



Act 105: Pennsylvania's First Comprehensive Anti-Trafficking Legislation

In September 2014, Pennsylvania enacted its first comprehensive anti-trafficking statute, "Act 105." The new law expands Pennsylvania's legal definition of human trafficking, giving prosecutors better tools to hold traffickers accountable. It provides new and enhanced protections for victims of human trafficking, including a robust civil remedy that allows survivors to sue those who participated in or profited from their victimization. And, it calls for a state plan to coordinate anti-trafficking initiatives and to educate the community and stakeholders about human trafficking, to prevent it from happening in the first place.

Prosecution

Act 105 (2014) clearly defines human trafficking in Pennsylvania as a criminal offense that covers both sexual servitude and labor servitude. (The previous definition failed to include sexual servitude as a distinct form of human trafficking, focusing instead on trafficking for "forced labor or services." 18 Pa. Cons. Stat. § 3002 (2006).) Under the new law, the crime of trafficking is committed if a person "recruits, entices, solicits, harbors, transports, provides, obtains or maintains an individual if the person knows or recklessly disregards that the individual will be subject to involuntary servitude," or if the person "knowingly benefits financially or receives anything of value from any act that facilitates any [such] activity."

The key to understanding Pennsylvania's definition of trafficking is determining what it means for an individual to "be subject to involuntary servitude." (18 Pa. Cons. Stat. § 3011(a)(1)-(2)). Under Act 105, "involuntary servitude" covers both labor and sexual servitude. Given the focus of the CSE Institute, this report will focus on what constitutes sexual servitude.

Sexual servitude, as defined under Pennsylvania law (18 Pa. Cons. Stat. § 3001), includes, "[a]ny sex act or performance involving a sex act for which anything of value is directly or indirectly given, promised to or received by any individual or which is performed or provided by any individual and is induced or obtained from...[a] minor... or [an adult who has been] subject [to] 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 18 Pa. Cons. Stat § 3014 (relating to unlawful conduct regarding documents);
- (7) Extortion;
- (8) Fraud;
- (9) Criminal coercion, as defined in section 18 Pa. Cons. Stat. § 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; or
- (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. (18 Pa. Cons. Stat. § 3012(b))

If the victim is a minor, then there is no need to prove any of the thirteen means listed above. Rather, the existence (or lack) of threats, harm, restraint, kidnapping, abuse of the legal process, etc. is simply irrelevant to determining whether a minor has been subjected to sexual servitude. As such, any commercial sex act involving a minor counts as trafficking under Pennsylvania law – even if the minor is not subjected to force, fraud, or coercion and even if the minor does not self-identify as a victim. In comparison, if the victim is above the age of eighteen years, then a prosecutor must prove that a victim has been subject to at least one of the thirteen means listed above.

The Pennsylvania definition of trafficking is consistent with the Federal definition, which was first enacted in 2000, in the U.S. Trafficking Victims Protection Act (TVPA). Like the Pennsylvania definition, all minors who are commercially sexually exploited are defined as victims of sex trafficking. When it comes to adult victims, the Federal definition counts these cases as “severe forms of sex trafficking” whenever the adult victim’s commercial sex act has been induced by “force, fraud, or coercion” (22 U.S.C. §7102(9)). Insofar as the thirteen means listed in the Pennsylvania definition can be categorized as various forms of “force, fraud, or coercion,” the Federal definition and Pennsylvania definitions are very similar.

Notably, both the Pennsylvania definition and the Federal definition impose criminal liability for trafficking on those who “benefit, financially” from trafficking (18 Pa. Cons. Stat. § 3011(a)(2); 18 U.S.C. § 1591(a)(2)). While the mens rea differs somewhat between the two definitions (with Pennsylvania requiring knowledge, and the Federal definition requiring mere

recklessness), this provision arguably exposes strip clubs, massage parlors, hotels, motels, and other entities to criminal liability for sex trafficking that they allow on their premises.

Act 105 also specifically targets purchasers of sex, otherwise known as “the demand” or “Johns.” It imposes criminal liability on those who solicit sex from someone they know is a trafficking victim (18 Pa. Cons. Stat. § 3013: Patronizing a Victim of Sexual Servitude). Moreover, Act 105 imposes criminal liability for trafficking not only on those who induce sex trafficking (such as pimps), but also on those who solicit or obtain sex from a person (buyers), if the buyer knows or recklessly disregards that the individual is a victim of trafficking.

Given the difficulty of proving the mental element (knowledge) included in the offense of Patronizing a Victim of Sexual Servitude (18 Pa. Cons. Stat. § 3013), prosecutors should pursue charges against purchasers of sex under Act 105’s expansive definition of trafficking, in cases where buyers solicit or obtain sex in reckless disregard that the victim is a trafficking victim. In sum, under the expansive definition of sex trafficking in the Pennsylvania law, prosecutors need not prove that buyers knew their victims were being trafficked – it is enough that they acted in reckless disregard of this fact. (A similar provision, allowing buyers to be prosecuted directly as traffickers, was recently enacted at the Federal level in the U.S. Justice for Victims of Trafficking Act.)

Protection

Act 105 provides a civil remedy for victims of trafficking (18 Pa. Cons. Stat. § 3051), permitting them to sue any person that “participated” in their trafficking. Additionally, Act 105 specifically permits victims of commercial sexual exploitation to sue anyone who profited from their victimization or anyone who knowingly published an ad recruiting them to the sex trade. These provisions of Act 105’s civil remedy arguably expose hotels to liability, as well as advertising websites like Backpage.com, which traffickers frequently use to advertise their victims as available for sex, usually at a hotel.

Furthermore, Act 105 permits judges to vacate certain criminal convictions – such as prostitution or simple possession of a controlled substance – that trafficking victims received as a direct result of their victimization (18 Pa. Cons. Stat. § 3019(d)). This provision critically helps survivors move beyond their victimization, both symbolically and practically. Vacating these convictions symbolizes Pennsylvania’s recognition that it has unjustly convicted and punished these victims – and that they are not, and never were, criminally culpable for their actions. Moreover, vacating these convictions has the crucial practical value of removing barriers to finding a job. That said, however, there is an important flaw in this provision, insofar as the Commonwealth must consent to the petition being filed in the first place. An improved version of this law would allow survivors to have their day in court, with a judge ruling on the merits of their vacatur petition, regardless of whether or not the Commonwealth agrees.

Finally, Act 105 provides important protections for victims by creating an evidentiary privilege for confidential communications between victims of human trafficking and their caseworkers. Pursuant to 42 Pa. Cons. Stat. § 5945.3, human trafficking caseworkers cannot disclose these communications without their clients’ written consent. This privilege allows victims to get the care they need without having to worry that their traffickers’ defense attorneys

can subpoena their caseworkers, and thus use that information to attack their credibility at the time of trial. Victims can communicate freely with their caseworkers, knowing what they say will be truly kept confidential and protected from disclosure.

Prevention

Act 105 permits the Commonwealth to award grants, “subject to the availability of funds” to organizations that develop, expand, or strengthen programs for victims of human trafficking and to direct funds toward increasing public awareness of human trafficking. Unfortunately, Act 105 was signed into law without a fiscal note. As a result, no organizations have received funding to implement this comprehensive legislation. Instead, more than 30 anti-trafficking organizations and coalitions from across the Commonwealth have formed Pennsylvania Alliance Against Trafficking in Humans (PAATH), to work together to implement Act 105 cohesively.