



## Urban Justice Center

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September 4, 2012

To: National Conference of Commissioners on Uniform State Law

Re: Comments on the Discussion Draft of "Prevention and Remedies For Human Trafficking"

Dear Commissioners:

The Sex Workers Project at the Urban Justice Center, which was established in 2001, provides client-centered legal and social services to individuals who engage in sex work, regardless of whether they do so by choice, circumstance, or coercion. One of the first programs in the nation to assist survivors of human trafficking, the Sex Workers Project has pioneered an approach to service provision grounded in human rights, harm reduction and in the real life experiences of our clients. We have represented many victims of trafficking in their cooperation with law enforcement investigations, and in their applications for immigration status and other forms of relief. In addition to providing direct services, we conduct human rights research with victims of trafficking and sex workers. We are recognized experts on the experience of persons involved in commercial sex in the United States, and travel throughout the United States and internationally to consult, lecture and provide training on issues related to human trafficking and prostitution. Given our unique perspective, we wanted to respectfully offer suggestions and feedback on the development of a comprehensive model law on human trafficking.

We applaud the Uniform Law Commission for taking on the issue of human trafficking and for drafting this proposed uniform law. Overall, we believe it balances many concerns and we support most of the provisions. As co-authors of the first law to allow survivors of trafficking to vacate prior convictions, we are especially supportive of the inclusion of such a provision in a uniform law.

We offer the following comments:

- In Section 2.3, where forms of coercion are enumerated, we suggest adding "or threat of the abuse" to subsections B, C, D, and G. In our experience, coercion is often experienced as the threat of some form of harm, not the harm itself.

- In Section 2.11, sexual activity, as an element of commercial sexual activity, is defined to include certain sexual acts, including the touching of breasts. We are concerned about this broad definition, because in states where prostitution is defined very vaguely, such as New York, courts often borrow the definition of “sexual conduct” or “sexual activity” from other parts of the criminal code. This broad definition could lead to prosecution of a wider range of persons, such as people that work in strip clubs, for prostitution. Arrests and convictions for prostitution can lead to devastating consequences for those arrested. We suggest adding a provision stating that this provision should not be read to expand the definition of prostitution.
- We are unclear as to the need for Section 3. We believe that defining “trafficking” as involving the acts mentioned here dates back to an earlier understanding of trafficking as a crime about the transportation or movement of people. In our experience, the harm caused by human trafficking is due to the forced or coerced labor, not due to the transportation or recruitment. Also, if a perpetrator is compelling another to do labor or sexual services, clearly they have “recruited” or “obtained” that person, making this definition co-extensive with the later provisions. We are also concerned that a person who merely transported or maintained another, while “recklessly disregarding” the fact that they may be coerced into labor by another individual, would here be chargeable as a trafficker. We think that is not proportional to the acts that person would have done- the real crime is the forced labor or sexual servitude. Therefore, we think that this section, along with the acts of “recruits, transports, transfers, etc” should be omitted, and that the subsequent Sections 4, 5, and 6 should be renamed “Trafficking.”
- In general, we do not support the use of a “reckless” standard to apply to human trafficking throughout the act. We believe that the use of a “reckless” standard is overly broad and vague as applied to such a serious crime.
- Section 4.a mentions “coercion, deception, or fraud.” Fraud is not defined in the act, and the definition of “deception” appears to be inclusive of fraud. We suggest omitting “fraud.”
- Section 6.g appears to be creating a strict liability standard as to the age of the victim. However, Section 6 also requires at least a mens rea of recklessness. If a perpetrator needs to at least be reckless towards the fact that the individual they are offering for commercial sex is under 18, then the fact that they reasonably believed that individual was over 18 *would* be a defense. We support at least a reckless standard being applied.
- In Section 7, we think that the minimum mens rea that should be required for this offense is “knowledge.” An individual who did not engage in any form of coercion towards the victim should at least be proved to have known that the individual was being trafficked.
- In Section 10, we support Alternative B, as imposing a surer liability on business entities.
- In Section 10, we suggest clarifying whether the cap of \$1 million for the fine is per victim or per perpetrator.
- In Section 11, we suggest removing the reference to the already existing state rape shield law. In New York, the state rape shield law excludes a victim’s prostitution convictions, meaning that he or she can be questioned about them in a rape trial. We are concerned that rape shield laws

may be less protective than this proposed provision, and think that this proposal is better and should trump state rape shield laws.

- In Section 12, we suggest that the victim not be criminally liable for “illegal sexual activity” but also for any criminal activity that a person committed as a result of being a victim.
- In Section 12, we suggest that subsection b.2 be omitted, so that the affirmative defense is available to victims of trafficking by coercion, debt bondage, deception, and other methods, not only threatened serious harm.
- Section 12.c provides that minors found to be victims of human trafficking should be presumed to be a “child in need of supervision” and subject to laws regarding juveniles. In our experience, children who are deemed persons in need of supervision are often subject to punitive placements that put them in danger, are removed from their families, or face other consequences. It is well known that in New York, minors arrested for prostitution often give an older age in order to avoid the harsher consequences of family court in favor of criminal court. In addition, minor victims of trafficking into commercial sex are often abused and traumatized in the course of arrests for prostitution. We suggest removing this subsection, and adding a new provision that redefines the crime of prostitution to apply only to persons 18 and older, protecting minors not only from conviction, but from arrest.
- As one of the only legal service providers who have brought motions under a law to vacate convictions for trafficked persons, we would like to suggest a few additions to Section 13, to make this remedy accessible and effective for victims of trafficking:
  1. Ensure that if a survivor meets the requisites of the law, the judge MUST vacate the prior conviction(s), dismiss the accusatory instrument, and seal the record. We would recommend changing the word “may” to “must” in the first sentence.
  2. Ensure the confidentiality of survivors by allowing for initials or “Jane Doe” designations to be used in court filings.
  3. Ensure a degree of judicial discretion to allow further appropriate actions by the Court to assist the survivor.
  4. Ensure funding so that there are legal services available to survivors seeking to bring these motions.

For a full discussion of a model vacating convictions law, please see our legislative memo here: <http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf>

- In Section 14.a.2, the intention is clearly to include persons trafficked into commercial sex as eligible for restitution, even if it is not possible to calculate the value of their labor to the defendant. However, this section includes only those whose labor was subject to the minimum wage and overtime provisions under FLSA, which excludes persons trafficked into illegal commercial sex. We suggest rewording to say “the equivalent of the value of the victim’s labor or services, *using the* minimum wage and overtime provisions...”
- We suggest omitting subsection 16.7, as transporting someone over state lines should not be considered an aggravating factor on the level of the others listed here, which actually cause additional harm to victims.

- In Section 18, we suggest applying confidentiality to court proceedings and court documents as well.
- In Section 24.b, we suggest adding a requirement to the services provision plan; that it fund a sufficient array of service providers so that competent services are available for victims of trafficking into forced labor *and* victims of trafficking into sexual servitude, for both adults and minors, and for men, women and transgender people.
- In Section 25, we prefer Alternative A.
- In Section 27, we would like the same suggestions for Section 24.b above, ensuring services are available to all victims, to apply here.

We thank you for taking our comments into consideration. If you have any questions, please do not hesitate to contact us for further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sienna Baskin', with a large, stylized flourish at the end.

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