending this
17 brutal crime through the prosecution of traffickers, the
18 identification of victims, providing services and significantly
19 enhancing community awareness; therefore be it

20 RESOLVED, That the Senate direct the Joint State Government
21 Commission to establish an advisory committee to study the
22 problem of human trafficking; to propose policies and procedures
23 to assist in the prevention and prosecution of human
24 trafficking; and to make recommendations on how to strengthen
25 State and local efforts to prevent human trafficking, protect
26 and assist human trafficking victims and prosecute offenders;
27 and be it further

28 RESOLVED, That the advisory committee be comprised of
29 approximately 30 members and include persons representing all
30 relevant aspects of the criminal justice and social welfare

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- 3 -

1 systems, including representatives of governmental agencies and
2 nongovernmental organizations, especially those specializing in
3 human trafficking, those representing communities
4 disproportionately affected by human trafficking, agencies
5 devoted to child services and runaway services and academic
6 researchers dedicated to the subject of human trafficking; and
7 be it further

8 RESOLVED, That the advisory committee make a report to the
9 Senate on the issue of human trafficking, including a proposed
10 State plan for the prevention of human trafficking and any
11 recommendations for changes in State law, policies and
12 procedures; and be it further

13 RESOLVED, That the advisory committee shall report to the
14 Senate no later than two years from the date that this
15 resolution is adopted.

INTRODUCTION

On April 20, 2010, the Pennsylvania Senate passed Senate Resolution No. 253 (SR 253), which directed the Joint State Government Commission (JSGC) to:

establish an advisory committee to study the problem of human trafficking; to propose policies and procedures to assist in the prevention and prosecution of human trafficking; and to make recommendations on how to strengthen State and local efforts to prevent human trafficking, protect and assist human trafficking victims and prosecute offenders.

Advisory Committee Process

Following the adoption of SR 253, the JSGC began forming an Advisory Committee of experts to guide and assist in the study of human trafficking. This Advisory Committee is comprised of a diverse group of 29 individuals from across Pennsylvania, representing federal, state and local government agencies, victim service providers, law enforcement, prosecutors, academics and advocates.¹ This group reviewed and discussed the topic in person, by teleconferences and via e-mail.

In an effort to thoroughly understand the breadth and depth of human trafficking in Pennsylvania, JSGC staff spoke with a diverse list of stakeholders and experts representing a wide range of activity and involvement in fighting this crime. In addition to the Advisory Committee discussion and review, the staff conducted extensive background research.

The Advisory Committee held its first meeting on October 15, 2010, at which time three subcommittees were formed: Prevention and Awareness, Investigations and Prosecution, and Protection and Support. This organization is consistent with the manner most widely accepted in organizing anti-human trafficking campaigns or government responses and is commonly known as the “3P’s.” Each subcommittee met over the next year, primarily by teleconference, to make recommendations in each area of study. Those recommendations were presented to the full Advisory Committee at its January 5, 2012 meeting and were approved after discussion and revisions.

¹ Although an Advisory Committee member may represent a particular department, agency, association or group, such representation does not necessarily reflect the endorsement of the department, agency, association or group of all the findings and recommendations contained in this report.

The first meeting of the Advisory Committee revealed that prevention, prosecution and protection were the three topics that must be addressed in order to successfully combat human trafficking in the Commonwealth. Increased awareness regarding how to identify and prevent human trafficking is key for the general public, law enforcement and prosecutors. Training first responders is also an important element. The Advisory Committee believed that current state law² should be improved as it contains vague definitions and lacks the teeth necessary for the law enforcement community to more effectively arrest and prosecute criminals (who are usually charged with other crimes or allowed to plea bargain to lesser charges). The law should be strengthened to provide the tools necessary to make convictions possible and penalties more stringent to give prosecutors more leverage in handling cases. The Advisory Committee also believes that, once human trafficking victims are identified and rescued from their abusers, they need access to secure shelter, medical treatment and counseling services, but local organizations currently providing these services have few beds and are underfunded.

By updating and expanding the existing law on human trafficking, the proposed legislation contained in this report addresses many areas not currently covered. One recommendation concerns the creation of the Pennsylvania Council for the Prevention of Human Trafficking, which seeks to build on the existing work in the law enforcement and victim services communities, to provide a resource for information sharing, expanded coordination and enhanced offerings for victims, while allowing local control. Although this recommendation does not provide statewide oversight, decision-making or investigations, it does serve as a resource for training, awareness and to grant distribution.

In addition to the statutory recommendations, the Advisory Committee also considered several other recommendations.

Additional Topics Considered

In 2010 California enacted the Transparency in Supply Chains Act which, beginning January 1, 2012, “requires retail sellers and manufacturers doing business in the state to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale, as specified.” This statute does not apply to a retail seller or manufacturer having less than \$100,000,000 in annual worldwide gross receipts. The law makes a specific statement of legislative intent regarding slavery and human trafficking and requires a company to make available to the Attorney General a list of retail sellers and manufacturers required to disclose efforts to eradicate slavery and human trafficking.³

² 18 Pa.C.S. Ch. 30. The first and only conviction under this law occurred in January 2012, when two people pled guilty to charges associated with selling an underage girl online for sex in Delaware County. “Delaware County man and woman first in state to be convicted of human trafficking,” *Delaware County News Network*, 1/19/2012, http://www.delconewsnetwork.com/articles/2012/01/19/news_of_delaware_county/news/doc4f1590e9271a8989851713.txt (accessed April 13, 2012).

³ S. 657 (Cal. 2009) was signed into law on September 30, 2010.

In 2008 the New York Assembly passed the Safe Harbour for Exploited Children Act aimed at helping the growing number of youth victimized by the sex trade. This act allows youth who are sexually exploited and abused to access court diversion programs, crisis intervention, counseling and emergency and long-term housing services. Previous law required sexually exploited youth to be prosecuted as hardened criminals. However, “[t]he lawmakers noted that since the overwhelming majority of these youths have a history of psychological, physical or sexual abuse as younger children and many have been raised in poverty, simply arresting, prosecuting and incarcerating them as criminals did little more than re-traumatize survivors of sexual exploitation.”⁴ The safe harbour law defines sexually exploited children as those under the age of 18 who may be subject to sexual exploitation because the youth “engaged or agreed or offered to engage in sexual conduct in return for a fee, food, clothing or a place to stay. The youth would also be defined as sexually exploited if he or she has stripped, been filmed doing sexual acts, traded sex for drugs or found guilty of loitering for the purpose of engaging in prostitution.”⁵ The Act went into effect April 1, 2010.

The Advisory Committee reviewed and vetted several other proposals, but ultimately decided against addressing other topics in this report: requiring dedicated beds for human trafficking victims in domestic violence shelters, licensing massage parlors and day spas, criminalizing promotion of online sexual solicitation, embracing the “Swedish Model” that makes it illegal to buy prostitution or sell someone in prostitution but not to sell oneself, “Johns Schools” or prostitution diversion courts for male clients of prostitutes, and sexual offender registration for conviction of trafficking perpetrators were all considered but ultimately not included. In addition, sexual offender registration, while appropriate for perpetrators convicted of sex trafficking, has the potential to spark a larger debate on the controversial topic and take human trafficking out of focus. Other topics, such as criminalizing promotion of online sexual solicitation of a minor, are already covered in Pennsylvania law. (See e.g., 18 Pa.C.S. Ch. 76 (Internet Child Pornography)).

Background

People are engaging in trafficking around the world, from sweatshop labor in the Dominican Republic and sex tourism in Malaysia, to Latino brothels in Philadelphia.⁶ It is a crime we cannot escape; we cannot turn our backs on it and hope it will go away. It is

⁴ “Assembly Passes ‘Safe Harbour’ Legislation,” June 19, 2008, <http://assembly.state.ny.us/Press/20080619/> (accessed June 10, 2011); New York State Assembly, “Safe Harbour for Exploited Children Act,” February 13, 2007, <http://assembly.state.ny.us/leg/?sh=printbill&bn=A05258&term=2007> (accessed June 10, 2011).

⁵ Ibid.

⁶ “Conspiracy of Hope: a voice for the voiceless victims of human trafficking,” <http://aconspiracyofhope.blogspot.com/2011/04/latino-house-brothels-human-trafficking.html> (accessed April 2, 2012).

not only a crime that preys on illegal immigrants in a foreign country and traffics them to the United States; it also involves the naïve young girls, troubled youth or runaways who are spotted, deceived and preyed upon.⁷ It is important to distinguish between smuggling illegal aliens into the country and human trafficking. While some trafficking victims may arrive in this country as a result of smuggling, their presence here and subsequent involuntary servitude are against their will. Additionally, human trafficking does not only involve the international movement of individuals; it can occur from state to state and county to county.

Trafficking often occurs in plain sight but is mistaken for or prosecuted as another crime with the victims treated as criminals. If police are not specially trained to identify human trafficking, victims of sexual abuse can be incarcerated as prostitutes and forced laborers as illegals; sometimes these victims are released to the custody of the very people who have victimized them. A trafficker can be an abusive and manipulative pimp marketing a girl through online classified websites such as Backpage, or a sophisticated network of organized crime that preys on victims and moves them from state to state to avoid detection. Trafficking in persons has many faces for both victims and perpetrators.

Human trafficking has been described as “modern slavery” and is often called a “growing global scourge.”⁸ It has been defined in many ways, but the Trafficking Victims Protection Act of 2000 defines the two most common forms:

sex trafficking is a commercial sex act induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; and labor trafficking is 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.⁹

These are the most common forms of trafficking in Pennsylvania and around the world, and they appear in the news every day.¹⁰ One does not have to search hard to find examples of human trafficking, and a wide range of reports are readily available. Current

⁷ Jeannine Amber, “Special Report: Lost Girl,” *Essence*, November 2009, pgs. 164-169.

⁸ Editorial, “The Fight Against Modern Slavery,” *New York Times*, March 21, 2012, <http://www.nytimes.com/2012/03/22/opinion/the-fight-against-modern-slavery.html> (accessed March 27, 2012); Editorial, “Human Trafficking: a scourge needs greater attention,” *Washington Post*, June 27, 2011, http://www.washingtonpost.com/opinions/human-trafficking-a-scourge-needs-greater-attention/2011/06/27/AGNoYDoH_story.html (accessed February 15, 2012).

⁹ The Trafficking Victims Protection Act of 2000, (P.L. 106-386) was reauthorized in 2003, 2005 and 2008. TVPA reauthorization is still pending in the 112th Congress. H.R. 2830 was introduced on 8/30/2011 by Rep. Christopher Smith of New Jersey and awaits action in the Foreign Affairs Committee. If authorized, it would provide funding for several programs within the Departments of Justice, Health and Human Services, Homeland Security, Labor and State, and the United States Agency for International Development. It does not provide funding for any programs run by individual states; Donna Hughes, “Hidden in Plain Sight,” University of Rhode Island, October 2003, http://www.uri.edu/artsci/wms/hughes/hiding_in_plain_sight.pdf (accessed June 27, 2011). Note: force, fraud or coercion are underlined in quotation for emphasis only.

¹⁰ See *supra* note 9.

examples in Pennsylvania are common and appear every day in newspapers, list serve emails and Internet blogs across the state: forced labor at a nail salon in York to a spa in Camp Hill that serves as a front for a brothel, involuntary servitude in Philadelphia or prostitution at interstate truck stops. A Google search for “Human Trafficking” shows 33 million hits while “Trafficking in Persons” returns 1.1 million.

Many victims of trafficking do not self-identify as victims. After experiencing such psychological trauma and stress, victims are often reluctant to come forward or cooperate, fearing reprisals, while others actually think their traffickers are protecting and providing for them after coming from a home life that was abusive or offered no support. Human trafficking is the second largest form of organized crime, behind the trade of illegal drugs and tied with illegal gun trading.¹¹ Gangs also seek victims to be sold in various venues such as at migrant camps for both labor and sex trafficking, at massage parlors and brothels, at restaurants and factories in forced labor, or sex trafficked through Craigslist or Backpage postings.¹² This has been front page news around major events like the Super Bowl.¹³ Trafficking victims are a reusable commodity and, unlike drugs or guns, can be sold more than once and have a low acquisition cost.

Trafficking by the Numbers

Human trafficking is real and widespread, but actual data is often difficult to find, because of the myriad of ways that statistics and reports regarding arrests, convictions, and victim services are kept and interpreted (particularly given the many factors and circumstances surrounding human trafficking). Mixed usage of charges, reports, convictions, grant tracking information and victim service numbers creates multiple unknowns. Polaris Project, which receives calls to the National Human Trafficking hotline, has seen a steady increase in reporting over the last five years with over 19,000 calls in 2011.¹⁴ The United Nations estimates 2.5 million people worldwide are subject to forced labor or sexual exploitation, including 1.2 million children, while 161 nations are a source, pass-through or destination for trafficking victims.¹⁵

¹¹ U.S. Department of Health and Human Services, Rescue and Restore Campaign, “Human Trafficking Fact Sheet,” <http://www.acf.hhs.gov/trafficking/> (accessed March 4, 2012).

¹² Carrie Johnson, “Gangs Enter New Territory With Sex Trafficking,” NPR, All Things Considered, November 14, 2011, <http://www.npr.org/2011/11/14/142300731/gangs-enter-new-territory-with-sex-trafficking> (accessed November 16, 2011); Russell Contreras, “Feds nab 28 NM gang members linked to trafficking,” *Desert News*, April 25, 2012, <http://www.deseretnews.com/article/765571479/Feds-nab-28-NM-gang-members-linked-to-trafficking.html> (accessed April 26, 2012).

¹³ “Human Trafficking in the Spotlight,” *State Legislatures*, April 2012.

¹⁴ Polaris Project, “Hotline Statistics,” <http://www.polarisproject.org/resources/hotline-statistics> (accessed January 27, 2012); E-mail from James Dold, Polaris Project, to JSGC staff on June 11, 2012.

¹⁵ U.N. Global Initiative to Fight Human Trafficking, “Human Trafficking: The Facts,” http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf (accessed February 25, 2012); Edith M. Lederer, “Human Trafficking Victims: 2.4 Million People Across the Globe Are Trafficked For Labor, Sex,” *Huffington Post*, April 3, 2012, http://www.huffingtonpost.com/2012/04/03/human-trafficking-victims_n_1401673.html?ncid=webmail4 (accessed April 5, 2012).

The U.S. Department of State (DOS) in its 2010 annual report on trafficking puts the number of victims at 12.3 million worldwide, or 1.8 per 1,000 inhabitants. The 2010 report grades countries on their efforts to combat trafficking as outlined in the U.N. Convention Against Transnational Organized Crime, also known as the Palermo Protocol, and the U.S. Trafficking Victims Protection Act, both adopted in 2000. The Department's 2011 report specifies that nearly 150 countries have ratified the Palermo Protocol, and over 100 countries have enacted laws prohibiting all forms of human trafficking.¹⁶ The U.N. ranks trafficking in persons as the number one crime in the world.¹⁷ According to the Pennsylvania Coalition Against Rape, "more than 100,000 U.S. citizens—mostly young girls—are trafficked for prostitution within the U.S. each year."¹⁸ Hundreds of thousands more are at-risk to be trafficked annually. Other sites estimate that there are 27 million victims worldwide, which would translate to "more slaves alive now than at any other time in history."¹⁹ In addition, Victim Tracking Reports for trafficking outreach grants and Performance Progress Reports provide spotty data, but could prove useful for more detailed case studies.²⁰

The Human Trafficking Data Collection and Reporting Project is an academic data collection initiative of the Institute of Race and Justice at Northeastern University. Established through a Department of Justice (DOJ) grant in 2007, it created a Human Trafficking Reporting System, which supplies data collected from multi-agency trafficking task forces, funded by the DOJ, and reports to the Bureau of Justice Statistics on a monthly basis.²¹ The university issued a report in 2008 detailing a survey of law enforcement perceptions of human trafficking and a detailed examination of departments who reported investigating a case of suspected trafficking between 2000 and 2006.²²

¹⁶ U.S. Department of State, "Trafficking in Persons Report," <http://www.state.gov/j/tip/rls/tiprpt/> (accessed February 25, 2012); Note: The US follows the TVPA and not the Palermo Protocol, but the standards are similar.

¹⁷ United Nations, "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime," 2000, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (accessed February 25, 2012); United Nations Office on Drugs and Crime, "United Nations Convention against Transnational Organized Crime and the Protocols Thereto," <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (accessed February 25, 2012).

¹⁸ Pennsylvania District Attorneys Association, "PCAR, PDAA Form Human Trafficking Response Team," June 8, 2011, http://www.pdaa.org/index.php?option=com_content&view=article&id=133:pcar-pdaa-form-human-trafficking-response-team&catid=48:press-pdaa&Itemid=64 (accessed June 10, 2011).

¹⁹ "Statistics on Human Trafficking," March 2, 2011, <http://biusvspa.blogspot.com/2011/03/statistics-on-human-trafficking.html> (accessed March 27, 2012).

²⁰ E-mail from Sister Teresita Hinnegan, President of the Board of Dawn's Place, to JSGC staff on May 10, 2011.

²¹ Northeastern University, "Human Trafficking Data Collection and Reporting Project," <http://www.humantrafficking.neu.edu/> (accessed April 3, 2012).

²² Northeastern University, "Northeastern University's Institute on Race and Justice Issues Report on Human Trafficking," June 16, 2008, http://www.northeastern.edu/news/stories/2008/06/McDevitt_Farrell_NIJ.html (accessed April 3, 2012).

Another academic effort is the Human Trafficking Law Project, which was launched in February 2011 by the University of Michigan School of Law. It is a publicly searchable database on trafficking cases within the United States. The database is an “ongoing project” and new cases are being reviewed and added continually.²³ In addition, the U.S. Department of Homeland Security (DHS) issues a “Daily Human Trafficking and Smuggling Report” with news of trafficking from around the world. The Advisory Committee addresses data by assigning the task of collecting and disseminating information throughout the state to the Pennsylvania Commission on Sentencing.

Pennsylvania’s Place in a Global Issue

Pennsylvania has primarily been described as a “pass-through state,” with its interstate highway system, truck stops and transient truckers. However, evidence suggests that it is also a “source” (victims originate in the Commonwealth) and a “destination” (victims are brought to the Commonwealth to be exploited).²⁴ Ironically, centuries ago, the Commonwealth was the first government in the western hemisphere to abolish slavery with its Act for the Gradual Abolition of Slavery, enacted 75 years before the 13th Amendment to the U.S. Constitution.²⁵

The growth of importance and relevance of human trafficking in contemporary life hits home in a recent article about a high school graduate who said she wanted to make a difference by pursuing a career goal of helping trafficking victims.²⁶ Several years ago, this topic would be far removed from the minds of everyday conversation. In Pennsylvania, legislation in the House and Senate reflects the growing concerns with human trafficking. Bills currently under consideration include the following areas: update definitions and increasing penalties in 18 Pa.C.S. Chapter 30,²⁷ requiring the posting of the National Human Trafficking Hotline,²⁸ and addressing the licensing of massage parlors and sexually oriented businesses.²⁹ Many of these concepts have been incorporated into the Advisory Committee’s recommendations and are detailed in the draft legislation contained in this report.

²³ University of Michigan School of Law, “Human Trafficking Database,” <http://www.law.umich.edu/clinical/HuTrafficCases/Pages/searchdatabase.aspx> (accessed April 3, 2012).

²⁴ Yvonne P. Mazzulo, “Pennsylvania: Human Trafficking Destination State,” April 25, 2011, <http://www.examiner.com/article/pennsylvania-human-trafficking-destination-state> (Accessed June 10, 2011); Matt Paul, “Pennsylvania’s First Human Trafficking Response Team Announced,” June 8, 2011, <http://www.pamatters.com/2011/06/08/pa%E2%80%99s-first-human-trafficking-response-team-announced/> (accessed June 10, 2011).

²⁵ ushistory.org, “An Act for the Gradual Abolition of Slavery,” <http://www.ushistory.org/presidents/house/history/gradual.htm> (accessed March 24, 2012).

²⁶ Elizabeth Gibson, “Tears, surprises mark ceremony,” *The Patriot News*, March 8, 2011.

²⁷ H.B. 856 (Pa 2011); H.B. 2016 (Pa 2011).

²⁸ H.B. 235 (Pa 2011); S.B. 338 (Pa 2011).

²⁹ H.B. 649 (Pa 2011).

Dozens of states across the nation have issued studies on human trafficking, and every state but one has enacted a law, in some form, to combat this problem.³⁰ Many other groups have published policy documents on this issue, including the DOS, the U.N. Office on Drugs and Crimes (UNODC), respected academic and research institutes and the National Conference of Commissioners on Uniform State Laws. There was no shortage of examples to review before updating the law in Pennsylvania.³¹ State reports from Georgia, Texas, Maryland, New Jersey and Ohio provided useful insights for drafting comprehensive legislation for Pennsylvania. The Polaris Project's "Model Provisions of Comprehensive State Legislation to Combat Human Trafficking" was also used extensively.³²

Contents of Report

This report contains a blend of background information outlining the problem of human trafficking in the international, national, state and local contexts, along with governmental responses to combat trafficking at those levels. The primary recommendations from the Advisory Committee are contained within the statutory recommendations. The proposed legislation focuses on the 3P's, more clearly defining sex and labor trafficking, increasing the fines and penalties for trafficking and involuntary servitude, adding penalties for business entities, including license revocation and forfeiture of contracts, implementing participation in the national human trafficking hotline, creating the Pennsylvania Council for the Prevention of Human Trafficking, increasing training of first responders, and expanding the resources available to victim service providers.

Members of the Advisory Committee reviewed the statutory recommendations at the January 5, 2012 meeting, where they reached consensus on the proposed legislation redrafting of current state law on Trafficking in Persons (18 Pa.C.S. Ch. 30).³³ The Advisory Committee approved the final draft of the report in June 2012.

³⁰ As of April 30, 2012, Wyoming is the only that has yet to enact any legislation on human trafficking.

³¹ For a complete list of state task force reports and other important documents on the study of human trafficking see Appendix A.

³² The Polaris Project, "Model Provisions of Comprehensive State Legislation to Combat Human Trafficking," August 2010, http://www.polarisproject.org/storage/documents/policy_documents/state_policy/Final_Comprehensive_ModelLaw_8_2010.pdf (accessed March 4, 2012). While the Polaris Project model provided a framework upon which to build the proposed legislation, the Advisory Committee made substantial additions, deletions and revisions to that model, so it would be inaccurate to state that Pennsylvania has adopted one particular model.

³³ It is important to note that consensus does not necessarily reflect unanimity among the Advisory Committee members on each individual provision contained within the draft. However, it does reflect the general goals and objectives of the Advisory Committee, gained through careful and lengthy review and discussion.

Conclusions

The unifying themes of the Advisory Committee to study human trafficking were to arrest and convict perpetrators, assist victims, conduct training and promote awareness. Pennsylvania has seen many local and regional efforts, established through collaboration, rise to meet specific needs. Inroads have been made in training and awareness, and a few passionate organizations currently leverage funds to bring services to many victims.

While the crime of human trafficking is not in its infancy, combating the crime at the state level is new. Numerous reforms, and specifically the proposed legislation contained in this report, will help to accelerate efforts to combat human trafficking, put perpetrators on notice, and will demonstrate to the nation and the world that Pennsylvania takes human trafficking very seriously and is working hard to fight this crime within its borders. Enacting these policy and legislative recommendations contained in this report will increase the training and awareness of law enforcement and first responders, expand the legal tools available for prosecutors and investigators, and provide more resources to victim service providers and advocates.

SUMMARY OF STATUTORY RECOMMENDATIONS

This report proposes a new Chapter 30 (Human Trafficking) of Title 18 (The Crimes Code) of the Pennsylvania Consolidated Statutes, which provides for the prosecution and prevention of human trafficking, and the protection of human trafficking victims. Conforming amendments are also made to various provisions of Title 42 (The Judicial Code) and the Commonwealth Attorneys Act.³⁴

Prosecution

The following sections are part of new 18 Pa.C.S. Ch. 30 Subch. B (Prosecution of Human Trafficking), and incorporate some of the provisions of the current trafficking in persons law:

§ 3006. Definitions. Current 18 Pa.C.S. § 3001 defines “criminal coercion,” “forced labor or services” and “traffics.” The type of coercion encompassed by the draft legislation in this proposal is much broader, as seen in proposed § 3012. Similarly, “traffics” is much more broadly defined in proposed § 3011. Additionally, the definition of “forced labor or services” found in existing § 3003 can be interpreted to restrict the existing law to labor trafficking only.

The proposed definitions of “human trafficking,” “involuntary servitude” “labor servitude,” and “sexual servitude” are all entwined in the offense of “human trafficking.” “Human trafficking” is divided into two separate offenses: trafficking in individuals and involuntary servitude, to ensure that both the persons who arrange for an individual to be subjected to involuntary servitude (a procurer, “coyote” or other person recruiting and transporting individuals) and the persons who then maintain that individual in a state of involuntary servitude are subject to the Pennsylvania Human Trafficking Act. Involuntary servitude is further divided into two types, labor servitude and sexual servitude, in recognition that the circumstances of, and remedies and penalties for those conditions may differ.

Sexual servitude may be induced by force, fraud or coercion, as set forth in § 3012(b). However, in the case of a minor, this is a strict liability provision: ANY sexual conduct or performance involving sexual conduct that is induced or obtained meets the definition of “sexual servitude” without a showing of force, fraud or coercion.

³⁴ Act of October 15, 1980 (P.L. 950, No. 164).

Serious harm details the type of threatened harm, both physical or nonphysical, that can induce individuals to perform services against their will. It relies on a “reasonable person in like circumstances” standard to determine the validity of the threat.

Debt coercion focuses on the exploitation of the debtor based on the existence of a debt. It includes both debt owed directly and a situation in which a trafficker has knowledge of a victim’s debt to a third party and uses that knowledge to coerce the services of the debtor.

Financial harm includes exploitation of usury laws, violations of minimum hour and wage laws and contracts involving wage forfeitures.

Minor is defined as an individual under the age of 18 for purposes of violations of this act involving children. An individual under the age of 21 may be considered a minor for purposes of dependency services under the Juvenile Act, and this definition in no way is intended to limit access to those services.

Extortion, performance involving sexual conduct, sex act and sexual conduct are all designed to cross-reference and encompass existing criminal acts defined in other areas of the Crimes Code to avoid inconsistent references to the same types of behaviors.

Advisory Council, Commission, commercial sex act, involuntary servitude, labor, labor servitude, record, services, State Plan, and victim are definitions that are self-explanatory.

§ 3011. Trafficking in individuals. This section creates a second degree felony offense for arranging in any way for an individual to be subjected to involuntary servitude, or for benefiting financially from such an endeavor. Trafficking in minors is a first degree felony. Current 18 Pa.C.S. § 3002 defines trafficking more narrowly: it is treated as a second degree felony unless the victim is under age 18 or suffers serious bodily injury, in which case it becomes a first degree felony offense.

§ 3012. Involuntary servitude. This section creates a first degree felony offense for subjecting an individual to involuntary servitude and provides a detailed list of the various ways in which an individual may be induced to or obtained for involuntary servitude.

§ 3013. Patronizing a victim of sexual servitude. This section creates a second degree felony offense for knowingly or recklessly engaging in any sexual conduct or performance involving a victim of human trafficking.

Provision is also made for the detention and interrogation of persons arrested for patronizing a prostitute to determine if the arrestee did so knowingly or in reckless disregard that the person is a human trafficking victim.

Persons not acquitted or those who have not had the charges dismissed against them under this section are subject to a \$500 fine to be added to the grant program established under this act to aid agencies in combating human trafficking.

§ 3014. Unlawful conduct with respect to documents. This section creates a third degree felony offense for tampering with or withholding an individual's passport, immigration documents or other government identification document in order to prevent the individual from leaving a situation involving involuntary servitude.

§ 3015. Non-payment of wages. This provision creates a felony offense for refusing to pay wages for labor services or inflicting other financial harm.

§ 3016. Obstruction of justice. A person who engages in witness or victim intimidation or obstructs governmental operations in order to prevent enforcement of this act will be subject to the same penalties as for the original offense under investigation.

§ 3017. Violation by business entities. Business entities that aid or participate in human trafficking are subject to fines, revocation of licenses and permits, revocation of charter or certificate to do business in Pennsylvania and any other equitable relief, including asset forfeiture or restitution. Fines under this section will be used to support the grant program established under this act.

Knowledge of violations under this act is imputed to officers, directors, partners, managers and members if there is a showing of bad faith. Otherwise, good faith and reasonable due diligence by a person of ordinary prudence under similar circumstances will prevent individual liability.

§ 3018. Non-defenses to human trafficking. The following conditions are not a defense to prosecution of a person charged with human trafficking:

- Prior sexual history of the victim
- Consent to sexual conduct or performance by the victim
- Age of consent to sex
- Legal age of marriage
- Consent by the victim to employment contract, even if fraud is absent, if force or coercion were involved in the making
- Defendant's lack of knowledge of the age of a person in cases involving the sexual servitude of a minor is not a defense, except as provided in other Pennsylvania law governing mistake of age

§ 3019. Victim protection during prosecution. This section deals with human trafficking victims during criminal proceedings, both when a trafficker is charged and when the victim is charged with criminal activity. Subsection (a) attempts to shield victims' names from public disclosure.

Subsections (b) and (c) permits an individual charged with a crime to introduce official documentation from a governmental entity or service agency that the person was a human trafficking victim at the time of the offense, to create the presumption that the person's participation in the offense currently charged was also the result of being a victim.

An individual who has prior prostitution charges may have those charges vacated on the grounds that the person was a victim of human trafficking at the time the offenses were committed. District attorneys are required to communicate from county to county information regarding a person's status as a human trafficking victim when the victim faces similar prostitution charges in another county.

§ 3020. Restitution. Persons found guilty of violating any portion of the Pennsylvania Human Trafficking Act may be ordered by the court to pay restitution to the victim or the victim's survivors. A victim or any person who would be entitled to restitution as a survivor who violates the trafficking law or knowingly participated in trafficking activities is barred from receiving restitution. Medical and psychological treatment, transportation, temporary housing, child care, attorneys' fees, the return of any property of the victim, relocation expenses, and lost wages are all potential amounts in a restitution order. Victims of sexual servitude are not entitled to lost wages, on the theory that a person should not profit from illegal behavior, but instead may receive financial assistance to advance their education. Restitution is limited to out-of-pocket expenses and may be reduced for sums received from other sources. Non-governmental organizations may also receive restitution for out-of-pocket expenses advanced on behalf of a human trafficking victim.

§ 3021. Asset forfeiture. Current § 3004 provides for asset forfeiture, and new § 3021 draws heavily on that language, with one significant change. Current § 3004(d) provides the following:

The district attorney, where appropriate, may retain the property for official use or sell the property, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be used for the enforcement of the criminal laws of Pennsylvania.

This disposition has been changed as follows:

- First, to local law enforcement to reimburse the agency for the costs of trafficking investigations and prosecutions.
- The balance after payment of restitution to local law enforcement, to be divided as follows:
 - 30% to the district attorney's office for use in investigation and prosecuting trafficking cases
 - 35% to the grant program established in new § 3036

- 35% to the Office of Victims' Services in the Pennsylvania Commission on Crime and Delinquency to provide services to human trafficking victims

§ 3022. Forfeiture of professional licenses and governmental contracts. The state professional license of an individual who knowingly employs or permits the employment of a human trafficking victim is revoked for one year under this provision. Additionally, public works contractors who knowingly employ or permit the employment of human trafficking victims are subject to contract termination and ultimately debarment for one year under the Commonwealth Procurement Code.

§ 3023. Cumulative remedies. This section clarifies that remedies under the Pennsylvania Human Trafficking Act are in addition to any other criminal penalties or forfeitures authorized under state law.

§ 3024. Sentencing. Maximum sentences for violations under the act can be imposed in situations where serious injury or death result, or may be determined on the basis of the duration of a victim's servitude, the number of victims involved and if the victim was a minor. Victim impact statements are authorized and interpreters provided during legal proceedings.

§ 3025. Data collection. A common concern regarding human trafficking is the lack of available data to gauge the magnitude of the problem. This provision creates an opportunity for Pennsylvania to gather information.

Prevention

The following sections are part of new 18 Pa.C.S. Ch. 30 Subch. C (Prevention of Human Trafficking).

§ 3031. Pennsylvania Council for the Prevention of Human Trafficking. This council is composed of representatives of state and federal agencies affected by human trafficking, law enforcement personnel, victim's advocates and representatives of non-governmental organizations that provide aid and assistance to trafficking victims. The council is attached to the Pennsylvania Commission on Crime and Delinquency (PCCD). Meeting quarterly, the council will develop a state plan for the provision of services to human trafficking victims in Pennsylvania, administer the grant program established by this act and advise the PCCD in carrying out its duties under the act.

§ 3032. Responsibilities of Pennsylvania Commission on Crime and Delinquency. PCCD is charged with enhancing and supporting local and regional efforts to combat trafficking, coordinating and implementing the state plan called for in this act, coordinating the sharing of information among agencies, and reviewing existing services

and facilities with the goal of recommending a delivery system that will coordinate health, housing, education, job training, interpretation services, legal and immigration services, victim compensation, and victim protection procedures. Additionally, PCCD will develop state policies on time limits to respond to requests for law enforcement certification for visa seekers, develop screening protocols for emergency responders, publish a statewide directory of service agencies, suggest ways to increase public awareness, and develop guidelines for public display information materials.

§ 3033. Training. PCCD is also charged with developing a training course that may be used as a component for law enforcement personnel and probation and parole officers, juvenile detention center staff and staff workers in shelters. State agencies are required to add a training component for use by their personnel, to assist them in identifying human trafficking victims.

§ 3034. Public awareness. PCCD is charged with creating a public awareness program to alert persons to the dangers of human trafficking, methods of identifying and reporting suspected human trafficking, and services available to trafficking victims.

§ 3035. National human trafficking hotline; signage. This section provides for the posting of signs containing information about the national human trafficking hotline at establishments where human trafficking victims or activities are likely to be found.

§ 3036. Grants. This section establishes a grant program administered by the Council to provide financial assistance to units of local government and non-governmental victims' service organizations to provide services to human trafficking victims. The grant program is funded by fines imposed under Sections 3013 and 3017 and by a share of any asset forfeitures under § 3021.

§ 3037. Role of non-governmental organizations. NGOs are expected to participate in assisting the Council in its duties and the PCCD in the development and implementation of training and public awareness programs.

Protection

The following sections are part of new 18 Pa.C.S. Ch. 30 Subch. D (Protection of Human Trafficking Victims).

§ 3051. State plan. The Council is charged with the development of a state plan for the provision and delivery of appropriate services to human trafficking victims. Services are to include items relating to medical care, psychological counseling, housing, child care, access to educational and employment opportunities, legal assistance and advocacy and information regarding legal rights and victims' benefits.

§ 3052. Civil causes of action. This provision authorizes victims to bring a private cause of action against the person who subjected them to trafficking and involuntary servitude. Relief may include actual damages, compensatory damages, punitive damages or injunctive or other appropriate relief. Attorneys' fees and costs may be awarded and treble damages may be incurred in cases of willful and malicious conduct. Multiple victims may join suit against a single trafficker, and a single victim may join multiple persons who had a role in their victimization in the same suit. The statute of limitations is tolled under this statute until a minor attains the age of majority or until an adult victim discovers the violation and the violator, or until any disability of the victim has been removed. If the victim is threatened, intimidated or manipulated into not bringing suit, it is tolled until those activities have ceased. In cases of sexual servitude, multiple non-defenses are enumerated. Specific definitions relating to the sex trade are also included in this section.

§ 3053. Protection of victims. This section attempts to identify and secure the safety of human trafficking victims and their families.

§ 3054. Appropriate implementation for minor victims. Special procedures are to be developed to accommodate witnesses who are minors during the investigation and prosecution of human trafficking cases. A best interest standard is applicable.

§ 3055. Services. This section provides that a conviction or guilty plea by a trafficker entitles his victims to all benefits, rights and compensation under this act. A model informational form is to be developed to inform victims of their rights with regard to the prosecution of their traffickers, repatriation or immigration procedures. A directory of local victim services agencies, including those that can assist in obtaining legal immigrant status is to be included on the form. Victims are eligible for benefits and compensation under the Crime Victims Act. Refugee benefits are also available. Law enforcement cooperation in providing certifications needed to obtain legal immigrant status is also authorized.

§ 3056. Services to victims in shelters. This section governs admission of human trafficking victims to shelters.

Other Statutory Provisions

18 Pa.C.S. §§ 911 and 5708 and 42 Pa.C.S. § 9720.2. Amendments are made to 18 Pa.C.S. §§ 911 (corrupt organizations) and 5708 (order authorizing interception of wire, electronic or oral communications) and 42 Pa.C.S. § 9720.2 (sentencing for trafficking of persons) to correct cross-references to the new sections of 18 Pa.C.S. Ch. 30.

42 Pa.C.S. §§ 4415 and 4436. Amendments are made to these sections (relating to confidential communications in presence of interpreter) to extend the protection of confidential communications to those between a victim and a human trafficking caseworker.

42 Pa.C.S. §§ 5552 and 5554. Trafficking and sexual servitude involving a minor are added to the list of sexual offenses that extend the statute of limitations until the minor reaches 50 years of age. In § 5554, the criminal statute of limitations under Chapter 30 is tolled during the time a victim could not have reasonably discovered the human trafficking offense against the victim due to the circumstances of the victim's situation caused by trafficking.

42 Pa.C.S. § 5945.3. This section is added to preserve the confidentiality of communications between a victim and a human trafficking caseworker in the same way as similar communications between a victim and a sexual assault counselor are protected.

42 Pa.C.S. § 9738. This provision, which authorizes victim impact statements generally, is amended to specifically authorize them by human trafficking victims.

Commonwealth Attorneys Act. Section 205 of this act is amended to permit the Attorney General and the local district attorney to have concurrent jurisdiction to criminally prosecute human trafficking cases.

THE DEVELOPMENT OF HUMAN TRAFFICKING LAWS IN PENNSYLVANIA AND THE UNITED STATES

An important aspect of the draft legislation contained in this report is its approach to the crime of human trafficking on multiple levels. In some cases, the perpetrator may play a role in all aspects of the trafficking; in others, there may be several persons involved in the victimization of one particular individual. One aspect is maintaining a person in a state of involuntary servitude, whether it is labor and/or sexual. Another is the role of the procurer, or in the parlance of the 17th and 18th century, the “slave trader,” who facilitates the placement of the individual in a servitude setting and who, in most cases, arranges the transportation of the individual from one location to another. An important fact to remember is that while some victims of trafficking are immigrants (both legal and illegal), trafficking occurs both inter- and intra-state, and it is as easily represented by a runaway child as by a group of illegal immigrants hidden in the cargo hold of a truck or ship.

Another subsidiary issue under the rubric of human trafficking is the differentiation between labor servitude and sexual servitude. While all labor servitude is not sexual in nature, it can be argued that all sexual servitude is labor servitude. Because of these differences, laws governing labor servitude and sexual servitude have tended to develop along different lines. In many ways, sexual servitude is more easily defined. It is almost always based upon an underlying illegal activity, usually involving criminal laws governing prostitution, obscenity and pornography that is perpetrated using force, fraud or coercion. The coercive element of sexual servitude also frequently involves already defined criminal acts, including rape, indecent contact or assault, sexual assault and other sex crimes. These circumstances have contributed to the relative ease with which anti-trafficking laws have developed with respect to sexual servitude.

This chapter addresses responses by both the Pennsylvania General Assembly and the U.S. Congress to deal with sexual servitude, labor servitude and human trafficking in general.

Sexual Servitude and Trafficking

Conduct that involves human trafficking and sexual servitude is not completely free of ambiguity. While there are those who would postulate that all persons involved in prostitution are doing so under some form of coercion or duress, most state laws recognize that there are individuals who affirmatively “choose” to participate in a profession (heterosexual prostitution) that is legal in many countries and some rural counties in the state of Nevada. The rights and protections, or lack thereof, for women in marriages have evolved greatly from the days in this country where wives were considered chattel (property) and title to real estate when conveyed to a husband and wife was vested in “John Doe *et ux.*” However, issues still remain in those situations involving marriage brokers and the importation of “brides” from foreign countries to marry American men, and many states are now beginning to regulate these transactions and to ensure that they are voluntary.

Sexual servitude has ancient roots, with one of most famous recitations found in the origins of the houses of Israel, when “Sarai said unto Abram, Behold now, the LORD hath restrained me from bearing: I pray thee, go in unto my maid; it may be that I may obtain children by her....And Sarai Abram’s wife took Hagar her maid the Egyptian, ... and gave her to her husband Abram to be his wife.”³⁵ The capture and abuse of women as spoils of war is equally old, a popular practice in ancient Rome, as memorialized by Peter Paul Rubens in his painting, *The Rape of the Sabine Women*, and continues to flourish in places like the Democratic Republic of the Congo and Uganda as tribal conflicts periodically flare in those countries.³⁶ While not common occurrences, Indian captivity narratives in the United States were popular during the 18th and 19th centuries, frequently detailing the forced marriage and rape of European women captured by Native American tribes.³⁷

Pennsylvania’s Response

While the force and coerciveness of the sexual servitude of a prisoner of war is readily identifiable, the line between voluntary and coerced sexual behavior is not always as clear. Societal standards vary and are constantly evolving over time, and what may have been criminal sexual behavior in one century can become socially acceptable in the next. American states have long sought to regulate “immoral” sexual behavior, and Pennsylvania is no exception. Pennsylvania’s own version of the “Scarlet Letter,” the branding on the forehead with the letter “A” for a thrice-convicted adulterer, was enacted

³⁵ Genesis 16:2-3, King James version of the Christian Bible.

³⁶ Jeffrey Gettleman, “In Vast Jungle, U.S. Troops Aid in Search for Kony,” *New York Times*, April 29, 2012, <http://www.nytimes.com/2012/04/30/world/africa/kony-tracked-by-us-forces-in-central-africa.html?pagewanted=all> (accessed May 1, 2012); Martin Patt, “Human Trafficking and Modern-Day Slavery,” <http://gvnet.com/humantrafficking> (accessed March 20, 2012).

³⁷ Jone Johnson Lewis, “Indian Captivity Narratives: Women Captives,” *About.com*, http://womenshistory.about.com/od/indiancaptivitynarratives/a/indian_captivity_narratives.htm (accessed March 20, 2012).

in 1705.³⁸ This penalty, together with combined penalties of whipping and imprisonment at hard labor for first and second offenses, was repealed in 1791. Over the next hundred years or so, the criminalization of *consensual* heterosexual sexual behavior slowly waned and state criminal statutes focused on *non-consensual* and *commercial* behavior.

Historically, Pennsylvania has dealt with sexual servitude in the context of strong criminal statutes governing sex crimes, including prostitution, obscenity and pornography, as well as the sexual abuse and exploitation of children. As a result, it has never had a statute that deals specifically with the issue of sex trafficking. The closest state statute indirectly dealing with this issue is the Employment Agency Law:

No employment agent shall send or cause to be sent any person as a servant, employe[e], entertainer or performer, to any place of bad repute, house of ill fame, or assignation house, or to any house or place of amusement kept for immoral purposes, or place resorted to for the purpose of prostitution, or gambling house, the character of which the employment agent could have ascertained upon reasonable inquiry.³⁹

Federal Response

While the federal government largely left the regulation of morality to the states in the early years of the country, the Civil War and its battle over “states’ rights” led to the national government taking a greater role in the day-to-day lives of the citizenry, beginning with the adoption of the 13th,⁴⁰ 14th⁴¹ and 15th⁴² Amendments to the U.S. Constitution. The increased role of the government implied by these amendments, coupled with the individual states’ struggle with evolving economic and cultural changes brought about by the Industrial Revolution, led Congress to take a more significant role in legislating behavior.

As a general rule, most Constitutional scholars would confirm that the power to protect the citizens of a state rests with that state, under its police power, and is not subject to Federal legislation. However, Congress has been able to extend its authority over sexual conduct through its immigration policies. “Although the U.S. Constitution explicitly grants the power to naturalize foreign-born persons as citizens, it does not

³⁸ *An ACT against adultery and fornication*, 1 Smith’s Laws 27, Ch. 122 (Passed in 1705, Recorded A. vol. I. page 147).

³⁹ Act of July 31, 1941 (P.L.616, No.261), § 20(f), 43 P.S. § 574(f).

⁴⁰ “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction,” Section 1.

⁴¹ “...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws,” Section 1.

⁴² “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude,” Section 1.

explicitly enumerate jurisdiction over immigration as one of the powers of Congress. However, in Article I, Section 8, clause 3, the Constitution does grant Congress the power to ‘regulate commerce with foreign nations.’⁴³

The United States Supreme Court ruled that regulation of immigration falls within the purview of Congress in its decision in *Henderson v. Mayor of the City of New York*.⁴⁴ Shortly thereafter, Congress enacted the Page Act of 1875, regulating immigration of “any subject of China, Japan or any Oriental country . . . [who] has entered into a contract or agreement for a term of service within the United States, for lewd and immoral purposes;”⁴⁵ Section 3 of that same act declares it a felony punishable by imprisonment not to exceed five years and a fine not exceeding \$5,000, to “cause any importation of, women into the United States for the purposes of prostitution, or shall knowingly or willfully hold, or attempt to hold, any woman to such purposes, in pursuance of such illegal importation and contract or agreement”

The culmination of this movement toward regulation of sexual conduct can be found in the Mann Act of 1910⁴⁶ and is based on both Congress’ power to regulate foreign commerce as well as its authority over interstate commerce. In its original incarnation, the act applied the same penalties as the Page Act to:

[W]hosoever knowingly transports in interstate or foreign commerce, . . . any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice . . .

The Mann Act was in many ways a product of its times, and its historical background has been concisely explained by director Ken Burns in his PBS documentary, “Unforgiveable Blackness: The Rise and Fall of Jack Johnson,” a biography of the famous boxer, first aired in January 2005:

As Progressive Era social reformers (many of whom did not distinguish between sexually active women and prostitutes) began to call attention to what they saw as a widespread decline in morality, foreigners emerged as an easy target. Unfettered immigration provided an endless supply of both foreign prostitutes and foreign men who lured American girls into immorality. Muckraking journalists fueled the hysteria with sensationalized stories of innocent girls kidnapped off the streets by foreigners, drugged, smuggled across the country, and forced to work in

⁴³ Howard Bromberg, “U.S. Congress”, Encyclopedia of Immigration, <http://immigration-online.org/445-us-congress.html>, September 27, 2011 (accessed March 19, 2012).

⁴⁴ 92 U.S. 259 (1875).

⁴⁵ 18 Stat. 477 (1875).

⁴⁶ White Slave Traffic Act of 1910, 18 U.S.C. §§ 2421 to 2428.

brothels. Borrowing a term from the 19th-century labor movement, muckraker George Kibbe Turner called prostitution “white slavery,” and in a 1907 article in *McClure’s Magazine* claimed that a “loosely organized association... largely composed of Russian Jews” was the primary source of supply for Chicago brothels. Pulp fiction and movies (then a novelty) fanned the flames even more.

Politicians seized upon the “crisis” for political gain. Edwin W. Sims, the U.S. district attorney in Chicago, claimed to have proof of a nationwide white slavery ring:

*The legal evidence thus far collected establishes with complete moral certainty these awful facts: that the white slave traffic is a system operated by a syndicate which has its ramifications from the Atlantic seaboard to the Pacific Ocean, with ‘clearinghouses’ or ‘distribution centers’ in nearly all of the larger cities; that in this ghastly traffic the buying price of a young girl is from \$15 up and that the selling price is from \$200 to \$600... This syndicate is a definite organization sending its hunters regularly to scour France, Germany, Hungary, Italy and Canada for victims. The man at the head of this unthinkable enterprise is known among his hunters as ‘the Big Chief.’*⁴⁷

While evidence of large criminal syndicates was not found, prosecutions under the Mann Act proceeded and have continually been upheld as constitutional.⁴⁸ A 1978 amendment added child pornography to the statute and made the child pornography provisions gender neutral.⁴⁹ A 1986 amendment removed the moralizing aspect of the law, restricting prosecutions under the law to “[w]hoever knowingly transports any individual in interstate or foreign commerce, . . . with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offenses, or attempts to do so . . .,” and made the entire act gender neutral.

Additionally, in 2003, Congress enacted the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act.⁵⁰ Designed to help prevent child abduction, the act also amended the Mann Act to penalize sex tourism, which is the practice of traveling, usually to foreign countries, to commit sex crimes against a child or adult.

⁴⁷ Ken Burns, “Unforgiveable Blackness: The Rise and Fall of Jack Johnson,” January 2005, www.pbs.org/unforgiveableblackness/knockout/mann.html (accessed March 15, 2012).

⁴⁸ Ibid.

⁴⁹ 92 Stat. 8, Public Law 95-225.

⁵⁰ S. 151 (2003).

While District Attorney Sims' fears were revealed to be slightly exaggerated, the concern regarding the possibility of organized crime's role in sex trafficking continues:

In reviewing the major trafficking cases in the United States since 1990, the perpetrators tended to be smaller crime groups, smuggling rings, gangs, loosely linked criminal networks, and corrupt individuals who tended to victimize their own nationals. None of the traffickers' names were found in the International Criminal Police Organization's database indicating that these traffickers were not under investigation for trafficking or other illicit activities in other countries. This contrasts with Europe and Asia where there are more indications of large, hierarchical structures involved in trafficking women and children and numerous other illegal activities.

The size or structure of the criminal group, however, has no bearing on the violence, intimidation, and brutality that is commonly perpetrated on the trafficking victims, as many small trafficking rings are extremely vicious. Moreover, technology has made size irrelevant in terms of a crime group's ability to establish commercial or business-like structures. The traffickers have easily established businesses in the US and abroad to conceal their activities and illicit proceeds from law enforcement as well as to deceive the women.

It is also important to recognize that only tentative conclusions regarding the level of organized crime involvement in the trafficking industry in the US can be reached at this point as the subject has received little attention from law enforcement. US law enforcement officers readily admit they do not know to what degree large international organized crime syndicates are engaged in this industry. Asian and Russian organized crime groups are clearly present in the US and involved in alien smuggling and/or prostitution among other illicit activities. Some experts state that these large criminal syndicates are also involved in trafficking in women, and they will become even more immersed in trafficking to the US given the industry's extensive profits. In order to reach more definitive findings about the present and future role of organized crime in the trafficking industry, more resources need to be devoted towards bolstering research and data collection.⁵¹

⁵¹ Amy O'Neill Richard, "International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime," DCI Exceptional Intelligence Analyst Program, An Intelligence Monograph, Center for the Study of Intelligence, April 2000, www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-mongraphs/trafficking.pdf (accessed March 20, 2012).

Sex trafficking of children by force, fraud or coercion was added to the Federal Criminal Code in 2000.⁵² See discussion of the Victims of Trafficking and Violence Protection Act of 2000 (TVPA)⁵³ *infra*, at *Human Trafficking in the 21st Century*.

Labor Servitude and Trafficking

Defining labor servitude is not an easy task. Slavery, peonage, forced labor, debt servitude and involuntary servitude have all been used to describe labor servitude, and all have been legal in this country in various forms at various times in our history. While “slavery,” as a central issue in the Civil War, has a clear characterization for most Americans, those activities that do not neatly fit the images we have developed from *Uncle Tom’s Cabin*,⁵⁴ *Roots*⁵⁵ or the Amistad Rebellion⁵⁶ are not so readily discernible. In a market economy where “supply and demand” rules, there will be inherent inequalities of power between employers and employees. The free will of an individual seeking employment as his only means of providing food and shelter for his family can be illusory. However, despite the abolition of slavery in this country over 150 years ago, there remain many ways in which an individual can be coerced into providing labor at a pittance of its real value.

“Indentured servitude” has also sometimes been described as a form of slavery. However, the system of indentured servitude found prevalent in the American colonies from the early days of the Virginia Company in Jamestown through the 19th century ranged from the brutal conditions frequently associated with slavery to the free contract between immigrants seeking to find a way to finance passage to America and employers desiring to import a larger labor force from England. The motive for the development of colonial indentured servitude can be seen as a desire by employers to obtain needed workers in a labor market where workers of any level of skill were hard to find, and the balance of power, and thus the negotiation of wages, was fairly equal on both sides.⁵⁷ Alternatively, the type of “indentured servitude” seen in the modern world can be attributed to a desire to obtain cheap labor and avoid laws governing employment relationships, and where the desire to immigrate to the United States (or simply emigrate from the poverty of one’s home country) shifts the balance of power and negotiation to the employer.

⁵² 18 U.S.C. § 1591.

⁵³ 114 Stat. 1464, Public Law 106-386. See *Human Trafficking in the 21st Century*, *infra*, pg. 39.

⁵⁴ Harriet Beecher Stowe, *Uncle Tom’s Cabin, Or, Life among the Lowly; The Minister’s Wooing; Oldtown Folks*. New York: Literary Classics of the United States, 1982.

⁵⁵ Alex Haley, *Roots*. Garden City, NY: Doubleday, 1976.

⁵⁶ *Amistad*. Dir. Steven Spielberg. By David Franzoni. Perf. Djimon Hounsou, Matthew McConaughey, Anthony Hopkins. DreamWorks SKG, 1997. DVD.

⁵⁷ David W. Galenson, “The Rise and Fall of Indentured Servitude in the Americas: An Economic Analysis,” *The Journal of Economic History*. Vol. 44, No. 1 (March 1984), pp. 1-26.

Pennsylvania's Response

As early as 1700, Pennsylvania had enacted a law “for the better regulation of servants in this province and territories.” Among its provisions were a prohibition on the sale or disposition of a servant without his or her consent, and a requirement that after completing four or more years in servitude, upon leaving the employ of the “master,” the servant was to be provided, by the master, with two complete suits of apparel (one new), one new axe, a grubbing hoe and a weeding hoe.⁵⁸ “This system of labor was more important to Pennsylvania than it was to any other colony or state; it continued longer in Pennsylvania than elsewhere.”⁵⁹

By the 1770s, a well regulated market in indentured servitude existed in Pennsylvania, with some more willing participants than others:

Most English servants signed fixed-term contracts in England. But most German (called Dutch) servants came as redemptioners or free willers, who promised to pay the captains for their fares upon arrival in Philadelphia. Upon arrival these redemptioners raised the money owed by indenturing themselves; for many this transaction was a distress sale in which the press of time precluded a normal job search.⁶⁰

Pennsylvania provided for the gradual abolition of slavery on March 1, 1780, by declaring that all children born of slaves from that date forward were declared to be born free.⁶¹ Time limits were established based upon the age of an individual for the eventual manumission of those persons living in slavery at that date. As part of its movement from legalized slavery, Pennsylvania enacted a statute in 1826 to require proof that a person was a fugitive slave before that person could be returned to the “owner.”⁶² An early version of a labor trafficking statute was enacted in 1847, when it became illegal to kidnap a “free negro or mulatto” in order to remove them from the Commonwealth and force them to become a slave or servant for life.⁶³

⁵⁸ *An ACT for the better regulation of servants in the province and territories*, 1 Smith's Laws 10, Ch. 49 (Passed in 1700 – Recorded A. vol. I. page 38).

⁵⁹ Cheesman A. Herrick, “White Servitude in Pennsylvania,” Philadelphia: 1926. p. 265, cited in Robert O. Heavner, “Indentured Servitude: The Philadelphia Market, 1771-1773,” *The Journal of Economic History*, Vol. 38, No. 3 (September 1978), pp. 701-713, 702.

⁶⁰ Heavner, “Indentured Servitude,” pp. 701-713, 703.

⁶¹ *An ACT for the gradual abolition of slavery*, 1 Smith's Laws 492, Ch. 870 (Passed March 1, 1780 – Recorded in Law Book vol. I. p. 339).

⁶² Act of March 25, 1926 (P.L.150) Ch. 50.

⁶³ Act of March 3, 1847 (P.L.206, No.159).

Immigration and labor conditions, including situations that could be described as coercive, continued to play a role in the economic development of Pennsylvania well into the 19th and early 20th centuries particularly in the logging,⁶⁴ coal mining⁶⁵ and railroad⁶⁶ industries. A common practice in these industries was for the company to build and own housing and to provide a company store for use by employees. Operations were usually located in geographically remote areas with low population densities and little or no housing or retail operations. Paying employees in cash required companies to obtain and hold cash and employ police payroll protection, so many companies turned to the use of “scrip,” a cash substitute used as a medium of exchange in many company towns.

Additionally, the use of scrip allowed employees to obtain credit that might not otherwise be attainable.⁶⁷ Popular culture and music⁶⁸ have reinforced the notion that this system resulted in a form of debt servitude that was virtually impossible to overcome.

Scrip did provide a means of easy credit for both miner and coal operator. For the coal miner, drawing cash on payday limited his choices should he run short before the next half, but gave him more freedom to shop elsewhere. Drawing all scrip meant that a miner had no cash on hand for emergencies. However, companies usually showed a willingness to extend scrip credit to the miner who was caught short. Miners drew scrip

⁶⁴ During the period between 1850 and 1870, the center of the lumber industry shifted into northern and central Pennsylvania. Williamsport, with 29 sawmills, became known as the lumber capital of the world. Its great mills, strategically located on the Susquehanna River, were supplied by logs floated down river from tributary streams to the north. The log boom, operated by the Susquehanna Boom Company, stretched seven miles along Williamsport's river front and was credited with a holding capacity of over 250 million board feet of lumber. It is within this period that Pennsylvania was the greatest timber producing state in the nation. Woodworkers or woodhicks were housed in camps located near the cutting operation. Camps were temporary, rough wooden buildings that could be quickly dismantled and relocated as the center of logging operations changed. With the location of each large sawmill, towns sprang up almost overnight. Pigs ears (cheap saloons), stores, churches, schools, and houses all followed the shifting lumber operations. Pennsylvania Historical and Museum Commission, The Pennsylvania Lumber Museum at Galeton, Pennsylvania, <http://www.lumbermuseum.org/history.php>.

⁶⁵ The Village of Eckley was established in 1854, when the mining firm of Sharpe, Leisenring and Company leased land and began to work on the Council Ridge Colliery and the village. The village, built near the colliery where the coal was mined and processed, provided housing for the miners and their families. Its stores, schools, and churches supplied the economic, educational, and religious needs of the villagers. To Eckley came a succession of immigrant groups seeking economic opportunities and religious or political freedom. English, Welsh, and German miners were supplanted by the Irish immigrants and then by southern and eastern Europeans. Pennsylvania Historical and Museum Commission, Eckley Miners' Village in Weatherly, Pennsylvania, <http://www.eckleyminers.org/about.html>, www.eckleyminersvillage.com.

⁶⁶ Abigail Ticker, “Ireland’s Forgotten Sons Recovered Two Centuries Later,” *Smithsonian Magazine*, April 2010, <http://www.smithsonianmag.com/history-archaeology/Irelands-Forgotten-Sons-Recovered-Two-Centuries-Later.html?c=y&page=3>.

⁶⁷ Price V. Fishback, “Did Coal Miner ‘Owe Their Souls to the Company Store’? Theory and Evidence from the Early 1900s,” *The Journal of Economic History*, Vol. 46, No. 4 (December 1986) pp. 1011-1029, 1015-1016.

⁶⁸ “You load sixteen tons, what do you get, another day older and deeper in debt. Saint Peter don’t you call me ‘cause I can’t go, I owe my soul to the company store.” *Sixteen Tons*, performed by Tennessee Ernie Ford. <http://www.cowboylrics.com/lyrics/classic-country/sixteen-tons---tennessee-ernie-ford-14930.html>.

advances for many purposes. Should he run short and need food before the next payday, scrip credit was available. If a miner needed a piece of furniture and did not have the cash, scrip credit would take care of it. If a miner was sick or injured, companies would advance scrip pending receipt of his Workman's Compensation checks. For the operators, this was a no lose situation. Companies had the ability to "virtually garnishee a worker's wages to collect on a debt." [citation omitted] It would appear that with the availability of such easy credit, most miners would in fact, "owe their souls" to the company stores. However, studies cited by Shifflett seem to indicate that miners used this option judiciously. He states that "debt peonage was rare," [citation omitted] and cites a Virginia mining company whose outstanding debt between the years of 1910 and 1947, averaged only two percent of sales. [citation omitted] The scrip system seemed to be something that served both miner and operator well and, except in rare cases, neither took undue advantage of the other.⁶⁹

However, there was apparently enough concern about the inequalities between owners and workers that the Commonwealth was moved to enact statutes to govern their interactions. Anecdotal evidence seems to support these concerns – Irish⁷⁰ and Welsh⁷¹ family oral histories in the coal and timber regions of Pennsylvania frequently contain references to the practices of debt servitude.

In partial recognition of these inequalities, labor law has evolved to help level the playing field. Wage and hour standards, minimum wage laws, worker's compensation and occupational safety laws have all attempted to ensure that relationships between employers and employees are equitable. In 1848, Pennsylvania limited the number of hours an employee could work in a cotton, woolen, silk, paper, bagging or flax factory to no more than 10 hours per day, and no more than 60 hours per week. Additionally, children under the age of 12 could no longer be employed in these factories.⁷² Employment of minors in anthracite coal mines and collieries was regulated in 1905,⁷³

⁶⁹ Rhonda Janney Coleman, "Coal Miners and Their Communities in Southern Appalachia, 1925-1941," *West Virginia Historical Society Quarterly*, Vol. XV, No. 3 (July 2001), <http://www.wvculture.org/history/wvhs1503.html> (accessed March 20, 2012).

⁷⁰ Interview, March 25, 2012, with Grace Smith Hursh (1916 -), regarding the experiences of her paternal grandfather, Patrick Smith of County Clare, Ireland, who emigrated to Pennsylvania to work on the railroad and settled in Tiadaghton, Tioga County, Pennsylvania. Mrs. Hursh was born in Leetonia, Tioga County, home to a former sawmill and tannery, the ruins of which are all that remain of the town. Mrs. Hursh's German aunt and uncle both worked in the tannery's company store.

⁷¹ Multiple conversations regarding the childhood memories of Chester W. Llewellyn (1937-2003), describing his paternal grandfather's activities as a Welsh immigrant mine and store owner in Columbia County, Pennsylvania in the early 20th Century.

⁷² Act of March 28, 1848 (P.L.278, No. 227).

⁷³ Act of May 2, 1905 (P.L.344, No.222).

The Child Labor Law was enacted in 1915,⁷⁴ and by 1931, labor by migrant children under the age of 16 in factories or canneries or in berry, fruit or vegetable raising or harvesting during the school year was prohibited.⁷⁵ By 1968, a statewide minimum wage law was in place.⁷⁶

While “company stores” were not outlawed in Pennsylvania, the legislature eventually determined that the practice of employers’ selling merchandise to their employees that was not of the employer’s own production, not handled in the employer’s regular course of business, or not connected with or related to its trade or business constituted unfair competition for other retail businesses. Exceptions were made for sales of meals, candy, beverages, tobacco products, safety clothing and equipment or goods used in furtherance of the employer’s business.⁷⁷

Another area in which Pennsylvania has considerable experience in potential labor trafficking is agriculture. As recently as 1978, the Pennsylvania General Assembly was moved to regulate migrant farm labor through the Seasonal Farm Labor Act.⁷⁸ The act established minimum wages and maximum hours of work and regulated piece rates. More significantly, for purposes of this study, the act regulated the *method* of wage payment in Section 206. Wages are to be paid directly to the worker, not through a farm labor contractor.⁷⁹ Deadlines for payment of wages were established and wages were to be paid in “lawful money of the United States or by check.” Additionally, employers were prohibited from deducting “any amount on account of debts accrued or anticipated, regardless of the purpose,” with exceptions being made for the types of payroll deductions usually seen (taxes, insurance, etc.) and also for “reasonable charges for housing and meals provided by the employer, which the seasonal farm worker has authorized in writing, or of any amount or partial amount of any advance payment by the employer to the seasonal farm worker against subsequent earnings pursuant to a contract or prior agreement with such seasonal farm worker.”

Federal Response

The U.S. Civil War introduced a period of flux in the treatment of trafficking and involuntary servitude. While slavery was outlawed, landowners were able to find ways to circumvent those laws through the institutions of peonage and sharecropping, using the labor of freed slaves and other poor persons primarily living in the Southern states. The

⁷⁴ Act of May 13, 1915 (P.L.286, No.177).

⁷⁵ Act of June 23, 1931 (P.L.923, No.309).

⁷⁶ The Minimum Wage Act of 1968, Act of June 17, 1968 (P.L.11, No.5).

⁷⁷ Act of August 11, 1941 (P.L. 898, No. 343).

⁷⁸ Act of June 23, 1978 (P.L.537, No.93).

⁷⁹ A farm labor contractor is defined as any person who, for payment, wages, salary, fees or other consideration, either for himself or on behalf of another person, recruits, solicits, hires, furnishes or transports five or more seasonal farm workers (excluding members of his immediate family) in any calendar year for employment in agriculture or in agriculture-related industry. § 206 of the Seasonal Farm Labor Act.

Industrial Revolution and the Westward Expansion of the country, through the Gold Rush and the extension of the railroad system to serve those developing areas led to different, varying treatments of immigrant labor.

The Contract Labor Law of 1864⁸⁰ was specially designed to permit the importation of immigrant labor by employers. Employers were permitted to “recruit foreign workers, pay their transportation costs, and obligate them to work for them for a period of time for no wages until they could repay the transportation and often their subsistence costs during this period of virtual servitude.”⁸¹ The statute limited contracts to a one-year maximum length. This need for cheap immigrant labor eventually waned, and concerns about the competition such labor provided to a growing organized labor movement 20 years later led to the abolition of such contracts. By 1885, anti-contract, anti-immigrant labor sentiments lead to the enactment of the Alien Contract Labor Act (Foran Act).⁸² This statute voided any employment contracts entered into prior to immigration, but made exceptions for:

- Skilled workmen to perform labor in or upon “any new industry not at present established in the United States”
- Professional actors, artists, lecturers, or singers
- Persons employed strictly as personal or domestic servants
- Private secretaries, servants or domestics of foreign nationals temporarily residing in the United States

Individuals (presumably U.S. residents) were permitted to assist “any member of his family to migrate from any foreign country to the United States, for the purpose of settlement here.” With the 1885 act began a long series of immigration legislation that classified and categorized immigrants, ultimately resulting in the immigration quotas and restrictions found in current law. While debt servitude was thus slowing regulated, slavery was completely abolished, at least in name. “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”⁸³

⁸⁰ US Statutes at Large, vol. XIII, p. 386, July 4, 1864.

⁸¹ Briggs, Vernon M., Jr. “Immigration Policy and Organized Labor - A Never-Ceasing Issue,” *The Social Contract Journal*, Vol. 17, No. 4 (Summer 2007). Testimony delivered before the Subcommittee on Immigration, U.S. House of Representatives, Washington, D.C., on May 24, 2007, http://www.thesocialcontract.com/artman2/publish/tsc_17_4/tsc_17_4_briggs.shtml (Accessed March 30, 2012).

⁸² 23 Stat. 332 (1881-1885), February 26, 1885.

⁸³ U.S. Constitution, Amendment XIII, <http://www.archives.gov/historical-docs/document.html?doc=9&title.raw=13th%20Amendment%20to%20the%20U.S.%20Constitution%3A%20Abolition%20of%20Slavery> (accessed March 30, 2012).

Additionally, Congress enacted the Anti-Peonage of 1867 to outlaw “the holding of any person to service or labor under the system know as peonage” and declared all

acts, laws, resolutions, orders, regulations or usages of any Territory or State, which . . . establish, maintain or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise . . . null and void.⁸⁴

Despite this clear Constitutional and Congressional language, peonage and sharecropping, two methods of creating debt servitude, thrived in the post-Civil War South.

Peonage existed in many Southern states and was a component of a system of state laws and customs, including statutes dealing with contract fraud, criminal surety, vagrancy, and other open-ended laws that permitted prosecution of laborers who sought to abandon their jobs.⁸⁵

These laws, combined together, frequently resulted in involuntary servitude. Vagrancy laws required a person to be able to prove that they were employed. Failure to do so could lead to fines and imprisonment. To avoid vagrancy charges, individuals would enter employment contracts with employers. If an employee refused to perform the labor described in the contract without just cause, or to refund any money or property received as an advancement on the contract, it was considered *prima facie* evidence of contract fraud, also a criminal offense, and the defendant was prohibited from testifying as to his “uncommunicated motives, purpose, or intention.” Anyone convicted under these laws was “permitted” to confess judgment with a surety in the amount of the fine and costs. The surety would pay the confessed judgment and the person would then agree to reimburse the surety by working for him upon terms approved by the court. Essentially, private employers could hire convicts as laborers by paying their fines for them.⁸⁶ Major U.S. corporations like U.S. Steel “rented” prisoners sentenced to hard labor from Southern sheriffs.⁸⁷

Sharecropping developed as a way for cash and land poor individuals to engage in farming.

⁸⁴ Act of March 2, 1867, c. 187, 14 Stat. 546, codified at 42 U.S.C § 1994.

⁸⁵ Kermit L. Hall, “Peonage,” *The Oxford Companion to the Supreme Court of the United States*, 2005, Encyclopedia.com, March 13, 2011, <http://www.encyclopedia.com/topic/peonage.aspx> (accessed March 27, 2012).

⁸⁶ “Peonage,” *Justia.com*, <http://law.justia.com/constitution/us/amendment-13/02-peonage.html> (accessed March 30, 2012).

⁸⁷ Douglas A. Blackmon, *Slavery by Another Name: The Re-enslavement of Black Americans from the Civil War to World War II*, Doubleday, 2008. A 90-minute documentary based on this book was released by PBS on February 13, 2012, <http://www.pbs.org/tpt/slavery-by-another-name/watch/> (accessed March 30, 2012).

Both whites and African Americans turned toward sharecropping as an alternative to rural wage labor. Because most African Americans had no access to capital, they lacked the financial wherewithal to buy their own land. Many initially viewed sharecropping as a way to build up savings and eventually enter the landowning class. In exchange for their skills and muscle, sharecroppers expected to receive tools, seed, work animals, and fertilizer, plus food, housing, supplies, and a substantial proportion of the final crop. Shares might vary from one-third to one-half for a sharecropping family, with the remainder going to the landowner to cover supplies, rent, and debts to merchants and bankers. Tenant farmers, who owned their own mules and farm implements, had rights to a larger share of the crop than did sharecroppers, who owned nothing. In practice, there was considerable overlap between the conditions of tenant farmers and sharecroppers, both of whom worked the land of others.

Sharecropping disintegrated into an exploitative labor system that trapped black families. Planters regularly falsified accounts at the end of each year to keep their workers in perpetual debt. Some planters found excuses to dismiss tenant farmers just before their compensation was due.⁸⁸

New landlord and tenant laws were enacted that gave the landowners complete authority over the crop and the financial settlement at harvest. These laws “made the sharecropper into a wage earner instead of a partner in the production of a crop.”⁸⁹ As such, he was subject to the same vagrancy, contract fraud and criminal surety laws that entrapped other laborers into peonage.

While ultimately found unconstitutional, these statutes legalized debt servitude for decades around the turn of the 20th century. Additionally, federal civil rights legislation sought to provide more protection from coercive behavior, including the 1909 Slave Trade Statute.⁹⁰ Section 241 of the statute provides:

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

⁸⁸ Caryn E. Neumann, “Sharecropping,” <http://american-business.org/2703-sharecropping.html> (accessed March 23, 2012).

⁸⁹ *Ibid.*

⁹⁰ March 4, 1909, ch. 321, 35 Stat. 1092.

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.⁹¹

Section 242 of the statute addresses the deprivation of rights and the application of different punishments and penalties on the basis of alienage or race.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.⁹²

The Slave Trade Statute added sections 1581 (peonage; obstructing enforcement) and 1584 (sale into involuntary servitude) to Title 18 of the United States Code. These sections have been used to prosecute human traffickers, but the United States Supreme Court, in *United States v. Kozminski*,⁹³ interpreted these provisions to require a showing of the use or threatened use of physical or legal coercion and specifically rejected psychological coercion as a means of subjecting an individual to involuntary servitude.

. . . our precedents clearly define a Thirteenth Amendment prohibition of involuntary servitude enforced by the use or threatened use of physical or legal coercion. The guarantee of freedom from involuntary servitude has never been interpreted specifically to prohibit compulsion of labor by other means, such as psychological coercion. *Kozminski* at 944.

⁹¹ 18 U.S.C. § 241.

⁹² 18 U.S.C. § 242.

⁹³ 487 U.S. 931 (1988).

Absent change by Congress, we hold that, for purposes of criminal prosecution under § 241 or § 1584, the term “involuntary servitude” necessarily means a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process. This definition encompasses those cases in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion. Our holding does not imply that evidence of other means of coercion, or of poor working conditions, or of the victim’s special vulnerabilities is irrelevant in a prosecution under these statutes. As we have indicated, the vulnerabilities of the victim are relevant in determining whether the physical or legal coercion or threats thereof could plausibly have compelled the victim to serve. In addition, a trial court could properly find that evidence of other means of coercion or of extremely poor working conditions is relevant to corroborate disputed evidence regarding the use or threatened use of physical or legal coercion, the defendant’s intention in using such means, or the causal effect of such conduct. *Kozminski* at 952.

HUMAN TRAFFICKING IN THE 21ST CENTURY

International Efforts

The year 2000 was the culmination of a growing international concern with the problem of human trafficking. That year, the United Nations General Assembly adopted the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.” Known as the Palermo Protocol, it is under the guardianship of the United Nations Office on Drugs and Crime, which reports that 147 States (countries) have adopted it.⁹⁴ Its stated purpose is:

To prevent and combat trafficking in persons, paying particular attention to women and children; To protect and assist the victims of such trafficking, with full respect for their human rights; and To promote cooperation among State Parties in order to meet those objectives.⁹⁵

The United States signed the protocol on December 13, 2000, and ratified it on November 3, 2005.⁹⁶

Countries that ratify the Convention and the Protocol are obligated to introduce national trafficking legislation. The Protocol is implemented by the United Nations Office on Drugs and Crime (UNODC), which is responsible for assisting countries with drafting laws and developing national anti-trafficking strategies. To raise awareness and inspire action against human trafficking in 2000, UNODC launched the Blue Heart Campaign, which supports the U.N. Global Fund for Trafficking Victims.

In 2005, the Council of Europe held its Convention on Action against Trafficking in Human Beings. To monitor the implementation of its decisions, the Convention established a Group of Experts on Action against Trafficking in Human Beings, known as GRETA. GRETA’s regular reports are published, and the countries that do not fully respect the measures contained in the Convention are required to take corrective actions.

⁹⁴ United Nations Office on Drugs and Crime, “Human Trafficking,” <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menuse> (accessed March 21, 2012).

⁹⁵ “United Nations Convention Against Transnational Organized Crime,” 2000, pg. 1, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_eng.pdf, (accessed March 21, 2012).

⁹⁶ United Nations Treaty Collection, “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime,” http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en#EndDec (accessed March 29, 2012).

United States Government Efforts

Also in 2000, Congress enacted the Victims of Trafficking and Violence Protection Act (TVPA) of 2000.⁹⁷ One of the intended purposes of this act is to expand the scope of the law in response to the decision in *Kozminski*.⁹⁸ Significant aspects of the law include that it prohibits forced labor, trafficking with respect to peonage, slavery, or involuntary servitude, and sex trafficking of children or of others by force, fraud, or coercion. 18 U.S.C. § 1589 prohibits forced labor obtained “by means of serious harm or threats of serious harm” and specifically defines “serious harm” to include

any harm, whether physical or nonphysical, including 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 to perform or to continue to performing labor or services in order to avoid incurring that harm.

The act sought to make special provision for victims of “severe forms of trafficking,” which include sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act is under the age of 18. A commercial sex act is defined as any sex act on account of which anything of value is given to or received by any person.

An alien who is a victim of a severe form of trafficking in persons is eligible for the same benefits and services under federal or state programs as alien refugees. Cooperation by such victims in investigations and prosecutions of their traffickers can help them obtain legal immigrant status. The act authorizes the establishment of the Office to Monitor and Combat Trafficking in the U.S. Department of State, and created three new categories of immigration statuses to permit trafficking victims who are illegal immigrants to remain in the United States for some period of time.

A new class of non-immigrant visa (a T visa) was designed for an alien who:

- the Attorney General determines is a victim of a severe form of trafficking in persons,
- is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or a U.S. port of entry on account of such trafficking,

⁹⁷ 18 U.S.C. §§ 1589-1593 and 1594.

⁹⁸ Conference Report on H.R. 3244 (House of Representatives – October 5, 2000), H.R. Conf. Rep. No. 106-939 (2000), “Joint Explanatory Statement Of The Committee Of Conference,” <http://thomas.loc.gov/cgi-bin/query/D?r106:2::/temp/~r106De9ST5:e269046> (accessed March 30, 2012).

- has complied with any reasonable request for assistance in the federal investigation or prosecution of acts of trafficking or has not attained age 15, and
- would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

The spouse, children, and parents of such an alien who is under 21 are eligible for a T visa if the Attorney General considers it necessary to avoid extreme hardship. The minor children of such an alien who is 21 years of age or older are also eligible if they are accompanying or following to join such alien. The total number of aliens who may be issued a T visa is limited to 5,000 people (not counting spouses, children or parents of the principal alien) during each fiscal year.⁹⁹

The enacting legislation of the TVPA, in its provisions addressing battered immigrant women, also provides for a humanitarian/material witness U non-immigrant classification. The U visa is an immigration benefit that can be sought by victims of certain crimes¹⁰⁰ who are currently assisting or have previously assisted law enforcement in the investigation or prosecution of a crime, or who are likely to be helpful in the investigation or prosecution of criminal activity.¹⁰¹ The law enforcement certification USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification (Form I-918B) is a requirement for U visa eligibility. Significantly, T visa applicants are “strongly advised” to submit law enforcement certification USCIS Form I-914B, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking Persons, which can serve as primary evidence that the person was a victim of trafficking and complied with reasonable requests from law enforcement, but may prove those elements through alternative means.¹⁰²

A victim of human trafficking who is a potential witness against a trafficker may also be eligible for a temporary immigration status known as “continued presence.” Federal law enforcement officials are authorized to submit applications for continued presence. State and local law enforcement who identify victims of human trafficking should contact their federal counterparts to ensure submission of the application. The status lasts for one year, but is renewable. No law enforcement certification is required for continued presence, and it is not dependent on cooperation by the victim, charges

⁹⁹ 8 U.S.C. § 1101(a)(15)(T).

¹⁰⁰ Qualifying crimes are identified as: abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, felonious assault, female genital mutilation, being held hostage, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, sexual assault, sexual exploitation, slave trade, torture, trafficking, witness tampering, unlawful criminal restraint, other related crimes (includes any similar activity where the elements of the crime are substantially similar and also includes attempt, conspiracy, or solicitation to commit any of the enumerated crimes and other related crimes.

¹⁰¹ 8 U.S.C. § 1101(a)(15)(U).

¹⁰² United States Department of Homeland Security, U.S. Citizenship and Immigration Services, “T Visa & U Visa,” <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=829c3e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=829c3e4d77d73210VgnVCM100000082ca60aRCRD> (accessed March 24, 2012).

being filed against the trafficker or acceptance of a trafficking case for prosecution. Continued presence can be authorized solely on the basis of a credible uncorroborated victim statement.¹⁰³

Interference with identity documents is also prohibited. The law imposes restitution and forfeiture of assets mandates on convicted traffickers, and makes victims eligible for the federal witness protection program.¹⁰⁴ The same piece of legislation also contained the Violence Against Women Act of 2000 and the Battered Immigrant Women Protection Act of 2000.

The TVPA was amended in 2003 to extend to nonimmigrant alien family members the same benefits and services available to a trafficking victim. Such benefits and services may include services to assist potential victims of trafficking in achieving certification and to assist minor dependent children of victims of severe forms of trafficking in persons or potential victims of trafficking. The benefits and services eligibility criteria for trafficking victims were expanded to include consideration of a victim's willingness to assist with a state or local investigation as well as with a federal investigation. Additionally, the 2003 TVPA amended the Immigration and Nationality Act to increase from 15 to 18 the minimum age at which a trafficking victim is required to assist in investigations and prosecutions to be eligible for a T visa, and added unmarried siblings under age 19 to the family members of a trafficking victim eligible for a T visa.

The 2003 amendments authorized a victim of criminal trafficking offenses to bring a civil action in any appropriate U.S. district court for actual damages, punitive damages, reasonable attorneys fees, and other litigation costs reasonably incurred.¹⁰⁵ The federal criminal code was amended to extend jurisdiction of sex trafficking offenses to acts of trafficking in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, added specified offenses relating to trafficking to federal racketeering offenses, and added a prohibition against the use of funds under the act to promote, support or advocate the legalization or practice of prostitution.¹⁰⁶

Amendments to the TVPA enacted in 2005 expanded the scope of the act to include domestic trafficking in persons, and included grant programs to (1) establish or expand assistance programs for U.S. citizens or permanent resident aliens who are the subject of sex trafficking or severe forms of trafficking that occurs in the United States; and (2) mandate that state and local law enforcement agencies establish or expand programs to combat trafficking. Additionally, it directed the Secretary of Health and

¹⁰³ 22 U.S.C. § 7105(c)(3); Department of Homeland Security, "Continued Presence," http://www.dhs.gov/files/programs/gc_1284411607501.shtm (accessed March 30, 2012).

¹⁰⁴ CRS (Congressional Research Service) Summary of H.R.3244 (1999), <http://thomas.loc.gov/cgi-bin/bdquery/z?d106:HR03244:@@D&summ2=5&>.

¹⁰⁵ 18 U.S.C. § 1595.

¹⁰⁶ Trafficking Victims Protection Reauthorization Act of 2003, Public Law 108-193; CRS Summary of H.R. 2620 (2003), <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HR02620:@@D&summ2=m&|TOM:/bss/d108query.html>.

Human Services to carry out a pilot program to establish residential treatment facilities in the United States for juveniles subjected to trafficking; and submit an implementation report to Congress.¹⁰⁷

The latest amendments to the TVPA were enacted in 2008. Among its provisions are a directive (formerly an authorization) for the Secretary of State to establish within the Department of State an Office to Monitor and Combat Trafficking and a directive that the President establish assistance programs for foreign governments to prevent and deter trafficking in persons. The amendments also include anti-trafficking assistance to foreign countries for investigations of individuals and entities involved in sexual exploitation. It also makes assistance for victims of trafficking in other countries available, through organizations that contract with, or receive grants from, the U.S. government, for the support of refugees and internally displaced persons. It revises provisions regarding minimum standards for the elimination of trafficking by foreign countries in order to receive assistance to include adding a requirement that a foreign government has made serious and sustained efforts to reduce the demand for commercial sex acts and participation in international sex tourism by nationals of the country.

Eligibility for T visas is expanded to include aliens who are brought into the country for investigations or as witnesses, unable to participate in a law enforcement interview because of physical or psychological trauma, or are parents or unmarried siblings under the age of 18 who face retaliation as a result of their family member's escape from trafficking or cooperation with law enforcement. The Secretary of Homeland Security is directed to develop and make available an information pamphlet on legal rights and resources for aliens applying for employment- or education-based nonimmigrant visas.

An alien is eligible for public benefits if the alien's petition sets forth a *prima facie* case for T visa status and the petition is either approved or pending. The Secretary of Health and Human Services and the Attorney General are directed to establish an assistance program for U.S. citizens and lawful permanent residents who are victims of severe forms of trafficking, and they are authorized to make grants to states, Indian tribes, local government, and nonprofit victims' service organizations to develop and expand victim service programs.

Penalties are expanded to authorize the same penalty for conspiracy or for benefiting financially from peonage, enticement into slavery or involuntary servitude, trafficking in persons, or related document use, as is provided for the underlying offense, and establishes criminal penalties for foreign labor contracting fraud. In addition, this enabling legislation includes the Child Soldiers Prevention Act of 2008.¹⁰⁸

¹⁰⁷ Trafficking Victims Protection Reauthorization Act of 2005, Public Law 109-164; CRS Summary of HR 972 (2005), <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR00972:@@D&summ2=m&TOM:/bss/d109query.html>.

¹⁰⁸ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (H.R. 7311), <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR07311:@@D&summ2=m&TOM:/bss/d110query.html>; See 18 U.S.C. §§ 1593A and 1596.

Increased attention to human trafficking on the federal level has led to several agencies introducing programs and awarding grants aimed at researching and combating this crime.

President's Interagency Task Force

The President's Interagency Task Force to Monitor and Combat Human Trafficking is a Cabinet-level task force created to coordinate federal anti-trafficking efforts. It was authorized in the Trafficking Victims Protection Act of 2000 (TVPA); it meets no less than once annually and is chaired by the Secretary of State. A Senior Policy Operating Group (SPOG) was created in 2003 to follow-up on the President's Interagency Task Force and coordinate and implement initiatives to U.S. government anti-trafficking policies, guidelines, grants and planning. The SPOG meets quarterly and includes representatives from the U.S. Agency for International Development, the Human Smuggling and Trafficking Center¹⁰⁹ and the Departments of Justice, State, Defense, Education, Labor, Health and Human Services and Homeland Security. In 2007, a special subcommittee met to develop recommendations specifically to combat domestic trafficking.¹¹⁰

At the most recent meeting of the task force on March 15, 2012, members were reminded of President Obama's remarks calling trafficking the "debasement of our common humanity." It was also noted that as the 150th anniversary of the Emancipation Proclamation approaches, it is a good time for us to recommit ourselves to the work of ending modern slavery.¹¹¹ The President's personal statement supports federal efforts against trafficking that mirror many of the changes proposed in Pennsylvania. The President continued, stating:

The United States is committed to eradicating trafficking in persons, and the government will draw on tools ranging from law enforcement and victim service provisions, to public awareness building and diplomatic pressure. Because the U.S. knows its own efforts are not enough, it is also increasing our partnerships with a broad coalition of local communities, faith-based and non-governmental organizations, schools and businesses.¹¹²

¹⁰⁹ DOJ, "Human Trafficking: The President's Interagency Task Force and the Senior Policy Operating Group," <http://www.nij.gov/topics/crime/human-trafficking/task-force.htm> (accessed March 4, 2012).

¹¹⁰SPOG, "Subcommittee on Domestic Trafficking," August 2007 <http://www.acf.hhs.gov/trafficking/SPOGReport-Final9-5-07.pdf> (accessed March 4, 2012).

¹¹¹ DOS, "Annual Meeting of the President's Interagency Task Force To Monitor and Combat Trafficking in Persons," March 15, 2012, <http://www.state.gov/secretary/rm/2012/03/185905.htm> (accessed March 21, 2012).

¹¹² The White House, "Statement by the President on the Meeting of the Interagency Task Force to Monitor and Combat Trafficking in Persons," March 15, 2012, <http://www.whitehouse.gov/the-press-office/2012/03/15/statement-president-meeting-interagency-task-force-monitor-and-combat-tr> (accessed March 21, 2012).

Department of Justice

The U.S. Attorney General and Department of Justice (DOJ) are also involved in the fight against human trafficking. While a member of the President's Interagency Task Force, DOJ has also worked to combat trafficking in its own right. In its annual report to Congress, beginning in 2004, it assesses and evaluates U.S. efforts to combat both sex and labor trafficking at home and abroad, critiques efforts that are under way and outlines goals for improvement in future years.¹¹³ U.S. Attorneys across the country have been involved in investigating and prosecuting suspected traffickers, and the DOJ distributes grant monies to law enforcement agencies for anti-trafficking efforts.¹¹⁴ Part of the grant monies fund the Anti-Human Trafficking Task Force Initiative within the Bureau of Justice Assistance.¹¹⁵ Many of the state and local law enforcement task forces listed in Appendix B are funded through this initiative.

Department of State

The DOS has taken a leading role in anti-human trafficking efforts around the globe. It releases an annual report on the subject, detailing its efforts and those of other nations in a ranking or tier system that measures compliance with the TVPA. Reports contain information ranging from keys to successful laws, policies and best practices to combating specific forms of trafficking, guarding against government contractor and procurement abuse, breaking the supply chain and considerations during disaster response.¹¹⁶ Through its Office To Monitor and Combat Trafficking In Persons, the Ambassador-at-Large coordinates U.S. government activities in the global fight against contemporary forms of slavery. In addition, the Ambassador serves as Senior Advisor to the Secretary and "assesses global trends, provides training and technical assistance, and advocates for an end to modern slavery."¹¹⁷

Department of Homeland Security

In July 2010, the United State Department of Homeland Security (DHS) launched the Blue Campaign, a comprehensive campaign to coordinate and enhance the Department's efforts aimed at curbing human trafficking. Led by a steering committee comprised of representatives from 17 operational and support components from across

¹¹³ DOJ, "Attorney General's Annual Report to Congress on and Assessment of U.S. Government Activities to Combat Trafficking in Persons," Fiscal Year 2012, <http://www.justice.gov/ag/annual-reports/tr2010/agreporhumantrafficking2010.pdf> (accessed March 4, 2012).

¹¹⁴ humantrafficking.org, "U.S. Attorney General John Ashcroft Issues First Annual Report on Human Trafficking," <http://www.humantrafficking.org/publications/342> (accessed March 4, 2012).

¹¹⁵ DOJ, Bureau of Justice Assistance, "Anti-Human Trafficking Task Force Initiative," https://www.bja.gov/ProgramDetails.aspx?Program_ID=51 (accessed March 21, 2012).

¹¹⁶ DOS, "Trafficking in Persons Report 2011," <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm>, and <http://www.state.gov/j/tip/rls/tiprpt/> (accessed February 25, 2012).

¹¹⁷ DOS, "Biography, Ambassador-at-Large Luis CdeBaca," <http://www.state.gov/r/pa/ei/biog/124083.htm> (accessed June 4, 2011).

DHS, the Blue Campaign “harnesses and leverages the varied authorities and resources of the Department of Homeland Security to deter human trafficking by increasing awareness, protecting victims, and contributing to a robust criminal justice response.”¹¹⁸

The DHS site prominently displays two telephone numbers to help victims and to report suspected human trafficking activity to law enforcement. Both numbers are staffed 24 hours a day, 7 days a week.

Several DHS offices have produced informational materials to promote public awareness about human trafficking and to indicate resources available to potential victims. The U.S. Immigration and Customs Enforcement (ICE) issued wallet-sized human trafficking indicator cards. The cards are available in 17 languages and contain definitions of human trafficking and human smuggling as well as a set of questions to ask in order to help identify potential human trafficking victims. The format makes these cards most accessible to the public and potential victims and inconspicuous so as not to put victims in jeopardy if they try to hide them. Colorful, emphatic posters, also available in several languages, specify key signals that can help recognize a trafficking victim. Among other places, posters are displayed at ports of entry and in the processing areas of Border Patrol stations. The United States Customs and Border Protection officers and agents are supplied with human trafficking tear cards that they can distribute to potential victims.

To complement the indicator cards and posters, ICE created an informational pamphlet highlighting its law enforcement role and its victim-oriented approach to human trafficking. ICE and the United States Citizenship and Immigration Services (USCIS) produced brochures outlining immigration options for victims of human trafficking, along with victims of domestic violence and other crimes. These publications are geared towards “emergency responders, law enforcement officers, and healthcare professionals nationwide who may be in a position to identify and aid victims of trafficking.”¹¹⁹ USCIS continually publishes memoranda clarifying the rights of trafficking victims under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. Interested organizations and individuals may sign up to receive the *Daily Human Trafficking and Smuggling Report*, a summary of open-source information about current human trafficking issues.

The public awareness campaign includes television, radio, and print media in the United States and Central America. It informs the public, including potential victims, of the dangers of human trafficking and advises how to report suspected human trafficking to authorities. In 2010, the Hidden in Plain Sight campaign featured newspaper advertisements in five languages printed in 50 newspapers across the United States whose

¹¹⁸ DHS, “Fact Sheet: DHS Blue Campaign,” http://www.dhs.gov/ynews/gc_1279809595502.shtm (accessed February 21, 2012).

¹¹⁹ Ibid.

total readership was an estimated 5 million people.¹²⁰ The DHS has also created several online resources for the general public and for law enforcement, non-governmental organizations and service providers.

The Blue Campaign has developed awareness and training materials to help increase public awareness and to promote competent and successful handling of human trafficking cases by law enforcement. The DHS offers training of different kinds and at different levels, from the Human Trafficking “Coffee Break” Training that offers private individuals some basic information on how human trafficking works and what they can do to stop it, to the highly specialized training program for federal employees: the Combating Human Trafficking Training for Acquisitions Personnel, which is specifically tailored for the U.S. government acquisition workforce with regard to combating human trafficking using the pertinent provisions of the federal acquisition regulations.¹²¹ The Office of Health Affairs and the Federal Emergency Management Agency’s United States Fire Administration collaborated on a public awareness video to help first responders recognize possible victims of human trafficking. The Federal Law Enforcement Training Center developed a free interactive computer-based training system for federal, state and local law enforcement officers. This training program “has been certified by Peace Officers Standards and Training in select states and has the potential to reach 200,000 law enforcement officers annually.”¹²² The DHS continuously expands and improves the training of its own personnel in their anti-trafficking roles and responsibilities, in the protection of the confidentiality of trafficking victims and in addressing urgent victim needs appropriately.

To facilitate anti-trafficking efforts on a broad scale, the DHS consistently expands engagement with its international partners and the private sector. The Private Sector Office of the DHS has developed a virtual toolkit of DHS’s anti-human trafficking resources and distributed it to thousands of employers across the nation, including those in industries where human trafficking is most likely to occur, such as lodging, entertainment, transportation, agriculture, manufacturing and construction. The DHS continues to investigate new opportunities for bilateral and multilateral collaboration with various international organizations. In its targeted outreach efforts, the Blue Campaign organizes stakeholder meetings with dozens of participants from non-governmental, state, local and private sector agencies.

The Blue Campaign has played a major part in bringing human trafficking into the national focus, in increasing public awareness and in promoting cooperation between various organizations that can be involved with trafficking victims in different ways.

The Blue Campaign, launched in 2010, was followed in 2011 by a new initiative: a nationwide Human Trafficking Enhanced Enforcement Initiative. Its launch was announced by the Departments of Justice, Homeland Security and Labor in

¹²⁰ Ibid.

¹²¹ DHS, “Human Trafficking Awareness Training,” <http://www.dhs.gov/files/programs/human-trafficking-awareness-training.shtm> (accessed February 21, 2012).

¹²² “Fact Sheet: DHS Blue Campaign.”

February 2011. It is designed to streamline expanding federal criminal investigations and prosecutions of human trafficking offenses. As part of the Enhanced Enforcement Initiative, specialized Anti-Trafficking Teams, known as ACTeams, are convened in select pilot districts around the country. The ACTeams are comprised of prosecutors and agents from multiple federal agencies. The ACTeams will implement “a strategic action plan to combat identified human trafficking threats.”¹²³ The purpose of the ACTeams activities is “to vindicate the rights of human trafficking victims, bring traffickers to justice and dismantle human trafficking networks.”¹²⁴ Announcing the new joint initiative, United States Attorney General Eric Holder emphasized the importance of collaboration: “The Human Trafficking Enhanced Enforcement Initiative takes our anti-trafficking enforcement efforts to the next level by building on the most effective tool in our anti-trafficking arsenal: partnerships.”¹²⁵ Secretary of Labor Hilda L. Solis in her statement focused on the plight of victims: “Victims of these contemptuous acts have been left in an unfamiliar land with no family, no support systems, and no way to make a life for themselves. We must do whatever we can to ensure that victims of trafficking receive full restitution, including denied wages.”¹²⁶ Combined efforts of several federal agencies through the ACTeam Initiative provide an opportunity of addressing various aspects of human trafficking in the most effective and comprehensive way.

Victims of Crime Act

One of the federal sources for financing efforts to combat human trafficking is the Victims of Crime Act (VOCA) Program. This program was established by the Victims of Crime Act of 1984 and is administered by the U.S. Department of Justice. The purpose of the program is to assist victims of crime in coping with the physical, emotional and criminal justice issues associated with crime. Victim services agencies funded by VOCA provide a variety of supportive services to victims of crime, including courtroom support, networking and referrals for treatment services and accompaniment to medical appointments. A portion of federal VOCA funds goes to state-based victim assistance programs, which provide cash payments to victims to pay (or reimburse out-of-pocket) for direct costs associated with crimes, such as medical examinations, counseling and other treatment costs, travel costs to court and funeral expenses.

While VOCA funds are often used by agencies providing services to human trafficking victims along with other victims of crime, a number of VOCA grants are specifically targeted at human trafficking. Some of these grants are offered by the Office for Victims of Crime; others by the Bureau of Justice Assistance; still others seek applications under a joint funding solicitation of several U.S. Department of Justice divisions. Examples of such programs in 2010 were “Enhanced Collaborative Model to

¹²³ DOJ, “Department of Justice Announces Launch of Human Trafficking Enhanced Enforcement Initiative,” February 1, 2011, <http://www.justice.gov/opa/pr/2011/February/11-ag-140.html> (accessed March 20, 2012).

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

Combat Human Trafficking,” offered to “state and local law enforcement agencies and nonprofit victim service organizations with a demonstrated established relationship and capacity to successfully partner among themselves and key stakeholders to support an enhanced approach to identifying, rescuing, and assisting victims of all forms of human trafficking;”¹²⁷ and “Services for Domestic Minor Victims of Human Trafficking,” awarding grants to states, Indian tribes, units of local government, tribal governments, as well as nonprofit, non-governmental organizations, with the purpose “to develop, enhance, or expand a comprehensive model of service delivery to minors who have been subjected to sex or labor trafficking” in collaboration with local public agencies, victim service providers, and nonprofit and faith-based organizations that serve youth.¹²⁸

In 2010 the National Institute of Justice also awarded a special grant, “Research and Evaluation on Human Trafficking,” to address the knowledge gaps related to trafficking in persons in the United States. The areas of particular interest indicated by the National Institute of Justice included “evaluations of programs that operate demand reduction interventions for sex trafficking and commercial sex acts” and “research that describes and estimates the unlawful commercial sex economy in the United States.”¹²⁹ The emphasis was on direct, immediate implications for policy and practice in the United States.

Violence Against Women Act

The Violence Against Women Act (VAWA), a federal law passed in 1994, established several grant programs. The Office on Violence Against Women funds these programs. At least one of them, STOP (Services, Training, Officers, and Prosecutors), can be used to fight human trafficking. The STOP program promotes

a coordinated, multidisciplinary approach to enhancing advocacy and improving the criminal justice system’s response to violent crimes against women. It encourages the development and improvement of effective law enforcement and prosecution strategies to address violent crimes against women and the development and improvement of advocacy and services in cases involving violent crimes against women.¹³⁰

The Pennsylvania Coalition Against Rape receives STOP funding through a grant awarded to the Pennsylvania Commission on Crime and Delinquency.

¹²⁷ DOJ, “OVC FY10 Enhanced Collaborative Model to Combat Human Trafficking,” http://www.ojp.usdoj.gov/ovc/grants/pdfxt/fy10_human_trafficking.pdf (accessed January 27, 2012).

¹²⁸ DOJ, “OVC FY09 Services for Domestic Minor Victims of Human Trafficking,” http://www.ojp.usdoj.gov/ovc/grants/pdfxt/FY09_Services_Domestic_Minor_Victims.pdf (accessed January 27, 2012).

¹²⁹ DOJ, “Solicitation: Research and Evaluation on Human Trafficking,” <https://www.ncjrs.gov/pdffiles1/nij/sl000887.pdf> (accessed February 17, 2012).

¹³⁰ DOJ, “Grant Programs,” <http://www.ovw.usdoj.gov/ovwgrantprograms.htm#17> (accessed on January 27, 2012).

Rescue and Restore

The U.S. Department of Health and Human Services (HHS) is another federal agency that funds a number of programs to combat human trafficking. The most prominent of these programs, Rescue and Restore, is run by the Anti-Trafficking In Persons Division (ATIP) of the Office of Refugee Resettlement. ATIP helps certify victims of a severe form of trafficking in persons, as defined by the Victims of Trafficking and Violence Protection Act of 2000. This certification allows victims to receive federally-funded benefits and services similar to those of refugees. ATIP leads the HHS Rescue and Restore program as part of its public awareness campaign. Its goal is to assist in identification of trafficking victims by educating the general public and persons and organizations likely to encounter victims such as social services providers, public health officials and lawyers, as well as ethnic, faith-based and community organizations. Rescue and Restore coalitions were established in 24 cities, regions and states. These coalitions “are comprised of non-governmental organization (NGO) leaders, academics, students, and other key stakeholders who are committed to addressing the problem of human trafficking in their own communities.”¹³¹ The Rescue and Restore Regional Program serves as the focal point for regional public awareness and local outreach activities aimed at identification of trafficking victims. Regional Rescue and Restore partners oversee local anti-trafficking networks and sub-award 60% of grant funds to local organizations that identify victims and work with them.¹³² Throughout the country, a network of non-governmental service organization subcontractors assists trafficking victims in over 100 locations throughout the country.¹³³ These per capita subcontractors are reimbursed for each human trafficking victim served under their case management. “This *per capita* system ensures the provision of efficient, high-quality services to victims of human trafficking. It also streamlines support services in order to help victims of human trafficking get timely access to shelter, legal assistance, job training and health care, enabling them to establish lives free of violence and exploitation.”¹³⁴

Several organizations providing services to victims of human trafficking in Pennsylvania benefit from Rescue and Restore. One is the shelter Dawn’s Place in Philadelphia. In 2011, 22% of the Dawn’s Place income came from two different federal HHS grants: Rescue and Restore and a subcontract with the U.S. Conference of Catholic Bishops, which was a per-capita grant for international trafficking victims coming

¹³¹ HHS, “Office of Refugee Resettlement,” http://www.acf.hhs.gov/ebrochure2011/ORR_VIPA.htm (accessed January 27, 2012).

¹³² Ibid.

¹³³ HHS, “The Campaign to Rescue & Restore Victims of Human Trafficking,” <http://www.acf.hhs.gov/trafficking/index.html> (accessed February 10, 2012).

¹³⁴ Ibid.

through the U.S. Committee for Refugees and Immigrants.¹³⁵ These federal grants are a valuable source of funding. “However, the current subcontract for the HHS per-capita grant depends on the admission of international women. These numbers are hard to predict.”¹³⁶ Victim service providers, including shelters like Dawn’s Place, can receive support from the above-mentioned federal grants only if they have international victims of human trafficking. Most of their funding comes from individual or group donations or grants, not from federal or state sources.

Pennsylvania State and Local Efforts

Pennsylvania enacted its only statute specifically addressing the crime of human trafficking with the addition of Chapter 30 to Title 18 of the Pennsylvania Consolidated Statutes (The Crimes Code) by the act of November 9, 2006 (P.L.1340, No.139). While this statute provides for remedies of restitution and asset forfeiture, and creates the felony offense of trafficking in persons, there is no discussion of services to victims of trafficking. Additionally, the act does not differentiate between labor trafficking and sex trafficking, and the use of the term “forced labor or services” could lead to the interpretation that the statute is intended to address labor trafficking only.

A number of organizations are actively involved in drawing attention to human trafficking and making positive efforts to stop it in Pennsylvania.

South Central Pennsylvania Human Trafficking Response Team

The Pennsylvania Coalition Against Rape (PCAR) is the oldest anti-sexual violence coalition in the United States. The organization represents 51 sexual assault centers that serve victims in the state’s 67 counties. In its fight against human trafficking, PCAR works in conjunction with state and local law enforcement agencies. In June 2011, PCAR and the Pennsylvania District Attorneys Association announced the formation of the Human Trafficking Response Team, covering a five-county area in South Central Pennsylvania (Adams, Franklin, Perry, Cumberland and Dauphin). Comprised of representatives of law enforcement, victim advocates, social services and professional trade associations, this team is the first regional response team in Pennsylvania to focus on human trafficking.

¹³⁵ E-mail from Sister Teresita Hinnegan, President of the Board of Dawn’s Place, to JSGC staff on February 10, 2012.

¹³⁶ Ibid.

Success of the human trafficking response team operating in Dauphin, Perry, Cumberland, Adams and Franklin Counties is based upon the collaboration of several state and county agencies.¹³⁷ The district attorneys have assigned the chief detectives within their office to be responders to human trafficking crimes. The Pennsylvania State Police specifically designated troopers to respond to human trafficking crimes. Each county has appointed a children and youth caseworker who is called if there is a human trafficking crime and the victim is a minor. Local rape advocates are also on board and will be contacted by law enforcement to offer advocacy, counseling and to help find services for the suspected victims. The human trafficking response team organizers have regular meetings and provide training for all participants in the five counties.¹³⁸ Training includes dynamics of human trafficking, domestic trafficking (adult and child), runaway youth as high risk victims for trafficking, international trafficking into Pennsylvania, counseling considerations for victims of trafficking, investigating trafficking at migrant camps and Asian massage parlors, various aspects of investigating and prosecuting human trafficking cases, team development and multi-jurisdictional collaborations.

Philadelphia Anti-Trafficking Coalition

The Philadelphia Anti-Trafficking Coalition (PATC), comprised of representatives of social service agencies, government, law enforcement agencies, faith-based groups and other advocates, is dedicated to combating human trafficking in the Philadelphia area. The coalition was founded in 2005 on the initiative of the Covenant House Pennsylvania. The coalition's focus is assistance to trafficking victims. PATC convenes several times a year to ensure appropriate response to victims, expand the range of services to meet victims' needs and further coordinate these services, including emergency assistance, legal aid, shelter, and advocacy.¹³⁹ The coalition has increased its outreach efforts toward vulnerable populations. It organizes training events for those likely to encounter victims or provide services to them. PATC tries to establish relationships with medical professionals and those able to provide interpretation services at low cost or no cost. One of its projects is the compilation of a resource guide for human trafficking in Philadelphia.

Southwestern Pennsylvania Anti-Human Trafficking Coalition

The Southwestern Pennsylvania Anti-Human Trafficking Coalition was formed in Pittsburgh in partnership with the Project to End Human Trafficking, a nonprofit organized in 2004.¹⁴⁰ This partnership includes local, state and federal law enforcement officers, social service workers, university professors and representatives of religious

¹³⁷ E-mail from Krista Hoffman, PCAR, to JSGC staff on March 28, 2011.

¹³⁸ Ibid; *see supra* note 18.

¹³⁹ Philadelphia Anti-Trafficking Coalition, "Information Sheet," http://www.covenanthousepa.org/documents/patc_infosheet.pdf (accessed March 7, 2012).

¹⁴⁰ The Project to End Human Trafficking, <http://www.endhumantrafficking.org/about> (accessed March 7, 2012).

groups. Speaking on the role of the coalition, FBI Supervisory Special Agent Bradley Orsini emphasized the importance of bringing awareness to the community and of having an organization that may identify a victim to the FBI. He said, “Three of four years ago, we weren’t working with the coalition. We were out there working in a vacuum. Once we got hooked up with the coalition, it expanded our intelligence base dramatically to increase the identification of victims.”¹⁴¹ The FBI has trained new recruits at the Allegheny County and Pittsburgh police academies on human trafficking, along with other civil rights issues. The goal of the coalition is to increase recognition of human trafficking in the community and, most importantly, among first responders. The coalition offers training to members of law enforcement, non-government organizations (NGOs), social service agencies, education, religious organizations and concerned citizens.

Lancaster Initiative Against Human Trafficking

Small grassroots organizations to combat human trafficking have emerged in various regions of Pennsylvania. One of them is the North Star Initiative, which began as a movement of Christians known as Lancaster Initiative Against Human Trafficking (L.I.G.H.T.). L.I.G.H.T. volunteers conducted awareness events and worked at truck stops. L.I.G.H.T. has been incorporated as the North Star Initiative. Presently, its focus is “the development of a restoration home specifically addressing the needs of domestic trafficking victims.”¹⁴² The North Star Initiative is involved in expanding community awareness, trafficking education and event fundraising. It is a founding member of the Lancaster Anti-Trafficking Network (LATN), an affiliation of organizations dedicated to combating human trafficking. North Star emphasizes the need for safe shelter for trafficking victims; therefore, it has made the creation of a safe, restorative home for domestically trafficked victims in Southeastern Pennsylvania its central project.

York County Human Trafficking Task Force

The York County Human Trafficking Task Force, a coalition working together to develop a unified response to human trafficking, was formed in 2005 by a volunteer group of human services agencies in York County, including the York YWCA. The task force includes representatives of law enforcement agencies and service providers as well as community members who are committed to addressing the problem of human trafficking. The task force focuses on outreach and education for law enforcement,

¹⁴¹ Margaret Harding, “Experts: Human Trafficking an Issue Here,” *The Pittsburgh Tribune-Review*, October 18, 2011, http://www.pittsburghlive.com/x/pittsburghtrib/news/pittsburgh/print_762350.html (accessed March 7, 2012).

¹⁴² North Star Initiative, <http://www.northstarinitiative.org/aboutus.htm> (accessed March 1, 2012).

medical professionals and social and legal service providers on special characteristics and needs of trafficking victims.¹⁴³ It provides training and technical assistance to providers serving victims of trafficking in Central Pennsylvania and organizes public awareness and outreach events.

Montgomery County Anti-Human Trafficking Coalition

Montgomery County Pennsylvania is also home to a grassroots organization to combat human trafficking.¹⁴⁴ It is comprised of professionals, businesses and community leaders, and the mission of the anti-trafficking coalition is to “raise awareness about human trafficking and to provide a network of service providers to identify victims and meet their needs.”¹⁴⁵ Founded in April 2011, it is helping to abolish human trafficking in the community through public awareness and education and through hosting events to support their mission.

Berks County Anti-Trafficking Coalition

In Berks County, the group Freedom and Restoration for Everyone Enslaved (FREE) became the basis of the Berks County Anti-Trafficking Coalition (BCATC). As FREE founder Bob Morrison said in an interview, the group intended to help law enforcement identify possible human trafficking, work like a neighborhood Crime Watch to help authorities, and reduce demand for prostitution by educating men about businesses using humans as slaves.¹⁴⁶ At the first meeting of the BCATC, representatives from the district attorney’s office, FREE, Berks Women in Crisis, the Berks Coalition Against Homelessness, the Reading-Berks Council of Churches, the Salvation Army, the United Way of Berks County and the Berks County Community Foundation discussed the tasks of increasing community awareness of human trafficking, of bringing together social service agencies and other organizations to protect victims and provide them with the services they need, and of prosecuting criminals.¹⁴⁷ BCATC defined its goal as establishing a response protocol and delivery of resources to trafficking victims in Berks County. The coalition advocates for legislative action and organizes public events such as film screenings and talks that can increase public awareness of the issue.

¹⁴³ York YWCA, “York Co. Human Trafficking Task Force,” <http://www.ywca.york.org/victim-services/community-action-awareness/york-county-human-trafficking-task-force/> (accessed March 1, 2012).

¹⁴⁴ “BMFI spreads human trafficking awareness, February 6, 2012,” <http://theloquitur.com/?p=28137> (accessed March 4, 2012).

¹⁴⁵ Facebook, “Montgomery County Anti-Human Trafficking Coalition,” <http://www.facebook.com/pages/Montgomery-County-Anti-Human-Trafficking-Coalition/298065240227052?sk=info> (accessed on March 1, 2012).

¹⁴⁶ Jason A. Kahl, “Group Aims to Halt Sexual Slavery in Berks County,” *The Reading Eagle*, September 30, 2009, <http://readingeagle.com/artcile.aspx?id=159260> (accessed on March 2, 2012).

¹⁴⁷ Mary Young, “Group Unites Against Sex Slavery,” *The Reading Eagle*, November 7, 2009, <http://readingeagle.com/article.aspx?id=164685> (accessed on March 1, 2012).

Other States

Increased awareness of the human trafficking as a widespread and dangerous phenomenon led to the establishment of task forces and service providers in many states.¹⁴⁸ The following review of the task forces operating in three states demonstrates a variety of approaches to combating human trafficking on the state level.

New York

The New York Interagency Task Force on Human Trafficking was created to coordinate the implementation of the 2007 Human Trafficking Law and the state's efforts to combat human trafficking. The task force is co-chaired by the Commissioners of the Division of Criminal Justice Services and the Office of Temporary and Disability Assistance (OTDA). These two agencies have assumed clearly defined functions in all areas covered by the new law while at the same time working in close contact with each other and with various other state departments and offices as well as national organizations. The task force established two subcommittees: one to focus on the criminal justice aspect, the other to focus on victim services.

The New York task force has established a comprehensive victim services program. The Response to Human Trafficking Program (RHTP) is run by the OTDA. The RHTP provides services to adult human trafficking victims without immigration status through regional case management agencies. Child victims and those adult victims who are U.S. citizens or eligible aliens receive facilitated referrals for assistance from local departments of social services. In accordance with the New York human trafficking law, the range of services provided under the RHTP is broad: from emergency temporary housing and case management to interpretation services and job training assistance.

The task force provides statewide training on human trafficking to law enforcement personnel, prosecutors and service providers. It facilitates cooperation between various government agencies, law enforcement and non-governmental organizations. It also conducts awareness-raising activities statewide.¹⁴⁹

Along with enhancing law enforcement strategies directed towards individuals who exploit prostitutes and employ forced labor, the task force focused on victims' services: it has worked on establishing a statewide directory of service providers capable of serving trafficking victims, on expanding safe housing options for these victims and on improving the delivery of services to various kinds of victims.

¹⁴⁸ A copy of the BJA/OVC map showing the distribution of human trafficking task forces around the country is provided in Appendix B.

¹⁴⁹ "New York State Interagency Task Force on Human Trafficking: A Report by the Interagency Task Force Implementation of the 2007 Law," August 2008, http://criminaljustice.state.ny.us/pio/humantrafficking/human_trafficking_rpt_aug08.pdf (accessed March 21, 2012).

The New York Interagency Task Force has explored the development of prostitution diversion courts. It has been collecting data on the number of victims and on the effectiveness of the new law.

Ohio

The Ohio Trafficking in Persons Study Commission was created at the suggestion of the Ohio General Assembly to study and review the problem of trafficking in persons, particularly as it affects the state; to study and review the Ohio's criminal law to determine how it applied to conduct that involves or is related to human trafficking; and to develop recommendations to address the problem of trafficking in persons and to improve and expand as necessary the existing criminal law to better address conduct that involves human trafficking.¹⁵⁰ The Commission was comprised of elected officials, law enforcement officers, prosecutors, trafficking victims, victim advocates and service providers.

As the first step, the Commission's Research and Analysis Subcommittee presented a report to the Ohio Attorney General that contained an overview of the existing research and an estimate of the number of persons being trafficked or being at risk of falling victims to trafficking in Ohio.¹⁵¹ Its focus was American-born youth, ages 12 to 17, who are at risk to become victims of the sex trade. The subcommittee identified runaways, throwaways and homeless youth as high-risk groups and determined that Ohio was a destination state for international victims of labor and sex trafficking, and an origin state for domestic victims of sex and labor trafficking. The subcommittee delineated weaknesses in Ohio's response to child sex trafficking in particular and to other kinds of trafficking in persons and recommended steps to be taken by three conventional institutions that typically intersect with youth involved in sex trafficking: the criminal justice system, the social service system and the health care system.¹⁵²

The Legal and Legislative Subcommittee outlined specific recommendations to strengthen Ohio's criminal laws to better address human trafficking, and the amendments they proposed were signed into law.

¹⁵⁰ "Ohio Trafficking in Persons Study Commission 2010 year End Report," December 15, 2010, <http://www.ohioattorneygeneral.gov/getattachment/2b30ee98-d43d-40f6-a66e-aaf966bcf62b/2010-Human-Trafficking-Year-End-Report.aspx> (accessed March 21, 2012).

¹⁵¹ Ohio Trafficking in Persons Study Commission, Research and Analysis Sub-Committee, "Report on the Prevalence of Human Trafficking in Ohio To Attorney General Richard Cordray," <http://www.ohioattorneygeneral.gov/getattachment/5880897e-09e5-4cd1-b051-4680ce560e6d/Report-on-the-Prevalence-of-Human-Trafficking-in-O.aspx> (accessed March 21, 2012).

¹⁵² Ibid.

The Victims Services and Safe Locations Subcommittee identified significant gaps in the services available to trafficking victims in Ohio and recommended a number of ways to fill those gaps, including establishing human trafficking community coalitions to raise awareness and coordinate emergency response when a victim is identified, providing training for all major service networks, building the network of trained case managers whose services would be available statewide, developing residential programs; and increasing the number of trauma-trained therapists and attorneys available to assist victims.¹⁵³

The Training and Law Enforcement Subcommittee found that well-trained law enforcement officers are critical to combating human trafficking as this kind of crime presents special challenges. The Subcommittee noted improved training developed and offered at the Ohio Peace Officer Training Academy and other organizations. It recommended further development of these efforts and better communication among law enforcement offices, in particular formation of regional law enforcement working groups that would allow multiple jurisdictions to gather together and discuss individual cases or observed trends. These working groups could be developed in conjunction with a community anti-trafficking coalition.¹⁵⁴

The Prevention, Education and Outreach Subcommittee suggested a number of low-cost ways to increase public awareness of human trafficking, which would help prevent it, recognize trafficking victims and ensure services for them. The proposed measures include (1) working through statewide organizations, such as the Governor's Office on Faith-Based Initiatives and the Ohio Council of Churches, to reach groups that may already be interested in human trafficking; (2) integrating human trafficking information and training into existing professional training programs for those who might encounter trafficking victims, such as health care professionals and social workers; (3) bringing together human trafficking experts and educators to develop appropriate materials that could be integrated into classroom instruction; and (4) expanding use of social media and the Ohio Attorney General's website to disseminate information on anti-trafficking resources.¹⁵⁵

The Demand Reduction Subcommittee developed recommendations that would lead to the elimination of demand for forced labor and compelled commercial sexual activity. The subcommittee outlined short-term recommendations, such as human trafficking education for youth and the use of Johns Schools to encourage behavior change. It also offered suggestions for long-term solutions, which would incorporate child sexual abuse prevention and increasing economic opportunities for women.¹⁵⁶ Presently, as a result of the work of the Commission, Ohio's criminal codes have been updated to allow for aggressive prosecution of human traffickers. Law enforcement officers have been trained to recognize trafficking cases and treat them properly, and general public awareness has increased.

¹⁵³ "Ohio Trafficking in Persons Study Commission 2010 Year End Report."

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

Texas

In Texas, the first human trafficking report, “The Texas Response to Human Trafficking,” was generated by the Office of the Attorney General in 2008 at the request of the state legislature. Prepared in consultation with the Health and Human Services Commission, the report contained an overview of human trafficking in the state and of the existing laws and regulations governing victims, witnesses and criminals. The report made numerous recommendations that became the basis for policy changes at the state and local level. One of the recommendations was the creation of a statewide task force. In September 2009, the Texas Legislature created the Texas Human Trafficking Prevention Task Force, with the Attorney General as its presiding officer. Numerous state agencies were required to serve as the task force members, the Attorney General was required to appoint certain persons and organizations as representatives of non-governmental organizations that fight trafficking and assist its victims. In 2011, the Task Force submitted an extensive report to the Texas legislature.

Since its formation, the Task Force established its own structure with four workgroups and two subcommittees that (1) specifically addressed training and outreach, law enforcement, victim services and legal review; (2) developed additional regional response teams; (3) improved data collection; (4) explored ways to better identify and support trafficking victims; (5) conducted human trafficking training and raised awareness of human trafficking laws so that authorities could better distinguish between victims and offenders; (6) added investigative and prosecutorial resources for human trafficking and (7) developed legislative recommendations for the Texas legislature.¹⁵⁷

The Task Force perceives coordinating statewide efforts that incorporate an integrated regional approach as the main tool to accomplish its goal of ending human trafficking in Texas. Law enforcement agencies have been working together to investigate trafficking rings that transport victims from one Texas city to another, and their coordinated efforts to dismantle these rings are reported to be successful.¹⁵⁸ Improving human trafficking data collection has been another focal point.

Much attention is given to preventive strategies such as (1) identifying and facilitating the closure of the Internet sites used to foster human trafficking; (2) Texas Rural Legal Aid visits to communities on both sides of the Texas/Mexico border to alert potential victims to the risks of becoming a trafficking victim as a result of smuggling; and (3) dissemination of information about Internet safety, prevention of child abduction and sexual exploitation.

To facilitate victim identification and offender prosecution, local human trafficking response teams are being developed in areas that lack a task force funded by the Bureau of Justice Assistance.

¹⁵⁷ “The Texas Human Trafficking Prevention Task Force Report to the Texas Legislature,” January 2011, https://www.oag.state.tx.us/ag_publications/pdfs/human_trafficking.pdf (accessed March 21, 2012).

¹⁵⁸ Ibid.

The Victim Services Workgroup is examining ways to address a variety of problems trafficking victims face after they have been rescued, such as housing, standards of care, continuum of care and legal representation. A separate Child Victims Subcommittee investigates the needs of minor victims, including the specialized needs of international children and children involved in prostitution. Finding alternatives to incarcerating juveniles involved in prostitution is one of the focal areas.

Raising awareness and education to increase detection involves developing different kinds of training curricula.

Significant effort is put into improving data collection. “Texas became the first state to use the Human Trafficking Reporting System [at Northeastern University] to collect data from entities outside the federally-funded task forces.”¹⁵⁹

The Task Force recognized that response to human trafficking varies widely around the state. In some parts of the state, “the existence of human trafficking is well documented because law enforcement and service providers have established protocols and procedures for responding rapidly to suspected trafficking cases.”¹⁶⁰ In other areas, human trafficking appears to be unknown; neither law enforcement officers nor service providers have any experience assisting trafficking victims. To improve human trafficking response around the state, the Task Force has attempted to develop regional strategies for combating human trafficking, along with a comprehensive statewide approach.

To ensure the long-term viability of the state’s fight against human trafficking, the Task Force developed a detailed plan incorporating all the major areas such as prevention, increasing victim identification and offender prosecution, and providing protection for adult and child trafficking victims. The Task Force identified specific steps and initiatives to be taken by the state, including reducing risk factors. Examples cited include reducing the demand for cheap labor and sexual services, which can be achieved by increasing oversight in industries where trafficking is likely to occur and decreasing availability of child victims by providing more support to families and addressing child abuse; ongoing and advanced training for law enforcement and service providers combined with targeted outreach programs aimed at non-traditional partners such as postal workers, teachers and utility workers; expanding the use of multi-disciplinary response teams; identifying funding mechanisms for victim services and creating a network of services that would guarantee a continuum of care for housing, medical and legal services for all kinds of trafficking victims; creating and maintaining a centralized repository for human trafficking resource and referral information; and enhancing information-sharing among law enforcement agencies by creating additional cohesion units similar to the Dallas-based cohesion unit operating under the Department of

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

Homeland Security and by identifying areas for improved collaboration with federal partners.¹⁶¹ The Task Force also suggested several specific legislative changes. As human trafficking is a crime of adaptation and evolution, the Texas Human Trafficking Prevention Task Force highlighted the need for law enforcement efforts and legislation to evolve on a continual basis.¹⁶²

Survey of Selected State Statutes Relating to Human Trafficking

As more states adopt individual anti-human trafficking statutes, they reflect a growing national interest in the topic. The National Conference of State Legislatures, Polaris Project and Northeastern University all track state legislative efforts.¹⁶³ The Polaris Project has rated the human trafficking-related laws of the 50 states and ranked them. Rankings are based on how many of Polaris' criteria for an effective state mechanism to respond to human trafficking is met. These 10 criteria are:

- Laws governing sex trafficking
- Laws governing labor trafficking
- Asset forfeiture and/or investigative tools
- Training on human trafficking and/or a human trafficking task force, commission or advisory committee
- Posting of a human trafficking hotline
- Safe harbors/protection of sex trafficked minors
- Lower burden of proof for sex trafficking of minors
- Victim assistance
- Access to civil damages
- Vacating convictions for sex trafficking victims.¹⁶⁴

The draft legislation in this report includes all of these conditions, and if enacted in its current form, would be one of the most comprehensive human trafficking statutes in the country.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ National Conference of State Legislatures, "Human Trafficking Laws in the States," <http://www.ncsl.org/issues-research/justice/human-trafficking-laws-in-the-states-updated-nov.aspx> (accessed April 28, 2012); Northeastern University, "State Human Trafficking Legislation," http://www.humantrafficking.neu.edu/responses/state_human_trafficking/ (April 28, 2012).

¹⁶⁴ The Polaris Project, "Rated State Laws," <http://www.polarisproject.org/what-we-do/policy-advocacy/state-policy/current-laws> (accessed April 4, 2012).

Polaris has identified a “Top 11” states whose laws most completely meet their targets. These 11 states were reviewed by JSGC staff and where appropriate, provided guidance in the drafting of the proposed legislation. Table A identifies provisions of the top 11 state statutes that address issues similar to those found in Pennsylvania’s draft legislation attached. Those provisions marked with an asterisk (*) are those that meet the Polaris Project criteria for an effective state mechanism. Only one state, Wyoming, currently does not have a specific statute addressing human trafficking.¹⁶⁵

Highlights of Novel Statutory Language

Several of the states’ statutes examined have adopted unique provisions to address specific aspects of human trafficking. These provisions are summarized below.

California

- The Transparency in Supply Chains Act of 2010 was enacted to address human trafficking by requiring entities doing business in California that have annual worldwide gross receipts that exceed \$100,000,000 to disclose efforts to eradicate human trafficking from the direct supply chain for tangible goods offered for sale.
- Under a two-year pilot project that is scheduled to expire on January 1, 2014, the City of San Diego, the City of Anaheim, the County of Alameda and the County of Sonoma are each authorized to create a two-year pilot project for the establishment of a multi-agency, multi-disciplinary family justice center to assist victims of domestic violence, officer-involved domestic violence, sexual assault, elder or dependent adult abuse, stalking, cyberstalking, cyberbullying and human trafficking, depending on the availability of services and to improve access to services for victims of domestic violence, sexual assault, elder or dependent adult abuse, stalking, cyberstalking, cyberbullying, and human trafficking.¹⁶⁶

¹⁶⁵ The Polaris charts, finalized as of August 24, 2011, include Massachusetts and West Virginia in their list of states without specific human trafficking laws. Massachusetts passed legislation addressing the “commercial exploitation of people,” which included trafficking offenses, with the Governor’s signature on November 21, 2011. Chapter 256 of the Massachusetts General Laws is amended by this legislation. West Virginia enacted human trafficking legislation, to be effective June 8, 2012 that provides for law enforcement training in the investigation of human trafficking cases and creates the specific crimes of labor trafficking and sex trafficking, by amending WVA Code §§ 30-29-3 and 61-2-14a and adding new § 61-2-17. HR 4053 (2012), was signed by the Governor on March 16, 2012.

¹⁶⁶ Calif. Penal Code §§ 13750-13752.

- “Human trafficking,” as defined in the California Penal Code, is declared to be the equivalent of the federal definition of a severe form of trafficking, which has implications for eligibility for federal services and non-immigrant visa status.¹⁶⁷
- California taxpayers may donate a portion of their state income tax refund to the Child Victims of Human Trafficking Fund.¹⁶⁸

Florida

- If a child is, or is suspected of being a human trafficking victim, reports of child abuse are referred to law enforcement for protective investigation.¹⁶⁹
- Women who are victims of human trafficking and seek abortions are given the same rights as rape and incest victims under Florida’s abortion consent law.¹⁷⁰

Illinois

- Child abuse or neglect includes being the victim of trafficking under Illinois law.¹⁷¹
- Illinois has a two-party consent eavesdropping/wiretap law. Wiretaps to investigate human trafficking are exempt from this statute¹⁷² and no consent is required for the interception of any private communication involving human trafficking.¹⁷³

Minnesota

- As part of its Family Investment Program, victims of “severe forms of trafficking in persons” defined as: (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act has not attained 18 years of age; or (2) the recruitment,

¹⁶⁷ Calif. Penal Code § 236.1(f).

¹⁶⁸ Calif. Rev. & Tax. Code §§ 18809-18809.3.

¹⁶⁹ Fla. Stat. § 39.301.

¹⁷⁰ Fla. Stat. § 390.0111.

¹⁷¹ 325 ILCS 5/3; 705 ILCS 405/2-3 and 2-18.

¹⁷² 720 ILCS 5/14-3.

¹⁷³ 725 ILCS 5/108B-3.

harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery, are eligible for public assistance.¹⁷⁴

- A “child in need of protection or services” includes a “sexually exploited youth,” which in turn, includes a child who is a victim of sex trafficking.
- The Minnesota Commissioner of Public Safety is charged with collecting and disseminating data on human trafficking.¹⁷⁵

Missouri

- Missouri incorporates the rights and protections found under the federal Trafficking Victims Protection Act of 2000 into its law by reference.¹⁷⁶
- Promoting online sexual solicitation, including trafficking in children, is a separate offense.¹⁷⁷
- Persons found guilty of sex trafficking of children must register as sex offenders.¹⁷⁸

New York

- The Interagency Task Force on Human Trafficking is charged with collecting and disseminating data and monitoring the progress of New York’s anti-trafficking efforts.¹⁷⁹
- New York’s eavesdropping and wire surveillance warrant law includes trafficking in the criminal offenses for which a warrant can be obtained to conduct an investigation.¹⁸⁰

¹⁷⁴ Minn. Stat. Ann. §§ 256J.08; 256J.32.

¹⁷⁵ Minn. Stat. Ann. §§ 299A.78, 299A.785.

¹⁷⁶ Mo. Rev. Stat. § 566.223(1).

¹⁷⁷ Mo. Rev. Stat. § 566.103.

¹⁷⁸ Mo. Rev. Stat. § 589.400.

¹⁷⁹ N.Y. Soc. Serv. Law § 483-ee(b)(1) & (7).

¹⁸⁰ N.Y. Crim. Proc. Law § 700.05.

Texas

- Locations used in trafficking of persons are treated as common nuisances under Texas law.¹⁸¹
- Protective orders may be issued for trafficking victims.¹⁸²
- Children under the age of 13 may testify via recordings.¹⁸³
- Persons found guilty of sex trafficking must register as sex offenders.¹⁸⁴
- Child abuse includes sex trafficking.¹⁸⁵
- Monthly court reports to the Office of Court Administration must include information about trafficking in persons cases.¹⁸⁶
- The Human Trafficking Prevention Task Force is charged with collecting and disseminating data on human trafficking.¹⁸⁷
- Grants to community organizations are available under the Sexual Assault Program Fund.¹⁸⁸
- A victim assistance program for domestic victims of trafficking provides services, training, outreach and grants for entities providing services to domestic victims.¹⁸⁹
- The trafficking of persons investigation and prosecution account is created in the general fund, under the administration of in the Governor’s Criminal Justice Division to make grants for human trafficking services.¹⁹⁰
- A First Offender Prostitution Prevention Program (“Johns School”) is established to reduce the demand for the commercial sex trade and trafficking of persons by educating offenders.¹⁹¹

¹⁸¹ Tex. Civil Prac. & Rem. Code, Ch. 125.

¹⁸² Tex. Code of Crim. Proc. Ch. 7A & 7B.

¹⁸³ Tex. Code of Crim. Proc. Art. 38.071.

¹⁸⁴ Tex. Code of Crim. Proc. Ch. 62.

¹⁸⁵ Tex. Fam. Code Ch. 261.

¹⁸⁶ Tex. Govt. Code § 71.0353.

¹⁸⁷ Tex. Govt. Code § 402.035(2)-(4).

¹⁸⁸ Tex. Govt. Code § 420.008.

¹⁸⁹ Tex. Govt. Code §§ 581.381 to 581.835.

¹⁹⁰ Tex. Govt. Code § 772.006.

¹⁹¹ Tex. Health & Saf. Code Ch. 169.

Vermont

- A victim of human trafficking under 18 years of age may be treated as the subject of a child in need of care or supervision proceeding.¹⁹²
- Persons found guilty of sex trafficking must register as sex offenders.¹⁹³

Washington

- The one-party consent exception to the state's wiretapping law includes the commercial sexual abuse of a minor.¹⁹⁴
- Johns Schools are authorized under 2012 amendments to Washington's trafficking law.¹⁹⁵
- Sex tourism is criminalized in Washington.¹⁹⁶
- Domestic employers of foreign workers and international labor recruitment agencies must provide a disclosure statement to foreign workers who have been referred to or hired by a Washington employer on or after June 10, 2010. The statement is to include information about state labor laws and trafficking information.¹⁹⁷

¹⁹² Vt. Stat. Ann. § 2652(e).

¹⁹³ Vt. Stat. Ann. §§ 5401, 5411a.

¹⁹⁴ Wash. Rev. Stat. § 9.73.230.

¹⁹⁵ Wash. Rev. Stat. §9A.40.100.

¹⁹⁶ Wash. Rev. Stat. § 9A.88.085.

¹⁹⁷ Wash. Rev. Stat. §§ 19.320.010-19.320.050.

SELECTED STATE HUMAN TRAFFICKING STATUTES

	CA	CT	FL	GA	IL	MN	MO	NY	TX	VT	WA
<i>Prosecution provisions</i>											
Trafficking in persons separate crime		§53a-192a	§787.06(3)		720 ILCS 5/10-9(d)		§577.675		Penal Code §§ 20A.01, 20A.03	§§ 2652, 2654	§9A.40.100
Labor and sexual servitude differentiated*	Penal Code §§ 181, 266 - 266j	§53a-192a	§§ 787.05, 787.06(1) & (2)	§16-5-46(a)-(c)	720 ILCS 5/10-9(a) &(b)	§§ 609.281, 609.282, 609.321	§§ 566.200, 566.206, 566.209	Penal Law §§ 135.35, 135.36, 230.34, 230.36	Penal Code §§ 20A.01, 20A.02	§§ 2635, 2651, 2652	§9A.40.100
Increased penalty for trafficking in minors	Penal Code §236.1 (C)				720 ILCS 5/10-9(c)						§9.94A.535
Increased penalty for sexual servitude of minors	Penal Code §§ 236.1(g), 266k		§§ 796.035, 796.045	§16-5-46(f)(2)		§609.322, subd. 1(a)	§§ 566.212, 566.213		Penal Code §21.02		
Treatment as organized crime or racketeering	Penal Code §186.2	§53 -394	§895.02					Penal Law §§ 460.00, 460.10			§9A.82.010 ¹⁹⁸
Liability of business entities				§16-5-46(j)			§566.265			§2656	
Identity protection									Code of Crim. Proc. Ch. 57D		Ch. 40.24
Vacation of prostitution convictions*					725 ILCS 5/116-2.1			Crim. Proc. Law §440.10			

¹⁹⁸ This provision was amended in 2012 and took effect on June 7, 2012.

SELECTED STATE HUMAN TRAFFICKING STATUTES--(continued)

	CA	CT	FL	GA	IL	MN	MO	NY	TX	VT	WA
<i>Prosecution provisions--(continued)</i>											
Restitution					720 ILCS 5/10-9(g)		§§ 566.218, 566.223(7)			§2657	
Asset forfeiture*	Penal Code §186.3 et seq.	§54-36p		§16-5-46(g)	720 ILCS 5/10-9(j); 725 ILCS 5/124B-300; 725 ILCS 5/124B-10	§609.5312					
Sentencing enhancements					720 ILCS 5/10-9(e) & (f)	§609.322, subd. 1(b)				§2653	
Concurrent jurisdiction for prosecuting/district attorneys and Attorney General				§16-5-46(h)							

	CA	CT	FL	GA	IL	MN	MO	NY	TX	VT	WA
<i>Prevention provisions</i>											
State task force/ advisory committee*		§46a-170 (Trafficking in Persons Council)				§299A.7955		Soc. Serv Law §483-ee(a) ¹⁹⁹	Govt. Code §402.035 ²⁰⁰		§7.68.350
Training*	Penal Code §13519.14	§§ 46a-4b, 54-234	§787.06(4) & (5)	§35-1-16		§299A.79, subd. 2	§566.223(3)	Soc. Serv. Law §483-ee(b)(6)	Govt. Code § 402.035(5)-(7); Occ. Code §§ 1701.258, 1701.402(h) & (j)		§§ 18.71.080, 18.83.090, 18.225.040
Public awareness campaigns			§402.87(7)			§299A.79, subd. 3		Soc. Serv. Law §483-ee(b)(5)	Govt. Code §402.035(8)		
Publication of hotline*						§299A.7957				§2661(b)	§47.38.080
Safe harbor provisions for minors/alternate disposition*								Fam. Ct. Act §311.4			
Fines, penalties and asset forfeitures to assist funding of services to victims and to fund NGOs	Penal Code §§ 236.1(h), 186.8(f) & (g)				725 ILCS 5/124B-305; 720 ILCS 5/36.5-5	§609.5315			Health & Saf. Code §169.005		§9A.40.100

¹⁹⁹ This task force is repealed as of September 1, 2013.

²⁰⁰ This task force is repealed as of September 1, 2013.

	CA	CT	FL	GA	IL	MN	MO	NY	TX	VT	WA
Protection provisions											
State plan						§299A.79, subd. 1				§2661(d)	§7.68.360
Civil actions for damages*	Civil Code §52.5	§52-571i	§772.104			§609.284, subd. 2	§566.223(6)		Civil Pract. & Rem. Code §§ 16.0045, 41.008, Ch. 98	§2662	§9A.82.100 ²⁰¹
Special services for minors*											
Protection - Services*		§54-234	§402.87(1), (4)-(6)		720 ILCS 5/10-9(h)	§299A.795	§566.223(5)	Soc. Serv. Law §§ 447-b, 483-bb, 483-ee(b)(2)-(4)			§36.22.178
Eligibility for crime victim's compensation	Govt. Code §§ 13955, 13956							Exe. Law §§ 621, 631	Code of Crim. Proc. Art. 56.01	§§ 2663(a)(1), 5301 et seq.	Ch. 7.68
Eligibility for refugee benefits	Welf. & Inst. Code §18945		§402.87(2) & (3)								
Immigration certification assistance by law enforcement agencies	Penal Code §236.5	§46b-38b(e), (f) & (g)			720 ILCS 5/10-9(i)			Soc. Serv. Law §§ 483-aa, 483-cc, 483-dd	Code of Crim. Proc. Art. 42.0191	§2663(a)(2) and (b)	§13.40.219

²⁰¹ *Supra*, note 3.

SELECTED STATE HUMAN TRAFFICKING STATUTES--(continued)

	CA	CT	FL	GA	IL	MN	MO	NY	TX	VT	WA
<i>Protection - Shelters</i>											
Privileged communication with caseworkers	Evid. Code §§ 1038-1038.2										
Prohibition on disclosure of shelter location	Penal Code §273.7								Tax Code §25.026		
Eligibility for witness protection program	Penal Code §§ 14020-14033										

Non-Governmental, Private Nonprofit and Faith-Based Organizations

Coalition to Abolish Slavery and Trafficking

One of the first not-for-profit organizations whose purpose is to address slavery and trafficking through advocacy and services for victims was the Coalition to Abolish Slavery and Trafficking (CAST). It was established in 1998 in the wake of the El Monte, California sweatshop case where 72 Thai garment workers were kept for eight years in slavery and debt bondage. The newly created organization started providing intensive case management, comprehensive services and advocacy to survivors healing from their traumatic experiences. In 2004, CAST opened the first shelter in the United States dedicated solely to serving victims of trafficking. It also established the first partnership of its kind with the Saban Free Clinic, a family clinic in Los Angeles trained to address the general health and mental health needs of trafficking victims.

Today, CAST is a multi-ethnic, multi-lingual human rights organization that has been nationally and internationally recognized for its dedication to the identification of trafficking survivors, the mobilization of all sectors of the community in combating human trafficking, and the provision of direct services to victims. Clients come to CAST by referrals from community and faith-based organizations, law enforcement agencies, Good Samaritans, as well as by self-referrals. Upon intake, the CAST staff assesses for emergency needs, such as housing, clothing, food and safety. Initial intake is followed by a later comprehensive assessment and legal interview. The legal information provided allows clients to make an informed choice about how to proceed with their case.

CAST provides comprehensive client services, including social and legal services and shelter. Its second major program involves advocacy and training. CAST operates a toll-free hotline. In 2009, it established a partnership with Mexico's border states to help fight trafficking at its root.²⁰²

Seeking increased victim identification and referrals for service, CAST has been actively involved in community outreach and public awareness activities. It provides education and practical training to government and law enforcement officials, social service workers, health care providers, attorneys and faith-based organizations. CAST is a founding member of the national Freedom Network Institute on Human Trafficking and implements the training curriculum regionally.²⁰³

²⁰² CAST, "Milestones," <http://www.castla.org/milestones> (accessed on February 22, 2012).

²⁰³ CAST, "Outreach," <http://www.castla.org/outreach> (accessed on February 22, 2012).

The Polaris Project

A leading non-governmental organization working to combat human trafficking and prevent modern-day slavery is the Polaris Project. Founded in 2002, it is one of the largest anti-trafficking organizations in the United States and Japan. Polaris runs programs at local, national and international levels. It serves both domestic and foreign national trafficking victims and works on all forms of human trafficking.

Polaris' approach is multifold: it encompasses direct outreach and victim identification; provides direct services to victims, including temporary housing; advocates for state and federal anti-trafficking legislation; provides training, technical assistance and education; and supports ongoing grassroots efforts. Polaris Project works in close contact with federal, international and state agencies involved in fighting human trafficking.

A crucial part of Polaris' work is operating the National Human Trafficking Resource Center (NHTRC), which serves as the main national hotline on human trafficking.

Polaris also tracks anti-trafficking efforts throughout the country and disseminates the relevant information. As part of its legislative efforts, Polaris developed the Model Provisions of Comprehensive State Legislation to Combat Human Trafficking as a guide for state policy makers.

The United States Conference of Catholic Bishops

Until recently, among faith-based organizations actively involved in combating human trafficking, a notable part was played by the United States Conference of Catholic Bishops (USCCB). In collaboration with the U.S. Department of Health and Human Services, it administered the Anti-Trafficking Services Program that provided comprehensive case management services to pre-certified and certified foreign trafficking victims through subcontracts with social service agencies throughout the United States. To be selected for this program, subcontractors needed to satisfy a set of criteria: they needed a history of working with trafficking victims or populations with similar needs or experiences (for example, refugees or survivors of domestic violence); they needed capacity to provide a safe environment and on-site comprehensive case management; and they were to have established relationships with relevant community partners such as immigration attorneys, law enforcement officials, medical health and mental health professionals. Participating subcontractors needed to comply with the terms of the subcontract, including financial and reporting requirements.

The USCCB provided per capita funding for administrative and client costs, conducted monthly core training sessions and facilitated specialty training. It offered technical assistance and case consultation. It monitored client cases and ensured subcontracting agencies rendered quality services to trafficking victims. The federal government did not renew the contract with the Conference when it expired in October 2011 because of certain restrictions the Conference put on its subcontractors regarding the use of the federal money received through the program.

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A new section is added to Title 42, Section 5945.3 (relating to confidential communications with human trafficking caseworkers).

Amendments were made to the following statutes to incorporate substantive provisions relating to human trafficking offenses:

- 42 Pa.C.S. § 5552 (relating to other offenses) – defining the statute of limitations for human trafficking offenses
- 42 Pa.C.S. § 5554 (relating to tolling of statute)
- 42 Pa.C.S. § 9738 (relating to victim impact statements)
- Subsections 205(a) and (b) of The Commonwealth Attorneys Act, act of October 15, 1980 (P.L.950, No.164), to provide for original jurisdiction of the Office of Attorney General in human trafficking cases.

Conforming amendments were made to:

- 18 Pa.C.S. § 911 (relating to corrupt organizations)
- 18 Pa.C.S. § 5708 (relating to order authorizing interception of wire, electronic or oral communications)
- 42 Pa.C.S. § 4415 (relating to confidential communications in presence of interpreter)
- 42 Pa.C.S. § 4436 (relating to confidential communications in presence of interpreter)
- 42 Pa.C.S. § 9720.2 (relating to sentencing for trafficking of persons).

**PROPOSED LEGISLATION:
Pennsylvania Human Trafficking Act**

AN ACT

Amending Title 18 (Crimes and Offenses) and Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes in creating the Pennsylvania Human Trafficking Act, and making related additions and amendments to implement that act.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The heading of Chapter 30 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

CHAPTER 30

HUMAN TRAFFICKING [OF PERSONS]

Section 2. Sections 3001, 3002, 3003 and 3004 of Title 18 are repealed:

[§ 3001. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Criminal coercion.” The term includes conduct defined as criminal coercion by section 2906 (relating to criminal coercion).

“Forced labor or services.” Labor or services that are performed or provided by another person which are obtained or maintained when a person:

(1) attempts to cause, causes or by threat of physical menace puts another person in fear of bodily injury;

(2) physically restrains or threatens to physically restrain another person unlawfully;

(3) abuses or threatens to abuse the law or legal process;

(4) possesses, except as required by Federal immigration law or regulation, destroys, conceals, removes or confiscates any actual or purported passport or other immigration document of another person, or any other actual or purported government identification document of another person; or

(5) engages in criminal coercion of another person.

“Traffics.” Recruits, entices, harbors, transports or provides or obtains by any means.

§ 3002. Trafficking of persons.

(a) Offense defined.--A person commits an offense if the person knowingly traffics or knowingly attempts to traffic another person, knowing that the other person will be subjected to forced labor or services.

(b) Grading.--An offense under subsection (a) shall be graded a felony of the second degree unless the other person suffers bodily injury or the other person is an individual under 18 years of age, in which case it shall be graded as a felony of the first degree.

§ 3003. Restitution for offenses.

(a) General rule.--A person convicted of an offense under this chapter shall, in addition to any other remedy deemed appropriate by the court, be sentenced to pay the victim restitution, including the greater of:

(1) the gross income or value to the person to whom the labor or services were performed by the victim; or

(2) the value of the victim’s labor based on the minimum wage of this Commonwealth.

(b) Private remedies.--Nothing in this section shall be construed to preclude any other remedy at law or in equity.

§ 3004. Forfeiture.

(a) General rule.--The following shall be subject to forfeitures to the Commonwealth, and no property right shall exist in them:

(1) All assets, foreign or domestic:

(i) Of an individual, entity or organization engaged in planning or perpetrating an act in this Commonwealth which violates section 3002 (relating to trafficking of persons) and all assets, foreign or domestic, affording a person a source of influence over such individual, entity or organization.

(ii) Acquired or maintained by a person with the intent and for the purpose of supporting, planning, conducting or concealing an act in this Commonwealth which violates section 3002.

(iii) Derived from, involved in or used or intended to be used to commit an act in this Commonwealth which violates section 3002.

(2) All assets within this Commonwealth:

(i) Of an individual, entity or organization engaged in planning or perpetrating an act which violates section 3002.

(ii) Acquired or maintained with the intent and for the purpose of supporting, planning, conducting or concealing an act which violates section 3002.

(iii) Derived from, involved in or used or intended to be used to commit an act which violates section 3002.

(b) Process and seizures.--Property subject to forfeiture under this section may be seized by the law enforcement authority upon process issued by any court of common pleas having jurisdiction over the property.

(c) Custody of property.--

(1) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the law enforcement authority subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings and of the district attorney.

(2) When property is seized under this section, the law enforcement authority shall place the property under seal and either:

(i) remove the property to a place designated by it; or

(ii) require that the district attorney take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) Transfer of property.--Whenever property is forfeited under this section, the property shall be transferred to the custody of the district attorney. The district attorney, where appropriate, may retain the property for official use or sell the property, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be used for the enforcement of the criminal laws of Pennsylvania.

(e) Proceedings and petition.--The proceedings for the forfeiture or condemnation of property, the retention or sale of which is provided for in this section, shall be in rem, in which the Commonwealth shall be the plaintiff and the property the defendant. A petition

shall be filed in the court of common pleas of the judicial district where the property is located, verified by oath or affirmation of an officer or citizen, containing the following:

- (1) A description of the property seized.
- (2) A statement of the time and place where seized.
- (3) The owner, if known.
- (4) The person or persons in possession, if known.
- (5) An allegation that the property is subject to forfeiture pursuant to this section and an averment of material facts upon which forfeiture action is based.
- (6) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and condemned unless cause be shown to the contrary.

(f) Service.--A copy of the petition required under subsection (e) shall be served personally or by certified mail on the owner or the person or persons in possession at the time of the seizure. The copy shall have endorsed a notice as follows:

To the claimant of within described property:

You are required to file an answer to this petition, setting forth your title in and right to possession of the property within 30 days from the service of this notice. You are also notified that, if you fail to file the answer, a decree of forfeiture and condemnation will be entered against the property.

The notice shall be signed by the district attorney, deputy district attorney or assistant district attorney.

(g) Notice.--

(1) If the owner of the property is unknown or there was no person in possession of the property when seized or if the owner or such person or persons in possession at the time of the seizure cannot be personally served or located within the jurisdiction

of the court, notice of the petition shall be given by the Commonwealth through an advertisement in only one newspaper of general circulation published in the county where the property shall have been seized, once a week for two successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding.

(2) The notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure and shall direct any claimants to the property to file a claim on or before a date given in the notice, which date shall not be less than 30 days from the date of the first publication.

(3) If no claims are filed within 30 days of publication, the property shall summarily forfeit to the Commonwealth.

(h) Unknown owner.--For purposes of this section, the owner or other such person cannot be found in the jurisdiction of the court if:

(1) a copy of the petition is mailed to the last known address by certified mail and is returned without delivery;

(2) personal service is attempted once but cannot be made at the last known address; and

(3) a copy of the petition is left at the last known address.

(i) Waiver of notice.--The notice provisions of this section are automatically waived if the owner, without good cause, fails to appear in court in response to a subpoena on the underlying criminal charges. Forty-five days after such a failure to appear, if good cause has not been demonstrated, the property shall summarily forfeit to the Commonwealth.

(j) Hearing date.--Upon the filing of a claim for the property setting forth a right of possession, the case shall be deemed at issue, and a date and time shall be fixed for the hearing.

(k) Burden of proof.--At the hearing, if the Commonwealth produces evidence that the property in question was unlawfully used, possessed or otherwise subject to forfeiture under this section, the burden shall be upon the claimant to show by a preponderance of the evidence:

(1) That the claimant is the owner of the property or the holder of a chattel mortgage or contract of conditional sale thereon.

(2) That the claimant lawfully acquired the property.

(3) That the property was not unlawfully used or possessed by the claimant. If it appears that the property was unlawfully used or possessed by a person other than the claimant, then the claimant shall show that the unlawful use or possession was without his knowledge or consent. Such absence of knowledge or consent must be reasonable under the circumstances presented.

(l) Claims of ownership.--If a person claiming the ownership of or right of possession to or claiming to be the holder of a chattel mortgage or contract of conditional sale upon the property, the disposition of which is provided for in this section, prior to the sale presents a petition to the court alleging lawful ownership, right of possession, a lien or reservation of title to the property and if, on public hearing, due notice of which having been given to the district attorney, the claimant shall prove by a preponderance of the evidence that the property was lawfully acquired, possessed and used by him or, it appearing that the property was unlawfully used by a person other than the claimant, that the unlawful use was without the claimant's knowledge or consent, then the court may

order the property returned or delivered to the claimant. Such absence of knowledge or consent must be reasonable under the circumstances presented. Otherwise, it shall be retained for official use or sold in accordance with this section.]

Section 3. Chapter 30 of Title 18 is amended to read:

Subchapter

A. General Provisions

B. Prosecution of Human Trafficking

C. Prevention of Human Trafficking

D. Protection of Human Trafficking Victims

E. Miscellaneous Provisions

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

3005. Short title of chapter.

3006. Definitions.

§ 3005. Short title of chapter.

This chapter shall be known and may be cited as the Pennsylvania Human Trafficking

Act.

§ 3006. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Commercial sex act.” Any sex act on account of which anything of value is given, promised to or received, directly or indirectly, by an individual.

“Commission.” The Pennsylvania Commission on Crime and Delinquency.

“Council.” The Pennsylvania Council for the Prevention of Human Trafficking, established under section 3031 (relating to council).

“Debt coercion.” Exploitation of the status or condition of a debtor arising from a pledge by the debtor of the personal services of the debt or an individual under the debtor’s control as a security or payment for debt, if any of the following apply:

(1) The value of those services as reasonably assessed is not applied toward the liquidation of the debt.

(2) The length and nature of those services are not respectively limited and defined.

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

(4) The individual is coerced to perform a sex act as payment for the debt.

(5) The debtor controls and determines the movement, housing and services performed by the individual until repayment of the debt.

“Extortion.” As defined in section 3923 (relating to theft by extortion).

“Financial harm.” Includes any of the following:

(1) A criminal violation of the act of June 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law (Usury Law).

(2) A violation of Chapter 2 of the act of June 20, 1978 (P.L.537, No.93), known as the Seasonal Farm Labor Act.

(3) A violation of the act of May 23, 1887 (P.L.181, No.122), referred to as the Employment of Labor Law.

(4) A violation the act of March 30, 1859 (P.L.318, No.318), referred to as the Payment of the Wages of Labor Act.

(5) A violation of any other law of this Commonwealth governing the payment of wages for labor or services.

“Human trafficking.” Any activity in violation of section 3011 (relating to trafficking in individuals) either alone or in conjunction with an activity in violation of section 3012 (relating to involuntary servitude).

“Human trafficking victim.” An individual who has been subjected to human trafficking.

“Involuntary servitude.” Includes labor servitude and sexual servitude.

“Labor.” Work or service of economic or financial value.

“Labor servitude.” Labor which is performed or provided by another individual and is induced or obtained by any of the means set forth in section 3012(b) (relating to involuntary servitude).

“Minor.” An individual less than 18 years of age.

“Performance involving sexual conduct.” Any performance that is described in section 5903 (relating to obscene and other sexual materials and performances).

“Record.” Information, regardless of physical form or characteristics, that documents a transaction or activity and that is created, received or retained pursuant to law or in connection with a transaction, business or activity. The term includes any of the following:

(1) A document, paper, letter, map, book, tape, photograph, film or sound recording.

(2) Information stored or maintained electronically.

(3) A data-processed or image-processed document.

“Serious harm.” Any harm, whether physical or nonphysical 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 human trafficking victim to perform or to continue performing labor or a service, a commercial sex act or a performance involving sexual conduct in order to avoid incurring that harm.

“Service.” Any act committed at the behest of, under the supervision of or for the benefit of another.

“Sex act.” Any touching of the sexual or other intimate parts of any individual for the purpose of gratifying sexual desire of any individual. The term includes any of the following:

- (1) Touching the individual.
- (2) Touching by the individual, whether directly or through clothing.
- (3) Physical contact involving the genitalia of either the human trafficking victim or the perpetrator.
- (4) Indecent contact, sexual intercourse or deviant sexual intercourse as defined in section 3101 (relating to definitions).
- (5) Indecent assault, as defined in section 3126 (relating to indecent assault).

“Sexual conduct.” As defined in section 5903(b) (relating to obscene and other sexual materials and performances). The term includes the following:

- (1) With respect to a minor, any activity under section 5903(c)(3).
- (2) A commercial sex act.

“Sexual servitude.” Any sexual conduct or performance involving sexual conduct for which anything of value is directly or indirectly given, promised to or received by any individual or which is perform or provide by any individual, and is induced or obtained from:

(1) A minor.

(2) Any other individual by any of the means set forth in section 3012(b) (relating to involuntary servitude).

“State Plan.” The State Plan for the Prevention of Human Trafficking established under section 3051 (relating to state plan).

SOURCE

The terms “commercial sex act,” “debt coercion,” “extortion,” “financial harm,” “labor,” “minor,” “sex act,” and “human trafficking victim” are all defined terms in the Polaris Project’s *Model Provisions of Comprehensive State Legislation to Combat Human Trafficking*.

The term “labor servitude” is based on the definition found in § 16-5-46(a)(3) of the Georgia Code, and the term “sexual servitude” is based on the definition found in §16-5-46(a)(6) of the Georgia Code.

The terms “sexual conduct” and “performance involving sexual conduct” are further defined in the Georgia Code by cross-reference to that state’s obscenity laws. “Sexually explicit performance” is the term used in the Polaris Model, but as the definition found there is comparable to the definition found in Pennsylvania’s obscenity laws, a cross-reference to the obscenity laws provides for more uniformity.

“Record,” “State Plan” and “Council” are new.

NOTE

The Polaris Model definition of “financial harm” is as follows:

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 statute of frauds as defined by [state statute of frauds, if any].

Pennsylvania does not have a specific statute governing private employment contracts. Chapter 2 of the Seasonal Farm Labor Act addresses wages and hours of seasonal farm labor, including, specifically what items can and cannot be deducted against the laborer’s wages. The 1887 statute addresses the rights of workers who are subject to wage forfeitures for quitting their jobs without notice to their employers. The 1859 statute referred to in this definition addresses the limitations on the right of coal mine owners to place a lien on the wages of workers for rent, and is limited in its application to six counties in the Coal Region (Carbon, Dauphin, Northumberland, Schuylkill, Somerset and Washington). Pennsylvania’s statute of frauds relates to real estate transactions only. See 13 Pa.C.S. § 2201.

COMMENT

This chapter established two separate offenses: trafficking in individuals and involuntary servitude. Both offenses are included under the rubric of “human trafficking,” to ensure that both the persons who arrange for an individual to be subjected to involuntary servitude and the persons who then maintain that individual in a state of involuntary servitude are both subject to this chapter. Involuntary servitude is further divided into two types, labor servitude and sexual servitude, in recognition that the circumstances of, and remedies and penalties for, those conditions may differ.

As defined, debt coercion focuses on the exploitation of the debtor based on the existence of a debt. Therefore, it includes those situations in which a trafficker has knowledge of a human trafficking victim’s debt to a third party and uses that knowledge to coerce the services of the debtor.

The definition of “financial harm” found in this section includes violations of Pennsylvania’s usury law.

A minor is defined as a child under the age of 18 for purposes of violations of this chapter involving children. However, a child under the age of 21 who is a human trafficking victim may also be considered a dependent child under the Juvenile Act (42 Pa.C.S. Chapter 63), and this definition is not intended to limit such a child's access to dependency services.

Sexual servitude of minors may encompass violations of several existing provisions of 18 Pa.C.S.: §§ 5902 (prostitution and related offenses), 5903 (obscene and other sexual materials and performances), 6301 (corruption of minors), 6312 (sexual abuse of children), 6318 (unlawful contact with a minor), 6320 (sexual exploitation of children) and Subchapter C of Chapter 76 (internet child pornography).

SUBCHAPTER B

PROSECUTION OF HUMAN TRAFFICKING

Sec.

3011. Trafficking in individuals.

3012. Involuntary servitude.

3013. Patronizing a victim of sexual servitude.

3014. Unlawful conduct regarding documents.

3015. Non-payment of wages.

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3023. Cumulative remedies.

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§ 3011. Trafficking in individuals.

(a) Offense defined.--A person commits a felony of the second degree if the person:

(1) recruits, entices, solicits, harbors, transports, provides, obtains or maintains an individual if the person has knowledge or recklessly disregards the knowledge that the individual will be subject to involuntary servitude;

(2) attempts to engage in any activity described in paragraph (1); or

(3) benefits financially or receives anything of value from any act that facilitates any activity described in paragraph (1).

(b) Trafficking in minors.--A person commits a felony of the first degree if the person engages in any activity listed in subsection (a) that results in a minor being subjected to sexual servitude.

SOURCE

Subsection (a) is derived from 18 Pa.C.S. § 3002 (Trafficking of Persons) and Model Provisions of Comprehensive State Legislation to Combat Human Trafficking (“Polaris Model”): Prosecution: Human Trafficking Criminal Provisions: (3) Human Trafficking. Subsection (b) is derived from Polaris Model: Prosecution: Human Trafficking Criminal Provisions: (2) Sexual Servitude of a Minor.

COMMENT

Sexual servitude of a minor occurs whenever any sexual conduct or performance involving sexual conduct of a minor occurs, regardless of the presence of force, fraud or coercion on the part of the person inducing or receiving the conduct.

§ 3012. Involuntary servitude.

(a) Offense defined.--A person commits a felony of the first degree if the person, through any of the means described in subsection (b), subjects an individual to involuntary servitude.

(b) Means of subjecting individual to involuntary servitude.--A person may subject an individual to involuntary servitude through any of the following means:

- (1) Causing or threatening to cause serious harm to any individual.
- (2) Physically restraining or threatening to physically restrain another individual.
- (3) Kidnapping or attempting to kidnap any individual.
- (4) Abusing or threatening to abuse the legal process.
- (5) Taking or retaining the individual's personal property or real property as a means of coercion.
- (6) Engaging in unlawful conduct with respect to documents, as defined in section 3014 (relating to unlawful conduct with respect to documents).
- (7) Extortion or blackmail.
- (8) Deception or fraud.
- (9) Coercion, as defined in section 2906 (relating to criminal coercion).
- (10) Duress, as defined in section 309 (relating to duress).
- (11) Debt coercion.
- (12) Causing or threatening to cause financial harm to, or exerting or threatening to exert financial control over, the individual.
- (13) Facilitating or controlling the individual's access to an addictive controlled substance.

(14) Using any scheme, plan or pattern, whether overt or subtle, intended to cause the individual to believe that, if the individual does not perform such labor, services, act or performance, that individual or another individual will suffer serious harm or physical restraint.

SOURCE

Subsections (a) and (b) are derived from Polaris Model: Prosecution: Human Trafficking Criminal Provisions: (1) Involuntary Servitude. Additionally, paragraphs (b)(1), (2), (4) and (6) are based on 18 Pa.C.S. § 3001 (definition of “Forced labor or services”), paragraphs (1), (2), (3) and (4), respectively. Paragraphs (b)(9) and (10) are based on paragraph (5) of the definition of “Forced labor or services.”

COMMENT

Many of the activities described in subsection (b) are already criminalized in other provisions of Title 18, which provide further definition and additional penalties for these activities: §§ 902 (criminal solicitation), 2706(a)(1) (terroristic threats), 2709(a)(1) (harassment), 2901 (kidnapping), 2902 (unlawful restraint), 2903 (false imprisonment), 3922 (theft by deception), 3923 (theft by extortion) and 3926 (theft of services).

§ 3013. Patronizing a victim of sexual servitude.

(a) Offense defined.--A person commits a felony of the second degree if the person engages in any sexual conduct or performance with another individual knowing or in reckless disregard that the individual is a human trafficking victim.

(b) Investigation.--An individual arrested for a violation of section 5902(e) (relating to patronizing a prostitute) shall be formally detained and questioned by law enforcement personnel to determine if the individual engaged in any sexual conduct or performance with the alleged prostitute knowingly or in reckless disregard thereof that the individual is a human trafficking victim.

(c) Fine.--A person whose violation of this subsection results in a judicial disposition other than acquittal or dismissal shall also pay a fine of \$500 to the court, to be distributed to the council to fund the grant program established under section 3036 (relating to grants).

SOURCE

Subsection (a) is derived from Polaris Model: Prosecution: Patronizing a Human Trafficking Victim. Subsection (b) is derived from Polaris Model: Prosecution: John Schools: Patronizing Prostitution.

COMMENT

A prosecution under this section does not preclude charges being filed against the perpetrator for violations of other provisions of this title, such as those relating to patronizing a prostitute, the sexual abuse of children, assault or other related violations.

§ 3014. Unlawful conduct regarding documents.

(a) Applicability.--This section applies to an action that is done:

(1) in the course of a violation of or with intent to violate sections 3011 (relating to trafficking in individuals) or 3012 (relating to involuntary servitude); or

(2) to prevent or restrict, or to attempt to prevent or restrict, without lawful authority, the ability of an individual to move or travel, in order to maintain the involuntary servitude of that individual.

(b) Offense defined.--A person commits a felony of the third degree if the person knowingly destroys, conceals, removes, confiscates or possesses an actual or purported:

(1) passport or other immigration document of an individual; or

(2) government identification document of an individual.

SOURCE

This section is derived from Polaris Model: Prosecution: Human Trafficking Criminal Provisions: (4) Unlawful Conduct with Respect to Documents.

§ 3015. Non-payment of wages.

(a) Offense defined.--A person who, willfully or with intent to defraud, fails or refuses to pay wages or otherwise causes financial harm to an individual for labor services rendered is guilty of:

(1) A misdemeanor of the third degree if the amount owed to the individual is less than \$2,000.

(2) A felony of the third degree, if:

(A) the amount owed to the individual is equal to or greater than \$2,000;

(B) the failure or refusal constitutes a second or subsequent violation of this section; or

(C) the person falsely denies the amount due or the validity of the debt.

(b) Offenses cumulative.--A person commits a separate offense under this section for each calendar month during which the individual earned wages that the person failed to pay or was otherwise financially harmed.

SOURCE

Subsection (a) is derived from Polaris Model: Prosecution: Human Non-Payment of Wages paragraphs (A) and (B). Subsection (b) derived from Polaris Model, paragraph (C).

§ 3016. Obstruction of justice.

A person who commits a violation of Subchapter B of Chapter 49 (relating to victim and witness intimidation) or Chapter 51 (relating to obstructing governmental operations) that in any way interferes with or prevents the enforcement of this chapter shall be subject to the same penalties that may be imposed for the offense for which the person has been charged under this chapter.

SOURCE

This section is derived from Polaris Model: Prosecution: Human Trafficking Criminal Provisions: (5) Obstruction.

COMMENT

Generally, the violations of provisions relating to “obstruction of justice” under Chapters 49 (falsification and intimidation) and 51 (obstructing governmental operations) of Title 18 are treated as misdemeanors of the second degree. In cases where the underlying crime is a felony of the first or second degree, obstruction-type behavior is usually penalized as a felony of the third degree. Accordingly, penalizing activities under this section to the same degree as the underlying offense when human trafficking offenses are involved is a departure from other provisions of Title 18.

§ 3017. Violation by business entities.

(a) Penalty.--Any business entity, including a corporation or unincorporated association, limited liability partnership or company or other legal entity that aids or participates in any violation of this chapter shall be subject to any of the following penalties:

(1) Either or both of the following:

(i) A fine of not more than \$1,000,000.

(ii) The suspension or revocation of any license, permit or prior approval granted to it by a Commonwealth or local government agency.

(2) Either of the following:

(i) The revocation of the business entity's charter if it is organized under the laws of this Commonwealth.

(ii) The revocation of the business entity's certificate to do business in this Commonwealth if the business entity is not organized under the laws of this Commonwealth.

(3) Such other relief as the court deems equitable, including the forfeiture of assets or other provision for restitution as provided in this chapter.

(b) Disposition of fines.--Fines imposed under this section shall be paid to the council to fund the grant program established under section 3036 (relating to grants).

(c) Knowledge.--Notwithstanding any exemption from liability provided for in 15 Pa.C.S. §§ 8523 (relating to liability of limited partners to third parties) and 8922 (relating to liability to members), an officer, director, partner, manager or member of any entity found liable under this section:

(1) Shall not be liable under this section if the person acted in good faith, in a manner that the person reasonably believed to be in the best interests of the corporation, partnership, or company and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances.

(2) Shall be liable under this section if the person has knowledge of such other facts as in the circumstances shows bad faith.

SOURCE

Subsection (a) is derived from Polaris Model: Prosecution: Criminal Liability of Business Entities, paragraph (A). Subsection (b) is derived from Polaris Model, paragraph (B)(1) and (2). Subsection (c)(1) and (2) are derived, respectively, from Polaris Model, paragraph (B)(3) and (4).

COMMENT

15 Pa.C.S. § 102 defines an association as “[A] corporation, a partnership, a limited liability company, a business trust or two or more persons associated in a common enterprise or undertaking. The term does not include a testamentary trust or an inter vivos trust as defined in 20 Pa.C.S. § 711(3) (relating to mandatory exercise of jurisdiction through orphans’ court division in general).”

§ 3018. Non-defenses to human trafficking.

(a) Non-defenses to human trafficking involving sexual servitude.--Evidence of the following facts or conditions shall not constitute a defense in a prosecution for a violation under this chapter, nor shall such evidence preclude a finding of a violation under this chapter:

(1) A human trafficking victim’s prior sexual history or history of participation in commercial sex acts or performances involving sexual conduct, as provided in section 3104 (relating to victim’s sexual conduct).

(2) A human trafficking victim’s consent or permission, or the consent or permission of any other person on the human trafficking victim’s behalf to any sexual conduct or performance, as provided in section 311(c) (relating to consent).

(3) A human trafficking victim’s age with respect to the age of consent to sex or legal age of marriage.

(b) Non-defense to human trafficking involving labor servitude.--The human trafficking victim's consent to an employment contract, even if there was not fraud involved in the contract's formation, shall not be a defense to labor trafficking if force or coercion were involved in the making of the contract.

(c) Sexual servitude of minor.--Except as provided in section 3102 (relating to mistake of age), evidence of a defendant's lack of knowledge of a person's age, or a reasonable mistake of age, is not a defense for a violation of this chapter involving the sexual servitude of a minor.

SOURCE

Subsections (a)(1) through (3) and (b) are derived from Polaris Model: Prosecution: Non-Defenses to Human Trafficking. Subsection (c) is derived from Polaris Model: Prosecution: Human Trafficking Criminal Provisions (2) Sexual Servitude of a Minor.

§ 3019. Victim protection during prosecution.

(a) Disclosure of human trafficking victim's name.--Notwithstanding any other provision of law to the contrary, unless the court orders otherwise in a prosecution involving a human trafficking victim, an officer or employee of the court may not disclose the identity of the human trafficking victim to the public. Any record revealing the name of the human trafficking victim shall not be open to public inspection.

(b) Affirmative defense.--An individual who is a defendant in a criminal trial may offer a defense at trial that the individual was a human trafficking victim and that the crime was committed as a direct result of the individual's status as a human trafficking victim.

(c) Documentation of human trafficking victim status.--Official documentation of the defendant's status as a human trafficking victim at the time of the offense from a Federal, State or local government agency or a victim services agency or organization:

(1) Shall create a presumption that the defendant's participation in the offense was a result of having been a human trafficking victim.

(2) Shall not be required for granting a motion under this section.

(d) Vacation of prior prostitution convictions.--At any time after the entry of a judgment of conviction under section 5902 (relating to prostitution and related offenses), upon motion of the attorney for the Commonwealth, the court in which the judgment was entered may vacate the judgment against the defendant upon the ground that the defendant was a human trafficking victim under this chapter or under the Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7101 et seq.) and participation in the offense was a result of having been a human trafficking victim. The attorney for the Commonwealth in the county of such conviction shall forward information regarding the defendant's status as a human trafficking victim to the district attorney of another county in which the defendant faces similar charges.

SOURCE

Subsection (a) is modeled after 42 Pa.C.S. §5988 (relating to victims of sexual or physical abuse). Subsection (b) is new. Subsection (c) is derived from Polaris Model: Prosecution: Victim Immunity from Prosecution. Subsections (c) and (d) are also based on S.B. 885, Pr.'s No. 901 (2011).

COMMENT

Pennsylvania prohibits release of the names of child victims of sexual or physical abuse in 42 Pa.C.S. § 5988, but defines a child as an individual under the age of 16 (§ 5982), and generally urges the media to exercise restraint in revealing the names and addresses of child victims or witnesses of crimes (§ 5981).

Additionally, Pennsylvania has established an address confidentiality program under the Domestic and Sexual Violence Victim Address Confidentiality Act (Chapter 67 of Title 23 of the Pennsylvania Consolidated Statutes). Program participants may receive a confidential substitute address. To be eligible, the individual must be a victim of sexual assault, defined to be rape, incest, sexual abuse of children, unlawful contact with a minor or sexual exploitation of children, and must certify that they have been subjected to violent acts or threats of violent acts in the past and fear future violent acts.

Law enforcement agencies may access otherwise confidential information from Commonwealth agencies during criminal investigations under the provisions of Title 42, Chapter 87, Subchapter B (relating to availability of otherwise confidential information). Disclosure is limited, and improper disclosure is a felony of the third degree, and also subject to civil damages.

§ 3020. Restitution.

(a) Order.--The court shall order a person found guilty of a violation of this chapter to pay restitution to the human trafficking victim, under the following conditions:

(1) If the human trafficking victim dies as a result of human trafficking, the following shall be entitled to restitution, in the following order:

(i) The surviving spouse of the human trafficking victim.

(ii) The lineal descendants of the human trafficking victim, per stirpes.

(iii) The estate of the human trafficking victim.

(2) A person who violates this chapter shall be ineligible to receive restitution as set forth in paragraph (1).

(3) A person ordered to pay restitution under this chapter may prove, by clear and convincing evidence, that an individual who would be entitled to restitution as a human trafficking victim under (a)(1) knowingly participated in trafficking activities, in which case that individual shall not be eligible for restitution.

(4) The following items may be included in an order of restitution, in the discretion of the court:

(i) The costs of medical and psychological treatment, including:

(A) Physical and occupational therapy and rehabilitation.

(B) Counseling for:

(I) a human trafficking victim;

(II) an individual responsible for the human trafficking victim's welfare;

(III) an individual related to the human trafficking victim within the second degree of consanguinity or affinity;

(IV) an individual maintaining a common-law relationship with the human trafficking victim;

(V) an individual residing in the same household with the human trafficking victim; or

(VI) an individual engaged to be married to the human trafficking victim.

(ii) The costs of transportation, temporary housing and child care.

(iii) Attorney fees and other court-related costs, including victim advocate fees.

(iv) For the period during which the human trafficking victim was engaged in involuntary servitude, the greatest of the following:

(A) The value of the human trafficking victim's services as guaranteed under the minimum wage and overtime provisions of the laws of this Commonwealth.

(B) The gross income or value to the defendant of the human trafficking victim's services.

(C) the amount the human trafficking victim was promised, or the amount someone in the human trafficking victim's position would have reasonably expected to earn.

(v) The return of property of the human trafficking victim, cost of damage to the property or the full value of the property if taken, destroyed or damaged beyond repair as a result of human trafficking.

(vi) Relocation expenses for the human trafficking victim and members of the human trafficking victim's family or household if the relocation is verified as necessary by:

(A) a law enforcement official, for the personal safety of the human trafficking victim or the human trafficking victim's family or household members; or

(B) a mental health treatment provider, for the emotional well-being of the human trafficking victim.

(vii) Repatriation of the human trafficking victim to the human trafficking victim's home country, if applicable.

(5) Collection and distribution of restitution payments shall be governed by the provisions of 42 Pa.C.S. §§ 9728 (relating to collection of restitution, fees, costs, fines and penalties), 9730 (relating to payment of court costs, restitution and fines) and 9730.1 (relating to collection of court costs, restitution and fines by private collection agency).

(b) Special rule for sexual servitude victims.--An individual who is a victim of sexual servitude:

(1) Shall not receive restitution as replacement for income earned in an illegal activity.

(2) Shall be entitled to restitution in the form of tuition and fees, not to exceed the average costs of a two-year degree program at a Pennsylvania community college, in order to obtain training or education necessary to become gainfully and legally employed.

(c) Limitation on restitution.--Other than amounts allowed under paragraph (a)(4)(iv), any award made under this section shall be in an amount not exceeding out-of-pocket expenses.

(d) Reduction.--Except as otherwise provided in this chapter, an award made under this chapter shall be reduced by the amount of any payments that are received or to be received by the human trafficking victim as a result of the human trafficking and that are derived from one or more of the following:

(1) From or on behalf of the person who was convicted of trafficking the human trafficking victim.

(2) Under any insurance or health and welfare programs, including those mandated by law.

(3) Under any contract of insurance wherein the human trafficking victim is the beneficiary.

(4) From public funds.

(5) Under any pension program, including those providing for disability or survivor's benefits.

(6) Under a settlement or award made by or on behalf of a party alleged to be responsible in whole or in part for the human trafficking victim's status as a human trafficking victim, without regard to the party's criminal culpability.

(e) Non-governmental organizations.--The court may order payment of restitution to a non-governmental organization for all out-of-pocket expenses incurred in assisting a human trafficking victim.

(f) Definition.--As used in this section, the term "relocation expenses" shall include deposits for utilities and phone services, deposits for rental housing, temporary lodging and food expenses, clothing expenses, expenses for personal items and other moving expenses.

SOURCE

This section is based on the prior provision found at 18 Pa.C.S. §3003 (relating to restitution for offenses) and repealed by this act and the Polaris Model: Prosecution: Restitution. Subsections (a)(4)(i)(B) and (b), (c), and (d) based on Chapter 7 of the Crime Victim's Act, act of November of 24, 1998 (P.L.882, No.111).

§ 3021. Asset forfeiture.

(a) General rule.--The following shall be subject to forfeiture to this Commonwealth, and no property right shall exist in them:

(1) All assets, foreign or domestic:

(i) Of an individual, entity or organization engaged in planning or perpetrating an act in this Commonwealth which violates section 3011 (relating to trafficking in individuals) or 3012 (relating to involuntary servitude).

(ii) Affording a person a source of influence over such individual, entity or organization under subparagraph (i).

(iii) Acquired or maintained by a person with the intent and for the purpose of supporting, planning, conducting or concealing an act in this Commonwealth which violates section 3011 or 3012.

(iv) Derived from, involved in or used or intended to be used to commit an act in this Commonwealth which violates section 3011 or 3012.

(2) All assets within this Commonwealth:

(i) Of an individual, entity or organization engaged in planning or perpetrating an act which violates section 3011 or 3012.

(ii) Acquired or maintained with the intent and for the purpose of supporting, planning, conducting or concealing an act which violates sections 3011 or 3012.

(iii) Derived from, involved in or used or intended to be used to commit an act which violates sections 3011 or 3012.

(b) Process and seizures.--Property subject to forfeiture under this section may be seized by a law enforcement agency upon process issued by any court of common pleas having jurisdiction over the property.

(c) Custody of property.--

(1) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the law enforcement agency subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings.

(2) When property is seized under this section, the law enforcement agency shall place the property under seal and either:

(i) remove the property to a place designated by it; or

(ii) require that the district attorney take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) Transfer of property.--Whenever property is forfeited under this section, the property shall be transferred to the custody of the district attorney. The district attorney, where appropriate, shall sell the property. The proceeds from the sale shall first be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be distributed under subsection (m).

(e) Proceedings and petition.--

(1) The proceedings for the forfeiture or condemnation of property shall be in rem, in which the Commonwealth shall be the plaintiff and the property the defendant.

(2) A petition shall be:

(i) filed in the court of common pleas of the judicial district where the property is located;

(ii) verified by oath or affirmation of an officer or citizen; and

(iii) contain the following:

(A) A description of the property seized.

(B) A statement of the time and place where seized.

(C) The owner, if known.

(D) The person or persons in possession, if known.

(E) An allegation that the property is subject to forfeiture pursuant to this section and an averment of material facts upon which forfeiture action is based.

(F) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and condemned unless cause to the contrary is shown.

(f) Service.--

(1) A copy of the petition required under subsection (e) shall be served personally or by certified mail on the owner or the person or persons in possession at the time of the seizure.

(2) The copy shall have endorsed a notice as follows:

To the claimant of the within described property:

You are required to file an answer to this petition, setting forth your title in and right to possession of the property within 30 days from the service of this notice. You are also notified that, if you fail to file the answer, a decree of forfeiture and condemnation will be entered against the property.

(g) Notice.--

(1) Notice of the petition shall be given by the Commonwealth through an advertisement in only one newspaper of general circulation published in the county where the property shall have been seized, once a week for two successive weeks. if:

(i) the owner of the property is unknown;

(ii) there was no person in possession of the property when seized; or

(iii) the owner or such person or persons in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court.

(2) The notice shall be signed by the district attorney, deputy district attorney or assistant district attorney.

(3) Notwithstanding any other law to the contrary, this section does not require any advertisement.

(4) The notice of the petition shall:

(i) contain a statement of the seizure of the property, a description of the property, the place and date of seizure; and

(ii) direct any claimants to the property to file a claim on or before a date given in the notice, which date shall not be less than 30 days from the date of the first publication.

(5) If no claims are filed within 30 days of publication, the property shall summarily forfeit to the Commonwealth.

(h) Unknown owner.--For purposes of this section, the owner or other such person cannot be found in the jurisdiction of the court if:

(1) a copy of the petition is mailed to the last known address by certified mail and is returned without delivery;

(2) personal service is attempted once but cannot be made at the last known address; and

(3) a copy of the petition is left at the last known address.

(i) Waiver of notice.--The notice provisions of this section are automatically waived if the owner, without good cause, fails to appear in court in response to a subpoena on the underlying criminal charges. If good cause has not been demonstrated and 45 days have passed since the owner failed to appear, the property shall summarily forfeit to the Commonwealth.

(j) Hearing date.--Upon the filing of a claim for the property setting forth a right of possession, the case shall be deemed at issue, and a date and time shall be fixed for the hearing.

(k) Burden of proof.--If the Commonwealth produces evidence at the hearing under this section that the property in question was unlawfully used, possessed or otherwise subject to forfeiture under this section, the burden shall be upon the claimant to show by a preponderance of the evidence that:

(1) the claimant is the owner of the property or the holder of a chattel mortgage or contract of conditional sale thereon;

(2) the claimant lawfully acquired the property; and

(3) the property was not unlawfully used or possessed by the claimant. If it appears that the property was unlawfully used or possessed by a person other than the claimant, then the claimant shall show that the unlawful use or possession was without his knowledge or consent. Such absence of knowledge or consent must be reasonable under the circumstances presented.

(l) Claims of ownership.--

(1) A person may file a petition to the court alleging:

(i) Ownership of the property.

(ii) A right of possession to the property.

(ii) A lien or reservation of title to the property as the holder of:

(A) a chattel mortgage upon the property; or

(B) a contract of conditional sale upon the property.

(2) A public hearing shall be held, with due notice given to the district attorney.

(3) The court may order the property returned or delivered to the claimant upon proof by a preponderance of the evidence by the claimant that:

(i) the property was lawfully acquired, possessed and used by the claimant; or

(ii) if it appears that the property was unlawfully used by a person other than the claimant, the unlawful use was without the claimant's knowledge or consent. The absence of knowledge or consent must be reasonable under the circumstances presented.

(m) Disposition of proceeds.--Subject to subsection (d), all monies forfeited and the proceeds from the sale of all property forfeited and seized under this section shall be paid as follows:

(1) Any local law enforcement agency shall be reimbursed if it has used its own funds in the detection, investigation, apprehension and prosecution of persons for violation of section 3011 and 3012.

(2) Any amount remaining after reimbursement under paragraph (1) shall be distributed under the following formula:

(i) 30% to the office of the district attorney to be used to investigate and prosecution human trafficking cases.

(ii) 35% to the council to fund the grant program established in section 3036 (relating to grants).

(iii) 35% to the Office of Victims' Services in the Pennsylvania Commission on Crime and Delinquency to provide services to human trafficking victims in the manner set forth in Chapter 9 (relating to services) of the act of November 24, 1998 (P.L.882, No. 111), known as the Crime Victims Act.

(n) Assets located outside United States.--Assets of persons convicted of violations of sections 3011 and 3012 that are located outside the United States shall also be subject to forfeiture to the extent they can be retrieved by the Commonwealth.

SOURCE

Subsections (a) through (l) are a reenactment of the prior provision found at 18 Pa.C.S. §3004 (relating to forfeiture) and repealed by this act. Subsections (m) and (n) derived respectively from the Polaris Model: Prosecution: Asset Forfeiture, paragraphs (D) and (E).

NOTE

Pennsylvania provides for forfeitures in prosecutions involving controlled substances and terrorism in 42 Pa.C.S. Chapter 68 (relating to forfeitures). New Section 3021 tracks many of the provisions of that chapter. Additionally, Subchapter C (loss of property rights of Title 18 Pa.C.S. Chapter 31 (sexual offenses) provides for forfeitures in prosecutions involving offenses under that chapter.

§ 3022. Forfeiture of professional licenses and governmental contracts.

(a) Revocation of professional license.--The professional license of a licensee who knowingly employs or permits the employment of a human trafficking victim shall be revoked for a period of one year.

(b) Administrative procedure.—A revocation under subsection (a) or (c)(2)(i) shall be subject to 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

(c) Loss of public works contract.--A public works contractor or subcontractor who knowingly employs or permits the employment of a human trafficking victim is subject to the following:

(1) For a first offense relating to the public contract, the Secretary of Labor and Industry shall issue a warning letter detailing the violation. The letter shall be posted on the Department of Labor and Industry's Internet website.

(2) For a second offense relating to the public contract:

(i) At the discretion of the Commonwealth agency public body with which the public works contractor has contracted, the contractor may be subject to termination of the contract by the Commonwealth agency public body and a fine of up to \$2,000. The right of the Commonwealth agency public body to terminate the contract under this subparagraph may not be waived.

(ii) At the discretion of the public works contractor with whom the subcontractor has contracted, the subcontractor may be subject to termination of the subcontract by the public works contractor without recourse against or penalty

to the public works contractor. The right of the public works contractor to terminate the subcontract under this subparagraph may not be waived.

(3) For a third or subsequent offense relating to the public contract, at the discretion of the Secretary of Labor and Industry, in addition to the sanctions in paragraph (2), the contractor or subcontractor shall be subject to debarment under the Commonwealth Procurement Code, 62 Pa.C.S. § 531 (relating to debarment or suspension) for one year.

(d) Affirmative defense.--It shall be an affirmative defense to any proceeding for a violation of this chapter that a licensee or public works contractor or subcontractor:

(1) complied with § 274A of the Immigration and Nationality Act (Public Law 99-603, 8 U.S.C. § 1324a) with respect to hiring, recruiting or referring an individual for employment in the United States; or

(2) required a contractor or subcontractor to certify compliance with § 274A of the Immigration and Nationality Act with respect to hiring, recruiting or referring an individual for employment in the United States.

(e) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

“Licensee.” An individual, corporation, partnership, limited liability company or other legal entity that holds a license issued by a departmental or administrative board or commission under the Bureau of Professional and Occupational Affairs in the Department of State.

“Public body.” The Commonwealth of Pennsylvania, any of its political subdivisions, any authority created by the General Assembly of the Commonwealth and any instrumentality or agency of the Commonwealth.

“Public work.” Construction, reconstruction, demolition, alteration and repair work other than maintenance work, done under contract and paid for in whole or in part out of the funds of a public body where the estimated cost of the total project is in excess of \$25,000. The term shall not include work performed under a rehabilitation or manpower training program.

“Public works contractor.” A contractor that provides goods or services under a contract involving a public works project.

“Public works project.” A project involving a public work.

“Subcontractor.” A person, other than a natural person and including, but not limited to, a staffing agency, temporary employment agency or placement agency that performs work for a public works contractor under a contract for a public work.

NOTE

This section is based on House Bill 439, Printer’s No. 2502 (2011); S.B. 637, Pr.’s No. 1242, and S.B. 947, Pr.’s No. 1020 (2011).

§ 3023. Cumulative remedies.

Any remedies under this chapter shall be in addition to any other criminal penalties or forfeitures authorized under the laws of this Commonwealth.

§ 3024. Sentencing.

(a) Sentencing enhancements.--In determining a sentence of imprisonment for any violation of this chapter, the court shall consider the following aggravating factors as justification for imposing the maximum sentence allowed under law:

(1) If a human trafficking victim suffered bodily injury, with increased penalties for:

(i) Serious bodily injury, as defined in section 2301 (relating to definitions).

(ii) Permanent or life-threatening bodily injury.

(iii) Death.

(2) The time the individual was held in involuntary servitude, with increased penalties for holding a human trafficking victim:

(i) For at least 180 days and less than one year.

(ii) For one year or more.

(3) The number of human trafficking victims, with increased penalties if violations involved more than one human trafficking victim.

(4) If the human trafficking victim was a minor at the time of the initial offense under this chapter.

(b) Victim impact statement.--Human trafficking victims under this chapter shall have the opportunity to offer prior comment on the sentencing of a defendant under following circumstances:

(1) The office of the district attorney shall provide notice of the opportunity to the human trafficking victim.

(2) The prior comment may include the submission of a written and oral victim impact statement detailing the physical, psychological and economic effects of the crime on the human trafficking victim and the human trafficking victim's family.

(3) The written statement or oral transcript shall be included in any predisposition or presentence report submitted to the court.

(4) Victim impact statements shall be considered by a court when determining a sentence.

(5) An interpreter who speaks a language that the human trafficking victim understands shall be made available to the human trafficking victim during the course of legal proceedings.

SOURCE

Subsections (a)(1), (2) and (3) are derived, respectively from Subsections (m) and (n) derived respectively from the Polaris Model: Prosecution: Sentencing Enhancements, paragraphs (B)(1), (2) and (3). Subsections (b)(1) through (4) based on Sections 201(5), 213(c) and 216(c) of the act of November 24, 1998 (P.L. 882, No. 111) known as the Crime Victims Act. Paragraph (b)(5) derived from the Polaris Model: Prosecution: Opportunity for Presentation of Victim's Views and Concerns.

COMMENT

Pennsylvania already provides for enhanced sentencing in human trafficking cases in some instances:

42 Pa.C.S. § 9720.2. Sentencing for trafficking of persons.

Notwithstanding any other provision of law, a person who commits a violation of 18 Pa.C.S. § 3002 (relating to trafficking of persons) while violating:

- (1) 18 Pa.C.S. § 2901 (relating to kidnapping);**
- (2) 18 Pa.C.S. § 3121 (relating to rape); or**
- (3) 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse);**

shall be sentenced up to a maximum term of life imprisonment.

NOTE

This provision is amended in the conforming amendments section of this report to change the cross-reference to Section 3011 (relating to trafficking in individuals).

42 Pa.C.S. § 9738 (victim impact statements) deals with the ability of a victim to be present during a trial even though they may later offer a victim impact statement during the sentencing phase. A conforming amend is made to that section to ensure that human trafficking victims receive the same treatment.

§ 3025. Data collection.

The Pennsylvania Commission on Sentencing established in 42 Pa.C.S. § 2154 shall collect data and other relevant information on sentences imposed under this subchapter.

COMMENT

Although two federal pilot projects designed to collect data on human trafficking currently exist at the University of Michigan (Human Trafficking Law Project) and Northeastern University (a partner with the Urban Institute through a U.S. Department of Justice grant), no accurate data is currently available. In addition, no data can be gleaned from the national human trafficking hotline, and there is little data available from individual states. Victim tracking reports for federal trafficking outreach grants provide spotty data as well. Under this provision, Pennsylvania can begin to track some information to gauge the magnitude of the human trafficking problem in Pennsylvania and the effectiveness of this chapter.

CHAPTER NOTE

The fines and penalties provided for in the Polaris Model do not always track perfectly with the structure of fines and penalties provided for in Title 18 of the Pennsylvania Consolidated Statutes. Grading of offenses in this chapter has been selected to approximate the levels recommended in the Polaris Model. Pennsylvania's classification of offenses and their corresponding fines and terms of imprisonment are set for in the table below, and are derived from 18 Pa.C.S. §§ 106 (classes of offenses), 1101 (fines), 1103 (sentence of imprisonment for felony) and 1104 (sentence of imprisonment for misdemeanors):

Class of Offense	Maximum Fine	Maximum Term of Imprisonment
Felony of the first degree	\$25,000	20 years
Felony of the second degree	\$25,000	10 years
Felony of the third degree	\$15,000	7 years
Misdemeanor of the first degree	\$10,000	5 years
Misdemeanor of the second degree	\$5,000	2 years
Misdemeanor of the third degree	\$2,500	1 year

The Polaris Model calls for the addition of human trafficking offenses to the definition of racketeering activity under the state Racketeer Influenced and Corrupt Organizations (RICO) statute. Pennsylvania already includes offenses under Chapter 30 in the definition of “racketeering activity” under 18 Pa.C.S. § 911(h)(1) (relating to corrupt organizations).

SUBCHAPTER C

PREVENTION OF HUMAN TRAFFICKING

Sec.

3031. Council.

3032. Commission responsibilities.

3033. Training.

3034. Public awareness.

3035. National human trafficking hotline; signage.

3036. Grants.

3037. Role of non-governmental organizations.

§ 3031. Council.

(a) Establishment.--A council is hereby established in the commission, to include the

following:

- (1) A representative of the Office of the Governor of the Commonwealth.
- (2) A representative of the Office of the Attorney General of the Commonwealth.
- (3) A representative of the Department of Labor and Industry of the Commonwealth.
- (4) A representative of the Department of Health of the Commonwealth.
- (5) A representative of the Department of Public Welfare of the Commonwealth.
- (6) A representative of the Department of State of the Commonwealth.
- (7) A representative of the Pennsylvania State Police.
- (8) A representative of the Pennsylvania District Attorneys Association.
- (9) A representative of the Pennsylvania Chiefs of Police Association.
- (10) A representative of the Pennsylvania Sheriffs' Association.
- (11) A representative of the Pennsylvania Coalition Against Domestic Violence.
- (12) A representative of the Pennsylvania Coalition Against Rape.
- (13) Three representatives of local law enforcement agencies appointed by the Governor.
- (14) Ten representatives from non-governmental organizations appointed by the Governor, to include the following:
 - (i) Organizations with substantial experience serving human trafficking victims.
 - (ii) Regional organizations, including task forces and coalitions devoted to human trafficking.
 - (iii) Agencies devoted to runaway services.
 - (iv) Academic researchers dedicated to the subject of human trafficking.

(b) Federal government representation on council.--The Governor shall invite a representative from each of the following organizations operating with the Commonwealth to be members of the council:

- (1) U.S. Attorneys' offices.
- (2) The Federal Bureau of Investigation.
- (3) U.S. Immigration and Customs Enforcement.
- (4) The U.S. Department of Labor.

(c) Procedural matters.--

- (1) The council shall meet at least four times annually.
- (2) The commission shall call and organize the first meeting of the council, at which time the council shall elect a chair from among the membership, who shall serve for two years, or until a successor is elected.
- (3) A simple majority of the council members shall constitute a quorum.
- (4) Members of the council shall serve without compensation, but each member shall be reimbursed for any actual and necessary expenses incurred in the performance of council-related duties. Expenses may include reimbursement of travel living expenses while engaged in council business.
- (5) The council shall establish rules for the conduct of its meetings.

(d) Responsibilities.--The council shall:

- (1) Develop and assist the commission in implementing the state plan established in section 3051 (relating to state plan).
- (2) Administer the grant program established in section 3036 (relating to grants).
- (3) Advise the commission in carrying out its duties under this chapter.

(e) Annual report.--The council shall submit an annual report of its findings and recommendations to the Governor, the Speaker of the House of Representatives and the President pro tempore of the Senate on or before December 31st of each calendar year.

SOURCE

Subsection (a) is derived from Polaris Model: Prevention of Human Trafficking (Prevention): State Task Force for the Prevention of Human Trafficking, paragraphs (A) and (C). Subsections (b) and (d)(1) are from Polaris Model, paragraphs (D) and (E)(1), respectively. Subsection (c) is from Polaris Model, paragraph (A). Paragraphs (d)(2) and (3) are new. Subsection (e) is from Polaris Model, paragraph (E)(9).

§ 3032. Commission responsibilities.

(a) Responsibilities.--The commission shall:

- (1) Enhance and support local and regional efforts to combat human trafficking.
- (2) Coordinate the implementation of the State plan.
- (3) Coordinate the sharing of information between agencies for the purposes of detecting persons engaged in human trafficking.
- (4) Explore the establishment of state policies for time limits for the issuance of law enforcement agency endorsements as described in Federal regulations found at 8 C.F.R. § 214.11(f)(1).
- (5) Establish policies to work with non-governmental organizations to prevent human trafficking and provide assistance to human trafficking victims.
- (6) Review existing services and facilities to meet the needs of human trafficking victims and recommend improved coordination efforts involving:
 - (i) Health services, including mental health services.
 - (ii) Housing.

(iii) Education and job training.

(iv) English as a Second Language classes.

(v) Interpreting services.

(vi) Legal and immigration services.

(vii) Victim compensation.

(viii) Processes and procedures to protect human trafficking victims after identification as a human trafficking victim.

(7) Evaluate various approaches used by State and local governments to increase public awareness of human trafficking.

(8) Develop screening protocols for use by emergency medical services providers as defined in 35 Pa.C.S. § 8103 (relating to definitions).

(9) Compile and publish a statewide directory of agencies that provide services to human trafficking victims.

(10) Develop guidelines for size and display of public information materials developed under § 3034 (relating to public awareness).

(11) Provide administrative support or other assistance to the council.

(b) Delegation.--The commission may provide for some or all of its responsibilities under (a)(6)-(10) through subcontracts with non-governmental organizations which comply with the regulations and standards developed under this chapter. Each non-governmental organization shall assure the commission annually that the organization is in compliance with its regulations.

(c) Regulations.--The commission shall establish performance standards for non-governmental organizations acting under a subcontract as provided in (b).

NOTE

Emergency medical services provider is defined in 35 Pa.C.S. § 8103 as any of the following: an emergency medical responder; an emergency medical technician; an advanced emergency medical technician; a paramedic; a prehospital registered nurse; a prehospital physician extender; a prehospital emergency medical services physician; or an individual prescribed by regulation of the Pennsylvania Department of Health to provide specialized emergency medical services. Efforts to promote awareness and combat trafficking could include distributing informational literature, maintaining a website with details of available resources or sponsoring public service announcements.

SOURCE

Paragraphs (a)(1) through (7) are derived from Polaris Model: Prevention: State Task Force for the Prevention of Human Trafficking, paragraphs (e)(2) through (8), respectively. Paragraphs (a)(6)(viii), (8), (9), (10) and (11) and subsections (b) and (c) are new.

§ 3033. Training.

(a) Law enforcement personnel.--The commission shall develop a course of training in all aspects of human trafficking to be included as a component of in-service training for the following :

(1) Members of the Pennsylvania State Police.

(2) Municipal police officers, as defined in 53 Pa.C.S. Ch. 21 (relating to municipal police education and training).

(3) County sheriffs and deputy sheriffs.

(4) Adult and juvenile parole and probation officers.

(b) Juvenile detention center staff.--The commission shall develop a course of training in all aspects of human trafficking to be presented as an annual workshop for all juvenile detention center staff.

(c) Other agencies.--The following shall add a training component to identify human trafficking victims for use by their personnel:

(1) The Department of Corrections of the Commonwealth.

(2) The Department of Health of the Commonwealth.

(3) The Department of Public Welfare of the Commonwealth.

(4) The Department of Education of the Commonwealth.

(5) The Department of Labor and Industry of the Commonwealth.

(6) The Office of the Victim Advocate.

(7) The commission.

(d) Victims in shelters.--The commission shall develop training materials for use by staff working in domestic violence, sexual violence and human trafficking shelters to ensure the safety of human trafficking victims residing in shelters

SOURCE

Subsections (a) and (b) are based on Polaris Model: Prevention of Human Trafficking (Prevention): Training. Subsections (c) and (d) are new.

COMMENT

Training under this section is intended to reach those persons who may encounter trafficked individuals in the performances of their professional or official duties and may include: law enforcement and emergency medical services personnel, firefighters, hospital emergency room staff, hotel management, health and housing inspectors, turnpike toll booth operators, cab drivers, railroad conductors, ticket agents, truck and bus drivers, teachers and counselors and those offering citizenship and English as a second language classes, among others.

§ 3034. Public awareness.

(a) Potential victims; content.--In cooperation with appropriate non-governmental organizations, the commission shall prepare public awareness programs designed to educate potential victims and their families on the risks of human trafficking, including information regarding:

- (1) Common recruitment techniques.
- (2) The use of debt bondage.
- (3) Common coercive tactics.
- (4) The health risks of maltreatment, rape, exposure to HIV/AIDS and sexually transmitted diseases.
- (5) The potential psychological harm.
- (6) The risks of engaging in commercial sex acts and possible punishment.
- (7) Human trafficking victim's rights under Federal and State law.
- (8) Methods for reporting suspected recruitment activities.
- (9) Types of services available to victims and how to access such services.
- (10) Relevant hotlines, including the National Human Trafficking Resource Center hotline under section 3036 (relating to national human trafficking hotline; signage).

(b) General public awareness programs.--In cooperation with other appropriate governmental agencies and non-governmental organizations, the commission shall prepare and disseminate general public awareness programs and materials to educate the public on the extent of human trafficking of both U.S. citizens and foreign nationals and to discourage the demand that fosters the exploitation of persons that leads to human trafficking.

(c) General public awareness programs; content.--General public awareness programs and materials under this section shall recognize and be sensitive to ethnic and cultural differences among human trafficking victims and may include:

(1) The impact of human trafficking on individual victims.

(2) Aggregate information on human trafficking worldwide and domestically.

(3) Warnings of the criminal consequences of engaging in human trafficking.

(4) Information described in paragraphs (a)(4) through (10).

(d) Types of materials.--Materials described in subsections (b) and (c) may include pamphlets, brochures, posters, advertisements in mass media, public service announcements, and any other appropriate media.

(e) Privacy protected.--All programs and materials developed under this section shall preserve the privacy of human trafficking victims and their families.

(f) Periodic evaluation.--All public awareness programs prepared under this section shall be evaluated periodically to ensure their effectiveness.

SOURCE

Subsections (a), (b), (e) and (f), are based, respectively, on Polaris Model: Prevention of Human Trafficking (Prevention): Public Awareness paragraphs (A), (B), (D) and (E). Subsections (c) and (d) are based on Polaris Model, paragraph (C).

§ 3035. National human trafficking hotline; signage.

(a) Sign.--An establishment defined under subsection (g) shall post a sign containing information regarding the National Human Trafficking Resource Center Hotline. Any other business may post a sign.

(b) Posting.--An establishment shall post at least one sign in a conspicuous manner clearly visible to the public and employees of the establishment.

(c) Size, information and design.--

(1) A sign under this section shall be no smaller than 8½ by 11 inches.

(2) The Department of Labor and Industry of the Commonwealth shall design the sign to include the following information:

(i) The National Human Trafficking Resource Center Hotline telephone number, which shall be in bold type and large font.

(ii) A statement that a victim of human trafficking is protected under Federal and State law.

(3) The sign shall be posted in English, Spanish and any other language mandated by the Voting Rights Act of 1965 (Public Law 89-110, 42 U.S.C. § 1973 et seq.) for the county where the sign will be posted.

(4) The Department of Labor and Industry of the Commonwealth may consult with human trafficking victim advocates to determine other information that may be included on the sign.

(d) Notice.--

(1) The authority responsible for licensing the establishments as defined in subsection (g) shall provide notice of this section.

(2) The Department of Labor and Industry of the Commonwealth shall provide the sign required by subsection (a) on its Internet web site for establishments to print as needed.

(e) Civil penalty.--In addition to any other remedy available at law or in equity for a violation of this section, the licensing authority for the establishment may assess a civil penalty upon a person for a violation of this section. In assessing a civil penalty, the licensing authority shall give notice to the person and shall provide an opportunity for a

hearing. The civil penalty assessed may not exceed \$500. The civil penalty shall be payable to the Department of Labor and Industry of the Commonwealth and shall be collectible in a manner provided by law for the collection of debt.

(f) Hearing.--A hearing regarding a civil penalty imposed under subsection (e) shall be conducted under 2 Pa.C.S. (relating to administrative law and procedure).

(g) Definition.--As used in this section, the term "establishment" shall mean the following:

(1) A massage parlor, spa, nail salon or a similar enterprise, regardless of whether it is required to obtain a license or permit from the Commonwealth for its operation.

(2) A restaurant, bar, tavern, hotel or club that has a valid liquor or malt or brewed beverage license under Article IV of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

(3) An adult entertainment enterprise featuring nude or partially nude dancing or providing live adult entertainment.

(4) A hotel or motel found to be a drug-related nuisance under 42 Pa.C.S. Ch. 83 Subch. H (relating to drug nuisances) or declared a common nuisance under section 1 of the act of June 23, 1931 (P.L.1178, No.319), entitled "An act declaring buildings and parts of buildings used for purposes of fornication, lewdness, assignation, and prostitution to be nuisances; providing a method of abating same; establishing a method of procedure against those who use said buildings, or parts thereof, for such purposes; and providing penalties for violations of this act."

(5) An airport, train station or bus station.

(6) A welcome center or rest area operated by the Department of Transportation of the Commonwealth.

- (7) A full-service commercial truck stop.
- (8) A farm labor camp as defined in the act of June 23, 1978 (P.L.537, No.93), known as the Seasonal Farm Labor Act.
- (9) A job placement agency or center.
- (10) A person that provides for transfer of cash from one individual to another, and may include an establishment licensed under and of the following:
- (i) The act of April 6, 1937 (P.L.200, No.51), known as the Pawnbrokers License Act.
- (ii) The act of September 2, 1965 (P.L.490, No.249), known as the Money Transmission Business License Law.
- (iii) The act of February 18, 1998 (P.L.146, No.22), known as the Check Casher Licensing Act.
- (11) A person who has been cited for hiring or using illegal aliens.
- (12) A person who has been found to have violated the provisions of this chapter.

SOURCE

In general, this section is based on S.B. 338, Pr.'s No. 1688 (2011). Paragraphs (8) through (12) of subsection (g) are new.

§ 3036. Grants.

(a) General rule.--Subject to the availability of funds, the council shall make grants to units of local government, and non-governmental victim's service organizations to:

- (1) develop, expand or strengthen programs for victims;
- (2) ensure prevention of human trafficking; and
- (3) ensure protection of victims.

(b) Conflict of interest.--Whenever a member of the council is a representative of an applicant for a grant under this section, the member shall fully disclose the nature of the interest and withdraw from discussion, lobbying and voting on the matter. Any transaction or vote involving a potential conflict of interest shall be approved only when a majority of disinterested council members determines that it is in the best interests of the grant program to do so.

SOURCE

Subsection (a) is based on Polaris Model: Prevention of Human Trafficking (Prevention): Grants. Subsection (b) is new.

§ 3037. Role of non-governmental organizations.

In implementing the responsibilities assigned under sections 3031 (relating to council), 3033 (relating to training) and 3034 (relating to public awareness), the commission shall enlist the cooperation of non-governmental organizations, including the following:

- (1) Organizations with substantial experience serving victims of human trafficking, sexual violence or domestic violence.
- (2) Regional organizations, including task forces and coalitions devoted to human trafficking.
- (3) Agencies devoted to runaway services.
- (4) Agencies providing shelter and secure housing for victims.
- (5) Academic researchers dedicated to the subject of human trafficking.

SOURCE

This section is based on Polaris Model: Prevention of Human Trafficking (Prevention): Role of Non-Governmental Organizations.

SUBCHAPTER D

PROTECTION OF HUMAN TRAFFICKING VICTIMS

Sec.

3051. State plan.

3052. Civil causes of action.

3053. Protection of victims.

3054. Appropriate implementation for minor human trafficking victims.

3055. Services.

3056. Victims in shelters.

§ 3051. State plan.

(a) Development of plan.--In consultation with non-governmental organizations and the commission, the council shall develop a plan for the provision and delivery of appropriate services by governmental and non-governmental sources to human trafficking victims, their dependents and the parents or guardians of minor victims.

Services shall include the following:

(1) Appropriate emergency, transitional and permanent housing, which takes into account the human trafficking victim's status as a victim of crime and includes safe conditions for sleeping, food and personal hygiene.

(2) Psychological counseling in a language the human trafficking victim can understand.

(3) Medical assistance.

(4) Child care.

(5) Appropriate material assistance.

(6) Access to employment, educational, language and training opportunities.

(7) Legal assistance and advocacy in a language the human trafficking victim understands.

(8) Information regarding the human trafficking victim's legal rights, which explains the legal process, including opportunities for court accompaniment by an advocate.

(b) Personal characteristics to be considered.--In the development of the plan under this section, the council shall consider the following factors relevant to the human trafficking victim and the victim's dependent children:

(1) Age.

(2) Gender.

(3) Special needs.

(4) Sexual orientation.

(5) Gender identity.

(6) Racial and ethnic background.

(c) Implementation.--The plan shall be submitted to the commission which shall implement the plan in compliance with the requirements of this section and ensure that all human trafficking victims are treated with respect for their human rights and dignity. The council shall review the plan annually to ensure that it continues to meet the needs of victims of human trafficking.

SOURCE

In general, this section is derived from Polaris Model: Protection: Develop a State Plan to Provide Services to Victims of Human Trafficking. Paragraphs (a)(8) and (b)(4) and (5) are new.

COMMENT

The intent of the Pennsylvania Council for the Prevention of Human Trafficking is to serve as a resource center for law enforcement agencies and personnel as well as service providers, facilitate improved and consistent communication and information sharing among existing anti-human trafficking efforts and to enhance programming and support the specific needs of prevention and protective services. With multiple task forces, response teams and special investigative units constituted throughout the state, along with existing organizations raising awareness, providing training and sponsoring victim services and housing, a growing infrastructure exists. It is not the intention or purpose of the Council to direct investigations or mandate services, but to support local, regional and statewide efforts.

§ 3052. Civil causes of action.

(a) General rule.--

(1) An individual who is a human trafficking victim may bring a civil action against any person that participated in the human trafficking of the individual in the court of common pleas of the county where the individual resides or where any of the alleged violations of this chapter occurred.

(2) An individual who is a victim of the sex trade may bring a civil action in the court of common pleas of the county where the individual resides against a person that:

(i) recruits, profits from or maintains the victim in any sex trade act;

(ii) abuses or causes bodily harm to the victim in any sex trade act; and

(iii) knowingly advertises or publishes advertisements for purposes of recruitment into sex trade activity.

(b) Exception.--This section shall not be construed to create liability for any person who provides goods or services to the general public and to a person who would be liable under paragraph (a)(2), absent a showing that the person:

(1) knowingly markets or provides its goods or services to a person liable under paragraph (a)(2);

(2) knowingly receives a higher level of compensation from a person liable under paragraph (a)(2); or

(3) supervises or exercises control over a person liable under paragraph (a)(2).

(c) Damages.--The court may award any of the following forms of relief:

(1) Actual damages.

(2) Compensatory damages.

(3) Punitive damages.

(4) Injunctive relief.

(5) Any other appropriate relief.

(d) Attorney fees and costs.--A prevailing plaintiff who is a human trafficking victim shall be awarded reasonable attorney fees and costs.

(e) Treble damages.--Treble damages shall be awarded to a human trafficking victim on proof of actual damages where the defendant's acts were willful and malicious.

(f) Joinder of actions.--In the discretion of the court:

(1) Two or more individuals may join in one action under this section as plaintiffs if their respective actions involve at least one defendant in common.

(2) 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.

(g) Attempts at avoidance of liability.--No person may avoid liability under this section by:

(1) a conveyance of any right, title or interest in real property;

(2) an agreement, including an indemnification agreement or hold harmless agreement, that purports to show the consent of the human trafficking victim.

(h) Statute of limitations.--The statute of limitations for an action under this section may be tolled under any of the following circumstances:

(1) Until the plaintiff discovers that the human trafficking incident occurred and that the defendant caused, was responsible for or profited from the incident.

(2) Until a minor victim has attained the age of majority.

(3) If a plaintiff is under a disability that makes it impossible or impracticable for the plaintiff to bring an action at the time the cause of action accrues, until the disability has been removed.

(4) If the plaintiff's injury is caused by two or more incidents that are part of a human trafficking situation created by the same defendant, 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 any person acting on the defendant's behalf, until such actions have ceased.

(i) Estoppel.--A defendant is estopped from asserting 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.

(j) Non-defenses.--It shall not be a defense to an action under this section that the following occurred:

(1) The victim of the sex trade and the defendant had a consensual sexual relationship.

(2) The defendant is related to the victim of the sex trade by blood or marriage.

(3) The defendant has lived with the victim of the sex trade in any formal or informal household arrangement.

(4) The victim of the sex trade was paid or otherwise compensated for sex trade activity.

(5) The victim of the sex trade engaged in sex trade activity prior to any involvement with the defendant.

(6) The victim of the sex trade continued to engage in sex trade activity following any involvement with the defendant.

(7) The victim of the sex trade made no attempt to escape, flee or otherwise terminate the contact with the defendant.

(8) The victim of the sex trade consented to engage in sex trade activity.

(9) The victim of the sex trade engaged in only a single incident of sex trade activity.

(10) There was no physical contact involved in the sex trade activity.

(11) As a condition of employment, the defendant required the victim of the sex trade to agree not to engage in prostitution.

(12) The defendant's place of business was posted with signs prohibiting prostitution or prostitution-related activities.

(13) The victim of the sex trade has been convicted or charged with prostitution or prostitution-related offenses.

(14) The victim of labor trafficking made no attempt to escape, flee or otherwise terminate the contact with the defendant.

(k) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Disability.” Includes insanity, imprisonment or other incapacity or intellectual disability.

“Sex trade.” An act, which if proven beyond a reasonable doubt, could support a conviction for violation or attempted violation of Ch. 59 (relating to public indecency) or section 6312 (relating to sexual abuse of children).

“Victim of the sex trade.” An individual who has been:

- (1) The object of a solicitation for prostitution.
- (2) The object of a transaction in a commercial sex act.
- (3) Intended or compelled to engage in an act of prostitution.
- (4) Intended or compelled to engage in a commercial sex act.
- (5) Described or depicted in material that advertises an intent or compulsion to engage in commercial sex acts.
- (6) In the case of obscenity or child pornography, has appeared in or been described or depicted in the offending conduct or material.

SOURCE

Subsections (a) through (j), and the definition of “disability” are a merger of Polaris Model: Protection: Civil Cause of Action for Victims of Human Trafficking and Civil Cause of Action for Victims of the Sex Trade. The definitions of “sex trade” and “victim of the sex trade” are based on Polaris Model: Prosecution: Definitions, “sex trade” and “victim of the sex trade.”

§ 3053. Protection of victims.

Law enforcement agencies shall take all steps necessary to identify and protect human trafficking victims, including:

(1) Interviewing all individuals arrested on charges of prostitution to identify if they are victims.

(2) Upon identification as a human trafficking victim and subject to the consent of the victim and the victim's family, where family consent is appropriate, by:

(i) providing reasonable protection to prevent recapture by human traffickers and their associates;

(ii) securing the victim and the victim's family known to be living in Pennsylvania from threats, reprisals, or intimidation by the human traffickers and their associates; and

(iii) ensuring that the victim has an opportunity to consult with a victim advocate or other appropriate person to develop a safety plan and for advocacy purposes.

SOURCE

This section is derived from Polaris Model: Protection: Protection of Victims.

§ 3054. Appropriate implementation for minor human trafficking victims.

(a) Best interest standard.--The provision of services to a minor human trafficking victim by the Commonwealth or by any institution or person established or licensed by the Commonwealth shall be carried out in a manner that is in the best interest of the minor and appropriate to the particular situation.

(b) Special procedures.--Special procedures shall be developed to accommodate minor witnesses during the investigation and prosecution of violations of this chapter, including:

(1) Allowing the minor's parent, legal guardian or foster parent to be present during all testimony and court proceedings, if it is in the best interest of the minor.

(2) Reuniting the minor with family members, whether within or without the United States, whenever safe, possible and in the best interest of the minor.

(3) Formally investigating the home situation of a minor who became a human trafficking victim after running away, or being cast out of the minor's home or foster care.

SOURCE

Subsections (a) and (b) are derived from Polaris Model: Protection of Victims of Human Trafficking: Appropriate Implementation for Child Victims.

COMMENT

As with any other minor crime victim, minor human trafficking victims may testify under the conditions and procedures established for child victims and witnesses in 42 Pa.C.S., Ch. 59, Subchapter D (relating to child victims and witnesses).

§ 3055. Services.

(a) Effect of guilty plea.--Any plea of guilty entered under section 3011 (relating to trafficking in individuals) or 3012 (relating to involuntary servitude) by a defendant shall automatically entitle the human trafficking victim to all benefits, rights and compensation granted under this chapter.

(b) Information for victims.--The commission shall prepare a model informational form to be used by any person having contact with human trafficking victims that informs human trafficking victims, in a language they can understand, of the following:

- (1) Progress in the prosecution of the defendants.
- (2) Information on prison release dates of persons convicted of offenses under this chapter.
- (3) Their right to provide a victim impact statement.
- (4) Their right to a victim advocate.
- (5) The procedure for repatriation to the human trafficking victim's country of citizenship or lawful residence.
- (6) A directory of local human trafficking victim service organizations.
- (7) A directory of legal services organizations that can assist human trafficking victims in obtaining or maintaining legal immigration status.

(c) Access to crime victims' services.--

- (1) Human trafficking victims shall be eligible for benefits and compensation under the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act.
- (2) Law enforcement agencies shall inform human trafficking victims of benefits they may receive under Federal and State laws, and may assist those human trafficking victims in obtaining such benefits where law enforcement assistance is required in order to obtain those benefits.
- (3) A human trafficking victim who is charged with a violation under 18 Pa.C.S. Ch. 59 (relating to public indecency) shall not be precluded from receiving benefits under the Crime Victims Act on the basis of those charges only.

(d) Refugee benefits.--Foreign national human trafficking victims and their accompanying dependent children shall be eligible to receive benefits in the same manner and to the same extent as refugees.

(e) Labor standards and working conditions.--The Department of Labor and Industry of the Commonwealth shall:

(1) Administer labor standards regarding wages, hours of work and working conditions under its jurisdiction without regard to the legal status of the individual's right to work in the United States.

(2) Investigate complaints of unlawful working conditions without regard to the immigration status of the complainants and without regard to the nature of the work or services involved.

(f) Immigration certification.--

(1) The Attorney General, a district attorney, or any representative of a law enforcement agency may certify in writing to the United States Department of Justice or other Federal agency, including the United States Department of Homeland Security, that:

(i) an investigation or prosecution under this chapter has begun; and

(ii) an individual who may be a human trafficking victim is willing to cooperate or is cooperating with the investigation to enable the individual, if eligible under Federal law, to qualify for an appropriate special immigrant visa and to access available Federal benefits.

(2) Cooperation with law enforcement agencies shall not be required of a human trafficking victim who is a minor.

(3) Certification under this subsection may be made available to the human trafficking victim and the human trafficking victim's designated legal representative.

SOURCE

Subsection (a) is derived from Polaris Model: Prosecution: Guilty Pleas. Subsection (b) is derived from Polaris Model: Prosecution: Information for Victims, paragraph (A). Subsection (c)(1) is derived from Polaris Model: Protection of Human Trafficking Victims (“Protection”): Access to the State Crime Victims’ Compensation Fund. Subsection (c)(2) is derived from Prosecution: Information for Victims, paragraph (B). Subsection (c)(3) is new. Subsection (d) is derived from Protection: Refugee Benefits. Subsection (e) derived from Polaris Model: Protection: Applicability of Labor Standards. Subsection (f) is modeled after Illinois’ trafficking in persons statute, 720 ILCS. §5/10-9(i).

COMMENT

The “T” and “U” class visas were created under the federal Victims of Trafficking and Violence Protection Act of 2000. The “T” visa is a non-immigrant visa, designed for use by an alien who the Attorney General determines is a victim of a severe form of trafficking in persons, who is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or a U.S. port of entry on account of such trafficking, who has complied with any reasonable request for assistance in the federal investigation or prosecution of acts of trafficking or has not attained age 15, and who would suffer extreme hardship involving unusual and severe harm upon removal from the United States; the spouse, children, and parents of such an alien who is under 21 if the Attorney General considers it necessary to avoid extreme hardship; or the minor children of such an alien who is 21 years of age or older if they are accompanying or following to join such alien. The total number of aliens who may be issued a “T” visa is limited to 5,000 people (not counting spouses, children or parents of the principal alien) during a fiscal year.

The “U” Visa is also a non-immigrant visa that can be sought by victims of certain crimes who are currently assisting or have previously assisted law enforcement in the investigation or prosecution of a crime, or who are likely to be helpful in the investigation or prosecution of criminal activity.

Qualifying crimes are identified as: abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, felonious assault, female genital mutilation, being held hostage, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, sexual assault, sexual exploitation, slave trade, torture, trafficking, witness tampering, unlawful criminal restraint, other related crimes (includes any similar activity where the elements of the crime are substantially similar and also includes attempt, conspiracy, or solicitation to commit any of the enumerated crimes and other related crimes).

The law enforcement certification USCIS Form I-918, Supplement B, U Nonimmigrant Status Certification (Form I-918B) is a required for “U” visa eligibility. “T” visa applicants are “strongly advised” to submit law enforcement certification USCIS Form I-914B, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking Persons, which can serve as primary evidence that the person was a victim of trafficking and complied with reasonable requests from law enforcement, but may prove those elements through alternative means. Persons receiving “T” and “U” visas may remain in the United States for up to four years.

A victim of human trafficking who is a potential witness against a trafficker may be eligible for a temporary immigration status known as “continued presence.” Federal officials are authorized to submit applications for continued presence. State and local law enforcement officials who identify victims of human trafficking should contact their federal counterparts to ensure submission of the application. The status lasts for one year, but is renewable. No law enforcement certification is required for continued presence and it is not dependent on cooperation by the victim, charges being filed against the trafficker or acceptance of a trafficking case for prosecution. Continued presence can be authorized solely on the basis of a credible uncorroborated victim statement.

§ 3056. Victims in shelters.

(a) Voluntary placement.--Residence of a human trafficking victim in a shelter or other facility shall be voluntary, and a human trafficking victim may decline to stay in a shelter or other facility.

(b) Restrictions on admission.--Admission to a shelter:

(1) shall be made without regard to race, religion, ethnic background, sexual orientation, country of origin or culture; and

(2) may not be conditioned on whether the human trafficking victim is cooperating with a law enforcement agency in its attempts to prosecute persons under this chapter.

SOURCE

Subsection (a) is derived from Polaris Model: Protection: Rights of Human Trafficking Victims in Shelters, paragraph (B). Subsection (b) is new.

SUBCHAPTER E

MISCELLANEOUS PROVISIONS

Sec.

3071. Appropriations.

3072. Other funding.

§ 3071. Appropriations.

The General Assembly shall appropriate funds as necessary to support the activities of the council.

§ 3072. Other funding.

(a) Grant applications.--In addition to the moneys appropriated in section 3071 (relating to appropriations) and any other moneys that may be appropriated from time to time by the General Assembly for its work, the council, in conjunction with the commission, is authorized to apply for and expend Federal grants and grants and contributions from other public, quasi-public or private sources to assist in implementing this chapter.

(b) Commission support.--The commission shall provide adequate resources to the council to implement this chapter.

Section 4. Sections 911 and 5708 of Title 18 of the Pennsylvania Consolidated Statutes are amended to read as follows:

§ 911. Corrupt organizations.

* * *

(h) Definitions.--As used in this section:

(1) "Racketeering activity" means all of the following:

(i) An act which is indictable under any of the following provisions of this title:

Chapter 25 (relating to criminal homicide)

Section 2706 (relating to terroristic threats)

Chapter 29 (relating to kidnapping)

Chapter 30 (relating to human trafficking [of persons])

Chapter 33 (relating to arson, criminal mischief and other property destruction)

Chapter 37 (relating to robbery)

Chapter 39 (relating to theft and related offenses)

Section 4108 (relating to commercial bribery and breach of duty to act disinterestedly)

Section 4109 (relating to rigging publicly exhibited contest)

Section 4117 (relating to insurance fraud)

Chapter 47 (relating to bribery and corrupt influence)

Chapter 49 (relating to falsification and intimidation)

Section 5111 (relating to dealing in proceeds of unlawful activities)

Section 5512 (relating to lotteries, etc.)

Section 5513 (relating to gambling devices, gambling, etc.)

Section 5514 (relating to pool selling and bookmaking)

Chapter 59 (relating to public indecency).

(ii) An offense indictable under section 13 of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act (relating to the sale and dispensing of narcotic drugs).

(iii) A conspiracy to commit any of the offenses set forth in subparagraph (i), (ii) or (v).

(iv) The collection of any money or other property in full or partial satisfaction of a debt which arose as the result of the lending of money or other property at a rate of interest exceeding 25% per annum or the equivalent rate for a longer or shorter period, where not otherwise authorized by law.

(v) An offense indictable under 4 Pa.C.S. Pt. II (relating to gaming).

An act which otherwise would be considered racketeering activity by reason of the application of this paragraph, shall not be excluded from its application solely because the operative acts took place outside the jurisdiction of this Commonwealth, if such acts would have been in violation of the law of the jurisdiction in which they occurred.

* * *

§ 5708. Order authorizing interception of wire, electronic or oral communications.

The Attorney General, or, during the absence or incapacity of the Attorney General, a deputy attorney general designated in writing by the Attorney General, or the district attorney or, during the absence or incapacity of the district attorney, an assistant district

attorney designated in writing by the district attorney of the county wherein the suspected criminal activity has been, is or is about to occur, may make written application to any Superior Court judge for an order authorizing the interception of a wire, electronic or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation involving suspected criminal activities when such interception may provide evidence of the commission of any of the following offenses, or may provide evidence aiding in the apprehension of the perpetrator or perpetrators of any of the following offenses:

(1) Under this title:

Section 911 (relating to corrupt organizations)

Section 2501 (relating to criminal homicide)

Section 2502 (relating to murder)

Section 2503 (relating to voluntary manslaughter)

Section 2702 (relating to aggravated assault)

Section 2706 (relating to terroristic threats)

Section 2709.1 (relating to stalking)

Section 2716 (relating to weapons of mass destruction)

Section 2901 (relating to kidnapping)

Section [3002] 3011 (relating to trafficking in [persons] individuals)

Section 3121 (relating to rape)

Section 3123 (relating to involuntary deviate sexual intercourse)

Section 3124.1 (relating to sexual assault)

Section 3125 (relating to aggravated indecent assault)

Section 3301 (relating to arson and related offenses)

Section 3302 (relating to causing or risking catastrophe)

Section 3502 (relating to burglary)

Section 3701 (relating to robbery)

Section 3921 (relating to theft by unlawful taking or disposition)

Section 3922 (relating to theft by deception)

Section 3923 (relating to theft by extortion)

Section 4701 (relating to bribery in official and political matters)

Section 4702 (relating to threats and other improper influence in official and political matters)

Section 5512 (relating to lotteries, etc.)

Section 5513 (relating to gambling devices, gambling, etc.)

Section 5514 (relating to pool selling and bookmaking)

Section 5516 (relating to facsimile weapons of mass destruction)

Section 6318 (relating to unlawful contact with minor)

(2) Under this title, where such offense is dangerous to life, limb or property and punishable by imprisonment for more than one year:

Section 910 (relating to manufacture, distribution or possession of devices for theft of telecommunications services)

Section 2709(a)(4), (5), (6) or (7) (relating to harassment)

Section 3925 (relating to receiving stolen property)

Section 3926 (relating to theft of services)

Section 3927 (relating to theft by failure to make required disposition of funds received)

Section 3933 (relating to unlawful use of computer)

Section 4108 (relating to commercial bribery and breach of duty to act disinterestedly)

Section 4109 (relating to rigging publicly exhibited contest)

Section 4117 (relating to insurance fraud)

Section 4305 (relating to dealing in infant children)

Section 4902 (relating to perjury)

Section 4909 (relating to witness or informant taking bribe)

Section 4911 (relating to tampering with public records or information)

Section 4952 (relating to intimidation of witnesses or victims)

Section 4953 (relating to retaliation against witness or victim)

Section 5101 (relating to obstructing administration of law or other governmental function)

Section 5111 (relating to dealing in proceeds of unlawful activities)

Section 5121 (relating to escape)

Section 5902 (relating to prostitution and related offenses)

Section 5903 (relating to obscene and other sexual materials and performances)

Section 7313 (relating to buying or exchanging Federal food order coupons, stamps, authorization cards or access devices)

(3) Under the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, where such offense is dangerous to life, limb or property and punishable by imprisonment for more than one year:

Section 1272 (relating to sales of unstamped cigarettes)

Section 1273 (relating to possession of unstamped cigarettes)

Section 1274 (relating to counterfeiting)

(4) Any offense set forth under section 13(a) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, not including the offense described in clause (31) of section 13(a).

(5) Any offense set forth under the act of November 15, 1972 (P.L.1227, No.272).

(6) Any conspiracy to commit any of the offenses set forth in this section.

(7) Under the act of November 24, 1998 (P.L.874, No.110), known as the Motor Vehicle Chop Shop and Illegally Obtained and Altered Property Act.

Section 5. Sections 4415 and 4436 of Title 42 of the Pennsylvania Consolidated Statutes are amended by adding a new paragraph (9) to each section to read:

§ 4415. Confidential communications in presence of interpreter.

An interpreter appointed under this subchapter shall not be compelled to testify in any judicial proceeding or administrative proceeding to any statements made by the person with limited English proficiency and interpreted by the interpreter when the person with limited English proficiency is engaged in a confidential communication as provided by any statute or general rule, including, but not limited to:

(1) Section 5916 (relating to confidential communications to attorney).

(2) Section 5928 (relating to confidential communications to attorney).

(3) Section 5942 (relating to confidential communications to news reporters).

(4) Section 5943 (relating to confidential communications to clergymen).

(5) Section 5944 (relating to confidential communications to psychiatrists or licensed psychologists).

(6) Section 5945 (relating to confidential communications to school personnel).

(7) Section 5945.1 (relating to confidential communications with sexual assault counselors).

(8) Section 5945.2 (relating to confidential communications to crime stopper or similar anticrime program).

(9) Section 5945.3 (relating to confidential communications with human trafficking caseworkers).

§ 4436. Confidential communications in presence of interpreter.

An interpreter appointed under this subchapter shall not be compelled to testify in any judicial proceeding or administrative proceeding to any statements made by the person who is deaf and interpreted by the interpreter when the person who is deaf is engaged in a confidential communication as provided by any statute or general rule, including, but not limited to:

- (1) Section 5916 (relating to confidential communications to attorney).
- (2) Section 5928 (relating to confidential communications to attorney).
- (3) Section 5942 (relating to confidential communications to news reporters).
- (4) Section 5943 (relating to confidential communications to clergymen).
- (5) Section 5944 (relating to confidential communications to psychiatrists or licensed psychologists).
- (6) Section 5945 (relating to confidential communications to school personnel).
- (7) Section 5945.1 (relating to confidential communications with sexual assault counselors).
- (8) Section 5945.2 (relating to confidential communications to crime stopper or similar anticrime program).

(9) Section 5945.3 (relating to confidential communications with human trafficking caseworkers).

COMMENT:

The additions of 42 Pa.C.S. §§ 4415(9) and 4436(9) are intended to protect confidential communications with human trafficking caseworkers at the same level as sexual assault counselors. See Source to new section 5945.3.

Section 6. Sections 5552 and 5554 of Title 42 of the Pennsylvania Consolidated Statutes is amended as follows:

§ 5552. Other offenses.

* * *

(c) Exceptions.--If the period prescribed in subsection (a), (b) or (b.1) has expired, a prosecution may nevertheless be commenced for:

(1) Any offense a material element of which is either fraud or a breach of fiduciary obligation within one year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this paragraph extend the period of limitation otherwise applicable by more than three years.

(2) Any offense committed by a public officer or employee in the course of or in connection with his office or employment at any time when the defendant is in public office or employment or within five years thereafter, but in no case shall this paragraph extend the period of limitation otherwise applicable by more than eight years.

(3) Any sexual offense committed against a minor who is less than 18 years of age any time up to the later of the period of limitation provided by law after the minor

has reached 18 years of age or the date the minor reaches 50 years of age. As used in this paragraph, the term “sexual offense” means a crime under the following provisions of Title 18 (relating to crimes and offenses):

Section 3011(b) (relating to trafficking in individuals).

Section 3012 (a)(1) (relating to involuntary servitude).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 4304 (relating to endangering welfare of children).

Section 6301 (relating to corruption of minors).

Section 6312(b) (relating to sexual abuse of children).

Section 6320 (relating to sexual exploitation of children).

(4) An offense in violation of § 6111(c) or (g), within one year of its discovery by State or local law enforcement, but in no case shall this paragraph extend the period of limitation otherwise applicable by more than eight years.

(5) An offense in violation of 18 Pa.C.S. § 3011 or 3012 in which the human trafficking victim was not a minor, but in no case shall this paragraph extend the period of limitation otherwise applicable by more than five years from the date the human trafficking victim escaped from the human trafficking situation.

SOURCE

The amendment to 42 Pa.C.S. § 5552(c)(3) is derived from Polaris Model: Prosecution: Statute of Limitations, paragraph (B). New paragraph 5552(c)(5) is derived from Polaris Model, paragraph (A).

COMMENT

Under 42 Pa.C.S. §5552(a), the current statute of limitations for human trafficking violations is two years.

The Polaris Model at Prosecution: Statute of Limitations, paragraph (B) tolls the statute of limitations for trafficking offenses involving minors until the minor reaches the age of 18. This is a lesser tolling period than allowed in 42 Pa.C.S. §5552(c)(3) for sexual offenses against minors. This proposal would add new sections 18 Pa.C.S. §3011(b) and 3012(a)(1), which relate to human trafficking involving the sexual servitude of minors to the longer tolling period, as it appears to be consistent with the intent of §5552 to cover all sexual offenses committed against a minor.

The Polaris Model at Prosecution: Statute of Limitations, paragraph (A) extends the statute of limitations for human trafficking offenses in which the victim was not a minor to within x number of years from the date the victim escaped from the human trafficking situation, with x being the applicable statute of limitations for sex offenses and kidnapping. In Pennsylvania, kidnapping and promoting prostitution related offenses have a five year statute of limitations under 42 Pa.C.S. §5552(b). Major sex offenses have a 12 year statute of limitations under 42 Pa.C.S. §5552(b.1). The five year statute was chosen for new § 5552(c)(5), to reflect that the trafficking violations and involuntary sexual servitude of ADULTS are more akin to kidnapping and prostitution violations than major sex crimes.

§ 5554. Tolling of statute.

Except as provided by section 5553(e) (relating to disposition of proceedings within two years), the period of limitation does not run during any time when:

- (1) the accused is continuously absent from this Commonwealth or has no reasonably ascertainable place of abode or work within this Commonwealth;
- (2) a prosecution against the accused for the same conduct is pending in this Commonwealth; [or]

(3) a child is under 18 years of age, where the crime involves injuries to the person of the child caused by the wrongful act, or neglect, or unlawful violence, or negligence of the child's parents or by a person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent[.]; or

(4) a person entitled to bring a claim of an offense under 18 Pa.C.S. Ch. 30 (relating to human trafficking) could not have reasonably discovered the offense due to circumstances resulting from the human trafficking situation, such as psychological trauma, social, cultural and linguistic isolation, and the inability to access services.

SOURCE

Paragraph (4) is based on The Polaris Model at Prosecution: Statute of Limitations, paragraph (C).

Section 7. Chapter 59 of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 5945.3. Confidential communications with human trafficking caseworkers.

(a) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Confidential communication.” All information, oral or written, transmitted between a victim of human trafficking and a human trafficking caseworker in the course of their relationship, including, but not limited to, any advice, reports, statistical data, memoranda, working papers, records or the like, given or made during that relationship, including matters transmitted between the human trafficking caseworker and the victim through the use of an interpreter.

“Interpreter.” A person who translates communications between a human trafficking caseworker, a domestic violence advocate or rape crisis advocate and a victim through the use of sign language, visual, oral or written translation.

“Human trafficking caseworker.” A person who is engaged by any organization whether financially compensated or not, whose primary purpose is the rendering of advice or assistance to human trafficking victims as defined in 18 Pa.C.S. § 3006 (relating to definitions) and who:

- (1) holds a master’s degree or higher in counseling or a related field;
- (2) has an undergraduate degree or equivalent in a human services profession; or
- (3) is supervised by a person qualified under paragraph (1) or (2) and has at least

80 hours of training received under that supervision in the following areas:

- (A) The history of human trafficking.
- (B) Civil and criminal law as it relates to human trafficking.
- (C) Societal attitudes toward human trafficking.
- (D) Peer counseling techniques.
- (E) Housing, public assistance and other financial resources available to meet the needs of human trafficking victims.
- (F) Referral services available to human trafficking victims.
- (G) An explanation of privileged communication.
- (H) Human trauma therapy counseling.

(b) Sexual assault counselors.--An individual qualified as a sexual assault counselor under the provisions of section 5945.1(a) (relating to confidential communications with sexual assault counselors) may serve as a human trafficking counselor under this section.

(c) Privilege.--No human trafficking caseworker or an interpreter translating the communication between a human trafficking caseworker and a human trafficking victim may, without the written consent of that victim, disclose the victim's confidential oral or written communications to the human trafficking caseworker or interpreter nor consent to be examined in any court or criminal proceeding.

SOURCE

Subsections (a) and (c) are derived from Polaris Model: Protection of Human Trafficking Victims: Human Trafficking Victim-Caseworker Privilege, and modeled after 42 Pa.C.S. § 5945.1 (relating to confidential communications with sexual assault counselors). Subsection (b) is new.

Section 8. Sections 9720.2 and 9738 of Title 42 of the Pennsylvania Consolidated Statutes are amended to read:

§ 9720.2. Sentencing for trafficking of persons.

Notwithstanding any other provision of law, a person who commits a violation of 18 Pa.C.S. § [3002] 3011 (relating to trafficking [of persons] in individuals) while violating:

- (1) 18 Pa.C.S. § 2901 (relating to kidnapping);
- (2) 18 Pa.C.S. § 3121 (relating to rape); or
- (3) 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse);

shall be sentenced up to a maximum term of life imprisonment.

* * *

§ 9738. Victim impact statements.

(a) General rule.--Notwithstanding any other statute, rule or provision of law to the contrary, in the trial of a defendant accused of an offense, including an offense subject to sentence under section 9711 (relating to sentencing procedure for murder of the first degree), a court shall not order the exclusion of any victim of the offense from the trial on the basis that the victim may, during the sentencing phase of the proceedings:

(1) make a victim impact statement or present any victim impact information in relation to the sentence to be imposed on the defendant; or

(2) testify as to the effect of the offense on the victim or the family of the victim.

(b) Definition.--As used in this section, the term “victim” shall have the same meaning as in section 479.1 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929 and as in 18 Pa.C.S. § 3006 (relating to definitions).

**PROPOSED LEGISLATION:
Amendments to the Commonwealth Attorneys Act**

AN ACT

Amending the act of October 15, 1980, (P.L.950, No.164), “a supplement to the act of April 9, 1929 (P.L.177, No.175), entitled ‘an act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined,’ implementing the addition of section 4.1 to Article IV of the Constitution of Pennsylvania; establishing the Office of Attorney General elected by the citizens and setting forth powers and duties of the Attorney General; creating an Office of General Counsel and providing for legal services for Commonwealth agencies; transferring, reorganizing or reconstituting certain boards, commissions and agencies; placing certain duties upon the courts and district attorneys; repealing certain acts and parts of acts and making appropriations,” further providing for original jurisdiction of the Office of Attorney General to bring criminal charges in human trafficking prosecutions.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 205(a) of the act of October 15, 1980 (P.L.950, No.164) known as the Commonwealth Attorneys Act shall be amended to read:

Section 205. Criminal prosecutions.

(a) Prosecutions.--The Attorney General shall have the power to prosecute in any county criminal court the following cases:

(1) Criminal charges against State officials or employees affecting the performance of their public duties or the maintenance of the public trust and criminal charges against persons attempting to influence such State officials or employees or benefit from such influence or attempt to influence.

(2) Criminal charges involving corrupt organizations as provided for in 18 Pa.C.S. § 911 (relating to corrupt organizations).

(3) Upon the request of a district attorney who lacks the resources to conduct an adequate investigation or the prosecution of the criminal case or matter or who represents that there is the potential for an actual or apparent conflict of interest on the part of the district attorney or his office.

(4) The Attorney General may petition the court having jurisdiction over any criminal proceeding to permit the Attorney General to supersede the district attorney in order to prosecute a criminal action or to institute criminal proceedings. Upon the filing of the petition, the president judge shall request the Supreme Court to assign a judge to hear the matter. The judge assigned shall hear the matter within 30 days after appointment and make a determination as to whether to allow supersession within 60 days after the hearing. The district attorney shall be given notice of the hearing and may appear and oppose the granting of the petition. Supersession shall be ordered if the Attorney General establishes by a preponderance of the evidence that the district attorney has failed or refused to prosecute and such failure or refusal constitutes abuse of discretion.

(5) When the president judge in the district having jurisdiction of any criminal proceeding has reason to believe that the case is a proper one for the intervention of the Commonwealth, he shall request the Attorney General to represent the

Commonwealth in the proceeding and to investigate charges and prosecute the defendant. If the Attorney General agrees that the case is a proper one for intervention, he shall file a petition with the court and proceed as provided in paragraph (4). If the Attorney General determines that the case is not a proper case for intervention, he shall notify the president judge accordingly.

(6) Criminal charges investigated by and referred to him by a Commonwealth agency arising out of enforcement provisions of the statute charging the agency with a duty to enforce its provision.

(7) Indictments returned by an investigating grand jury obtained by the Attorney General.

(8) Criminal charges arising out of activities of the State Medicaid Fraud Control Unit as authorized by Article XIV (relating to fraud and abuse control), act of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code," and the Federal law known as the "Medicare-Medicaid Antifraud and Abuse Amendments."

(9) Criminal charges involving human trafficking as provided for in 18 Pa.C.S. Ch. 30 (relating to human trafficking).

(b) Concurrent jurisdiction to prosecute.--The Attorney General shall have the concurrent prosecutorial jurisdiction with the district attorney for cases arising under subsection (a)(1), (2), (6) and (9) and may refer to the district attorney with his consent any violation or alleged violation of the criminal laws of the Commonwealth which may come to his notice.

TRANSITIONAL LANGUAGE

TRANSITIONAL LANGUAGE FOR AMENDMENT OF 18 Pa.C.S. Chapter 30

APPLICABILITY

(1) The remedies under 18 Pa.C.S. Ch. 30 (relating to human trafficking) for violations of a section of this chapter are not exclusive and shall be in addition to other procedures or remedies for a violation or conduct provided for in other law.

(2) The amendment of 18 Pa.C.S. Ch. 30 shall apply to offenses committed on or after the effective date of this amendment.

(3) The amendment of 18 Pa.C.S. Ch. 30 shall not apply to or affect the validity of any prosecution initiated under former 18 Pa.C.S §§ 3001-3004.

(4) A prosecution initiated under former 18 Pa.C.S. §§ 3001-3004 prior to the effective date of this act shall proceed under those former provisions.

REPEALS

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the amendment of 18 Pa.C.S. Ch. 30.

(2) 18 Pa.C.S §§ 3001-3004 are hereby repealed.

EFFECTIVE DATE

The following shall take effect in 60 days:

(1) The amendment of 18 Pa.C.S. Ch. 30.

(2) The repeal of 18 Pa.C.S. §§ 3001-3004.

(3) The amendment of 18 Pa.C.S. §§ 911 and 5708.

(4) The amendments to 42 Pa.C.S. §§ 4415, 4436, 5552, 5554, 9720.2 and 9738.

**TRANSITIONAL LANGUAGE FOR AMENDMENT OF THE
COMMONWEALTH ATTORNEYS ACT**

APPLICABILITY

The addition of § 205(a)(9) of the act of October 15, 1980 (P.L.950, No.164), known as The Commonwealth Attorneys Act, shall apply to offenses committed on or after the effective date of this amendment.

EFFECTIVE DATE

The addition § 205(a)(9) shall take effect immediately.

APPENDIX A:

INDEX OF SELECTED HUMAN TRAFFICKING REPORTS

Government Level Reports

California Alliance to Combat Trafficking and Slavery Task Force, “Human Trafficking in California: Final Report,” October 2007.

The Cook County Commission on Women’s Issues, “The Realities of Human Trafficking in Cook County: Strategies for Ending the Exploitation of Women and Girls,” Public Hearing Report, October 2007.

Minnesota Office of Justice Programs and Minnesota Statistical Analysis Center, “Minnesota’s Human Trafficking Task Force: A Report to the Minnesota Legislature,” December 2006.

New York State Interagency Task Force on Human Trafficking, “A report by the Interagency Task Force Implementation of the 2007 law,” August 2008.

Ohio Trafficking in Persons Study Commission, Research and Analysis Sub-Committee, “Report on the Prevalence of Human Trafficking in Ohio to Attorney General Richard Cordray.”

Ohio Trafficking in Persons Study Commission, Legal and Legislative Sub-Committee, “Report on Recommended Changes to Ohio’s Criminal Codes to Attorney General Richard Cordray.”

Ohio Trafficking in Persons Study Commission, Training and Law Enforcement Sub-Committee, “Report on Status of Law Enforcement Training and Interagency Communication to Attorney General Richard Cordray.”

Senior Policy Operating Group on Trafficking in Persons, Subcommittee on Domestic Trafficking, “Final Report and Recommendations,” August 2007.

“The Texas Human Trafficking Prevention Task Force Report 2011,” January 2011.

Texas Juvenile Probation Commission, "Alternatives to Juvenile Justice for Youth Involved in Prostitution," January 2011.

U.S. Department of Justice, "Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2009," July 2010.

U.S. Department of Justice, Office of Justice Programs, "Law Enforcement Response to Human Trafficking and Implications for Victims: Current Practices and Lessons Learned," October 2006.

U.S. Department of State, "Trafficking in Persons Report," June 2010, 10th Edition.

United Nations Office on Drugs and Crime, "Global Report on Trafficking in Persons," February 2009.

Washington State Task Force Against Human Trafficking, "Human Trafficking: Present Day Slavery," June 2004.

Reports from Academia and Research Institutions

Amy Farrell, Jack McDevitt, Stephanie Fahy, Northeastern University, "Where are all the victims?: Understanding the determinants of official identification of human trafficking incidents," *Criminology and Public Policy*, vol. 9, no. 2, 2010.

Florida State University, Center for the Advancement of Human Rights, "Florida Strategic Plan on Human Trafficking," October 2010.

National Opinion Research Center at the University of Chicago, "Finding Victims of Human Trafficking," September 2008.

Richard Estes and Neil Alan Weiner, "The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico," University of Pennsylvania School of Social Work, Center for the Study of Youth Policy, September 19, 2001.

Model Provisions for Law and Policy

The National Institute on State Policy on Trafficking of Women and Girls, “Resource Guide for State Legislators: Model Provisions for State Anti-Trafficking Laws,” July 2005.

Polaris Project, “Model Provisions of Comprehensive State Legislation to Combat Human Trafficking,” August 2010.

The National Conference of Commissioners on Uniform State Laws’ Study Committee on the Prevention of Human Trafficking is wrapping up an initial draft of a uniform act entitled “Prevention of and Remedies for Human Trafficking,” that will be presented for first reading at the Commission’s Annual Conference in July 2012. A copy is scheduled to be posted on the ULC’s website <http://uniformlaws.org/> in June.

United Nations Office of Drugs and Crime, “Model Law against Trafficking in Persons,” 2009.

Miscellaneous Reports

Caliber, and ICF International Company, “Evaluation of Comprehensive Services for Victims of Human Trafficking: Key Findings and Lessons Learned,” June 2007.

David R. Hodge, “Sexual Trafficking in the United States: A Domestic Problem with Transnational Dimensions,” *Social Work*, vol. 52, no. 2, April 2008.

Jeremy M. Wilson and Erin Dalton, RAND Corporation, “Human Trafficking in the Heartland: Variation in Law Enforcement Awareness and Response,” *Journal of Contemporary Criminal Justice*, August 2008.

Jeremy M. Wilson, Erin Dalton, RAND Corporation, “Human Trafficking in Ohio: Market, Responses, Consideration,” 2007.

M. Margaret McKeown and Emily Ryo, “The Lost Sanctuary: Examining Sex Trafficking Through the Lens of *United States v. Ah Sou*,” *Cornell International Law Journal*, vol. 41, 2008.

APPENDIX B:
DISTRIBUTION OF HUMAN TRAFFICKING
TASK FORCES IN THE UNITED STATES²⁰⁴



²⁰⁴ “BJA/OVH Human Trafficking Task Forces,” <https://www.bja.gov/Programs/40HTTF.pdf>; Bureau of Justice Programs, “Anti-Human Trafficking Task Force Initiative,” https://www.bja.gov/ProgramDetails.aspx?Program_ID=51; The US Department of Justice’s Bureau of Justice Assistance and Office for Victims of Crime provide funding, through grants, for Enhanced Collaborative Model Task Forces that look comprehensively in their approach to combating all forms of Human Trafficking.