



# A Legal Guide to Human Trafficking in Pennsylvania

For Sexual Assault Legal  
Advocates



# Introduction

The term human trafficking is widely known, but the devastating impact is often not clearly understood. The most vulnerable citizens of the Commonwealth are susceptible to the greatest risk. Literally, people buy and sell children. The convenience of the internet removes the shame and disgrace that would ordinarily accompany a crime of this magnitude (Kosloski, Bontrager-Ryon, & Roe-Sepowitz, 2017). It is estimated that 80% of trafficking victims are sold repeatedly for sexual exploitation. Other victims are trafficked for forced labor. Human trafficking is a billion dollar criminal enterprise, with a significant source of its revenue generated via the internet (Kangaspunta, 2003). Currently, case law values protected speech over the safety of children. Enterprises sell sex online with reckless disregard for the welfare of children and other vulnerable victims. This injustice is intolerable.

This guide is designed to help legal advocates be a voice for the voiceless. The guide reviews federal law along with Pennsylvania law and its application to some of the first cases prosecuted under Act 105, Pennsylvania's Anti-Human Trafficking Law. Information on assistance available to victims of human trafficking in Pennsylvania is provided.

# Recognizing Human Trafficking Victims

Victims of human trafficking are not always easily identifiable. More often than not, they live and work among us and their plight goes unnoticed. Some individuals, especially children, may not identify as victims and resist or refuse attempts by advocates to intervene on their behalf. As legal advocates, we have a responsibility to educate ourselves in order to understand the unique nuances and complex needs of victims of human trafficking. The information included in this guide is not exclusive, but a launching point to assist in recognizing situations and circumstances that may be helpful in identifying victims of human trafficking.

It is important to note the human smuggling is a different crime than human trafficking. The key components of human trafficking are force, fraud or coercion. A victim does not have to be moved across state lines or transported out of the country to be trafficked; that is human smuggling, the illegal transporting of persons across international borders. Human trafficking does not require transportation of any kind. While the circumstances pertaining to individual victims of trafficking will differ greatly, there are some commonalities that are useful in identifying victims of human trafficking.

## Consider the following:

- ✓ Is the person being controlled by another person?
- ✓ Do you see signs of abuse or malnutrition?
- ✓ Do you see signs of substance abuse or addiction?
- ✓ Does the person control their own finances?
- ✓ Is the person working a job different from the job the person was promised?
- ✓ Does the person have control of their personal identification documents?
- ✓ Is the person free to come and go as they please?
- ✓ Is the person providing services for "favors"?
- ✓ Does the person appear fearful or depressed?
- ✓ Is the person being isolated from family and friends?
- ✓ Is the minor attending school?
- ✓ Is the minor involved with sexual exploitation in any form?

The power and control wheel below is similar to the domestic violence power and control wheel in that it provides insight into the relational dynamics between human trafficking victims and traffickers.



From *Domestic & Sexual Violence Intersections with Trafficking: Issue Brief* (p. 2), by Becky Owens Bullard, 2012.

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# Pennsylvania Human Trafficking Law

In 2014, Pennsylvania enacted Act 105, Pennsylvania's Anti-Human Trafficking Law, which defined human trafficking to specifically include sex trafficking as well as labor trafficking. Human trafficking does not require removal from an individual's country of origin, nor does it require removal across state lines. Human trafficking does require force, fraud or coercion, unless the victim is a minor. Exploited minors do not need to self-identify as victims nor does the law require a showing of involuntary servitude (victims being held against their will) as stated in the statute for adult victims. If someone financially benefits or receives anything of value from the sexual exploitation of a minor, that person is a human trafficker. From a legal standpoint, there is no such thing as a child prostitute. Selling a minor for sex is trafficking in minors.



**Act 105 can be viewed in its entirety here:**

<http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2014&sessInd=0&act=105>

Legal advocates should be particularly aware of the following provisions:

### **18 Pa. Cons. Stat. § 3019 Victim protection during prosecution**

- Identifying information may be free from public disclosure
- Possible affirmative defense against prostitution charges
- First offenders may receive priority for diversion programs
- Individuals convicted of certain offenses directly relating from human trafficking may file a motion to vacate the convictions

### **18 Pa. Cons. Stat. § 3051 Civil causes of action**

- Civil cause of action against perpetrator
- Awards for damages
- Attorney fees for the prevailing party

### **42 Pa. Cons. Stat. § 5945.3**

- Applies the same sexual assault counselor confidential privilege communication to sexual assault counselors serving as human trafficking counselors



Human trafficking involves both males and females of all ages. Common characteristics of human trafficking schemes from actual cases include exchanging sex acts for access to heroine and other illicit drugs, threats of violence to prevent escape from involuntary servitude and manipulating victims with promises of love and later selling them for sex on the internet via Backpage.com. Human trafficking is prevalent in both urban and rural communities throughout the Commonwealth of Pennsylvania. The first cases prosecuted under Pennsylvania's Act 105 were prosecuted in Lehigh, Berks, Montgomery and Wayne counties.



# Pennsylvania Human Trafficking Case Law

The first cases prosecuted under Pennsylvania's Act 105 reveal the gravity of human trafficking in our state.

***Commonwealth v. Pearson*, 2016 Pa. Dist. & Cnty. Dec. LEXIS 14011 (Apr. 4, 2016)**

Pearson, the defendant, advertised the services of the victim on backpage.com. During the court proceeding Pearson described their relationship as boyfriend/girlfriend, but the victim was manipulated and coerced to prostitute herself in exchange for heroin and a place to live. The defendant argued on appeal that the evidence did not support the conviction. The Appellate Court did not agree and the conviction was upheld. Pearson received the maximum sentence of 17 to 34 years in prison.

***Commonwealth v. Mercado*, Docket #CP-06-CR-0001650-2016**

The defendant provided a 16-year-old victim with illicit drugs in exchange for her sexual servitude. In addition, the defendant threatened to have the victim killed if she tried to leave or contact the police. The defendant pled guilty to involuntary servitude, endangering the welfare of a child and simple assault. He was sentenced to 3 to 8 years in state prison.

***Commonwealth v. Brown*, 2016 PA Super 98,  
139 A.3d 208.**

In this case, the minor victim was transported from her home to another location in Pennsylvania to perform sex acts. The defendant provided alcohol to the victim and posted explicit pictures of her on the internet. The defendant received the maximum penalty for trafficking a minor and other related charges, 15 to 32 years.

***Commonwealth v. Boswell*, 2016 Pa. Dist. & Cnty.  
Dec. LEXIS 20420 (August 22, 2016)**

The defendant used hotels and motels in the Lehigh Valley area to sell women for sex. The defendant used physical abuse to coerce the victims into compliance. He was convicted of human trafficking, promoting prostitution, simple assault and criminal use of a cellphone. Boswell was sentenced to 13 to 26 years in prison.

These are actual cases which provide examples of how the language as defined by Pennsylvania Statutes is applied to the factual scenarios experienced by the victims. For the specific language of the statute, see the Appendix.

# Federal Law

The first federal law to specifically and comprehensively address human trafficking was the Trafficking Victims Protection Act (TVPA). The act was enacted in 2000 and has subsequently been reauthorized four times. The law provides relevant definitions and addresses prevention, protection and prosecution. TVPA is cited as 22 U.S. C. § § 7104-7114 (2012). Additionally, in 2014, Congress enacted the Preventing Sex Trafficking and Strengthening Families Act, cited as 113 P.L. 183, 128 Stat. 1919 (2014). The law is designed to provide added protections for children in the foster care system, potentially at a greater risk of trafficking.

The Department of Homeland Security also lists the following federal laws as regulations governing human trafficking: (<https://www.dhs.gov/human-trafficking-laws-regulations>), (US Department of Homeland Security (DHS), 2017).

- Customs and Facilitations and Trade Enforcement Reauthorization Act of 2009, which prohibits the entry of goods into the United States made by victims of human trafficking or forced labor.
- Intelligence Reform and Terrorism Prevention Act of 2004, which deals with investigative and prosecutorial response to human trafficking.

- Protect Act of 2003, which is designed to protect children from sexual exploitation.
- Civil Asset Forfeiture Reform Act of 2000, which allows the government to pursue property owners whose properties are involved in human trafficking.
- Mann Act of 1910, as amended, makes sex trafficking across state lines a felony.

The Blue Campaign is a thorough resource describing the position of the Federal Government and the various Federal Agencies and Federal Task Forces working to prevent human trafficking. Please see <https://www.dhs.gov/blue-campaign> for detailed federal information.

For specific language of the federal statutes, see the Appendix.

# Federal Case Law

At issue in many of the federal cases where victims are seeking redress is the Communications Decency Act. The law provides that an entity cannot be held liable for posting third party content. This law allows internet service providers to sell sex online without criminal penalty or financial liability to the countless victims who are trafficked through these types of advertisements. Specifically, the law states,

“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider” 47 U.S.C. § 230.

This tide is changing as advocates and survivors of human trafficking demand justice. At the time of this publication, both the U.S. House and the U. S Senate are considering legislation to address this issue. The United States Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Government Affairs issued a report on Backpage.com. It can be found here <https://www.hsgac.senate.gov/subcommittees/investigations/reports>.

# **Additional Resources for Human Trafficking Victims**

## **National Human Trafficking Hotline**

[www.humantraffickinghotline.org](http://www.humantraffickinghotline.org)

## **24/7 Hotline**

1-888-373-7888 (TTY: 771)

## **BeFree Textline**

33733 (BeFree)

## **The Polaris Project**

[www.polarisproject.org](http://www.polarisproject.org)

## **Department of Homeland Security Blue Campaign**

[www.dhs.gov/blue-campaign](http://www.dhs.gov/blue-campaign)

**To report suspected trafficking:** 1-866-347-2423

## **U. S. Department of Justice, Office for Victims of Crime**

<https://ojp.gov/ovc>

## **Shared Hope International**

[www.sharedhope.org](http://www.sharedhope.org)



**The Human Trafficking Pro Bono Legal Center**

[www.htprobono.org/resources](http://www.htprobono.org/resources)

**The Human Trafficking Legal Center**

[www.htlegalcenter.org](http://www.htlegalcenter.org)

**U.S. Department of Health & Human Services  
& Administration for Children & Families, Office  
on Trafficking in Persons**

[www.acf.hhs.gov/otip](http://www.acf.hhs.gov/otip)

**American Bar Association Center for Human  
Rights – Human Trafficking Project**

[www.americanbar.org/groups/human\\_rights/projects](http://www.americanbar.org/groups/human_rights/projects)

**Pennsylvania Immigration Resource Center**

[www.pirclaw.org](http://www.pirclaw.org)

**The Villanova Law Institute to Address  
Commercial Sexual Exploitation**

[www.cseinstitute.org](http://www.cseinstitute.org)

**Pennsylvania Alliance Against Trafficking  
in Humans**

[www.educateandadvocate-paath.com](http://www.educateandadvocate-paath.com)

# Appendix

## Pennsylvania Statutes

### 18 Pa. Cons. Stat. § 3001

**Human trafficking** — Any activity in violation of section 3011 (relating to trafficking in individuals) either alone or in conjunction with an activity in violation of section 3012 (relating to involuntary servitude). 18 Pa. Cons. Stat. Ann. §3001

### 18 Pa. Cons. Stat. § 3011

#### Trafficking in individuals

*(a) Offense defined.* — A person commits a felony of the second degree if the person:

- (1)* 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
- (2)* knowingly benefits financially or receives anything of value from any act that facilitates any activity described in paragraph (1).

*(b) Trafficking in minors.* — A person commits a felony of the first degree if the person engages in any activity listed in subsection (a) that results in a minor's being subjected to sexual servitude.

## 18 Pa. Cons. Stat. Ann. §3012

### Involuntary servitude

*(a) Offense defined.* — A person commits a felony of the first degree if the person knowingly, through any of the means described in subsection (b), subjects an individual to **labor servitude or sexual servitude**, except where the conduct is permissible under Federal or State law other than this chapter.

*(b) Means of subjecting an individual to involuntary servitude.* — A person may subject an individual to involuntary servitude through 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.
- (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.

## **Federal Statutes**

### **22 U.S. Code § 7102**

#### **Coercion**

The term "coercion" means —

**(a)** threats of serious harm to or physical restraint against any person;

**(b)** any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

**(c)** the abuse or threatened abuse of the legal process.

## Commercial sex act

The term “commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

## Debt bondage

The term “debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

## Involuntary servitude

The term “involuntary servitude” includes a condition of servitude induced by means of —

(a) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(b) the abuse or threatened abuse of the legal process.

## Peonage 18 U.S.C. § 1581

(a) Whoever holds or returns any person to a condition of

peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

**(b)** Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).

### **Involuntary Servitude 18 U.S.C. § 1584**

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

## **Forced Labor 18 U.S.C. § 1589**

Whoever knowingly provides or obtains the labor or services of a person —

(1) by threats of serious harm to, or physical restraint against, that person or another person;

(2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) by means of the abuse or threatened abuse of law or the legal process, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

## **Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor**

### **18 U.S.C. § 1590**

Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title

or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

### **Sex Trafficking of Children or by Force, Fraud, or Coercion 18 U.S.C. § 1591**

Whoever knowingly —

**(1)** in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, or obtains by any means a person; or

**(2)** benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing that force, fraud, or coercion described in subsection (c)(2) will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).



## Unlawful Conduct with Respect to Documents in Furtherance of Trafficking, Peonage, Slavery, Involuntary Servitude, or Forced Labor 18

### U.S.C. § 1592

(a) Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person —

(1) in the course of a violation of section 1581, 1583, 1584, 1589, 1590, 1591, or 1594(a);

(2) with intent to violate section 1581, 1583, 1584, 1589, 1590, or 1591; or

(3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, shall be fined under this title or imprisoned for not more than 5 years, or both.

(b) Subsection (a) does not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, if that conduct is caused by, or incident to, that trafficking.

# References

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 1-888-772-PCAR  [www.pcar.org](http://www.pcar.org)

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