

To: New Jersey Law Revision Commission
From: Susan G. Thatch
Re: Uniform Act on Prevention of and Remedies for Human Trafficking
Date: July 7, 2014

MEMORANDUM

This Memorandum is intended to provide the Commission with additional information regarding the Uniform Act on Prevention of and Remedies for Human Trafficking and its potential applicability to New Jersey law.

Executive Summary

Staff requests the Commission's approval to conduct further research and draft statutory language that will enhance and strengthen New Jersey's present human trafficking laws.

Introduction

In February 10, 2014, the Commission released a Draft Final Report ("DFR") reviewing the potential applicability of the Uniform Act on Prevention of and Remedies for Human Trafficking ("UPRHT"). The DFR recognized the significant and serious nature of the crime of human trafficking and lauded the New Jersey Legislature's substantial efforts to draft, implement and enforce stringent anti-trafficking laws. In light of New Jersey's strong commitment to enforcing its recently enhanced laws human trafficking laws similar to the UPRHT, the DFR recommended suspending the project until the new laws have had ample time to be more fully utilized.

Following the release of the DFR, Staff was contacted by the Rutgers School of Law – Newark's International Human Rights Clinic ("Clinic"). Penny M. Venetis, the Director of the International Human Rights Clinic requested the DFR be held in abeyance until the Clinic had an opportunity to thoroughly evaluate the UPRHT and comment more substantially.

In May of 2014, the Clinic provided Staff with an eighteen page Memorandum detailing four primary areas in which they believe New Jersey's human trafficking law could be further strengthened. Staff has reviewed these recommendations and will analyze each in turn.

Background

The crime of human trafficking has long existed in both World and U.S. history. The most modern conceptions of crimes of human servitude have been framed in the terms "prostitute/pimp." In recent times, the popular and statutory language surrounding human servitude has adapted to better convey both the pervasive nature and varied presentation of the crime. It no longer suffices to address those selling other individuals as "pimps" or as "those promoting prostitution"; they are engaging in the trafficking of humans. Similarly, many individuals identified as prostitutes may be forced or coerced to remain participants in commercial sexual activities. Also, these types of crimes are not limited to sexual services –

many individuals are trafficked to perform manual labor or other physical tasks. The linguistic re-categorization of these offenses has opened the door to legal schemes that more accurately recognize perpetrators and victims.

The Uniform Law Commission (“ULC”) acknowledged and addressed the pernicious crime of human trafficking in its publication of the UPHRT. In its prefatory note, the ULC noted that “[m]illions are subjected to human trafficking every year. In 2012, the International Labour Organization issued a comprehensive and sophisticated statistical analysis, finding 20.9 million people in forced labor worldwide...”¹ In response, the ULC adopted the UPHRT with sought to model a clear and complete set of criminal proscriptions and essential victim remedies and protections, as well as to encourage state coordination.²

Simultaneously, New Jersey has recognized the scourge of human trafficking and has taken an aggressive approach to combating this crime. In 2013, the NJ Government updated its human trafficking laws by passing the Human Trafficking Prevention, Protection and Treatment Act (“HTPPT Act”)³ which amended and supplemented various portions of existing law. The HTPPT Act was widely applauded for its expansive and tough stance on human trafficking.⁴

Analysis

The Clinic identified four principal areas in which it believes New Jersey law is not as rigorous as the UPRHT and seeks modifications to New Jersey’s law as follows:

- Amendment of New Jersey law immunizing human trafficking victims, particularly minors, from prosecution for prostitution-related offenses;
- Revision of New Jersey law to establish business entity liability for human trafficking crimes;
- Expansion of the New Jersey Human Trafficking Commission’s duties to include oversight of a broader anti-trafficking public awareness campaign; and
- Clarification of some inconsistent and confusion language existing in current New Jersey anti-trafficking laws.⁵

The Clinic posits that upon adoption of the proposed changes, “New Jersey’s anti-trafficking laws will be the best and most comprehensive in the country.”⁶

¹Uniform Law Commission, *Uniform Act on Prevention of and Remedies for Human Trafficking*, Prefatory Note (July 2013).

² *Id.*

³ Human Trafficking, Prevention, Protection and Treatment Act, Pub. L. 2013, c.51 (2013).

⁴ *See e.g.* Statement by Kate Keisel, Director of Polaris Project New Jersey, <http://www.polarisproject.org/media-center/news-and-press/press-releases/793-comprehensive-anti-trafficking-legislation-signed-into-law-in-new-jersey> ; *See also* NJ Coalition Against Human Trafficking Applauds Governor Christie for Making Tough Anti-Trafficking Legislation in NJ, http://jfedgmw.org/local_includes/downloads/62981.pdf

⁵ *Memorandum from the Rutgers Law School International Human Rights Clinic* (May 14, 2014) (on file with author).

⁶ *Id.*

I. Amendment of New Jersey law to immunize human trafficking victims from prosecution of prostitution-related offenses

As currently comprised, New Jersey's statutes criminalize human trafficking victims who are prostituted against their will.⁷ However, New Jersey's law does offer certain protections to human trafficking victims; N.J.S. § 2C:34-1(e) provides trafficking victims with an affirmative defense during prosecutions for prostitution. Additionally, N.J.S. § 2C:44-1.1 permits trafficking victims to move to vacate and expunge prostitution related convictions. While the UPHRT makes age based distinction in its treatment of prostitution charges, New Jersey law does not presently distinguish between human trafficking victims who are minors and those who are of legal age in affording these statutory protections. In light of the UPHRT's distinction, it is useful to bifurcate discussion of different victim age groups.

a. Underage human trafficking victims

The Clinic notes that the UPRHT is more protective of minor aged human trafficking victims than New Jersey law in that it offers immunity⁸ from criminal prosecutions or juvenile delinquency proceedings, while New Jersey provides the above-mentioned affirmative defense and vacatur/expungement mechanism.

Critics of New Jersey's statutory approach maintain that criminalization of human trafficking victims is anathema to our laws.⁹ A City of New York School of Law report entitled "Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims" states:

By the time arraignment takes place, the individual is usually poorly clothed, tired, hungry, and has endured miserable conditions overnight. The arrest compounds the trauma that the victim of trafficking is already experiencing. Not only is a victim of trafficking being charged for a crime he or she was forced to commit, the individual is also being forced to endure the often humiliating experiences of arrest and incarceration.¹⁰

The Uniform Law Commission was similarly concerned about the prosecution of minor aged human trafficking victims. The Comment to the UPRHT states that granting child victims immunity achieves important policy goals:

"[M]inor victims of human trafficking should not be viewed as legally capable of consenting to their own commercial sexual exploitation. Immunity in such cases recognizes the facts that: (a) the real culpability for these offenses of the minor resides with the coercing or exploiting party; and (b) the minor is a child in need of counseling, treatment, and support rather than prosecution."¹¹

⁷ *Id.*

⁸ *See Uniform Act, supra* note 1, at §16.

⁹ *Memorandum, supra* note 5.

¹⁰ Int'l Women's Human Rights Clinic, *Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims* at 18 (2012), available at <http://www.law.cuny.edu/academics/clinics/iwhr/publications/Clearing-the-Slate.pdf>

¹¹ *See Uniform Act, supra* note 1, at §16.

In 2013, the U.S. Government also weighed in on the prosecution of minors for prostitution when Congress modified its Model State Criminal Law Protection for Child Trafficking Victims and Survivors. Pursuant to P.L. 113-4, Section 225(b) of the Trafficking Victims Reauthorization Act of 2008 (the “TVRA”) was amended to include safe harbor provisions which would effectively provide under age human trafficking victims with immunity from prosecution for prostitution.¹²

Twelve other U.S. states have adopted the immunity provisions for minor victims of human trafficking victims similar to those proposed by the UPRHT each with various modifications.¹³ Similar to New Jersey, fifteen other states afford an affirmative defense to a prostitution charge for minors.¹⁴

The New Jersey Legislature has given its own specific consideration to the prosecution of human trafficking victims. Prior to the passage of the HTPPT Act in 2013, N.J.S. § 2C:34-1(e) provided an affirmative defense to prosecution for prostitution or promoting prostitution if the defendant was either a victim of human trafficking **or** under the age of 18.¹⁵ Arguably, this created unintended consequences; under the 2011 law, any minor under 18 had a valid defense for either prostitution or promoting prostitution (pimping).¹⁶ The organization Concerned Women for America (“CWA”) made specific recommendations to repeal this broad prostitution

¹² As of March 7, 2013, 22 U.S.C. § 7101 was amended to include:

“(2) protects children exploited through prostitution by including safe harbor provisions that—

“(A) treat an individual under 18 years of age who has been arrested for engaging in, or attempting to engage in, a sexual act with another person in exchange for monetary compensation as a victim of a severe form of trafficking in persons;

“(B) prohibit the charging or prosecution of an individual described in subparagraph (A) for a prostitution offense;

“(C) require the referral of an individual described in subparagraph (A) to appropriate service providers, including comprehensive service or community-based programs that provide assistance to child victims of commercial sexual exploitation; and

“(D) provide that an individual described in subparagraph (A) shall not be required to prove fraud, force, or coercion in order to receive the protections described under this paragraph;”

¹³ Tessa L. Dysart, *Child, Victim, or Prostitute? Justice through Immunity for Prostituted Children*, DUKE JOURNAL OF GENDER LAW & POLICY, 255, 275 (2014). For example, Illinois law provides that “if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section is a person under the age of 18, that person shall be immune from prosecution for a prostitution offense . . . and shall be subject to the temporary protective custody provisions of . . . the Juvenile Court Act of 1987.” 720 ILL. COMP. STAT. 5/11-14 (2014). Tennessee similarly provides that “if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation . . . is under eighteen (18) years of age, that person shall be immune from prosecution as a juvenile or adult. A law enforcement officer shall, upon determination that the person is a minor, provide the minor with the telephone number for the national human trafficking resource center hotline and release the minor to the custody of a parent or legal guardian. TENN. CODE ANN. § 39-13-513 (2012). Nebraska also provides that “if the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected or charged with a violation . . . such person shall be immune from prosecution for a prostitution offense and shall be subject to temporary custody . . . and further disposition under the Nebraska Juvenile Code.” NEB. REV. STAT. § 28-801 (2013).

¹⁴ Dysart, *supra* note 13, at 276.

¹⁵ In relevant part: “It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking pursuant to N.J.S. § 2C:13-8 or the defendant was under the age of 18.

¹⁶ See Brenda Zurita, *New Jersey “Safe Harbor” Law Provides a Lesson in Unintended Consequences*, American Thinker, 2014.

and promotion of prostitution for minors provision on the ground that it actually makes it easier for human traffickers to take advantage of the victims.¹⁷

The HTPPT Act modified the language of 2C:34-1(e) to afford the protection of an affirmative defense against prostitution charges to defendants who are “a victim of human trafficking pursuant to N.J.S. § 2C:13-8 or compelled by another to engage in sexual activity, regardless of the defendant’s age.”¹⁸ Also, the HTPPT Act added a mechanism in N.J.S. § 44-1.1 for vacating and expunging convictions of “prostitution and related offenses, loitering for the purpose of engaging in prostitution, or a similar local ordinance” when such offenses occurred as a result of being a victim of human trafficking.¹⁹ Presumably, the human trafficking victims face incarceration during the period in advance of exercising their affirmative defense.

It does seem patently inconsistent that minors in New Jersey incapable of legally consenting to sexual activity²⁰ could be charged with prostitution regardless of whether they later have an affirmative defense or can have any conviction vacated or expunged. However, some argue that a blanket cloak of statutory immunity could well prevent law enforcement officers from having a successful intervention with an underage victim.²¹ Indeed, those weighing in against immunity for minors reference the fact that “because strategies of persuasion and common sense have failed with these youth, it is necessary to place them in secure custody for their own protection.”²²

While indisputable that these minors are in need of protection and services, criminalizing and detaining a prostituted child is inconsistent with the child-centered approach of the TVPA and the UPRHT. Staff requests whether the Commission finds it appropriate to draft a statutory immunity provision for underage human trafficking victims consistent with those in other jurisdictions.

An alternative approach may be to leave the existing affirmative defense and vacatur/expungement provisions in place but to add a requirement that those individuals under the age of sexual consent be deemed a person in need of services similar to New York and diverted to victim assistance organizations.²³ While N.J.S. § 52:4B-44.1 directs the NJ Attorney General to “coordinate the establishment of standard protocols for the provision of information

¹⁷ *Id.* (stating, [i]f a police officer finds a minor in prostitution, all the minor has to say is they have no pimp (even if they do) and, legally, she is allowed to continue. What do you think pimps would tell victims to say in this situation?)

¹⁸ N.J.S. § 2C: 34-1(e)(2013).

¹⁹ N.J.S. § 2C:44-1.1 (2013).

²⁰ N.J.S. § 2C:14-2 provides that the legal age for consent to sexual acts with an adult is 16 years old and that minors under the age of 13 cannot legally consent to sexual acts.

²¹ Tamar R. Birckhead, *The “Youngest Profession”: Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1066 (2011); *see also* Dysart, *supra* note 13, at 281.

²² Birckhead at 1085; Dysart, *supra* note 13, at 281.

²³ See N.Y.SOC. SERV. LAW 483-cc. (McKinney 2007) which provides that the division of criminal justice services shall conduct an assessment to determine whether the individual “appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined by 22 U.S.C. § 7105.” The federal statute automatically qualifies anyone under the age of 18 as “a victim of a severe form of trafficking in persons.” 22 U.S.C. § 7105 (b)(C)(2013). Hence, anyone victim under the age of 18 in New York would be deemed in need of supervision and directed to appropriate services. Massachusetts has a similar diversion option. *See* MASS. GEN. LAWS. ANN. ch. 119, § 21 (West 2014).

and services to victims of human trafficking and minors under the age of 18 who are charged with prostitution,” New Jersey does not have a statutory mechanism which specifically outlines and mandates the provision of services to underage human trafficking victims. This is a significant omission. The New Jersey Supreme Court has recognized the existence of children in need of services in the absence of a Title 9 finding of abuse or neglect by a parent or custodian.²⁴

A useful framework for this type of diversion could potentially be found in the Commission’s newly proposed N.J.S. § 9:27-2; any individual under the age of 18 charged with prostitution could be deemed a child in need of services pursuant to § 9:27-2 and ideally receive the assistance and oversight required. Additionally, language could be added to both the prostitution and human trafficking statutes requiring law enforcement, upon identification and arrest of an underage prostitute or human trafficking victim, to file an application for care or custody with the Division of Child Protection and Permanency pursuant to N.J.S. § 30:4C-11.²⁵ With consideration to the Commission’s decision regarding the propriety of granting immunity, Staff requests whether the Commission alternatively finds it appropriate to investigate and propose statutory language that more clearly diverts underage human trafficking victims to the appropriate services in order to properly address them as victims rather than offenders.

b. Adult human trafficking victims

The Clinic further advocates that adult trafficking victims should also be immunized against criminal prosecution for prostitution related offenses. Unlike for minors, New Jersey has never decriminalized prostitution for those over the age of 18.

The UPRHT declines to extend criminal immunity to adult trafficking victims. Rather, consistent with current New Jersey law, the UPRHT permits a victim to assert an affirmative defense to any prostitution related charges²⁶ and also allows a victim to motion to vacate and expunge the record of conviction upon a finding that the “individual’s participation in the offense was a direct result of being a victim” of human trafficking.²⁷ Additionally, anti-trafficking policy organization Polaris Project²⁸ similarly recommends the vacatur/expungement approach. Moreover, a grant of immunity to adult trafficking victims could theoretically undermine the prosecution of willful, non-coerced prostitution; a dubious claim that an individual had been forced or coerced by a unlocatable third party would theoretically absolve the crime.

Staff believes that expansion of criminal immunity for adult trafficking victims is a substantial policy decision and seeks the Commission’s guidance on whether to further research this proposed expansion.

²⁴See *DYFS v. I.S.*, 214 N.J. 8 (2013).

²⁵ It’s not entirely clear whether N.J.S. § 30:4C-11, as presently written, would permit law enforcement to file such an application in every situation. Applications may be brought “by a parent or other relative of the child, by a person standing in loco parentis to the child, **by a person or association or agency or public official having a special interest in the child** or by the child himself” (emphasis added).

²⁶ *Uniform Act*, *supra* note 1, at §16.

²⁷ *Uniform Act*, *supra* note 1, at §17.

²⁸ Polaris Project is an organization committed to fighting human trafficking through policy advocacy, services for victims, and training. For more information see www.polarisproject.org.

Lastly, to facilitate identification and appropriate handling of human trafficking victims, the Clinic suggests that New Jersey should create a “diversion part” in the New Jersey criminal courts for human trafficking victims.²⁹ These courts would have heightened awareness of the physical and psychological trauma caused by human trafficking and would be better able to direct victims to appropriate services. While a model of such a special court exists in New York³⁰, the creation of this special type of court is not contemplated by the UPRHT. Further, the Human Trafficking Intervention Court in New York was judicially rather than legislatively created.³¹

New Jersey does have some interest and history in creating separate, streamlined court systems to achieve certain policy goals. For example, the New Jersey Adult Drug Court Program was first piloted in 1996 with the goal of rehabilitating rather than punishing nonviolent criminal offenders.³² These special diversion Drug Courts have been expanded over the years and by many accounts, have been successful in both breaking the cycle of addiction and crime and reducing the recidivism of addicted offenders.³³

To be sure, the creation of human trafficking courts is a laudable and perhaps needed undertaking; however such a recommendation may regretfully fall beyond the purview of the Commission’s legislative mandate. Staff seeks the Commission’s guidance on whether it would be appropriate to draft statutory language proposing this type of diversion court.

II. Revision of New Jersey law to establish business entity liability for human trafficking crimes

The Clinic maintains that New Jersey should adopt more comprehensive business entity liability for human trafficking crimes. According to the International Labour Organization: “[o]f the total number of 20.9 million forced labourers, 18.7 million (90%) are exploited in the private economy, by individuals or enterprises.”³⁴ The United Nations Office on Drugs and Crime has

²⁹ *Memorandum*, *supra* note 5, at 7.

³⁰ The Human Trafficking Intervention Court existing in all five boroughs of New York City, is a judicially created “diversion part” that exclusively hears prostitution and loitering cases. The program revealed that these special courts were more effective at identifying and protecting victims than regular criminal courts. Similar human trafficking courts appear in various forms in other cities such as Chicago, Dallas and Seattle. *Memorandum*, *supra* note 5, at 8.

³¹ According to a New York Courts Press Release: “All cases charging prostitution or related offenses that continue past arraignment will be transferred to the Human Trafficking Court, where they will be evaluated by the judge, defense attorney and prosecutor. If there is a consensus that the case involves a victim in need of resources, the court will connect the defendant to tailored services, which may range from shelter and healthcare to immigration assistance and drug treatment. Human Trafficking Courts will also link participants to education and job training programs to help prevent their return to the commercial sex industry. A defendant’s charges may be dismissed or reduced contingent upon compliance with court-mandated services and programs.” Press Release, New York State Unified Court System, *NY Judiciary Launches Nation’s First Statewide Human Trafficking Intervention Initiative* (Sept. 25, 2013) (on file with author).

³² N.J. Courts, *A Model for Success, A Report on New Jersey’s Adult Drug Courts* (October 2010), available at <http://www.judiciary.state.nj.us/drugcourt/DrugCourtReport.pdf>.

³³ *Id.* at 6. See also N.J.A.C. Exec. Order No. 83 (2011) which praises and broadens New Jersey’s Drug Court Program.

³⁴ ILO Special Action Programme to combat Forced Labour, *2012 Global Estimate of Forced Labour Executive Summary* (Jun. 1, 2012), available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_181953.pdf.

identified several industries in which trafficked labor is most common: “agriculture or horticulture, construction, garments and textiles under sweatshop conditions, catering and restaurants, domestic work, entertainment and the sex industry.”³⁵

Enterprises in the above-mentioned industries may use cheap and trafficked labor to maximize their profits, sometimes inadvertently.³⁶ Often, complex supply chains reduce a business’s awareness of the working conditions in the production of goods.³⁷ The use of subcontractors or partners who use trafficked labor to supply materials, produce a good, or provide a service creates a system of reliance on trafficking by otherwise legal business entities.³⁸

In the UAPRHT, the Uniform Law Commission similarly recognized the need for a comprehensive business liability statute which would “[a]ddress the demand for trafficking, including questions of corporate liability and demand-reduction strategies for sex trafficking.”³⁹ Section 8 of the UAPRHT holds liable a business that “knowingly engages in conduct that constitutes human trafficking.”⁴⁰ Additionally, Section 8 holds business entities accountable when an employee or agent commits the act of human trafficking for the benefit of the entity when the business entity knew it was occurring and failed to take effective action to stop it.⁴¹

New Jersey has grappled with the issue of entity liability in its various human trafficking laws and revisions. N.J.S. § 2C:13-8(2) states that a “person commits the crime of human trafficking if he: receives anything of value from participation as an organizer, supervisor, financier, or manager in a scheme or course of conduct which violates this paragraph.” Currently pending NJ Assembly Bill 2420 would add language making those who “benefit financially” from human trafficking liable under this same provision. However, while the more expansive language is an improvement, the comments to the bill reference expansion to “**individuals** who receive a financial benefit from participating in human trafficking without necessarily being an ‘organizer, supervisor, financier or manager’ of the enterprise or scheme, **such as drivers or hotel employees** (emphasis added).⁴² Thus, in terms of legislative intent, this modification seems primarily concerned with individuals rather than corporate or business entities.

Pursuant to New Jersey law, a person includes “corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals, unless restricted by the context to an individual as distinguished from a corporate entity.”⁴³ Therefore, a business

³⁵ United Nations Office on Drugs and Crime, *Human Trafficking FAQs*, http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_types_of_industries_are_involved_with_human_trafficking .

³⁶ *Memorandum*, *supra* note 5, at 11.

³⁷ UN.GIFT, *Human Trafficking, Everybody’s Business* (Oct. 2009), available at http://www.ungift.org/docs/ungift/pdf/Human_Trafficking_-_Everybody's_Business.pdf.

³⁸ *Id.* at 1.

³⁹ ABA Center for Human Rights, *Uniform Law Commission Project Proposal Uniform Human Trafficking Law* (July 2010), available at <http://www.law.washington.edu/AsianLaw/HumanTrafficking/ULC-ProjectProposal.pdf>.

⁴⁰ *Uniform Act*, *supra* note 1, at §8.

⁴¹ *Id.*

⁴² Comments to NJ Assembly Bill No. 2420.

⁴³ N.J.S. § 1:1-2 (2014); *see also Bankers Trust Co. v. New York Women’s League for Animals*, 23 N.J. Super, 170 (App. Div. 1953).

entity could be charged with human trafficking to the extent it “receives anything of value as participation as an organizer, supervisor or manage in a scheme or course of conduct violating” 2C:13-8. New Jersey law as presently written conflates individual and business entity liability. However, the language of the UAPRHT more clearly articulates the circumstances under which a business entity could be held liable for human trafficking violations. Staff has proposed modifications to NJ law for the Commission’s consideration that would incorporate some of the UAPRHT’s language and more clearly delineate when a business entity could be held liable using terminology more applicable to a business operation, such as employees and nonemployee agents.

Of note, the NJ Legislature in 2013 sought to additionally expand certain forms of business liability in codifying the first degree crime of advertising commercial sexual abuse of a minor in N.J.S. § 2C:13-10.⁴⁴ However, in *Backpage.com, LLC v. Hoffman*⁴⁵ the U.S. District Court enjoined enforcement of this law on the grounds that it is likely pre-empted by Section 230 of the Communications Decency Act of 1996⁴⁶, that it likely violates the first and fourteenth amendment⁴⁷ and that it likely violates the Commerce Clause.⁴⁸ This piece of legislation mirrored legislation of other states, which were similarly enjoined and, in once instance, repealed by the applicable legislative body.⁴⁹ In any event, this law was a narrow expansion of the concept of business entity liability and is unlikely to survive further judicial scrutiny. In moving forward with this project, Staff will seek language in other State’s statutes that may address this important policy concern without running afoul of Constitutional limitations.

III. Expansion of New Jersey Human Trafficking Commission’s duties to include oversight of a broader public awareness campaign

The Clinic highlights the UAPRHT’s strong commitment to public awareness. In particular, Section 20 of the UAPRHT contemplates the development and distribution of public-awareness signs with the appropriate human trafficking information as well as the availability of the National Human Trafficking Resource Hotline. These signs would be displayed conspicuously at locations such “as transportation centers, state welcome areas, and hospitals, as well as in sexually-oriented businesses.”⁵⁰ A fine would be assessed, similar to those for other

⁴⁴ N.J.S. § 2C:13-10 provides in relevant part that “[a] person commits the offense of advertising commercial sexual abuse of a minor if:

(1) the person knowingly publishes, disseminates, or displays, or causes directly or indirectly to be published, disseminated, or displayed, any advertisement for a commercial sex act, which is to take place in this State and which includes the depiction of a minor; or

(2) the person knowingly purchases advertising in this State for a commercial sex act which includes the depiction of a minor.

⁴⁵ 2013 WL 4502097 (D. N.J. 2013).

⁴⁶ *Id.* at 5, *citing* 47 U.S.C. § 230 (1996)

⁴⁷ *Id.* at 7.

⁴⁸ *Id.* at 11.

⁴⁹ *See* WASH. REV. CODE ANN § 9.68A.104 (2012), *enjoined by Backpage.com, LLC v. McKenna*, 881 F.Supp 1262 (W.D. Wash. 2012), *repealed by* WASH. LAWS 2013, ch.9, § 2 (2013); *see also* TENN. CODE. ANN. § 39-13-315 (2012), *enjoined by Backpage.com, LLC v. Cooper*, 2013 WL 1558785 (M.D. Tenn, 2013).

⁵⁰ *Uniform Act, supra* note 1, at § 20.

workplace rules, for failure to display the sign. Eleven states have enacted legislation to either require or encourage the development and posting of similar signs.⁵¹

Pursuant to N.J.S. § 52:17B-237, New Jersey has developed a Commission on Human Trafficking charged with, among other tasks, the duty to promote public awareness of human trafficking, in particular promotion of the national human trafficking hotline as well as the development of training programs for law enforcement personnel. The statutory language does not specifically contemplate the development or deployment of public awareness signs.

While it may indeed be preferable to require the distribution of Anti-Trafficking public awareness signs statewide, this may be a mandate which stretches or is beyond the Human Trafficking Commission's budgetary allotment. Nevertheless, proposed language requiring such public awareness signs is attached for the Commission's review.

IV. Clarification of some inconsistent and confusing language existing in current New Jersey anti-trafficking laws.

The Clinic also recommends clarifying some of the prostitution and human trafficking laws for consistency and to minimize confusion. With the Commission's authorization, Staff will contemplate some ways in which the various statutes might be clarified and/or streamlined.

Conclusion

If the Commission authorizes the project directions set forth herein, Staff will conduct outreach with various stakeholders in the development of a Draft Tentative Report and prepare such additional statutory language as is consistent with the Commission's determinations.

⁵¹ See the comment section of the proposed statutory language for specific discussion of individual States' implementation of this provision.

2C:13-8. Human trafficking

a. A person commits the crime of human trafficking if he:

(1) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, another, to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1 or to provide labor or services:

(a) by causing or threatening to cause serious bodily harm or physical restraint against the person or any other person;

(b) by means of any scheme, plan, or pattern intended to cause the person to believe that the person or any other person would suffer serious bodily harm or physical restraint;

(c) by committing a violation of N.J.S.2C:13-5 against the person;

(d) by destroying, concealing, removing, confiscating, or possessing any passport, immigration-related document as defined in section 1 of P.L.1997, c. 1 (C.2C:21-31), or other document issued by a governmental agency to any person which could be used as a means of verifying the person's identity or age or any other personal identifying information;

(e) by means of the abuse or threatened abuse of the law or legal process;

(f) by means of fraud, deceit, or misrepresentation against the person; or

(g) by facilitating access to a controlled dangerous substance or controlled substance analog as set forth in chapter 35 of Title 2C of the New Jersey Statutes;¹ or

(2) receives anything of value from participation as an organizer, supervisor, financier or manager in a scheme or course of conduct which violates paragraph (1) of this subsection; or

(3) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, a child under 18 years of age, to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1, whether or not the actor mistakenly believed that the child was 18 years of age or older, even if that mistaken belief was reasonable.

b. A person that is a business entity may be prosecuted for an offense under Sections 1 through 3 only if:

(1) the business entity knowingly engages in conduct that constitutes human trafficking as defined herein; or

(2) an employee or nonemployee agent of the business entity engages in conduct that constitutes human trafficking and the conduct is part of a pattern of activity in violation of this Section 2C:13-8 for the benefit of the business entity, which the business entity knew was occurring and failed to take effective action to stop.

cb. An offense under this section constitutes a crime of the first degree.

de. It is an affirmative defense to prosecution for a violation of this section that, during the time of the alleged commission of the offense of human trafficking created by this section, the defendant was a victim of human trafficking.

ed. Notwithstanding the provisions of N.J.S.2C:43-6, the term of imprisonment imposed for a crime of the first degree under paragraph (2) or (3) of subsection a. of this section shall be either a term of 20 years during which the actor shall not be eligible for parole, or a specific term between 20 years and life imprisonment, of which the actor shall serve 20 years before being eligible for parole. Notwithstanding the provisions of N.J.S.2C:43-3, the sentence for a conviction for a crime of the first degree under this section shall include a fine in an amount of not less than \$25,000, which shall be collected as provided for the collection of fines and restitutions in section 3 of P.L.1979, c. 396 (C.2C:46-4) and forwarded to the Department of the Treasury to be deposited in the “Human Trafficking Survivor's Assistance Fund” established by section 2 of P.L.2013, c. 51 (C.52:17B-238).

e. In addition to any other disposition authorized by law, any person who violates the provisions of this section shall be ordered to make restitution to any victim. The court shall award to the victim restitution which is the greater of:

- (1) the gross income or value to the defendant of the victim's labor or services; or
- (2) the value of the victim's labor or services as determined by the “New Jersey Prevailing Wage Act,” P.L.1963, c. 150 (C.34:11-56.25 et seq.), the “New Jersey State Wage and Hour Law,” P.L.1966, c. 113 (C.34:11-56a et seq.), the Seasonal Farm Labor Act, P.L.1945, c. 71 (C.34:9A-1 et seq.), the laws concerning the regulation of child labor in chapter 2 of Title 34 of the Revised Statutes, or any other applicable State law, and the “Fair Labor Standards Act of 1938,” 29 U.S.C. s.201 et seq., or any other applicable federal law.

Comment

The addition of 2C:13-8(b) tracks the language of the Uniform Act on Prevention of and Remedies for Human Trafficking with respect to business entity liability. Under New Jersey law, the term “person” used in 2C:13(a) is applicable to individuals and businesses alike, the proposed addition more clearly delineates circumstances under which a business entity may be held liable. This language more accurately reflects the potential role a business entity may have in the crime of human trafficking but also preserves and reinforces the necessary scienter.

52:17B-237. Commission on Human Trafficking; establishment; membership; term of office; compensation; duties; regulations; annual report

- a. [Creation of Commission – no modifications]
- b. [Appointment of Commission members – no modifications]
- c. [Organization of the Commission – no modifications]
- d. [Authorizing reimbursement to members of commission for necessary and reasonable expenses – no modifications]
- e. [Authorizing commission to incur expenses to perform duties within the limits of funds appropriated or otherwise made available – no modifications]
- f. It shall be the duty of the commission to:
 - (1) Evaluate the existing law concerning human trafficking and the enforcement thereof, and to make recommendations for legislation, if appropriate;
 - (2) Review existing victim assistance programs and analyze the costs, organization, and availability of these services for victims of human trafficking and to make recommendations for legislation, if appropriate;
 - (3) Promote a coordinated response by public and private resources for victims of human trafficking; and
 - (4) Develop mechanisms to promote public awareness of human trafficking, **victim remedies and services, and trafficking prevention** including **the creation of a public-awareness sign** ~~promoting~~**ion of** the national, 24-hour toll-free hotline telephone service on human trafficking described under section 18 of P.L.2013, c. 51 (C.2C:13-11), and the promotion of training courses and other educational materials for use by persons required under section 19 of P.L.2013, c. 51 (C. 2C:13-12) to undergo training on the handling of and response procedures for suspected human trafficking activities.
- g. [Commission reporting requirements]

[New] **Section 1. Display of Human Trafficking Public-Awareness Sign; Penalty for Failure to Display:**

- a. **Pursuant to C.52:17B-237, the Commission on Human Trafficking shall develop a public-awareness sign that contains the national, 24-hour toll-free hotline telephone service on human trafficking described under C.2C:13-11 and otherwise meets the requirements contained in subsection (c).**

b. The following establishments shall display the public–awareness sign described in subsection (a) in a place that is clearly conspicuous and visible to employees and the public:

- (1) Strip clubs or sexually oriented business defined in C:2C:33-12.2(a)(1)(a);
- (2) Business entities found to be a nuisance for prostitution under C:2C:33-12;
- (3) Hospital emergency rooms;
- (4) Urgent care centers;
- (5) Airports;
- (6) Train stations; and
- (7) Truck stops defined in N.J.A.C. § 14:29-1.2.

c. The notice to be posted pursuant to subsection (b) shall be no smaller than eight and one-half inches by eleven inches in size, in English and Spanish and shall state the following:

“If you or someone you know is being forced to engage in any activity and cannot leave – whether it is commercial sex, housework, farm work or any other activity – call the National Human Trafficking Resource Center Hotline at 1-888-373-7888 or the New Jersey Human Trafficking Task Force Hotline at 1-855-363-6548 to access help and services.

Victims of human trafficking are protected under United States and New Jersey law.

The toll-free hotlines are:

- Available 24 hours a day, 7 days a week.
- Operated by a nonprofit, nongovernmental organization
- Anonymous and confidential
- Accessible in more than 160 languages
- Able to provide help, referral to services, training, and general information.

d. A business or establishment that fails to comply with the requirements of this section shall be liable for a civil penalty of three hundred dollars (\$300) for a first offense and one thousand dollars (\$1,000) for each subsequent offense.

Comment:

These proposed modifications integrate the UAPRHT’s recommendation that State’s promulgate and mandate the display of signs containing anti-human trafficking information in certain establishments. To date, eleven states have enacted similar provisions. Please note that five states have enacted this provision as a permissive statement rather than mandatory obligation. The

other six states with laws relating to human trafficking posters have created mandatory obligations with accompanying penalty provisions for failure to comply.

Alabama: See ALA. CODE § 13A-6-170. (2012) (Posting of National Human Trafficking Resource Center Hotline in certain establishments) (requiring poster no smaller than 8 ½ x 11 containing toll-free hotline information in liquor stores, hotels cited as a nuisance, airports, train stations, bus stations and strip clubs.)

Arkansas: See ARK. CODE ANN. § 12-19-102 (West 2013) (Posting information about the National Human Trafficking Resource Center Hotline) (requiring poster no smaller than 8 ½ x 11 containing toll-free hotline information in hotels cited as nuisances, strip clubs, bars that are not food service establishments, airports, train stations, bus stations and truck stops).

California: See CAL. CIVIL CODE § 52.6 (West 2013) (Notice to be posted at specified businesses and establishments) (requiring poster no smaller than 8 ½ x 11 in English and Spanish containing toll-free hotline information to be displayed in on-sale general public premises licensee businesses (as defined by California law), adult or sexually oriented business, primary airports, rail stations, bus stations, truck stops, emergency rooms, urgent care centers, farm labor contractors, privately operated job recruitment centers, roadside rest areas and businesses that offer massage or bodywork services).

Louisiana: See LA. REV. STAT. ANN. § 15:541.1 (2013) (Posting of the National Human Trafficking Resource Center hotline; content; languages; civil penalty) (requiring poster no smaller than 8 ½ x 11 in English, Louisiana French, Spanish containing toll-free hotline information in every massage parlor, spa or hotel found to be a public nuisance for prostitution, every strip club or sexually-oriented business and every gas station adjacent to interstate highway or rest stop).

Maryland: See MD. CODE ANN., BUS. REG. § 15-207 (West 2010) (Posting of sign relating to human trafficking) (requiring sign no smaller than 3 x 5 in English and Spanish containing toll-free hotline information which law enforcement agency *may require* to be posted in any lodging establishments located where arrests leading to convictions of prostitution, solicitation of a minor or human trafficking have occurred).

Nebraska: See NEB. REV. STAT. ANN. § 81-1430 (West 2013) (Task force; established; members; terms; duties; quorum; report; Department of Labor; posters) (requiring posters in English and Spanish containing toll-free hotline information in every rest stop and strip club and encouraging voluntary placement in high schools, postsecondary institutions, gas stations, hotels, hospitals, health care clinics, urgent care centers, airports, train stations, bus stations and other appropriate locations).

Ohio: See OHIO REV. CODE ANN. § 5502.63 (West 2012) (Safe firearms practice poster and brochure; poster providing information regarding national human trafficking resource center hotline) (requiring development of posters no smaller than 8 ½ x 11 in English and Spanish containing toll-free hotline information and *encouraging* display at truck stops, hotels, adult entertainment establishments, beauty salons, agricultural labor camp, hospital or urgent care centers, professional or NCAA sport athletic competitions, massage parlors or fairs).

Tennessee: See TENN. CODE ANN. § 39-13-313 (West 2012) (Tennessee Human Trafficking Resource Center Hotline Act) (requiring development of sign no smaller than 8 ½ x 11 containing toll-free hotline information and *strongly encourages* posting at certain businesses or establishments offering entertainment, transportation, lodging, dining, educational, medical or leisure activities or services).

Vermont: See VT. STAT. ANN. tit. 13, § 2661 (West 2011) (Resource guide posting) (requiring notice to be developed containing toll-free hotline information which *may* be posted in prominent and accessible locations in workplaces).

Virginia: See VA. CODE ANN. § 40.1-11.3 (West 2013) (Human trafficking hotline; posted notice required; civil penalty) (requiring strip clubs and truck stops to post notice containing information regarding the existence of toll-free hotline).

Washington: See WASH. REV. CODE ANN. § 47.38.080 (West 2010) (Human Trafficking informational posters at rest areas) (stating the department *may* develop informational posters containing toll-free hotline information and Washington state office of crime victims advocacy for placement in bathroom stalls in rest areas).