AN OVERVIEW OF STATE LAW: ACT 105 AND ITS APPLICATION

PRESENTED BY:
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LEARNING OBJECTIVES

At the end of this presentation, participants will be more equipped to:

- Understand Pennsylvania human trafficking laws
- Understand the most successful approach to working human trafficking cases, from investigation through prosecution.
PENNSYLVANIA SEX TRAFFICKING LAW
TITLE 18 OF CRIMES CODE, CHAPTER 30
ACT 105 (2014), 18 PA. C.S.A. §§3001 ET. SEQ.

- Created a clear definition of sex trafficking
- Comprehensive focus on three primary goals:
  - *Prosecution* of human trafficking
  - *Prevention* of human trafficking
  - *Protection* for victims and survivors
- First jury trial & conviction in Lehigh County - February 2016
- First civil lawsuit filed in Philadelphia County – March 2017
PROSECUTION
DEFINITION: § 3001 – SEX TRAFFICKING

- “Sexual Servitude” Any sex act or performance involving a sex act for which anything of value is directly or indirectly given, promised to or received by any individual or which is performed or provided by any individual, and is induced or obtained from
  - (1) a minor
  - (2) Any other individual by any of the means set forth in section 3012(b)(relating to involuntary servitude).
• Recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes or solicits
• Knowingly financially benefits or receives anything of value

• Force, fraud, or coercion
• i.e. threats, physical abuse, kidnapping, extortion, use of drugs, duress, controlling property, withholding food, etc.

• Commercial sex act
• Involuntary servitude, debt bondage
(a) Offense defined.—A person commits a felony of the second degree if the person:

- (1) recruits, entices, solicits, harbors, transports, provides, obtains or maintains an individual if the person knows or recklessly disregards that the individual will be subject to involuntary servitude; or
- (2) knowingly benefits financially or receives anything of value from any act that facilitates any activity described in paragraph (1).

(b) A person commits a felony of the first degree if the person engages in any activity listed in subsection (a) that results in a minor’s being subjected to sexual servitude.
The law criminalizes a broad spectrum of conduct and indiscriminately applies to traffickers, buyers, and facilitators alike.
THE “ACT” ELEMENT: TRANSPORTS

- United States v. Brooks, 610 F.3d 1186 (9th Cir. 2010)
- Defendant was convicted of transporting minors to engage in commercial sex act when he drove the minors to the bus station, purchased the minors bus tickets, and rented a car to drive the minors to be prostituted.
An Uber driver in California picked up two women and a girl for a ride; during the ride, the driver suspected that the girl was being trafficked for sexual servitude. After the drop off, the driver called the police and reported the following signs of child sex trafficking:

- Destination was a hotel
- Young girl dressed in attire not age appropriate
- The older woman was controlling her
- The older woman verbally coached her on what to do at the hotel – pat down the buyer for weapons and get the “donation” first

Source: My San Antonio News
Flight attendant suspected child sex trafficking of two passengers on board, so she informed the pilot. When they landed the police were waiting in the terminal. Signs she noticed:

- Flight prior to Super Bowl where trafficking spikes
- Flight was to San Francisco where Super Bowl was taking place
- The victim was disheveled with greasy blond hair
- She was traveling with much older well-dressed man
- The man became defensive when the flight attendant tried to engage in a conversation

Source: New York Daily News
THE “ACT” ELEMENT: MORE THAN MOVEMENT

- **Harbors**
  - Civil and criminal liability
  - Co-occurring crimes like kidnapping and false imprisonment
  - Hotel industry involvement and exposure

- **Maintains**
  - Limiting access to transportation or communication with outside world
  - Providing access to controlled substances
  - Controlling access to food and other basic needs
THE “ACT” ELEMENT: OBTAINS

- In 2015, the JVTA amended the TVPA to add in the following acts: *adVERTISES*, *patronizes*, and *solicits*, making it unequivocally clear that the demand (or sex buyers) are also responsible for perpetuating sex trafficking.

- United States v. Jungers 702 F.3d 1066 (8th Cir. 2013)
  - “*Obtains*” is broad enough to apply to both pimps (suppliers) and purchasers of sex ("Johns" or the Demand)

- The demand should be investigated and prosecuted as traffickers when appropriate
  - High-frequency buyers
  - Child sex buyers
THE “ACT” ELEMENT: HARBORS FACT PATTERN

- A sex buyer responds to ad selling a child for sex on Backpage.com, arranging for a one hour “date” for oral sex
- The buyer drives from Iowa to South Dakota to a house where child is being kept
- The buyer asks ‘permission’ to take the child elsewhere for the date
- Buyer drives child victim to a nearby motel that can be rented by the hour
- After the “date” buyer decides he wants more time to rape and exploit the child
- Buyer books a flight to Las Vegas for himself and victim after promising more money to trafficker
- Buyer rents a hotel room for two nights and keeps child victim locked in the room for the weekend
- Buyer supplies child victim with food, additional clothing, and access to a shower and a place to sleep so long as he can have access to her whenever he chooses
- After the weekend buyer returns child victim to trafficker

- Has buyer engaged in trafficking?
(b) Means of subjecting an individual to involuntary servitude.—A person may subject an individual to involuntary servitude through any of the following means:

**FORCE:**

1. Causing or threatening to cause serious harm to any individual.
2. Physically restraining or threatening to physically restrain another individual.
3. Kidnapping or attempting to kidnap any individual.
THE “MEANS”: § 3012(B)

**FRAUD:**
(8) Fraud.

**COERCION:**
(4) Abusing or threatening to abuse the legal process.
(5) Taking or retaining the individual’s personal property or real property as a means of coercion.
(6) Engaging in unlawful conduct with respect to documents, as defined in section 3014 (relating to unlawful conduct regarding documents).
(7) Extortion.
(10) Duress, through the use of or threat to use unlawful force against the person or another.
(11) Debt coercion.
COERCION, continued:

(9) Criminal coercion, as defined in section 2906 (relating to criminal coercion)

A person is guilty of criminal coercion, if, with intent unlawfully to restrict freedom of action of another to the detriment of the other, he threatens to:

(1) commit any criminal offense;
(2) accuse anyone of a criminal offense;
(3) expose any secret tending to subject any person to hatred, contempt or ridicule; or
(4) take or withhold action as an official, or cause an official to take or withhold action.

(12) Facilitating or controlling the individual’s access to a controlled substance.

(13) Using any scheme, plan or pattern intended to cause the individual to believe that, if the individual does not perform the labor, services, acts or performances, that individual or another individual will suffer serious harm or physical restraint.
THE “MEANS” ELEMENT

- Force, Fraud & Coercion
- Not an element of the crime if the victim is a minor
- United States v. Bell, 761 F.3d 900 (8th Cir. 2014)
  - “Boyfriend behavior” constitutes fraud
  - The Court found the use of deception about marital status and his “pattern of convincing [the] women that he loved them and would take care of them at the exclusion of all others” and that “they would be financially secure, emotionally secure, and loved” rose to the level of deception – which constituted fraud.
(a) **Offense defined.**—A person commits a felony of the first degree if the person knowingly, through any of the means described in subsection (b), subjects an individual to labor servitude or sexual servitude, except where the conduct is permissible under Federal or State law other than this chapter.
PREVENTION OF HUMAN TRAFFICKING

- Organized efforts subject to funding and resources
- Public awareness campaigns
- Training for first responders and other professionals
- Specialized programs and services for victims
PROTECTIONS FOR VICTIMS OF TRAFFICKING

- Civil causes of action 18 Pa.C.S. § 3051
  - Who is liable?
  - Damages
  - Statute of limitations
- Protection of victims Mandates law enforcement identify, assist, and protect victims
  - Access to crime victims services
  - Vacatur 18 Pa.C.S. § 3019(d)
THANK YOU

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Commercial Sexual Exploitation