

Appendix A

Legal Definitions of Trafficking

NEW YORK STATE LAW

New York Penal Law § 230.34 — Sex Trafficking

Sex trafficking is a class B felony. 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 § 3302 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 the property of the actor; or
- (c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of § 135.05 of this chapter; or
- (d) accuse some person of a crime or cause 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 § 135.35 — Labor Trafficking

Labor trafficking is a class D felony. 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 performed 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 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. 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 § 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 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.

FEDERAL LAW

18 U.S.C. § 1589 — Forced Labor

- (a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means —
 - (1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
 - (2) by means of serious harm or threats of serious harm to that person or another person;
 - (3) by means of the abuse or threatened abuse of law or legal process; or
 - (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).
- (b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d).
- (c) In this section:
 - (1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.
 - (2) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.
- (d) Whoever violates this section shall be fined under this title, imprisoned not more than twenty years, or both. If death results from a violation of this section, or if the violation includes kidnapping, an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.

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

- (a) 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, obtains, or maintains 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, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of eighteen years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).
- (b) The punishment for an offense under subsection (a) is —
- (1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of fourteen years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than fifteen or for life; or
 - (2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of fourteen years but had not attained the age of eighteen years at the time of such offense, by a fine under this title and imprisonment for not less than ten years or for life.
- (c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained or maintained, the Government need not prove that the defendant knew that the person had not attained the age of eighteen years.
- (d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed twenty years, or both.

(e) In this section:

- (1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.
- (2) 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 law or the legal process.
- (3) The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.
- (4) The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.
- (5) The term “venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

INTERNATIONAL LAW

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, of the United Nations Convention Against Transnational Organized Crime (also known as the Trafficking or Palermo Protocol)

For the purposes of this Protocol:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.