



## **Sex Trafficking and the Hotel Industry: Criminal and Civil Liability for Hotels and their Employees**

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### **I. Introduction**

Every day thousands of hotel employees witness manifestations of sex trafficking and commercial sexual exploitation. As a group, they are in a unique position to recognize, identify and combat sex trafficking. More importantly, when hotel employees recognize indicators of sex trafficking, yet fail to act, and instead allow the criminal activity to occur on hotel property, the hotel itself effectively profits from the trafficking. In cases where hotel representatives or employees receive financial benefits for permitting these acts to occur on site, they are participating in or at least profiting from human trafficking, and can be prosecuted and held civilly liable under existing Federal and State law. This paper analyzes Federal and Pennsylvania human trafficking statutes, to evaluate how hotels, as corporations, and individual hotel employees can be held liable, both criminally and civilly, for their involvement in sex trafficking.

## II. Trafficking Indicators

There are a number of indicators of sex trafficking that hotel employees are likely in a position to recognize.<sup>1</sup> According to the Polaris Project, general victim indicators include signs of abuse or dependency, minor girls accompanied by older men, women being treated in an aggressive manner, victims with signs of fear or anxiety, and girls in groups who are dressed inappropriately for their age.<sup>2</sup> Indicators that check-in or front desk staff might notice include rooms paid for in cash, men checking in with no luggage, women checking in with no identification, and minors coming in with men at night or during school hours.<sup>3</sup>

While many victims do not actually come through the front-desk or lobby area of the hotel, some enter under a façade of normal circumstances, giving no indications that trafficking is happening on the hotel premises. There are, however, more subtle indicators of trafficking that hotel staff, specifically housekeepers and room service employees, might still be able to recognize. For instance, in-room indicators of trafficking include refusal of cleaning service for multiple days, excessive amounts of cash stored in rooms, men frequently entering and leaving rooms, multiple men standing in hallways outside room doors, women known to be staying in rooms without leaving, extended stays in the hotel with few or no personal possessions, and minors left alone in rooms for long periods of time.<sup>4</sup>

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<sup>1</sup> Polaris Project, *Human Trafficking in Hotels, Victim and Location Indicators*, TWO LITTLE GIRLS, <http://www.twolittlegirls.org/ufiles/Hotel%20and%20Motel%20Indicators%20AAG.pdf> (last visited Feb. 28 2015). See also ECPAT, *The Role of Hospitality in Preventing and Reacting to Child Trafficking* (Dec. 7, 2015), <https://www.ahlei.org/Products/Online-Learning/The-Role-of-Hospitality-in-Preventing-and-Reacting-to-Child-Trafficking/>,

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

### III. The Law and Criminal Liability

This section examines Federal and Pennsylvania state law that may result in hotel employees or the hotel, as a corporation, being held criminally liable for their involvement in sex trafficking.

#### A. Federal Law

The Federal human trafficking statute, the U.S. Trafficking Victims Protection Act (TVPA) defines severe forms of trafficking in persons to include “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.”<sup>5</sup> The elements of sex trafficking, as a criminal offense, are defined in terms of three elements: act, means, and purpose. The act element of criminal sex trafficking includes, “recruiting, enticing, harboring, transporting, providing, obtaining, advertising, maintaining, patronizing or soliciting,” while the means element includes the use of force, threat of force, fraud, or coercion.<sup>6</sup> Note, however, that force, threat of force, fraud, and coercion do not need to be proven if the victim is a minor.<sup>7</sup> Lastly, the TVPA defines the purpose element of sex trafficking as “to cause the person to engage in a commercial sex act.”<sup>8</sup> 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.”<sup>9</sup>

Thus, it is a crime to *harbor* an adult by force, threats of force, fraud, or coercion to cause him or her to engage in a commercial sex act, *and* it is a crime to *harbor* any minor for the purposes of causing him or her to engage in a commercial sex act, regardless of the means used

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<sup>5</sup> TVPA, 22 U.S.C. §1702(9).

<sup>6</sup> 18 U.S.C. §1591(a).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 18 U.S.C. §1591(e)(3).

to achieve that purpose. Under section 1591, the prosecution does not need to prove that a hotel employee personally used the “means” of force, fraud, and coercion against a victim. Rather, for purposes of prosecution, it is sufficient that the employee “harbored” the victim by renting a room to the trafficker, knowing or in reckless disregard of the fact that force, threat of force, fraud, or coercion were being used to cause an adult victim to engage in commercial sex, or that a minor victim was caused to engage in commercial sex (even if no force, threat of force, fraud or coercion were used against the minor victim).<sup>10</sup> Moreover, in cases involving minor victims, if the defendant had a “reasonable opportunity to observe” the minor, the Government need not prove that the defendant knew, or recklessly disregarded the fact, that the victim was a minor. All of this is to say that a hotel employee who has a reasonable opportunity to observe a minor victim of sex trafficking will be guilty of sex trafficking in virtue of having “harbored” the victim by renting out the hotel room where the commercial sex act occurs.

Hotels, as corporations, can be held criminally liable for sex trafficking in two ways. First, a hotel can be held vicariously liable for the acts its employees commit under section 1591(a)(1), if the employees were acting as agents of the hotel.<sup>11</sup> Second, a hotel can be prosecuted under section 1591(a)(2), if it knowingly receives financial benefit from participation in a venture that violates section 1591(a)(1).<sup>12</sup> By merely renting a room to the trafficker, victim,

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<sup>10</sup> The act element requires a corresponding mens rea of knowledge. Thus, the employee must “know” he is harboring a person. 18 U.S.C. §1591(a)(1). Knowledge will be easily proven in typical cases.

<sup>11</sup> Abigail H. Lipman, *Corporate Criminal Liability*, 46 AM. CRIM. L. REV. 359, 361 (2009). In order to be held vicariously criminally liable, a hotel employee must act within the scope of his or her employment, and the act must benefit the corporation. If these conditions are met, the employee’s “intent can be imputed to the corporation.” *Id.* at 361-62. For a corporation to be vicariously liable an employee must be acting within the scope of his or her employment and the corporation must receive a benefit from that action. Renting a room is within the scope of a hotel employee’s employment, and the hotel receives a financial benefit from room rentals. Thus, if an employee rents a room in reckless disregard of the fact that a violation of section 3011(a)(1) is occurring, that reckless disregard could be imputed to the hotel and the hotel, as a corporation, could be held vicariously criminally liable for the conduct of its employees.

<sup>12</sup> 18 U.S.C. §1591(a)(2) (“Whoever knowingly... benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act in violation of paragraph (1)... in reckless disregard of the

or the buyer of sex when the circumstances would be criminal under section 1591(a)(1), the hotel is effectively participating in a trafficking venture in criminal violation of section 1591(a)(2).

## **B. Pennsylvania Law**

Pennsylvania’s human trafficking statute defines an act as human trafficking if the defendant “recruits, entices, solicits, harbors, transports, provides, obtains, or maintains and individual... knowing or in reckless disregard of the fact that the individual will be subject to [sexual servitude].”<sup>13</sup> Sexual servitude includes any sex act for which “anything of value is... given, promised to or received...” that is induced or obtained from a minor, or by 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 regarding documents).
- (7) Extortion.

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fac[t] that means of force... fraud, or coercion will be used to cause the person to engage in a commercial sex act... shall be punished....”).

<sup>13</sup> 18 Pa.C.S.A. §3001.

(8) Fraud.

(9) Criminal coercion, as defined in section 2906 (relating to criminal coercion).

(10) Duress, through the use of or threat to use unlawful force against the person or another.

(11) Debt coercion.

(12) Facilitating or controlling the individual's access to a controlled substance.

(13) Using any scheme, plan or pattern intended to cause the individual to believe that, if the individual does not perform the labor, services, acts or performances, that individual or another individual will suffer serious harm or physical restraint.<sup>14</sup>

Consistent with the federal law, if the victim is under the age of 18, then the means (or thirteen factors set forth in section 3012(b) mentioned above) need not be proven by the prosecution.

Under Pennsylvania law, both hotel employees and hotels, as corporations, can held be criminally liable for sex trafficking. Hotel employees can be charged under section 3011(a)(1) for “harboring” a sex trafficking victim with reckless disregard to the fact that the victim was “subject to [sexual] servitude.”<sup>15</sup> Additionally, individual hotel employees may be subjected to criminal liability under Pennsylvania law for conspiring with traffickers to facilitate the crime on hotel premises. An individual employee who “harbors” a victim in reckless disregard that the victim will be subject to involuntary servitude through the means set forth in section 3012(b) commits a violation of section 3011(a)(1). As is the case in the Federal law example above, to

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<sup>14</sup> 18 Pa.C.S.A. §3012.

<sup>15</sup> 18 Pa. C.S.A. §3011(a)(1)

be prosecuted under section 3011(a)(1), the employee need not commit the means himself but merely act in reckless disregard of the fact that a trafficker was using those means to subject a victim to involuntary servitude. Again, where the victim is a minor, the prosecution need not prove any of the thirteen means listed above.<sup>16</sup>

Hotels in Pennsylvania can be criminally charged for sex trafficking in their corporate capacity in two ways. First, if a hotel employee, in the course of his or her employment, rented a room to the trafficker, victim, or buyer of sex in a situation that would violate section 3011(a)(1), and the hotel employee was in reckless disregard of that fact, then the employee's *mens rea* (or criminal intent) could be imputed to the hotel as a corporate entity to construct vicarious liability to charge the hotel under section 3011(a)(2).<sup>17</sup> Second, a hotel can be held criminally liable in its corporate capacity under section 3011(a)(2), for knowingly "[benefitting] financially or receiving anything of value" from "harboring" the victim.<sup>18</sup> Section 3011(a)(2) is similar to the Federal criminal law, because it punishes those who knowingly receive a financial benefit from "any act that facilitates any activity" of trafficking.<sup>19</sup>

#### **IV. The Law and Civil Liability**

This section examines Federal and Pennsylvania state law that may result in hotel employees or the hotel, as a corporation, being held civilly liable for their involvement in sex trafficking.

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<sup>16</sup> 18 Pa. C.S.A. § 3011(b)

<sup>17</sup> *See, Lipman, supra* note 11 and accompanying text.

<sup>18</sup> 18 Pa. C.S.A. §3011(a)(2)

<sup>19</sup> 18 U.S.C. § 1591(a)(2).

## A. Federal Law

The Federal law broadly allows a victim of human trafficking (defined as anyone who is a victim of a crime under Chapter 77 Peonage, Slavery, and Trafficking in Persons) to bring a claim against his or her trafficker as well as anyone who financially benefited from his or her victimization and knew or should have known the acts were in violation of human trafficking law.<sup>20</sup>

It is important for hotels to realize that Federal law defines traffickers as not only those who are “pimping out” victims, but also anyone who “solicits” or “obtains” sex - meaning, those who buy sex.<sup>21</sup> While the law requires the prosecution to prove that adult victims were trafficked by means of “force, threat of force, fraud, or coercion,” the prosecution does not need to prove this element in cases involving minor victims of trafficking.<sup>22</sup> Therefore, under federal law, if a minor is purchased for sex, even if s/he is not under the control of a “pimp,” the minor is still viewed, in the eyes of the law, as a victim of sex trafficking – and the buyer is the trafficker. Likewise, if an adult victim is subjected to commercial sex by means of force, threat of force, fraud, or coercion, the buyer can be held to be a trafficker – and the hotel or its employees can be liable.

Under this framework, if a hotel, by way of an employee, knowingly rents a room to a trafficker (either a “pimp,” or buyer of sex) for the purpose of a commercial sex act, or *should have known* that it was renting a room to a trafficker for that purpose, the hotel can be held liable for civil damages to the victim.

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<sup>20</sup> 18 U.S.C. §1595(a).

<sup>21</sup> 18 U.S.C. §1591(a)(1).

<sup>22</sup> 18 U.S.C. §1591(a).

## **B. Pennsylvania Law**

Similarly, under Pennsylvania law, a “victim of the sex trade” can bring a civil action against anyone who “profits from...the victim’s sex trade.”<sup>23</sup> A victim of the sex trade includes an individual who has:

- (1) been the object of a solicitation for prostitution;
- (2) been the object of a transaction in a sex act;
- (3) been intended or compelled to engage in an act of prostitution;
- (4) been intended or compelled to engage in a sex act;
- (5) been described or depicted in material that advertises an intent or compulsion to engage in sex acts; or
- (6) in the case of obscenity or child pornography, has appeared in or been described or depicted in the offending conduct or material.<sup>24</sup>

Since victims of the sex trade have a civil cause of action against anyone who profits from their victimization, hotels and their employees face substantial risk if they knowingly rent rooms to traffickers.<sup>25</sup> For, in Pennsylvania, an adult victim who is brought into a hotel and forced, defrauded, or coerced to have sex with customers by any of the means set out in the thirteen factors of section 3012(b) can sue both the hotel, as a corporate entity, and the individual hotel employee who rented a room to the trafficker under the theory they knowingly “profit[ed]

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<sup>23</sup> 18 Pa. C.S. §3051(a)(2).

<sup>24</sup> 18 Pa. C.S. §3051(k).

<sup>25</sup> 18 Pa. C.S. §3051(b), (requiring the plaintiff to prove the defendant acted “knowingly” in cases where the defendant provides “goods or services to the general public”).

from” the sex trafficking and “maintain[ed] the victim.”<sup>26</sup> (Again, note that a victim under the age of 18 would not be required to prove the any of the thirteen factors that constitute means listed in section 3012(b)).<sup>27</sup>

## **V. Legal Rationale for Enforcing Dual Liability for Trafficking on Hotels**

This section evaluates considerations that weigh in favor of holding hotels and their employees both civilly and criminally liable for their involvement in sex trafficking. The impact of holding hotels and their employees liable for facilitating or participating in sex trafficking would likely be widespread. Not only might it provide justice for victims, it might prevent their victimization in the first place.

### **A. The Prosecution Problem**

Both the Federal and the Pennsylvania human trafficking laws can and should be used to hold hotel employees and hotels as corporations liable for violations of human trafficking offenses. At this time, it does not appear that any hotel has been held vicariously liable for an employee’s participation in or facilitation of a human trafficking offense. Yet, prosecutors have these tools available to punish those who participate in human trafficking whenever it occurs in a hotel. The present problem is that these tools are not being used to specifically target hotels during sex trafficking investigations and prosecutions.

### **B. The Victim Identification Problem**

Given that victims often do not self-identify, it is unlikely they are aware of their right to bring a civil action for the harms they suffered from being trafficked. Indeed, victims are

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<sup>26</sup> 18 Pa. C.S. §3051(a)(2)(i).

<sup>27</sup> § 3011(b)

frequently bonded to their traffickers as a result of their traumatic experiences and this only compounds a victim's reluctance to self-identify.<sup>28</sup> In addition, victims may feel their victimization was their own fault.<sup>29</sup> As a result, it is unlikely that victims will actively pursue civil suits after having been trafficked. As trafficking victims transition out of "the life," they will need to process and heal from their trauma when they are ready and seek help if they wish.<sup>30</sup> At that point, the individual actions of the hotel employees and the hotel, as a corporation, will be long in the past.

### **C. Pimps and Buyers of Sex**

Traffickers (including both pimps and buyers) will be impacted by hotel criminal liability. If hotel employees are motivated to report human trafficking to authorities, this will lead to greater success in detecting pimps and buyers. In turn, the perpetrators will be criminally punished for their conduct in violation of human trafficking laws. Buyers of sex, moreover, in fear of being caught, may be discouraged from continuing to seek commercial sex at a hotel with strict anti-trafficking policies. Furthermore, with hotels no longer considered a viable "easy" venue to engage in sex trafficking, traffickers may be discouraged from the business of trafficking at all, leading to a decrease in the amount of trafficking altogether. Eventually, therefore, enforcement of criminal action against hotels would result in deterrence for pimps and buyers alike.

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<sup>28</sup> Becca C. Johnson, *Aftercare for Survivors of Human Trafficking*, 39, *Journal of the North American Association of Christians in Social Work*, 370, 377 (2012).

<sup>29</sup> *Id.*

<sup>30</sup> The life refers to "The experience of being used in prostitution. Virtually always involves heavy drug and alcohol use, violence and other crime." Joe Parker, *Prostitution Terminology & Slang*, Gandberg.com (Dec. 16, 2015, 11:49 PM), <http://genderberg.com/boards/viewtopic.php?f=10&t=1244>. See also Vill. U. Sch. of Law Inst. to Address Commercial Sexual Exploitation, *Why Victims of Sex Trafficking Should Not Be Forced to Engage Victim Services*, (2015).

#### **D. Law Enforcement and Regulators**

If hotels strengthen their anti-trafficking policies, it would facilitate anti-trafficking efforts of law enforcement and regulators. For example, if hotel staff is trained and well-equipped to spot instances of trafficking, then law enforcement can be notified immediately and the perpetrators can be stopped on the spot. Moreover, if a hotel has strong anti-trafficking policies, regulators could readily determine whether or the hotel staff is adhering to the policies and actively combating trafficking on its property.

#### **E. Victims of Human Trafficking**

Holding hotels liable will also impact the victims of sex trafficking. Each time an instance of trafficking is reported to police by a hotel employee, the victim has increased potential for recovery. Making contact with a victim would allow the victim to receive referrals to comprehensive services, including shelter, clothing, and counseling needs. Moreover, civil remedies would provide economic justice for victims of sex trafficking, and hold accountable those who have profited from their exploitation.

#### **F. Hotels and Employees**

Hotels themselves will face the biggest impact of enforcement of criminal liability, both at the corporate level and at the individual employee level. Although hotels are already exposed to civil liability when they recklessly permit sex trafficking on the premises, criminal liability for this practice will be substantially different.<sup>31</sup> If a hotel employee is convicted under the Federal

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<sup>31</sup> Anna Williams Shavers, *Human Trafficking, the Rule of Law, and Corporate Social Responsibility*, 9 S.C. J. INT'L. L. & BUS. 39, 51-52 (2012). By facilitating human trafficking, corporations expose themselves to several types of liability, including the potential loss of government contracts, civil liability under statutes that allow for victim recovery, liability under third party liability statutes, liability under the Alien Tort Statute, liability under the

or state human trafficking statute and the hotel is held criminally vicariously liable, this would result in a formidable financial loss, perhaps even leading to closure, and possibly incarceration of responsible parties.

## **VI. Conclusion**

Hotels should be required to take action to comply with both civil and criminal human trafficking laws. At a minimum, such compliance should include training for every employee of the hotel so that employees are able to recognize human trafficking.<sup>32</sup> Hotels should also develop and implement policies and protocols conveying what steps employees should take once an instance of trafficking has been recognized and identified as such.

The potential impact of hotel liability in civil and criminal law can begin to alter the way society views sex trafficking and help to affect lasting change throughout the global sex industry. It is imperative that a strong message be sent to pimps and buyers of sex, clearly signaling that commercial sexual exploitation will not be tolerated. Hotel liability for trafficking - both criminally and civilly - will hold hotels accountable for their participation in human trafficking, and will send a message to traffickers (pimps and buyers) that the age of impunity for commercial sexual exploitation has ended.

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Torture Victim Protection Act, liability under the Racketeer Influenced and Corrupt Organizations Act, liability under state tort statutes, and international implications for multi-national companies. *Id.*

<sup>32</sup> Shavers, *supra* at 84. This article describes the steps corporations can take toward voluntary implementation of the End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes (ECPAT) Code and the experience the Carlson hotel group has had with its own voluntary implementation of this code.