

2007 DRAFTING REQUEST

Bill

Received: 02/23/2007

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Glenn Grothman (608) 266-7513**

By/Representing: **Anne Sappenfield**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous
Criminal Law - victims**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Grothman@legis.wisconsin.gov**

Carbon copy (CC:) to: **anne.sappenfield@legis.wisconsin.gov
sharon.little@legis.wisconsin.gov
pam.matthews@legis.wisconsin.gov
rep.kessler@legis.wisconsin.gov
rep.jeskewitz@legis.wisconsin.gov
mikem@wcasa.org**

Pre Topic:

No specific pre topic given

Topic:

Human trafficking

Instructions:

See Attached

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 02/28/2007	wjackson 03/02/2007		_____			State Crime
/P1	chanaman 05/08/2007	wjackson 05/09/2007	nnetzke 03/02/2007	_____	sbasford 03/02/2007		State Crime

*for Senate
per Jolene*

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/1			jfrantze 06/22/2007	_____	sbasford 06/22/2007	cduerst 10/15/2007	

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→ At Intro.

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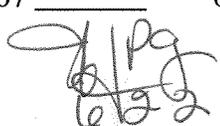
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~~lparisi~~
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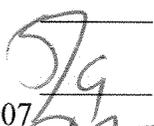
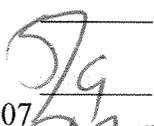
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/?	chanaman	/pl wlj 3/1	nwn 3/2	nwn/sb 3/2			

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<END>



Wisconsin Coalition Against Sexual Assault, Inc.

600 Williamson St., Suite N2 • Madison, Wisconsin • 53703
Voice/TTY (608) 257-1516 • Fax (608) 257-2150 • www.wcasa.org



MEMORANDUM

TO: Representative Frederick Kessler
Representative Suzanne Jeskewitz

CC: Sharon Little
Pam Mathews
Sr. Patrice Colletti
Patti Seger
Anne Sappenfield

FROM: Mike Murray, Policy Specialist, Wisconsin Coalition Against Sexual Assault, Inc.
608-257-1516 mikem@wcasa.org

Fr. John Celichowski
Office of Pastoral Care and Conciliation
Province of St. Joseph of the Capuchin Order
(414) 232-9705

RE: Creation of Wisconsin Anti-Human Trafficking Statute

This memo from the Wisconsin Coalition Against Sexual Assault, Inc. (WCASA) and the Citizens Anti-Trafficking Legislative Workgroup establishes the need for comprehensive anti-human trafficking legislation in Wisconsin and outlines the provisions that should be included in such a proposal.

Human trafficking is a form of modern-day slavery in which victims are sexually exploited or conscripted as slave labor through force, fraud or coercion. There has been federal anti-trafficking legislation since 2000, when Congress passed and the President signed the Trafficking Victims Protection Act (TVPA). However, the federal resources that are required to investigate and successfully prosecute trafficking crimes and to assist victims are limited. In addition, existing federal laws are not comprehensive or strong enough to address the full breadth and scope of trafficking. As a result, many human trafficking cases are not adequately investigated and prosecuted and many victims—including many vulnerable women and children—are left unprotected.

Wisconsin does not currently have any anti-human trafficking laws. Our organizations believe that a comprehensive and effective anti-trafficking statute in Wisconsin will enable

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local and state criminal justice systems to prosecute human traffickers and ensure that trafficking victims are protected.

Twenty-four states, including Illinois, Iowa, Minnesota, and Michigan, have already passed anti-trafficking legislation. WCASA and the Citizens Anti-Trafficking Legislative Workgroup suggest that any proposed anti-human trafficking legislation in Wisconsin contain the following provisions, which are found in international treaties and protocols, the TVPA, trafficking laws from other states, and model trafficking legislation created by nonprofit organizations that work with trafficking victims:

1. Wisconsin's statutes should criminalize and provide significant penalties for both sex and labor trafficking, including attempted trafficking. These criminal provisions should contain the following elements:
 - Broad, internationally accepted definitions of trafficking and other trafficking-related terms, such as "coercion" and "forced labor." In addition, the definition of trafficking should also encompass forms of initially voluntary activity (e.g., participation in smuggling) that become involuntary once the victim has reached a particular destination.¹
 - Prohibitions against both inter- and intra-state trafficking.² The most effective way to achieve this is to not include any references to interstate transportation.
 - Penalties for people or businesses that knowingly or recklessly purchase services or profit from the labor of trafficked persons.³
 - An equitable statute of limitations that both takes account of the due process rights of the accused as well as the secretive, coercive and sometimes violent nature of trafficking crimes that discourage victims from coming forward.⁴
 - A tiered penalty system that correlates criminal penalties with the vulnerability of the victim (i.e.: child victims).
 - Other existing crimes that could be charged in addition to trafficking (i.e.: sexual assault, child prostitution, racketeering, false imprisonment, involuntary servitude, etc.) should be included as lesser included offenses so that all of the conduct stemming for a trafficking case can be addressed in a single criminal case. This will give prosecutors a broader array of tools with which to prosecute such offenses.
 - Increased penalties should be considered for aggravated behavior by the

doesn't like
"commercial
sex activities"
but in

Case 12

x

¹ For model definitions, see the Polaris Project's "Model Elements of Comprehensive State Legislation to Combat Trafficking in Persons," Section 1: Prosecution; Definitions, pages 1-2. This document also provides an outline for a comprehensive anti-trafficking criminal statute from pp. 1-7. There are numerous other "model" pieces of trafficking legislation. For simplicity we have tried to limit our citations to the Polaris Project's model bill. However, our organizations are open to integrating language and concepts from other model trafficking legislation or existing trafficking legislation from other states.

² See the Polaris Project's "TOP 15 PROBLEM AREAS IN STATE BILLS ON TRAFFICKING IN PERSONS," p. 10, §1.

³ See the Polaris Project's "Model Elements of Comprehensive State Legislation to Combat Trafficking in Persons," p. 3, §1(B); p. 3 §2(B); and p. 4 Criminal Liability of Business Entities.

⁴ See Id., Statute of Limitations, p. 6.

trafficker. Some possible grounds for penalty enhancements are: the use of violence; bodily injury to the victim; the time in servitude spent by the trafficked person; the number of victims involved; and the vulnerability of the trafficked person.⁵

2. Wisconsin should provide extensive protections, services, and remedies for trafficked persons. Trafficked persons are extremely vulnerable and require significant support in order to receive compensation for their labor, pay for the expenses associated with their victimization (e.g., psychological counseling), and facilitate cooperation with prosecutors. Wisconsin's anti-trafficking law should provide the following protections and remedies for trafficked persons:

- ok 1 Wisconsin's anti-trafficking statute should be listed as a compensable crime for Wisconsin's Crime Victim Compensation Program under Chapter 949.
- ok 2 Trafficked persons should be immune from prosecution for crimes they committed as a result of being a trafficking victim.⁶ → spec. withholding
- no 3 A restitution provision that prioritizes trafficked persons to receive restitution before any other people or entities.⁷ These restitution provisions will need to be integrated into Wisconsin's existing restitution statute under Wis. Stat. §973.20. pass point etc.
- ok 4 Create a civil cause of action that will allow victims to sue traffickers for damages.⁸
- no 5 Trafficking victims should not be housed in prisons, jails or other criminal detention facilities if they are arrested and/or detained for activities that arise from being trafficked.
- option 6 Consider making trafficked persons eligible for certain public benefits and services.⁹ Ann

3. WCASA and the Citizens Anti-Trafficking Legislative Workgroup strongly urge that Wisconsin adopt measures to collect data about trafficking and coordinate law enforcement responses to trafficking. Such measures will greatly enhance our state's understanding of the problems presented by trafficking and our state's response to this crime. In order to further these goals, Wisconsin should adopt the following measures:

- ok 1 Require data collection and dissemination of trafficking data by the State that is made available to the public.¹⁰
- no 2 Create a state task force for the prevention of trafficking. Among other duties, this task force would be responsible for coordinating collaboration between law enforcement agencies, nonprofit organizations, victim service providers, and other government agencies.¹¹

⁵ See *Id.* Sentencing Enhancements, p. 7.

⁶ See *Id.*, Victim Immunity from Prosecution, p. 4.

⁷ See *Id.*, Restitution, p. 5.

⁸ See *Id.*, Civil Liability, pp. 5-6

⁹ See *Id.*, Support for Victims, p. 13

¹⁰ See *Id.*, Data Collection and Dissemination, p. 9

¹¹ See *Id.* for further details, State Task Force for Prevention of Trafficking, pp.

WCASA and the Citizens Anti-Trafficking Legislative Workgroup look forward to working with you on this proposal. While we realize that fiscal, political or other constraints may prevent all of the above recommendations from being incorporated in Wisconsin anti-trafficking legislation, we hope that they will serve as a set of high standards that will produce the most comprehensive and effective body of laws possible to combat this gross violation of human rights and dignity, both in an initial bill and in subsequent amendments.

Please feel free to contact us regarding this issue if you have further questions, comments, or concerns. Thank you for your consideration and for the opportunity to be part of this important effort.

2005 ASSEMBLY BILL 463

June 7, 2005 – Introduced by Representatives KESSLER, GRIGSBY, SINICKI, KRAWCZYK, ALBERS, OTT, LEHMAN, SHERIDAN, MOLEPSKE, BERCEAU, PETROWSKI, FIELDS, POCAN and HAHN, cosponsored by Senators PLALE, GROTHMAN, WIRCH, A. LASEE and ROESSLER. Referred to Committee on Criminal Justice and Homeland Security.

1 AN ACT *to renumber* 940.30; *to amend* 940.30 (title); and *to create* 940.30 (2)
2 of the statutes; **relating to:** forced labor and human trafficking and providing
3 a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from intentionally confining or restraining another person without the other person's consent if the person knows that he or she has no lawful authority for confining or restraining the other person. Whoever violates this prohibition is guilty of a felony and may be fined up to \$10,000 or sentenced to a term of imprisonment of up to six years (which, if the sentence is for more than one year, includes a term of extended supervision) or both.

This bill prohibits a person from transporting, soliciting, recruiting, harboring, providing, or obtaining another person for profit (human trafficking), from using people for forced labor or services, or from knowingly benefiting from human trafficking or forced labor or services. A person who violates one of these prohibitions is guilty of a felony and may be fined up to \$25,000 or sentenced to a term of imprisonment not to exceed ten years (which, if the sentence is for more than one year, includes a term of extended supervision) or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

ASSEMBLY BILL 463

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 940.30 (title) of the statutes is amended to read:

2 **940.30 (title) False imprisonment and human trafficking.**

3 SECTION 2. 940.30 of the statutes is renumbered 940.30 (1).

4 SECTION 3. 940.30 (2) of the statutes is created to read:

5 940.30 (2) (a) In this subsection:

6 1. "Forced labor or services" means labor or services obtained from a person by
7 causing or threatening to cause bodily harm to that person or another person, by
8 confining or threatening to confine that person or another person without the
9 person's consent and with the knowledge that he or she has no lawful authority to
10 do so, by withholding from another person that person's government records,
11 identification, or personal property, or by threatening deportation to that person or
12 another person.

13 2. "Human trafficking" means transporting, soliciting, recruiting, harboring,
14 providing, or obtaining another person for profit.

15 (b) Whoever knowingly engages in human trafficking or uses people for forced
16 labor or services is guilty of a Class G felony.

17 (c) Whoever benefits from a violation specified under par. (b) is guilty of a Class
18 G felony if the person knows or should know that the benefits come from human
19 trafficking or forced labor or services.

20 SECTION 4. **Initial applicability.**

MODEL STATE ANTI-TRAFFICKING CRIMINAL STATUTE

AN ACT relating to criminal consequences of conduct
that involves certain trafficking of persons and involuntary servitude.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____:

(A) TITLE _____, PENAL CODE, is amended by adding Article XXX to read as follows:

ARTICLE XXX: TRAFFICKING OF PERSONS AND INVOLUNTARY SERVITUDE

SEC. XXX.01. DEFINITIONS. In this Article:

- gi*
- (1) "Blackmail" is to be given its ordinary meaning as defined by [state blackmail statute, if any] and includes but is not limited to a threat to expose any secret tending to subject any person to hatred, contempt, or ridicule.
 - (2) "Commercial sexual activity" means any sex act on account of which anything of value is given, promised to, or received by any person.
 - (3) "Financial harm" includes credit extortion as defined by [state extortion statute, if any], criminal violation of the usury laws as defined by [state statutes defining usury], or employment contracts that violate the Statute of Frauds as defined by [state statute of frauds].
 - (4) "Forced labor or services" means labor, as defined in paragraph (5), infra, or services, as defined in paragraph (8), infra, that are performed or provided by another person and are obtained or maintained through an actor's:
 - (A) causing or threatening to cause serious harm to any person;
 - (B) physically restraining or threatening to physically restrain another person;
 - (C) abusing or threatening to abuse the law or legal process;
 - (D) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;
 - (E) blackmail; or
 - (F) causing or threatening to cause financial harm to [using financial control over]

any person.

- (5) "Labor" means work of economic or financial value.
- (6) "Maintain" means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type of service.
- (7) "Obtain" means, in relation to labor or services, to secure performance thereof.
- (8) "Services" means an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity and sexually-explicit performances are forms of "services" under this Section. Nothing in this provision should be construed to legitimize or legalize prostitution.
- (9) "Sexually-explicit performance" means a live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.
- (10) "Trafficking victim" means a person subjected to the practices set forth in Sections XXX.02(1) (involuntary servitude) or XXX.02(2) (sexual servitude of a minor), or transported in violation of Section XXX.02(3) (trafficking of persons for forced labor or services).

SEC. XXX.02. CRIMINAL PROVISIONS.

- (1) INVOLUNTARY SERVITUDE. Whoever knowingly subjects, or attempts to subject, another person to forced labor or services shall be punished by imprisonment as follows, subject to Section (4), infra:
 - (A) by causing or threatening to cause physical harm to any person, not more than 20 years;
 - (B) by physically restraining or threatening to physically restrain another person, not more than 15 years;
 - (C) by abusing or threatening to abuse the law or legal process, not more than 10 years;
 - (D) by knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person, not more than 5 years,

suffered bodily injury, the sentence may be enhanced as follows:
(1) Bodily injury, an additional ____ years of imprisonment; (2) Serious Bodily Injury, an additional ____ years of imprisonment; (3) Permanent or Life-Threatening Bodily Injury, an additional ____ years of imprisonment; or (4) If death results, defendant shall be sentenced in accordance with Homicide statute for relevant level of criminal intent).

(2) Time in Servitude. In determining sentences within statutory maximums, the sentencing court should take into account the time in which the victim was held in servitude, with increased penalties for cases in which the victim was held for between 180 days and one year, and increased penalties for cases in which the victim was held for more than one year.

(3) Number of Victims. In determining sentences within statutory maximums, the sentencing court should take into account the number of victims, and may provide for substantially-increased sentences in cases involving more than 10 victims.

(5) **RESTITUTION.** Restitution is mandatory under this Article. In addition to any other amount of loss identified, the court shall order restitution including 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 as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) and [corresponding state statutes if any].

(B) **TRAFFICKING VICTIM PROTECTION**

1) **ASSESSMENT OF VICTIM PROTECTION NEEDS**

(A) The Attorney General, in consultation with the [Department of Health and Social Services] shall, no later than one year from the effective date of this statute, issue a report outlining how existing victim/witness laws and regulations respond to the needs of trafficking victims, as defined in XXX.01(8) of the Criminal Code, and suggesting areas of improvement and modification.

(B) The [Department of Health and Social Services], in consultation with the Attorney General, shall, no later than one year from the effective date of this statute, issue a report outlining how existing social service programs respond or fail to respond to the needs of trafficking victims, as defined in XXX.01(8) of the Criminal Code, and the interplay of such existing programs with federally-funded victim service programs, and suggesting areas of improvement and modification.

Wisconsin Anti-Trafficking Legislative Work Group Meeting
February 2, 2007

Present: Sen. Glenn Grothman, Rep. Sue Jeskewitz, Rep. Fred Kessler, Pam Matthews, Sr. Patrice Colletti, Monica Schulz, Sowa Unora (interpreter), Mike Murray, Barb Messerknecht, Nancy Irazzary, Fr. John Celichowski.

Rep. Kessler gave a brief history of AB 463, the anti-trafficking legislation that was introduced in the last session of the legislature. The legislation received a number of Assembly and Senate co-sponsors but did not progress.

Mike Murray, Policy Specialist at the Wisconsin Coalition Against Sexual Assault, circulated and led a discussion of the memo he crafted with Fr. John Celichowski of our Work Group regarding the creation of a Wisconsin anti-human trafficking statute. The memo was not a direct response to AB 463 but rather a list of elements that the Work Group thought would be part of an ideal anti-trafficking law. Everyone agreed that trafficking is probably a widespread problem that takes many forms, including labor and sexual exploitation.

- **General Questions**—There is not a strong body of data on the trafficking problem in Wisconsin, but nationwide sex trafficking and farm and factory labor trafficking are the most dominant forms. Victims come from a variety of ages and racial/ethnic backgrounds.
- **Criminalizing Trafficking**—This section was relatively straightforward.
 - Change the *standard of proof* from “knowingly or recklessly” to solely “knowingly.”
 - *Penalties*—Class D felony for trafficking.
 - *Statute of limitations*—The standard statute of limitations for felonies is six years, though it could be tolled in some exceptional circumstances. Overall, however, six years appeared reasonable.
 - *Tiered penalty system*—It would be easier to have a single penalty system. It was noted that judges have some discretion in sentencing, and many trafficking offenses would be charged along with other crimes. This brings the possibility of consecutive sentences. It would be helpful to have a prosecutor look at our proposals to find what will work best in the “real world” of investigations and prosecutions.
- **Protections and Services for Victims**—We noted that there are some protections on the federal level for trafficking victims who are at risk of deportation. We could amend the bill to require that human services providers give victims information that would enable them to avoid deportation (e.g., through a T or U visa). It was noted that a lot of the protective and service-related provisions have budget implications, and the more costly they are, the less likely it is they will be passed.

- **Data Collection and Anti-Trafficking Task Force**—Mike said that it would be very helpful develop a stronger set of data on trafficking.

Sen. Grothman, Rep. Kessler, Pam and Mike will meet in Madison on February 6 to work on incorporating elements in the memo into a new anti-trafficking bill that can be introduced in the current session of the Legislature. Following this meeting, a new bill will be drafted and circulated prior to the next meeting of the Work Group. This will give everyone the opportunity to review the proposed bill and suggest amendments.

There have been some cases of sex trafficking in Wisconsin. Nancy said that she could get information about these cases and the initial investigations by federal authorities. Mike said that he could provide some additional information. These could be very effective in providing testimony at hearings on the bill, etc.

Next Meeting—Following the draft of the bill, we will schedule another meeting.

Respectfully submitted,

John Celichowski

*Date
Next week*

*Grothman
Kessler*

Sappenfield, Anne

From: Mike Murray - WCASA [mikem@wcasa.org]
Sent: Tuesday, February 20, 2007 4:46 PM
To: Sappenfield, Anne
Subject: Human Trafficking

*copy
Grothman*

*more rules
comment
progn*

Hi Anne,

Just to follow up on our previous conversation, below are a few things regarding the human trafficking bill draft. If you have any questions regarding these things, please let me know.

- Regarding restitution, I checked Wisconsin's restitution section and I think it would be good to model a section for trafficking restitution on the existing sexual assault restitution statute. The best way to do that I think would be to include some of the factors contained in the Polaris Project on page 5 that aren't a part of Wisconsin's restitution statute. These factors should include (this is under section (c) for the Polaris restitution piece):
 - 3) costs of necessary transportation, temporary housing, and child care;
 - 5) the greater of (i) the gross income or value to the defendant of commercial sex acts or sexually-explicit performances of the victim, or labor or services, or (ii) the value of the trafficking victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) and [insert State name] labor laws. (this may have to be reworded depending on whether we use the term "commercial sex acts")
 - 8) Expenses incurred by an adult victim in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

Then see section (d), and include: "The return of the victim to her or his home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving restitution"

- There needs to be a strict liability section for cases involving sex trafficking of minors. The section should not include any force or coercion element. This is the "sexual servitude of a minor" section on p. 3 of Polaris. However, since Rep. Kessler doesn't want to define the term commercial sex act, I'll have to discuss how to work this out with him.
- Anne, you had said that you were aware of how to best make victims available for public benefits. I checked the DWD and DHFS websites and they explicitly state that you must be here legally in order to receive many of the benefits that they offer, unless you are a trafficking victim. So, there is good cause to believe that we should specifically make trafficking victims available for these benefits. The Polaris model has a list of potential benefits to make victims eligible for on p. 13 under "Support for Victims" under section (a). Please let me know if this is enough of a guide for you or if you need more specifics. Other states have done this differently and I can share their models w/you if that would be of help. I'll also be sure to run this by Sen. Grothman. If you have other ideas best approach this, go for it.

*maybe
just
to
minor*

9/20/07

This should cover what I needed to go over with you for the draft. Please let me know if you have any questions about this or if there is a problem w/any of these recommendations.

Thanks for all your help!

Mike

*Class D
no reckless
no more tiered penalties*

Mike Murray

2/21/2007



Wisconsin Coalition Against Sexual Assault, Inc.

600 Williamson St., Suite N2 • Madison, Wisconsin • 53703
Voice/TTY (608) 257-1516 • Fax (608) 257-2150 • www.wcasa.org



MEMORANDUM

TO: Representative Frederick Kessler
Representative Suzanne Jeskewitz

CC: Sharon Little
Pam Mathews
Sr. Patrice Colletti
Patti Seger
Anne Sappenfield

FROM: Mike Murray, Policy Specialist, Wisconsin Coalition Against Sexual Assault, Inc.
608-257-1516 mikem@wcasa.org

Fr. John Celichowski
Office of Pastoral Care and Conciliation
Province of St. Joseph of the Capuchin Order
(414) 232-9705

RE: Creation of Wisconsin Anti-Human Trafficking Statute

This memo from the Wisconsin Coalition Against Sexual Assault, Inc. (WCASA) and the Citizens Anti-Trafficking Legislative Workgroup establishes the need for comprehensive anti-human trafficking legislation in Wisconsin and outlines the provisions that should be included in such a proposal.

Human trafficking is a form of modern-day slavery in which victims are sexually exploited or conscripted as slave labor through force, fraud or coercion. There has been federal anti-trafficking legislation since 2000, when Congress passed and the President signed the Trafficking Victims Protection Act (TVPA). However, the federal resources that are required to investigate and successfully prosecute trafficking crimes and to assist victims are limited. In addition, existing federal laws are not comprehensive or strong enough to address the full breadth and scope of trafficking. As a result, many human trafficking cases are not adequately investigated and prosecuted and many victims—including many vulnerable women and children—are left unprotected.

Wisconsin does not currently have any anti-human trafficking laws. Our organizations believe that a comprehensive and effective anti-trafficking statute in Wisconsin will enable

local and state criminal justice systems to prosecute human traffickers and ensure that trafficking victims are protected.

Twenty-four states, including Illinois, Iowa, Minnesota, and Michigan, have already passed anti-trafficking legislation. WCASA and the Citizens Anti-Trafficking Legislative Workgroup suggest that any proposed anti-human trafficking legislation in Wisconsin contain the following provisions, which are found in international treaties and protocols, the TVPA, trafficking laws from other states, and model trafficking legislation created by nonprofit organizations that work with trafficking victims:

- O.K?
- Sue Kessler Graham
1. Wisconsin's statutes should criminalize and provide significant penalties for both Class D felony sex and labor trafficking, including attempted trafficking. These criminal provisions should contain the following elements:
- Broad, internationally accepted definitions of trafficking and other trafficking-related terms, such as "coercion" and "forced labor." In addition, the definition of trafficking should also encompass forms of initially voluntary activity (e.g., participation in smuggling) that become involuntary once the victim has reached a particular destination.¹
 - Prohibitions against both inter- and intra-state trafficking.² The most effective way to achieve this is to not include any references to interstate transportation.
 - Penalties for people or businesses that knowingly or recklessly purchase services or profit from the labor of trafficked persons.³ ~~Kessler~~
 - An equitable statute of limitations that both takes account of the due process rights of the accused as well as the secretive, coercive and sometimes violent nature of trafficking crimes that discourage victims from coming forward.⁴
 - A tiered penalty system that correlates criminal penalties with the vulnerability of the ~~victim~~ (i.e.: child victims).
 - Other existing crimes that could be charged in addition to trafficking (i.e.: sexual assault, child prostitution, racketeering, false imprisonment, involuntary servitude, etc.) should be included as lesser included offenses so that all of the conduct stemming for a trafficking case can be addressed in a single criminal case. This will give prosecutors a broader array of tools with which to prosecute such offenses.
 - Increased penalties should be considered for aggravated behavior by the
- o →
- No No No

¹ For model definitions, see the Polaris Project's "Model Elements of Comprehensive State Legislation to Combat Trafficking in Persons," Section 1: Prosecution; Definitions, pages 1-2. This document also provides an outline for a comprehensive anti-trafficking criminal statute from pp. 1-7. There are numerous other "model" pieces of trafficking legislation. For simplicity we have tried to limit our citations to the Polaris Project's model bill. However, our organizations are open to integrating language and concepts from other model trafficking legislation or existing trafficking legislation from other states.

² See the Polaris Project's "TOP 15 PROBLEM AREAS IN STATE BILLS ON TRAFFICKING IN PERSONS," p. 10, §1.

³ See the Polaris Project's "Model Elements of Comprehensive State Legislation to Combat Trafficking in Persons," p. 3, §1(B); p. 3 §2(B); and p. 4 Criminal Liability of Business Entities.

⁴ See Id., Statute of Limitations, p. 6.

trafficker. Some possible grounds for penalty enhancements are: the use of violence; bodily injury to the victim; the time in servitude spent by the trafficked person; the number of victims involved; and the vulnerability of the trafficked person.⁵

2. Wisconsin should provide extensive protections, services, and remedies for trafficked persons. Trafficked persons are extremely vulnerable and require significant support in order to receive compensation for their labor, pay for the expenses associated with their victimization (e.g., psychological counseling), and facilitate cooperation with prosecutors. Wisconsin's anti-trafficking law should provide the following protections and remedies for trafficked persons:
 - 1 Wisconsin's anti-trafficking statute should be listed as a compensable crime for Wisconsin's Crime Victim Compensation Program under Chapter 949. ✓
 - 2 Trafficked persons should be immune from prosecution for crimes they committed as a result of being a trafficking victim. ✓
 - 3 ~~A restitution provision that prioritizes trafficked persons to receive restitution before any other people or entities.~~⁷ These restitution provisions will need to be integrated into Wisconsin's existing restitution statute under Wis. Stat. §973.20.
 - 4 Create a civil cause of action that will allow victims to sue traffickers for damages.⁸]
 - 5 ~~Trafficking victims should not be housed in prisons, jails or other criminal detention facilities if they are arrested and/or detained for activities that arise from being trafficked.~~
 - 6 Consider making trafficked persons eligible for certain public benefits and services.⁹
3. WCASA and the Citizens Anti-Trafficking Legislative Workgroup strongly urge that Wisconsin adopt measures to collect data about trafficking and coordinate law enforcement responses to trafficking. Such measures will greatly enhance our state's understanding of the problems presented by trafficking and our state's response to this crime. In order to further these goals, Wisconsin should adopt the following measures:
 - 1 Require data collection and dissemination of trafficking data by the State that is made available to the public.¹⁰
 - 2 ~~Create a state task force for the prevention of trafficking. Among other duties, this task force would be responsible for coordinating collaboration between law enforcement agencies, nonprofit organizations, victim service providers, and other government agencies.~~¹¹

⁵ See Id. Sentencing Enhancements, p. 7.

⁶ See Id., Victim Immunity from Prosecution, p. 4.

⁷ See Id., Restitution, p. 5.

⁸ See Id., Civil Liability, pp. 5-6

⁹ See Id., Support for Victims, p. 13

¹⁰ See Id., Data Collection and Dissemination, p. 9

¹¹ See Id. for further details, State Task Force for Prevention of Trafficking, pp.

WCASA and the Citizens Anti-Trafficking Legislative Workgroup look forward to working with you on this proposal. While we realize that fiscal, political or other constraints may prevent all of the above recommendations from being incorporated in Wisconsin anti-trafficking legislation, we hope that they will serve as a set of high standards that will produce the most comprehensive and effective body of laws possible to combat this gross violation of human rights and dignity, both in an initial bill and in subsequent amendments.

Please feel free to contact us regarding this issue if you have further questions, comments, or concerns. Thank you for your consideration and for the opportunity to be part of this important effort.

MODEL ELEMENTS OF COMPREHENSIVE STATE LEGISLATION TO COMBAT TRAFFICKING IN PERSONS¹

*Comprehensive Model Law Compiled by Polaris Project
from elements of current and proposed State and Federal law*

A Bill for an Act Related to Human Trafficking

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [State's name]:

Section 1. PROSECUTION

DEFINITIONS

- (1) ACTOR. —The term “actor” means a person who violates any of the provisions of this article.
- (2) EXTORTION. —The term “extortion” is to be given its ordinary meaning as defined by [refer to state extortion or blackmail statute].
- (3) COMMERCIAL SEX ACT.—The term “commercial sex act” means any sex act on account of which anything of value is given, promised to, or received, directly or indirectly, by any person.
- (4) 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 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.
- (5) FINANCIAL HARM.—The term “financial harm” includes credit extortion as defined by [state extortionate credit statute, if any] criminal violation of the usury laws as defined by [State statute defining usury], or employment contracts that violate relevant Statutes of Frauds as defined by [State Statute of Frauds].
- (6) LABOR.—The term “labor” means work of economic or financial value.

¹ The Model Elements of Comprehensive State Legislation to Combat Trafficking in Persons (Comprehensive Model Law) is divided into three sections: 1) Prosecution, 2) Prevention of Trafficking, and 3) Victim Protection. Language in this model law draws from numerous sources, including: A) the Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386; B) Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. No. 108-21; C) the Department of State's Model Anti-trafficking law, released March 12, 2003; D) the Department of Justice's Model State Anti-trafficking Criminal Statute, released July 16, 2004; and E) current proposed and previously enacted State Statutes related to combating human trafficking in various U.S. States.

- (7) PERSON—The term “person” includes an individual, corporation, partnership, association, a government body, a municipal corporation, or any other legal entity.
- (8) MAINTAIN—The term “maintain” means, in relation to commercial sex acts or sexually-explicit performances, or labor or services, to secure continued performance thereof, regardless of any initial agreement on the part of the trafficked person to perform commercial sex acts or sexually-explicit performance, or labor or services.
- (9) MINOR —The term “minor” refers to any person under 18 years of age.
- (10) OBTAIN —The term “obtain” means, in relation to commercial sex acts or sexually-explicit performance, or labor or services, to secure performance thereof.
- (11) SERVICES.—The term “services” means an ongoing relationship between a person and the actor in which the person performs activities committed at the behest of, under the supervision or, or for the benefit of another.
- (12) SEX ACT —The term “sex act” means any touching of the sexual or other intimate parts of another person for the purpose of gratifying sexual desire of any person. It includes touching of the actor as well as touching by the actor, whether directly or through clothing.
- (13) SEXUALLY-EXPLICIT PERFORMANCE.—The term “sexually-explicit performance” means an act or show, intended to arouse, satisfy the sexual desires of, or appeal to, the prurient interests of patrons or viewers, whether live or public, private, photographed, recorded, or videotaped.
- (14) VICTIM OF TRAFFICKING IN PERSONS.—The term “victim of trafficking in persons” means any person, whether a U.S. citizen or foreign national, who has been subjected to the crime of trafficking in persons or sexual servitude of a minor.

CRIMINAL PROVISIONS

- (1) TRAFFICKING IN PERSONS. Any person who knowingly
- (A) recruits, entices, harbors, transports, provides, or obtains, or so attempts, another person for the purposes of:
- (i) Commercial sex acts or sexually explicit performance, or
 - (ii) Labor or services

through use of any of the following means:

- (a) causing or threatening to cause serious harm to any person,
- (b) physically restraining or threatening to physically restrain another person,
- (c) abusing or threatening to abuse the law or legal process,
- (d) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person,

- (e) extortion,
- (f) deception or fraud,
- (g) debt bondage,
- (h) causing or threatening to cause financial harm to any person, or,
- (i) facilitating or controlling a victim's access to an addictive controlled substance;
- (j) using any scheme, plan, or pattern intended to cause any persons to believe that, if the persons did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(B) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described subsection (A),

commits a [Class B felony OR felony in the 2nd degree]

(2) SEXUAL SERVITUDE OF A MINOR. Any person who knowingly

(A) recruits, entices, transports, provides, obtains, or harbors, or so attempts, any person under 18 years of age for the purposes of commercial sex acts or sexually explicit performance through any means; or

(B) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described subsection (A);

commits a [Class A felony OR felony in the 1st degree]

(3) INVOLUNTARY SERVITUDE. Any person who knowingly subjects, or attempts to subject, another person for the purposes of:

- (iii) Commercial sex acts or sexually explicit performance, or
- (iv) Labor or services

through use of any of the following means:

- (k) causing or threatening to cause serious harm to any person,
 - (l) physically restraining or threatening to physically restrain another person,
 - (m) abusing or threatening to abuse the law or legal process,
 - (n) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person,
 - (o) extortion,
 - (p) deception or fraud,
 - (q) debt bondage,
 - (r) causing or threatening to cause financial harm to any person,
 - (s) facilitating or controlling a victim's access to an addictive controlled substance;
- or,

- (t) using any scheme, plan, or pattern intended to cause any persons to believe that, if the persons did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

commits a [Class A felony OR felony in the 1st degree]

(4) ACCOMPLICE LIABILITY. Any person who knowingly aids, abets, or conspires with one or more persons to violate Sections 1, 2, or 3 of the Criminal Provisions of this Act shall be punishable in the same manner as for a completed violation of that section.

GUILTY PLEAS

Any plea of guilty entered under any provision of this chapter by an offender shall automatically entitle the victim of trafficking to all benefits, rights, and compensation under this Title, notwithstanding existing laws.

VICTIM IMMUNITY FROM PROSECUTION

In any prosecution of a person who is a victim of trafficking in persons, it shall be an affirmative defense that he or she was under duress [if defined under state law] and/or coerced [if defined under state law] into committing the offenses for which he or she is being subject to prosecution.

A victim of trafficking in persons is not criminally liable for any commercial sex act committed as a direct result of, or incident or related to, being trafficked.

NON-DEFENSES TO TRAFFICKING

“Evidence of the following facts or conditions shall not constitute a defense in a prosecution for violations of this Title, nor shall such evidence preclude a finding of Criminal Provisions 1, 2, 3 or 4:

- (a) a trafficking victim’s sexual history or history of commercial sexual activity;
- (b) a trafficking victim’s connection by blood or marriage to a defendant in the case or to anyone involved in their trafficking;
- (c) consent of or permission by a trafficking victim or anyone else on the trafficking victim’s behalf to commercial sex acts or sexually explicit performance;
- (d) Age of consent to sex, legal age of marriage, or other discretionary age;
- (e) Mistake as to the victim’s age shall be no defense to a violation under this Title, even if the mistake is reasonable.²

CRIMINAL LIABILITY OF BUSINESS ENTITIES

(a) Any business entity that knowingly aids or participates in the trafficking of persons shall be criminally liable for the offense and shall be subject to a fine or loss of business license in the state, or both.

(b) If a corporation or other business enterprise is convicted of violating any section of this chapter the court may when appropriate:

- (1) order its dissolution or reorganization;
- (2) order the suspension or revocation of any license, permit, or prior approval granted to it by a state agency; or

² This language tracks various state statutes regarding prosecution of sexual assault offenses. See D.C. Code § 22-3011; Fla. Stat. § 794.021; Minn. Stat. § 609.325; N.J. Laws § 2C-34:1; Wash. Rev. Code § 9A.44.030.

- (3) order the surrender of its charter if it is organized under [insert State name] law or the revocation of its certificate to conduct business in [insert State name] if it is not organized under [insert State name] law.

RESTITUTION.

- (a) A person convicted of violations of this Title shall be ordered to pay mandatory restitution to the victim as provided in paragraph (c).

(b) For restitution purposes alone, "victim" shall be defined as [enter state statute defining victim under restitution provisions]. OR

(b) For restitution purposes alone, "victim" shall be defined as a victim of trafficking. If the victim of trafficking dies as a result of being trafficked, a surviving spouse of the victim of trafficking is eligible for restitution. If no surviving spouse exists restitution shall be paid to the victim's issue or their decedents per stirpes. If no surviving spouse, issue or decedents exist, restitution shall be paid to the victim's estate. Any person named in this provision may not receive any funds from restitution if he or she benefited or engaged in conduct described in provisions 1, 2, 3, or 4.

(c) Restitution under this section shall include [state restitution statute] and [any of the following if not already included in the State statute]:

- (1) costs of medical and psychological treatment;
- (2) costs of physical and occupational therapy and rehabilitation;
- (3) costs of necessary transportation, temporary housing, and child care;
- (4) attorney's fees and other costs such as victim advocate fees;
- (5) the greater of (i) the gross income or value to the defendant of commercial sex acts or sexually-explicit performances of the victim, or labor or services, or (ii) the value of the trafficking victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) and [insert State name] labor laws.
- (6) return of property, cost of damage to property, or full value of property if destroyed;
- (7) compensation for emotional distress, pain, and suffering; and
- (8) Expenses incurred by an adult victim in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.; and
- (9) any other losses suffered by the victim.

(d) Restitution shall be paid to the victim promptly upon the conviction of the defendant, with the proceeds from property forfeited under this Title applied first to payment of restitution. The return of the victim to her or his home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving restitution.

(e) Nonpayment or delay in payment of restitution shall be governed by [state restitution statute(s) governing non-payment or delay in restitution payments].

CIVIL LIABILITY³

³ See Trafficking Victim's Protection Reauthorization Act of 2003 at Sec. 4, Pub. L. No. 108-193, (Dec. 19, 2003).

(a) An individual who is a victim of trafficking may bring a civil action in the appropriate state court. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Treble damages shall be awarded on proof of actual damages where defendant's acts were willful and malicious.

(b) Any statute of limitation imposed for the filing of a civil suit will not start to toll until any minor plaintiff has reached the age of majority. An appropriate Statute of Limitations for filing a civil suit is 10 years.

(c) If a person entitled to sue is under a disability at the time of the cause of action accrues, so that it is impossible or impracticable for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes insanity, imprisonment, or other incapacity or incompetence.

(d) The running of the statute of limitations may be suspended where a person entitled to sue could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

(e) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action, or due to threats made by the defendant causing duress upon the plaintiff.

FORFEITURE

(a) All offenses under this chapter shall qualify as offenses for forfeiture and thereby subject to the provisions under [state forfeiture statute].

(b) Overseas assets of persons convicted of trafficking in persons shall also be subject to forfeiture to the extent they can be retrieved by government.

(c) Any assets seized shall first be used to pay restitution to trafficking victims, as well as any punitive damages awarded to victims in the civil action.

STATUTE OF LIMITATIONS

(a) Any statute of limitations that would otherwise preclude prosecution for an offense involving the trafficking of a child under the age of 18 years, or the physical or sexual abuse of a child under the age of 18 years, shall be tolled until such time as the victim has reached the age of 18 years.

(b) An action for trafficking in persons where the victim is not a minor shall be brought within [see applicable state statute of limitations for sex offenses or kidnapping]

(c) An action for unlawful conduct with respect to documents shall be brought within six years.

(d) The running of the statute of limitations may be suspended where a person entitled to bring a claim of trafficking in persons, not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

APPLICABILITY OF LABOR STANDARDS

((a) Standards for working conditions specified in [insert reference to appropriate law] shall apply equally to persons with or without the legal right to work in the United States.

(b) The state shall investigate complaints of unlawful working conditions without regard to the immigration status of complainants and without regard to the nature of the work or services involved.

SENTENCING ENHANCEMENTS

(a) Sentencing Considerations in cases involving Rape, Extreme Violence, or Death. If the violation of this Article involves kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant commits a [Class A felony or felony in the 1st degree].

(b) Additional Sentencing Considerations.

(1) Bodily Injury. If, pursuant to a violation of this Article, a victim suffered bodily injury, the sentence may be enhanced as follows: (i) Bodily injury, an additional _ years of imprisonment; (ii) Serious Bodily Injury, an additional _ years of imprisonment; (iii) Permanent or Life-Threatening Bodily Injury, an additional _ years of imprisonment; (iv) If death results, defendant shall be sentenced in accordance with Homicide statute relevant for level of criminal intent.

(2) Time in Servitude. In determining sentences within statutory maximums, the sentencing court should take into account the time in which the victim was held in servitude, with increased penalties for cases in which the victim was held for between 180 days and one year, and increased penalties for cases in which the victim was held for more than one year.

(3) Number of Victims. In determining sentences within statutory maximums, the sentencing court should take into account the number of victims, and may provide for substantially increased sentences in cases involving more than 10 victims.