

Vermont State Report State Ratings 2014

The Polaris annual state ratings process tracks the presence or absence of 10 categories of state statutes that Polaris believes are critical to a comprehensive anti-trafficking legal framework. It is important to note that these 10 categories are not exhaustive of all the important legislation that helps combat human trafficking in a given state. Moreover, the ratings do not assess the effectiveness or implementation of these laws, nor the anti-trafficking efforts of task forces, law enforcement, prosecutors, judges, service providers, and advocates in the state. The purpose of the annual state ratings process is to document laws on the books, to motivate legislators and policy advocates, and to focus the attention of states on the statutes that still need to be enacted in order to achieve a strong anti-trafficking legal framework.

Rating: Tier One (green)

Total Points: 9

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 4(b) Human Trafficking Task Force; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 6 Posting of a Hotline; 7 Safe Harbor for Minors; 8 Victim Assistance; 9 Civil Remedy; and 10 Vacating Convictions.

Categories Still Needed: 3(a) Asset Forfeiture; 3(b) Investigative Tools; and 4(a) Training for Law Enforcement.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

§ 2651. Definitions

As used in this subchapter:

(1) “Blackmail” means the extortion of money, labor, commercial sexual activity, or anything of value from a person through use of a threat to expose a secret or publicize an asserted fact, whether true or false, that would tend to subject the person to hatred, contempt, ridicule, or prosecution.

(2) “Coercion” means:

(A) threat of serious harm, including physical or financial 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 bodily or financial harm to or physical restraint of any person;

(C) the abuse or threatened abuse of law or the legal process;

(D) withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other government identification document of another person;

(E) providing a drug, including alcohol, to another person with the intent to impair the person's judgment or maintain a state of chemical dependence;

(F) wrongfully taking, obtaining, or withholding any property of another person;

(G) blackmail;



- (H) asserting control over the finances of another person;
- (I) debt bondage; or
- (J) withholding or threatening to withhold food or medication.
- (3) “Commercial sex act” means any sex act or sexually explicit performance on account of which anything of value is promised to, given to, or received by any person.
- (4) “Debt bondage” means a condition or arrangement in which a person requires that a debtor or another person under the control of a debtor perform labor, services, sexual acts, sexual conduct, or a sexually explicit performance in order to retire, repay, or service a real or purported debt which the person has caused with the intent to defraud the debtor.
- (5) “Family member” means a spouse, child, sibling, parent, next of kin, domestic partner, or legal guardian of a victim.
- (6) “Human trafficking” means:
 - (A) to subject a person to a violation of section 2652 of this title; or
 - (B) “severe form of trafficking” as defined by 21 U.S.C. § 7105.
- (7) “Labor servitude” means labor or services performed or provided by a person which are induced or maintained through force, fraud, or coercion. “Labor servitude” shall not include labor or services performed by a family member of a person who is engaged in the business of farming as defined in 10 V.S.A. § 6001(22) unless force, fraud, or coercion is used.
- (8) “Serious bodily injury” shall have the same meaning as in subdivision 1021(2) of this title.
- (9) “Sexual act” shall have the same meaning as in subdivision 3251(1) of this title.
- (10) “Sexual conduct” shall have the same meaning as in subdivision 2821(2) of this title.
- (11) “Sexually explicit performance” means a public, live, photographed, recorded, or videotaped act or show which:
 - (A) Depicts a sexual act or sexual conduct;
 - (B) Is intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers; and
 - (C) Lacks literary, artistic, political, or scientific value.
- (12) “Venture” means any group of two or more individuals associated in fact, whether or not a legal entity.
- (13) “Victim of human trafficking” means a victim of a violation of section 2652 of this title.

§ 2652. Human trafficking

- (a) No person shall knowingly:
 - (1) recruit, entice, harbor, transport, provide, or obtain by any means a person under the age of 18 for the purpose of having the person engage in a commercial sex act;
 - (2) recruit, entice, harbor, transport, provide, or obtain a person through force, fraud, or coercion for the purpose of having the person engage in a commercial sex act;
 - (3) compel a person through force, fraud, or coercion to engage in a commercial sex act;
 - (4) benefit financially or by receiving anything of value from participation in a venture, knowing that force, fraud, or coercion was or will be used to compel any person to engage in a commercial sex act as part of the venture;
 - (5) subject a person to labor servitude;
 - (6) recruit, entice, harbor, transport, provide, or obtain a person for the purpose of subjecting the person to labor servitude; or
 - (7) benefit financially or by receiving anything of value from participation in a venture, knowing that a person will be subject to labor servitude as part of the venture.
- (b) A person who violates subsection (a) of this section shall be imprisoned for a term up to and including life or fined not more than \$500,000.00, or both.
- (c) (1)(A) A person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)-(4) of this title shall not be found in violation of or be the subject of a delinquency petition based on



chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title for any conduct committed as a victim of sex trafficking.

(B) Notwithstanding any other provision of law, a person under the age of 18 shall be immune from prosecution in the criminal division of the superior court for a violation of section 2632 of this title (prohibited acts; prostitution), but may be treated as a juvenile under chapter 52 of Title 33 or referred to the department for children and families for treatment under chapter 53 of Title 33.

(2) If a person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)-(4) of this title is prosecuted for any offense or is the subject of any delinquency petition other than a violation of chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title which arises out of the sex trafficking or benefits the sex trafficker, the person may raise as an affirmative defense that he or she committed the offense as a result of force, fraud, or coercion by a sex trafficker.

(d) In a prosecution for a violation of this section, the victim's alleged consent to the human trafficking is immaterial and shall not be admitted.

(e) If a person who is a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as the subject of a child in need of care or supervision proceeding.

§ 2653. Aggravated human trafficking

(a) A person commits the crime of aggravated human trafficking if the person commits human trafficking in violation of section 2652 of this title under any of the following circumstances:

- (1) The offense involves a victim of human trafficking who is a child under the age of 18;
- (2) The person has previously been convicted of a violation of section 2652 of this title;
- (3) The victim of human trafficking suffers serious bodily injury or death; or
- (4) The actor commits the crime of human trafficking under circumstances which constitute the crime of sexual assault as defined in section 3252 of this title, aggravated sexual assault as defined in section 3253 of this title, or aggravated sexual assault of a child as defined in section 3253a of this title.

(b) A person who violates this section shall be imprisoned not less than 20 years and a maximum term of life or fined not more than \$100,000.00, or both.

(c) The provisions of this section do not limit or restrict the prosecution for murder or manslaughter.

Category 2: Labor Trafficking Statute

Yes. See § 2652(a)(5)-(7).

Category 3(a): Asset Forfeiture

None.

Category 3(b): Investigative Tools

None.

Category 4(a): Training for Law Enforcement

None.



Category 4(b): Human Trafficking Task Force

H 153 (2012) Sec. 3. Services for Victims of Human Trafficking

(a) The Vermont center for crime victim services may convene a task force to assist social service providers, victim service providers, state agencies, law enforcement agencies, state's attorneys' offices, the office of the attorney general, and other agencies and nongovernmental organizations as necessary to develop a statewide protocol to provide services for victims of human trafficking in Vermont. The protocol may include a public awareness and education campaign.

(b) The Vermont center for crime victim services may enter into contracts with individuals and nongovernmental organizations in order to develop a statewide protocol and to coordinate services to victims of human trafficking, insofar as funds are available for that purpose. Such services may include:

- (1) Case management;
- (2) Emergency temporary housing;
- (3) Health care;
- (4) Mental health counseling;
- (5) Drug addiction screening and treatment;
- (6) Language interpretation and translation services;
- (7) English language instruction;
- (8) Job training and placement assistance;
- (9) Post-employment services for job retention; and
- (10) Services to assist the victim of human trafficking and any of his or her family members to establish a permanent residence in Vermont or the United States.

(c) Nothing in this section precludes the Vermont center for crime victim services or any local social services organization from providing victims of human trafficking in Vermont with any benefits or services for which they may otherwise be eligible.

Category 5: No Requirement of Force, Fraud, or Coercion for Sex Trafficking of Minors

Yes. See § 2652(a)(1).

Category 6: Posting of a Human Trafficking Hotline

§ 2661. RESOURCE GUIDE POSTING

(a) A notice offering help to victims of human trafficking shall be accessible on the official website of the Vermont department of labor and may be posted in a prominent and accessible location in workplaces.

(b) The notice should provide contact information for at least one local law enforcement agency and provide information regarding the National Human Trafficking Resource Center (NHTRC) hotline as follows:

"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 toll-free National Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services.

The toll-free hotline is:

- Available 24 hours a day, 7 days a week
- Operated by a nonprofit, nongovernmental organization
- Anonymous and confidential



Accessible in 170 languages

Able to provide help, referral to services, training, and general information.”

(c) The notice described in this section should be made available in English, Spanish, and, if requested by an employer, another language.

(d) The Vermont department of labor shall develop and implement an education plan to raise awareness among Vermont employers about the problem of human trafficking, about the hotline described in this section, and about other resources that may be available to employers, employees, and potential victims of human trafficking. On or before January 15, 2013, the department shall report to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare on the progress achieved in developing and implementing the notice requirement and education plan required by this section.

Category 7: Safe Harbor

§ 2652. Human trafficking

(c)

(1)

(A) A person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)-(4) of this title shall not be found in violation of or be the subject of a delinquency petition based on chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title for any conduct committed as a victim of sex trafficking.

(B) Notwithstanding any other provision of law, a person under the age of 18 shall be immune from prosecution in the criminal division of the superior court for a violation of section 2632 of this title (prohibited acts; prostitution), but may be treated as a juvenile under chapter 52 of Title 33 or referred to the department for children and families for treatment under chapter 53 of Title 33.

(2) If a person who is a victim of sex trafficking in violation of subdivisions 2652(a)(1)-(4) of this title is prosecuted for any offense or is the subject of any delinquency petition other than a violation of chapter 59 (lewdness and prostitution) or 63 (obscenity) of this title which arises out of the sex trafficking or benefits the sex trafficker, the person may raise as an affirmative defense that he or she committed the offense as a result of force, fraud, or coercion by a sex trafficker.

(d) In a prosecution for a violation of this section, the victim's alleged consent to the human trafficking is immaterial and shall not be admitted.

(e) If a person who is a victim of human trafficking is under 18 years of age at the time of the offense, the state may treat the person as the subject of a child in need of care or supervision proceeding.

Category 8: Victim Assistance

§ 2663. Classification of victims; immigration assistance

(a) Classification of victims of human trafficking. As soon as practicable after the initial encounter with a person who reasonably appears to a law enforcement agency, a state's attorneys' office, or the office of the attorney general to be a victim of human trafficking, such agency or office shall:

(1) notify the victim's compensation program at the center for crime victim services that such person may be eligible for services under this chapter; and



(2) make a preliminary assessment of whether such victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of Title 22 of the United States Code (Trafficking Victims Protection Act) or appears to be otherwise eligible for any federal, state, or local benefits and services. If it is determined that the victim appears to meet such criteria, the agency or office shall report the finding to the victim and shall refer the victim to services available, including legal service providers. If the possible victim is under the age of 18 or is a vulnerable adult, the agency or office shall also notify the family services division of the department for children and families or the office of adult protective services in the department of disabilities, aging, and independent living.

(b) Law enforcement assistance with respect to immigration. After the agency or office makes a preliminary assessment pursuant to subdivision (a)(2) of this section that a victim of human trafficking or a possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons, as defined in section 7105 of Title 22 of the United States Code and upon the request of such victim, the agency or office shall provide the victim of human trafficking with a completed and executed United States citizenship and immigration service (USCIS) form I-914 supplement B declaration of law enforcement officer for victim of human trafficking in persons or a USCIS form I-918, supplement B, U nonimmigrant status certification, or both. These endorsements shall be completed by the certifying officer in accordance with the forms' instructions and applicable rules and regulations. The victim of human trafficking may choose which form to have the certifying officer complete.

H 153 (2012) Sec. 3. SERVICES FOR VICTIMS OF HUMAN TRAFFICKING

(a) The Vermont center for crime victim services may convene a task force to assist social service providers, victim service providers, state agencies, law enforcement agencies, state's attorneys' offices, the office of the attorney general, and other agencies and nongovernmental organizations as necessary to develop a statewide protocol to provide services for victims of human trafficking in Vermont. The protocol may include a public awareness and education campaign.

(b) The Vermont center for crime victim services may enter into contracts with individuals and nongovernmental organizations in order to develop a statewide protocol and to coordinate services to victims of human trafficking, insofar as funds are available for that purpose. Such services may include:

- (1) Case management;
- (2) Emergency temporary housing;
- (3) Health care;
- (4) Mental health counseling;
- (5) Drug addiction screening and treatment;
- (6) Language interpretation and translation services;
- (7) English language instruction;
- (8) Job training and placement assistance;
- (9) Post-employment services for job retention; and
- (10) Services to assist the victim of human trafficking and any of his or her family members to establish a permanent residence in Vermont or the United States.

(c) Nothing in this section precludes the Vermont center for crime victim services or any local social services organization from providing victims of human trafficking in Vermont with any benefits or services for which they may otherwise be eligible.



Category 9: Civil Remedy

§ 2662. Private cause of action

(a) A victim of human trafficking may bring an action against the offender in the **civil** division of the superior court for damages, injunctive relief, punitive damages in the case of a willful violation, and reasonable costs and attorney's fees. Actual damages may include any loss for which restitution is available under section 2657 of this chapter.

(b) If the victim is deceased or otherwise unable to represent himself or herself, the victim may be represented by a legal guardian, family member, or other representative appointed by the court, provided that the legal guardian, family member, or other representative appointed by the court has not benefited in any way from the trafficking.

(c) In a civil action brought under this section, the victim's alleged consent to the human trafficking is immaterial and shall not be admitted.

Category 10: Vacating Convictions

§ 2658. Prostitution conviction; motion to vacate by victim of human trafficking

(a) As used in this section, "victim of human trafficking" means:

(1) a victim of a violation of section 2652 of this title; or

(2) "a victim of a severe form of trafficking" as defined by 22 U.S.C. § 7102(13) (federal Trafficking Victims Protection Act).

(b) A person convicted of prostitution in violation of section 2632 of this title may file a motion to vacate the conviction if it was obtained as a result of the person having been a victim of human trafficking. The motion shall be in writing, describe the supporting evidence with particularity, and include copies of any documents showing that the moving party is entitled to relief under this section.

(c) The court shall hold a hearing on the motion, provided that the court may dismiss a motion without a hearing if the court finds that the motion fails to assert a claim for which relief may be granted.

(d)

(1) The court shall grant the motion if it finds by a preponderance of the evidence that:

(A) the moving party was convicted of prostitution in violation of section 2632 of this title; and (B) the conviction was obtained as a result of the moving party's having been a victim of human trafficking.

(2) If the motion is granted, the court shall vacate the conviction, strike the adjudication of guilt, and expunge the record of the criminal proceedings. The court shall issue an order to expunge, or redact the moving party's name from, all records and files related to the moving party's arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation for the offense.

(e) Official documentation of a person's status as a victim of human trafficking provided by a federal, state, or local government agency shall create a presumption that the person's prostitution conviction was obtained as a result of having been a victim of human trafficking. Such documentation shall not be required to grant a motion under this section.

If you would like assistance in enacting laws to fill in the gaps, please contact the Polaris Policy Program at policy@polarisproject.org.