



NEW JERSEY LAW REVISION COMMISSION

Final Report Relating to the Human Trafficking: N.J.S. 2C:13-8

June 6, 2016

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.
Please consult the New Jersey statutes in order to determine the law of the State.

Please send comments concerning this report or direct any related inquiries, to:

Susan G. Thatcher, Esq., Counsel
New Jersey Law Revision Commission
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07102
973-648-4575
(Fax) 973-648-3123
Email: sgt@njlrc.org
Web site: <http://www.njlrc.org>

Introduction

In February 10, 2014, the Commission considered a Draft Final Report reviewing the potential applicability of the Uniform Act on Prevention of and Remedies for Human Trafficking (“Uniform Act”). The Draft Final Report recognized the significant and serious nature of the crime of human trafficking and lauded the New Jersey Legislature’s substantial efforts to draft, implement and enforce stringent anti-trafficking laws. In light of New Jersey’s strong commitment to enforcing it’s recently enhanced human trafficking laws similar to the Uniform Act, the Draft Final Report recommended suspending the project until the new laws had ample time to be more fully utilized.

Following the release of the Draft Final Report, Staff was contacted by the Rutgers School of Law – Newark’s International Human Rights Clinic (“Clinic”). Penny M. Venetis, the Director of the Clinic requested that the Draft Final Report be held in abeyance until the Clinic had an opportunity to thoroughly evaluate the Uniform Act and comment more substantially.

The Commission considered the Clinic’s proposals at the October 16, 2014 Commission meeting and requested further outreach and input from knowledgeable parties. Staff has had discussions with those knowledgeable in the area and has considered various ways in which New Jersey’s human trafficking laws may be strengthened. This Final Report proposes revisions to New Jersey’s existing human trafficking law to address forced or coerced sexually explicit performances.

Background

The crime of human trafficking has long existed in both World and U.S. history. The most modern conceptions of crimes of human servitude have been framed in the terms “prostitute/pimp.” In recent times, the popular and statutory language surrounding human servitude has adapted to better convey both the pervasive nature and varied presentation of the crime. It no longer suffices to address those selling other individuals as “pimps” or as “those promoting prostitution”; they are engaging in the trafficking of humans. Similarly, many individuals identified as prostitutes may be forced or coerced to remain participants in commercial sexual activities. These types of crimes are not limited to sexual services – many individuals are trafficked to perform manual labor or other physical tasks. The linguistic re-categorization of these offenses has opened the door to legal schemes that more accurately recognize perpetrators and victims.

The Uniform Law Commission (“ULC”) acknowledged and addressed the pernicious crime of human trafficking in its publication of the Uniform Act. In its prefatory note, the ULC noted, “[m]illions are subjected to human trafficking every year.”¹ In 2012, the International Labour Organization issued a comprehensive and sophisticated statistical analysis, finding 20.9 million people in forced labor worldwide...² In response, the ULC adopted the Uniform Act which sought to model a clear and complete set of criminal proscriptions, provide essential victim remedies and protections, and encouraged state coordination.³

New Jersey has similarly recognized the scourge of human trafficking and has taken an aggressive approach to combating this crime. In 2013, the NJ Legislature updated its human trafficking laws by passing the Human Trafficking Prevention, Protection and Treatment Act (“NJ Act”)⁴, which amended and supplemented various portions of existing law. The NJ Act was widely applauded for its expansive and tough stance on human trafficking.⁵

Analysis

Expanding New Jersey’s human trafficking law to include sexually explicit performances

While definitive figures remain elusive, it is widely recognized that the adult entertainment is multi-billion dollar industry.⁶ Unfortunately, this industry may also serve as an environment in which human trafficking perpetrators may victimize the vulnerable. TurnAround, Inc., a center that provides counseling and services to victims of sexual abuse, maintains “human trafficking cases often have links to adult entertainment, from pornography to prostitution.”⁷ In a similar vein, a report commissioned by the U.S. State Department concluded that “strip clubs are

¹ UNIF. LAW COMM’N, *Uniform Act on Prevention of and Remedies for Human Trafficking*, Prefatory Note (July 2013).

² *Id.*

³ *Id.*

⁴ Human Trafficking, Prevention, Protection and Treatment Act, Pub. L. 2013, c.51 (2013).

⁵ See e.g. Statement by Kate Keisel, Director of Polaris Project New Jersey, <http://www.polarisproject.org/media-center/news-and-press/press-releases/793-comprehensive-anti-trafficking-legislation-signed-into-law-in-new-jersey>; See also NJ Coalition Against Human Trafficking Applauds Governor Christie for Making Tough Anti-Trafficking Legislation in NJ, http://jfedgmw.org/local_includes/downloads/62981.pdf

⁶ A New York Times article maintains the adult entertainment industry generates between \$10-\$14 billion annually. Frank Rich, *Naked Capitalists: There’s No Business Like Porn Business*, N.Y. TIMES, May 20, 2001, available at <http://www.nytimes.com/2001/05/20/magazine/20PORN.html?pagewanted>. In contrast, Forbes magazine maintains that the adult entertainment industry generates approximately \$4 billion per year. Dan Ackman, *How Big is Porn?*, FORBES, May 21, 2001, available at <http://www.forbes.com/2001/05/25/0524porn.html>.

⁷ Peter Hermann, *Women from Baltimore Escape Alleged Prostitution Ring*, THE BALTIMORE SUN, November 5, 2011, available at http://articles.baltimoresun.com/2011-11-05/news/bs-md-ci-prostitution-ring-20111103_1_prostitution-ring-human-trafficking-adult-entertainment.

attractive to some criminals because they assume that since stripping is legal they will be less likely to be caught trafficking women into these markets.”⁸

Nevertheless, legitimate businesses should not be assumed complicit in the crime of human trafficking. Recognizing that their enterprises are fertile ground for human trafficking perpetrators, increasing numbers of sexually oriented businesses are partnering with law enforcement in combatting this crime.⁹ The organization Club Owners Against Sex Trafficking is embracing the opportunity to educate club owners nationwide on the perils of human trafficking and urging members to recognize the signs associated with victimization.

The Uniform Law acknowledges the significance of sexually explicit performances in human trafficking by including it within its definition of sexual activity.¹⁰ Numerous States have similarly drafted human trafficking laws criminalizing forced or compelled sexually explicit performances.¹¹ These States have generally taken three distinct statutory approaches:

- Expressly prohibiting the behavior by enumerating it in the main body of the statute;
- Prohibiting the behavior by nesting sexually explicit performances (and often, the production of sexually explicit material) into statutory definitions of “services”; or
- Prohibiting the behavior by cross-referencing to definitions such as “sexual conduct” contained in the State’s applicable child exploitation statute (even though the human trafficking statute applies to both minors and adults).

The NJ Act addresses human trafficking involving “sexual activity”¹² and “labor or services” but does not explicitly criminalize forced or coerced sexually explicit performances.

⁸ Donna Hughes, *THE DEMAND FOR VICTIMS OF SEX TRAFFICKING* 22 (2005) (citation omitted).

⁹ See Annie Sweeney, *Feds, Strip Clubs Fighting Human Trafficking*, CHICAGO TRIBUNE, April 5, 2014, available at http://articles.chicagotribune.com/2014-04-05/news/ct-strip-club-trafficking-training-met-20140406_1_strip-clubs-human-trafficking-federal-agents; see also *How Strip Clubs are Helping to Fight Sex Trafficking*, LOS ANGELES DAILY NEWS, January 16, 2014, available at http://www.huffingtonpost.com/2014/01/16/strip-clubs-sex-trafficking_n_4609906.html.

¹⁰ *Uniform Act*, *supra* note 1, at § 2 (11).

¹¹ See ALA. CODE § 13A-6-151 (2010); ARIZ. REV. STAT. ANN. § 13-1307 (2010); ARK. CODE ANN. § 5-18-102 (West 2013); COLO. REV. STAT. ANN. § 18-3-502 (West 2014); DEL. CODE ANN. tit. 11 § 787 (West 2014); FLA. STAT. ANN. § 787.06 (West 2014); GA. CODE ANN. § 16-5-46 (West 2011); 720 ILL. COMP. STAT. ANN. 5/10-9 (West 2015); IND. CODE ANN. § 35-42-3.5-1 (West 2014); IOWA CODE 710A.1. (2012); KY REV. STAT. ANN. § 529.010 (West 2013); MASS. GEN. LAWS ANN. ch. 265 § 50 (West 2012); MICH. COMP. LAWS ANN. § 750.462a (West 2014); MISS. CODE ANN. § 97-3-54.4 (West 2013); MONT. CODE ANN. § 45-5-3701 (West 2013); NEB. REV. STAT. ANN. § 28-830 (West 2013); N.H. REV. STAT. ANN. § 633:7 (2014); N.M. STAT. ANN. § 30-52-1 (West 2008); OHIO REV. CODE ANN. § 2905.32 (West 2014); OKLA. STAT. tit. 21 § 748 (2014); UTAH CODE ANN. § 76-5-308 (West 2013); VT. STAT. ANN. tit. 13 § 2651 (3) (West 2011); WASH. REV. CODE ANN. § 9A.40.100 (West 2014); WIS. STAT. ANN. § 940.302 (West 2014).

¹² “Sexual activity” is defined in N.J.S. § 2C:34-1: “Sexual activity includes, but is not limited to, sexual intercourse, including genital-genital, oral-genital, anal-genital, and oral-anal contact, whether between persons of the same or

The NJ Act also lacks a definition of “services” with respect to human trafficking crimes. While minors are protected from this type of sexual exposure pursuant to N.J.S. 2C:24-4, which prohibits broader degrees of sexual exploitation, it may prove beneficial to clarify New Jersey’s law to expressly prohibit forced or coerced sexually explicit performances for all individuals.

The proposed addition of language in N.J.S. 2C:13-8(a)(1) to address forced sexually explicit performances is the most straightforward and least invasive method of addressing this potential venue of human trafficking. However, an alternative approach taken by some State legislatures is to define the term “services” as “sexual activity, sexually explicit performances or the production of sexually explicit materials.” This alternative approach further expands protection to those individuals forced or compelled to produce pornographic material. Either method would effectively address ambiguity existing in New Jersey’s current law to a degree.

Staff has worked in conjunction with New Jersey’s Human Trafficking Commission (“HT Commission”) and has provided the HT Commission with the Law Revision Commission’s research and reports on this matter for their consideration. The HT Commission supports this narrow clarification and recommends prohibiting sexually explicit materials in the main text of the statute; it is expected that the HT Commission will make a similar recommendation to the Governor consistent with its legislative mandate. Accordingly, the Commission recommends the revisions to N.J.S. 2C:13-8 set forth in the Appendix, which explicitly designates forced sexually explicit performances as a human trafficking crime.

opposite sex; masturbation; touching of the genitals, buttocks, or female breasts; sadistic or masochistic abuse and other deviate sexual relations.”

Appendix

2C:13-8. Human trafficking

a. A person commits the crime of human trafficking if he:

(1) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, another, to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1, **to engage in a sexually explicit performance**, or to provide labor or services:

(a) by causing or threatening to cause serious bodily harm or physical restraint against the person or any other person;

(b) by means of any scheme, plan, or pattern intended to cause the person to believe that the person or any other person would suffer serious bodily harm or physical restraint;

(c) by committing a violation of N.J.S.2C:13-5 against the person;

(d) by destroying, concealing, removing, confiscating, or possessing any passport, immigration-related document as defined in section 1 of P.L.1997, c. 1 (C.2C:21-31), or other document issued by a governmental agency to any person which could be used as a means of verifying the person's identity or age or any other personal identifying information;

(e) by means of the abuse or threatened abuse of the law or legal process;

(f) by means of fraud, deceit, or misrepresentation against the person; or

(g) by facilitating access to a controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes;¹ or

(2) receives anything of value from participation as an organizer, supervisor, financier or manager in a scheme or course of conduct which violates paragraph (1) of this subsection; or

(3) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, a child under 18 years of age, to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1, whether or not the actor mistakenly believed that the child was 18 years of age or older, even if that mistaken belief was reasonable.

b. An offense under this section constitutes a crime of the first degree.

c. It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense of human trafficking created by this section, the defendant was a victim of human trafficking.

d. Notwithstanding the provisions of N.J.S.2C:43-6, the term of imprisonment imposed for a crime of the first degree under paragraph (2) or (3) of subsection a. of this section shall be either a term of 20 years during which the actor shall not be eligible for parole, or a specific term between 20 years and life imprisonment, of which the actor shall serve 20 years before being eligible for parole. Notwithstanding

the provisions of N.J.S.2C:43-3, the sentence for a conviction for a crime of the first degree under this section shall include a fine in an amount of not less than \$25,000, which shall be collected as provided for the collection of fines and restitutions in section 3 of P.L.1979, c. 396 (C.2C:46-4) and forwarded to the Department of the Treasury to be deposited in the “Human Trafficking Survivor’s Assistance Fund” established by section 2 of P.L.2013, c. 51 (C.52:17B-238).

e. In addition to any other disposition authorized by law, any person who violates the provisions of this section shall be ordered to make restitution to any victim. The court shall award to the victim restitution which is the greater of:

- (1) the gross income or value to the defendant of the victim's labor or services; or
- (2) the value of the victim's labor or services as determined by the “New Jersey Prevailing Wage Act,” P.L.1963, c. 150 (C.34:11-56.25 et seq.), the “New Jersey State Wage and Hour Law,” P.L.1966, c. 113 (C.34:11-56a et seq.), the Seasonal Farm Labor Act, P.L.1945, c. 71 (C.34:9A-1 et seq.), the laws concerning the regulation of child labor in chapter 2 of Title 34 of the Revised Statutes, or any other applicable State law, and the “Fair Labor Standards Act of 1938,” 29 U.S.C. s.201 et seq., or any other applicable federal law.

COMMENT

The Commission noted that certain statutory language in this section might be broader than necessary to accomplish the Legislature’s goals. After discussion, the Commission determined that proposing revisions to this statutory language is beyond the scope of this particular project.