

## *NEW YORK STATE ANTI-TRAFFICKING LAW*

New York State (NYS), especially New York City (NYC), is a destination for trafficked persons from all over the world who are forced into various labor sectors, such as restaurants, agriculture, domestic or sex work. To address this important concern, New York State enacted an anti-trafficking law that took effect on November 1, 2007.<sup>1</sup> This document highlights the key changes made to New York State laws.

### **NEW YORK PENAL LAW**

The law adds new sections to the Penal Law, creating the crimes of “Labor Trafficking” and “Sex Trafficking.”

#### **“Labor Trafficking”**

- A new N.Y. Penal Law §**135.35** creates the crime of “Labor Trafficking.” A person commits this crime when he or she compels or induces another person to engage in labor, or recruits, entices, harbors, or transports such other person by means of intentionally: (1) providing the victim with certain drugs; (2) requiring servicing of a debt that is caused by a course of conduct, with intent to defraud such person; (3) withholding or destroying government identification documents; (4) using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in labor activity by making that person fearful of one of seven actions or consequences against him or her. (For the full text of this section, please see *Appendix A*.)
- N.Y. Penal Law §**135.35** makes the crime of “Labor Trafficking” a class D felony, with a maximum sentence of 7 years imprisonment.<sup>2</sup> In addition, a court may order a defendant to pay a fine of \$5,000 or double the defendant’s gain from the commission of the crime.<sup>3</sup>
- A new N.Y. Penal Law §**135.36** provides that a victim of “Labor Trafficking” is not an accomplice of the trafficker. (For the full text of this section, please see *Appendix A*.)

#### **“Sex Trafficking”**

- A new N.Y. Penal Law Section §**230.34** creates the crime of “Sex Trafficking.” A person commits this crime when he or she intentionally advances or profits from prostitution by: (1) providing the victim with certain drugs;<sup>4</sup> (2) making material false statements;<sup>5</sup> (3) withholding or destroying government identification documents; (4) requiring repayment of a debt;<sup>6</sup> (5) using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in prostitution by making that person fearful of one of eight actions or consequences against him or her. (For the full text of this section, please see *Appendix B*.)

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<sup>1</sup> S.B. 5902, 228th Leg., Reg. Sess. (N.Y. 2007), chaptered on June 6, 2007.

<sup>2</sup> See N.Y. Penal Law §70.00(2)(d).

<sup>3</sup> See N.Y. Penal Law §80.00.

<sup>4</sup> N.Y. Penal Law §230.34(1), relating to drugs, is more detailed in the “Sex Trafficking” provision than in the “Labor Trafficking” provision at N.Y. Penal Law §135.35(1).

<sup>5</sup> N.Y. Penal Law §230.34(2), relating to the use of fraud, has no counterpart in the “Labor Trafficking” provision.

<sup>6</sup> N.Y. Penal Law §230.34(4), relating to repayment of a debt, does not require a “systematic ongoing course of conduct with intent to defraud such person” as required in the “Labor Trafficking” provision at N.Y. Penal Law §135.35(2).

- N.Y. Penal Law §230.34 makes the crime of “Sex Trafficking” a Class B felony, with a maximum sentence of 25 years imprisonment.<sup>7</sup> In addition, a court may order a defendant to pay a fine of \$5,000 or double the defendant’s gain from the commission of the crime.<sup>8</sup>
- A new N.Y. Penal Law §230.36 provides that a victim of “Sex Trafficking” is not an accomplice of the trafficker. (For the full text of this section, please see *Appendix B*.)

### Changes to the Penal Law Relating to Prostitution

- N.Y. Penal Law §230.25, “Promoting Prostitution in the 3<sup>rd</sup> Degree,” is amended to include the selling of traveled-related services, knowing that such services include or are intended to facilitate travel for the purpose of patronizing a prostitute.
- Repeals N.Y. Penal Law §230.03, “Patronizing a Prostitute in the 4<sup>th</sup> Degree,” and amends §230.04 to make the lowest level of “Patronizing a Prostitute” a Class A misdemeanor.

### NEW YORK SOCIAL SERVICES LAW

The law adds a new Article 10-D to the Social Services Law, entitled “Services for Victims of Human Trafficking.” New York State Office of Temporary and Disability Assistance (OTDA) and the Division of Criminal Justice Services (DCJS) are entrusted with ensuring that trafficked persons obtain necessary services. The process of determining eligibility for services is called “confirmation.”<sup>9</sup>

- N.Y. Soc. Ser. Law §483-bb(a) authorizes OTDA to coordinate with and assist law enforcement agencies and district attorneys’ offices to access appropriate services for trafficked persons.
- N.Y. Soc. Ser. Law §483-bb(b) states that OTDA may enter into contracts with non-governmental organizations for providing pre-certified victims of human trafficking services insofar as funds are available.
- N.Y. Soc. Ser. Law §483-cc(a) states that after the *first encounter* with a trafficked person, law enforcement or the district attorney’s office shall notify OTDA and DCJS that this person may be eligible for services.
- N.Y. Soc. Ser. Law §483-cc(b) further states that upon receipt of notification, DCJS, in consultation with OTDA, shall make a preliminary assessment of whether such victim appears to meet criteria for certification as stated under federal law (section 7105 of title 22 of U.S. Code). If the victim meets the criteria, OTDA will inform the victim and the law enforcement agency or district attorney’s office. OTDA may also assist in helping victim find services. If victim is under age of 18, then OTDA shall notify local department of social services in county where child found.
- N.Y. Soc. Ser. Law §483-dd states that the state or local law enforcement agency or district attorney’s office must provide the victim with the Form I-914B for immigration purposes upon the request of the trafficking victim or victim’s representative.

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<sup>7</sup> See N.Y. Penal Law §70.00(2)(b).

<sup>8</sup> See N.Y. Penal Law §80.00.

<sup>9</sup> See N.Y. Soc. Ser. Law §483-cc.

## ***GAPS IN THE LAW***

- Labor trafficking is not treated as serious a crime as sex trafficking. DCJS has recommended that some labor trafficking cases should be referred to federal law enforcement for prosecution, since those penalties are more substantial.
- The law does not include an independent private right of action.
- The law does not provide for restitution or forfeiture of traffickers' assets.
- There is no provision that allows for victims to vacate prior convictions for conduct involuntarily engaged in as a part of the trafficking scheme.
- There is no specific mechanism for service providers to make referrals to OTDA directly, meaning that a trafficked person must be involved with law enforcement in order to access services that are available through the confirmation process.

## ***WHAT YOU SHOULD DO IF YOU BELIEVE SOMEONE IS TRAFFICKED***

- Immediately, reach out to social service providers and attorneys who are experts on trafficking. You can contact Safe Horizon, New York Association for New Americans, Sex Workers Project at the Urban Justice Center, City Bar Justice Center, Asian American Legal Defense and Education Fund, and The Door.
- If the trafficked person is in immediate physical danger, call your local law enforcement and emphasize that the person is trafficked.
- If the trafficked person is a minor who is not required to cooperate under the law, and does not want to cooperate, advocate to ensure his or her rights are not violated.
- Encourage your organization to receive training on the issue of trafficking in persons and on the new law.
- If you are with law enforcement or a district attorney's office, call OTDA and DCJS immediately. In addition, call a service provider who is experienced in working with trafficked persons to coordinate provision of essential health, housing, food and counseling resources.
- If you are OTDA or DCJS, after receiving a referral from law enforcement, confirm the person as trafficked and contact appropriate service providers.
- Law enforcement and/or the district attorneys' offices must complete an I-914B form immediately upon identifying a person as trafficked and forward it to either the trafficked person or his or her representative.

## ***NEW YORK STATE ANTI-TRAFFICKING LAW***

### ***APPENDIX A***

#### **New York Penal Law §135.35 – Labor Trafficking**

A person is guilty of labor trafficking if he or she compels or induces another to engage in labor or recruits, entices, harbors, or transports such other person by means of intentionally:

1. Unlawfully providing a controlled substance to such person with intent to impair said person's judgment;
2. Requiring that the labor be preformed to retire, repay, or service a real or purported debt that the actor has caused by a systematic ongoing course of conduct with intent to defraud such person;
3. Withholding, destroying, or confiscating any actual or purported passport, immigration document, or any actual or purported government identification document, of another person with the intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;
4. Using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in or continue to engage in labor activity by means of instilling a fear in such person, that if the demand is not complied with, the actor or another will do one or more of the following:
  - (a) cause physical injury, serious physical injury, or death to a person; or
  - (b) cause damage to property, other than the property of the actor; or
  - (c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this chapter; or
  - (d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against such person; provided, however, that is shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or
  - (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
  - (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
  - (g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

#### **New York Penal law §135.36 – Labor Trafficking Accomplice Liability**

In a prosecution for labor trafficking, a person who has been compelled or induced or recruited, enticed, harbored or transported to engage in labor shall not be deemed to be an accomplice.

## **APPENDIX B**

### **New York Penal Law §230.34 - Sex Trafficking**

A person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by:

1. Unlawfully providing to a person who is patronized, with intent to impair said person's judgment:
  - (a) a narcotic drug or a narcotic preparation;
  - (b) concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law;
  - (c) methadone; or
  - (d) gamma-hydroxybutyrate (GHB) or flunitrazepan, also known as Rohypnol;
2. Making material false statements, misstatements, or omissions to induce or maintain the person being patronized to engage in or continue to engage in prostitution activity;
3. Withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;
4. Requiring that prostitution be performed to retire, repay, or service a real or purported debt;
5. Using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one or more of the following:
  - (a) cause physical injury, serious physical injury, or death to a person; or
  - (b) cause damage to property, other than property of the actor; or
  - (c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this chapter; or
  - (d) accuse some person of a criminal charges or deportation proceedings to be instituted against some person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or
  - (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule; or
  - (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
  - (g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
  - (h) perform any other act which would not in itself materially benefit the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status.

### **New York Penal Law §230.36 – Sex Trafficking Accomplice Liability**

In a prosecution for sex trafficking, a person from whose prostitution activity another person is alleged to have advanced or attempted to advance or profited or attempted to profit shall not be deemed to be an accomplice.