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H.743

Introduced by Representatives Partridge of Windham, Edwards of Brattleboro,
Fisher of Lincoln, Howard of Rutland City, Marek of Newfane,
Mrowicki of Putney, Nease of Johnson, Obuchowski of
Rockingham, Pellett of Chester, Ram of Burlington, Spengler of
Colchester, Till of Jericho and Zuckerman of Burlington

Referred to Committee on

Date:

Subject: Crimes; human trafficking

Statement of purpose: This bill proposes to establish a comprehensive system
of criminal penalties for human trafficking, of prevention programs, and of
services for human trafficking victims.

An act relating to human trafficking

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. chapter 60 is added to read:

CHAPTER 60. HUMAN TRAFFICKING

Subchapter 1. Criminal Acts

§ 2651. DEFINITIONS

As used in this subchapter:

1 (1) “Blackmail” means to obtain something through coercive means or
2 threats and includes a threat to expose any secret tending to subject any person
3 to hatred, contempt, or ridicule.

4 (2) “Commercial sex act” shall have the same meaning as in section
5 2635a of this title.

6 (3) “Labor” means work of economic or financial value.

7 (4) “Services” means an ongoing relationship between a person and the
8 actor in which the person performs activities under the supervision of or for the
9 benefit of the actor.

10 (5) “Sexually explicit performance” means a live or public act or show
11 intended to arouse or satisfy the sexual desires or appeal to the prurient
12 interests of patrons.

13 (6) “Venture” shall have the same meaning as in section 2635a of this
14 title.

15 (7) “Victim of human trafficking” means any person who has been
16 subject to the crime of human trafficking as described in subsection 2352(a) of
17 this title, or the crime of sexual servitude of a minor as detailed in subsection
18 2352(b) of this title.

19 § 2652. HUMAN TRAFFICKING

20 (a) No person shall knowingly:

1 (1) recruit, entice, harbor, transport, provide, obtain, subject, or attempt
2 to subject another person for the purposes of commercial sex acts, sexually
3 explicit performance, labor, or services through use of any of the following
4 means:

5 (A) causing or threatening to cause serious harm to any person;

6 (B) physically restraining or threatening to physically restrain another
7 person;

8 (C) abusing or threatening to abuse the law or legal process;

9 (D) knowingly destroying, concealing, removing, confiscating, or
10 possessing any actual or purported passport or other immigration document or
11 any other actual or purported government identification document of another
12 person;

13 (E) blackmail;

14 (F) causing or threatening to cause financial harm to any person;

15 (G) facilitating or controlling a victim's access to an addictive
16 controlled substance;

17 (H) kidnapping; or

18 (I) depriving another person of his or her property;

19 (2) benefit financially or by receiving anything of value from
20 participation in a venture, knowing that force, fraud, or coercion was or will be

1 used to compel any person to engage in a commercial sex act, sexually explicit
2 performance, labor, or service as part of the venture.

3 (b) A person who violates subsection (a) of this section shall be imprisoned
4 not more than 10 years or fined not more than \$50,000.00, or both. In
5 determining sentences within statutory maximums, the court shall take into
6 account the time in which the victim was held in servitude and the number of
7 victims.

8 (c) A victim of human trafficking is not criminally liable for any
9 prostitution or any other criminal offense committed as a direct result of being
10 a victim of the trafficking offense.

11 (d) In a prosecution for violations of this section, the alleged consent of a
12 person to the intended or realized exploitation is irrelevant.

13 (e) In a prosecution for violations of this section, evidence of a victim's
14 past sexual behavior is irrelevant and inadmissible for the purpose of proving
15 that the victim engaged in other sexual behavior or to prove the victim's sexual
16 predisposition.

17 (f) Age of consent to sex, legal age of marriage, or other discretionary age
18 shall not be used as a defense to trafficking in persons.

19 (g) A mistake as to the victim's age shall not be a defense to a violation
20 under this section, even if the mistake is reasonable.

1 § 2653. RESTITUTION

2 (a) A person convicted of a violation of this subchapter shall be ordered to
3 pay restitution to the victim as provided in subsection (b) of this section.

4 (b) Restitution shall compensate the victim for:

5 (1) costs of medical and psychological treatment;

6 (2) costs of physical and occupational therapy and rehabilitation;

7 (3) costs of necessary transportation, temporary housing, and child care;

8 (4) lost income;

9 (5) attorney's fees and other costs such as victim advocate fees;

10 (6) gross income or value to the defendant of the victim's services or
11 labor;

12 (7) compensation for emotional distress, pain, and suffering; and

13 (8) any other losses suffered by the victim.

14 (c) Restitution shall be paid to the victim promptly upon the conviction of
15 the defendant, with the proceeds from property forfeited under this subchapter
16 applied first to payment of restitution. The return of the victim to his or her
17 home country or other absence of the victim from the jurisdiction shall not
18 prejudice the victim's right to receive restitution.

19 § 2654. SCOPE OF SEIZURE AND FORFEITURE

20 The following property shall be subject to the seizure and forfeiture
21 provisions under this subchapter:

1 (1) All books, records, and research, including formulas, microfilm,
2 tapes, computers, software, and data, which are used or intended for use in
3 violation of this subchapter.

4 (2) Any materials, products, or equipment used or intended for use in
5 violation of this subchapter.

6 (3) Any consideration, including monies, negotiable instruments, and
7 securities, used or intended for use in violation of this subchapter and any
8 proceeds or derivative proceeds of any human trafficking, including monies,
9 negotiable instruments, and securities. Such consideration, proceeds, or
10 derivative proceeds shall be forfeited to the extent of the interest of an owner
11 only by reason of an action or omission committed or omitted with the
12 knowledge or consent of the owner. As used in this section, “derivative
13 proceeds” shall not include real property which is occupied as the primary
14 residence of a person involved in the violation and a member or members of
15 that person’s family.

16 (4) All conveyances, including aircraft, vehicles, or vessels, which are
17 used or are intended for use to transport, conceal, or in any manner facilitate
18 human trafficking. No conveyance shall be forfeited:

19 (A) which is used by any person as a common carrier in the
20 transaction of business as a common carrier, unless the owner or other person

1 in charge of such conveyance was a consenting party or privy to a violation of
2 this subchapter;

3 (B) by reason of any act or omission of any person other than the
4 owner while the conveyance was unlawfully in the possession of a person
5 other than the owner in violation of the criminal laws of the United States, this
6 state, or any other state; or

7 (C) by reason of the use or intended use of the conveyance in
8 violation of this subchapter by a person other than the owner, unless the owner
9 knew or had reason to believe that the conveyance was used in that manner.

10 § 2655. SEIZURE

11 (a) The district court may issue at the request of the state ex parte a
12 preliminary order or process to seize or secure property for which forfeiture is
13 sought and to provide for its custody. Process for seizure of such property
14 shall issue only upon a showing of probable cause that the property is subject
15 to forfeiture. Application therefor and issuance, execution, and return shall be
16 subject to provisions of applicable law.

17 (b) Any property subject to forfeiture under this subchapter may be seized
18 upon process. Seizure without process may be made when:

19 (1) the seizure is incident to an arrest with probable cause or a search
20 under a valid search warrant;

1 (2) the property subject to seizure has been the subject of a prior
2 judgment in favor of the state in a forfeiture proceeding under this subchapter;

3 or

4 (3) the seizure is incident to a valid warrantless search.

5 (c) If property is seized without process under subdivision (b)(1) or (3) of
6 this section, the state shall forthwith petition the court for a preliminary order
7 or process under subsection (a) of this section.

8 § 2656. PETITION FOR FORFEITURE

9 (a) The state shall file a petition for forfeiture of any property seized under
10 section 2355 of this title promptly, but not more than 14 days from the date the
11 preliminary order or process is issued. The petition shall be filed in the
12 superior court of the county in which the property is located or in any court
13 with jurisdiction over a criminal proceeding related to the property.

14 (b) A copy of the petition shall be sent by certified mail to all persons
15 named in the petition. In addition, the state shall cause notice of the petition to
16 be published in a newspaper of general circulation in the state, as ordered by
17 the court. The petition shall state:

18 (1) the facts upon which the forfeiture is requested, including a
19 description of the property subject to forfeiture;

20 (2) the names of the apparent owner or owners, lienholders who have
21 properly recorded their interests, and any other person appearing to have an

1 interest; and, in the case of a conveyance, the name of the person holding title,
2 the registered owner, and the make, model, and year of the conveyance.

3 § 2657. FORFEITURE HEARING

4 (a) The court shall hold a hearing on the petition no less than 14 nor more
5 than 30 days after notice. For good cause shown or on the court's own motion,
6 the court may stay the forfeiture proceedings pending resolution of related
7 criminal proceedings. If a person named in the petition is a defendant in a
8 related criminal proceeding and the proceeding is dismissed or results in a
9 judgment of acquittal, the petition shall be dismissed as to the defendant's
10 interest in the property.

11 (b) A lienholder who has received notice of a forfeiture proceeding may
12 intervene as a party. If the court finds that the lienholder has a valid, good
13 faith interest in the subject property which is not held through a straw
14 purchase, trust, or otherwise for the actual benefit of another and that the
15 lienholder did not at any time have knowledge or reason to believe that the
16 property was being or would be used in violation of the law, the court upon
17 forfeiture shall order compensation to the lienholder to the extent of the
18 lienholder's interest.

19 (c) The proceeding shall be against the property and shall be deemed civil
20 in nature. The state shall have the burden of proving all material facts by clear
21 and convincing evidence.

1 (d) The court shall make findings of fact and conclusions of law and shall
2 issue a final order. If the petition is granted, the court shall order the property
3 held for evidentiary purposes or delivered to the state treasurer.

4 § 2658. MAINTENANCE

5 Law enforcement agencies seizing property under this subchapter shall
6 ensure that the property is properly maintained. Equipment and conveyances
7 seized shall be removed to an appropriate place for storage. Any monies,
8 negotiable instruments, or securities seized shall if practicable be deposited in
9 an interest-bearing account pending final disposition by the court, unless the
10 seizing agency determines the property to be of an evidentiary nature and
11 provides for their security in another manner. Any such deposit in an
12 interest-bearing account shall only be accomplished pursuant to a court order
13 directing the same, and the court shall have jurisdiction to enter such order or
14 any other order directing interim disposition of the properties pending final
15 disposition by the court.

16 § 2659. DISPOSITION OF PROPERTY

17 (a) Whenever property is forfeited and delivered to the state treasurer under
18 this subchapter, the state treasurer shall, at least 90 days after the date the
19 property is delivered, sell the property at a public sale held under chapter 13 of
20 Title 27.

1 (b) Proceeds from the sale of property forfeited under this subchapter shall
2 be distributed in the following manner:

3 (1) First, applied to any restitution order issued against the defendant to
4 compensate any human trafficking victim of the defendant;

5 (2) Second, applied to any civil judgment award of punitive or
6 compensatory damages to a human trafficking victim of the defendant; and

7 (3) Third, applied to the general fund.

8 § 2660. RECORDS

9 (a) A state law enforcement agency or other state agencies which have
10 custody of any property subject to forfeiture under this subchapter or which
11 dispose of such property shall keep and maintain full and complete records,
12 including the following:

13 (1) the source from whom the property was received;

14 (2) a description of the property, including the exact kinds, quantities,
15 and forms of the property;

16 (3) the value of the property;

17 (4) if the property is deposited in an interest-bearing account, the
18 location of the account and the amount of interest;

19 (5) under what authority the property was held, received, or disposed;

20 (6) the person to whom the property was delivered;

21 (7) the date and manner of destruction or disposition of the property.

1 (b) Those records shall be submitted to the state treasurer and shall be open
2 to inspection by all federal and state departments and agencies charged with
3 enforcement of federal and state drug control laws. Persons making final
4 disposition or destruction of the property under court order shall report, under
5 oath, to the court the exact circumstances of that disposition or destruction, and
6 a copy of that report shall be sent to the state treasurer.

7 Subchapter 2. Human Trafficking Prevention

8 § 2671. HUMAN TRAFFICKING PREVENTION TASK FORCE

9 (a) The governor shall establish an interagency task force to develop and
10 implement a state plan for the prevention of human trafficking. The task force
11 shall meet at least annually and should include all aspects of trafficking,
12 including sex trafficking and labor trafficking of both U.S. citizens and foreign
13 nationals.

14 (b) As used in this chapter, “trafficking” means all acts involved in the
15 recruitment, abduction, transport, harboring, transfer, sale, or receipt of
16 persons, whether U.S. citizens or foreign nationals, within state, intra-national,
17 or across international borders by any means, to place persons in situations of
18 slavery or slavery-like conditions.

19 (c) The governor shall appoint the members of the task force, which shall
20 include, at a minimum, representatives from:

21 (1) the attorney general’s office;

1 (2) the department of labor;

2 (3) the department of public safety;

3 (4) the police chiefs' association;

4 (5) the department of health;

5 (6) representatives from nongovernmental organizations, especially
6 those specializing in the subject of trafficking in persons, those representing
7 diverse communities disproportionately affected by trafficking, agencies
8 devoted to child services and runaway services, and academic researchers
9 dedicated to the subject of trafficking.

10 (d) The task force shall carry out the following activities either directly or
11 via one or more of its constituent agencies as appropriate:

12 (1) Develop the state plan for the prevention of human trafficking.

13 (2) Coordinate the implementation of the plan.

14 (3) Coordinate the collection and sharing of trafficking data among
15 government agencies, which data collection shall respect the privacy of victims
16 of trafficking.

17 (4) Coordinate the sharing of information among agencies for the
18 purposes of detecting criminal groups engaged in trafficking.

19 (5) Establish policies to enable state government to work with
20 nongovernmental organizations and other elements of civil society to prevent
21 trafficking and provide assistance to U.S. citizens and foreign national victims.

1 (6) Review the existing services and facilities to meet trafficking
2 victims' needs and recommend a system that would coordinate such services,
3 including but not limited to: health services; housing; education and job
4 training; classes in English as a second language; interpretation services; legal
5 and immigration services; and victim compensation.

6 (7) Evaluate various approaches used by state and local governments to
7 increase public awareness of the trafficking in persons, including U.S. citizens
8 and foreign national victims of trafficking.

9 (8) Submit an annual report of its findings and recommendations to the
10 governor, the speaker of the house of representatives, and the president of the
11 senate on or before December 31.

12 § 2672. DATA COLLECTION AND DISSEMINATION

13 (a) The state shall collect and periodically publish statistical data on
14 trafficking.

15 (b) The state shall elicit the cooperation and assistance of other government
16 agencies, nongovernmental organizations, and other elements of civil society
17 as appropriate to assist in the data collection required under subsection (a) of
18 this section.

19 (c) The appropriate authorities in each agency or department that play a
20 vital role in addressing trafficking shall make best efforts to collect information
21 relevant to tracking progress on trafficking, including:

1 (1) the numbers of arrests, prosecutions, and successful convictions of
2 traffickers and those committing trafficking-related crimes;

3 (2) statistics on the number of victims, including nationality, age, and
4 the method of recruitment;

5 (3) trafficking routes and patterns;

6 (4) the method of transportation, if any transportation took place; and

7 (5) social factors that contribute to the demand that fosters all forms of
8 exploitation of persons, especially women and children, that leads to
9 trafficking.

10 § 2673. TRAINING

11 (a) The state shall provide training for law enforcement and other relevant
12 officials in addressing trafficking in persons.

13 (b) Such training shall focus on:

14 (1) methods used in identifying U.S. citizens and foreign national
15 victims of trafficking, including preliminary interview techniques and
16 appropriate questioning methods;

17 (2) methods for prosecuting traffickers;

18 (3) methods for protecting the rights of victims, taking into account the
19 need to consider human rights and special needs of women and children
20 victims, and that victims should be treated as such; and

1 (4) methods for promoting the safety of victims, including, for example,
2 the training of police to recognize quickly U.S. citizen and foreign national
3 victims of trafficking.

4 (c) The state shall seek the advice of appropriate nongovernmental
5 organizations and other relevant organizations in the preparation and
6 presentation of training required in this section.

7 § 2674. PUBLIC AWARENESS

8 (a) The state, in cooperation with appropriate nongovernmental
9 organizations, shall prepare public awareness programs designed to educate
10 potential victims and their families of trafficking in persons and of the risks of
11 victimization. Such public awareness programs shall include:

12 (1) information about the risks of becoming a victim, including
13 information about common recruitment techniques, use of debt bondage, and
14 other coercive tactics, risk of maltreatment, rape, exposure to HIV/AIDS and
15 other sexually transmitted diseases, and psychological harm related to
16 victimization in trafficking cases;

17 (2) information about the risks of visiting a brothel and possible
18 punishment; and

19 (3) information about potential victims' rights, as well as methods for
20 reporting suspected recruitment activities.

1 (b) The state, in cooperation with other appropriate government agencies
2 and appropriate nongovernment organizations or other elements of civil
3 society, shall prepare and disseminate public awareness materials to educate
4 the public on the extent of human trafficking of both U.S. citizens and foreign
5 nationals within the United States, and to discourage the demand that fosters
6 the exploitation of persons, especially women and children, and that leads to
7 trafficking.

8 (c) Materials developed pursuant to subsection (b) of this section may
9 include information on the impact of trafficking on individual victims, whether
10 U.S. citizens or foreign nationals, aggregate information on trafficking
11 worldwide and domestically, as well as warnings of the potential for criminal
12 consequences for taking part in trafficking. Such materials may include, as
13 appropriate, pamphlets, brochures, posters, advertisements in mass media, and
14 any other appropriate methods.

15 (d) Materials described in this section may include information on the
16 impact of trafficking on individual victims. However, any information on the
17 experiences of individual victims shall preserve the privacy of the victim and
18 the victim's family.

19 (e) All public awareness programs shall be evaluated periodically to ensure
20 their effectiveness.

1 programs for victims of organized criminal activity or other serious offenses if
2 it is determined that an offense involving a crime of violence directed at the
3 witness or potential witness is likely to be committed. The programs may
4 include:

5 (1) relocation;

6 (2) new identity and documents establishing identity;

7 (3) new residence;

8 (4) employment or work permits; or

9 (5) protection of confidentiality of identity and location.

10 § 2682. PROTECTION FOR THE PRIVACY OF VICTIMS

11 In a prosecution for violations of this chapter, the identity of the victim and
12 the victim's family shall be kept confidential by ensuring that names and
13 identifying information of the victim and victim's family are not released to
14 the public, including by the defendant.

15 § 2683. INFORMATION FOR VICTIMS

16 (a) The state shall inform victims of trafficking, in a language they can
17 understand, of their legal rights and the progress of relevant court and
18 administrative proceedings, as appropriate, including prosecution of the
19 criminal offenders, proceedings for the return of the victim to a country of
20 citizenship or lawful residence, and procedures for seeking legal immigration
21 status.

1 (b) The state shall inform victims of trafficking of immigration benefits
2 they may receive under federal laws and assist victims in obtaining such
3 benefits.

4 § 2684. OPPORTUNITY FOR PRESENTATION OF VICTIM'S VIEWS
5 AND CONCERNS

6 The state shall provide an opportunity to a victim of trafficking to present
7 the victim's views and concerns at appropriate stages of criminal proceedings
8 against traffickers, in a manner not prejudicial to the rights of the defendant.
9 An interpreter who speaks a language the victim understands should be made
10 available to the victim during the course of legal proceedings.

11 § 2685. SUPPORT FOR VICTIMS

12 (a) Within 90 days of the enactment of this legislation, the state shall
13 develop plans, in consultation with nongovernment organizations and other
14 elements of civil society, for the provision of appropriate services from
15 government and nongovernment sources for victims of trafficking, whether
16 U.S. citizens or foreign nationals, and dependent children accompanying the
17 victims, including:

18 (1) appropriate housing, taking into account the person's status as a
19 victim of crime and safe living conditions;

20 (2) psychological counseling communicated in a language the victim
21 can understand;

1 (3) medical assistance communicated in a language the victim can
2 understand;

3 (4) other material assistance as appropriate;

4 (5) employment, education, and training opportunities; and

5 (6) legal assistance communicated in a language the victim understands.

6 (b) Victims of trafficking and their accompanying dependent children shall
7 be entitled to receive social benefits in the same manner as refugees.

8 (c) Victims shall have the option to communicate with and receive visits
9 from family, friends, attorneys, and advocates.

10 (d) Victims of trafficking shall not be housed in prisons or other detention
11 facilities for accused or convicted criminals. Child victims of trafficking shall
12 not be housed in prisons or other detention facilities for accused or convicted
13 criminals under any circumstances.

14 (e) The authorities described in subsection (a) of this section shall take into
15 account the age, gender, and special needs of victims and accompanying
16 dependent children in formulating plans to provide services to them and in
17 delivering such services.

18 § 2686. APPROPRIATE IMPLEMENTATION FOR CHILD VICTIMS

19 The provisions of this chapter shall be provided to trafficking victims who
20 are children in a manner that is in the child's best interests and appropriate to
21 the situation. Child trafficking victims shall be provided with appropriate

1 services, which may include understanding of their rights, privacy, housing,
2 care, and age-appropriate support and rights specified in this chapter. Special
3 programs should be developed to accommodate child witnesses, including:

4 (1) the testimony of the minor shall be conducted outside a court setting
5 or by video;

6 (2) all testimony and court proceedings shall take place with a parent,
7 legal guardian, or foster parent present;

8 (3) whenever safe and possible, children shall be reunited with family
9 members, either in a country of origin or destination country;

10 (4) special mental and physical medical care shall be tailored to the
11 child's needs; or

12 (5) upon resettlement in a new country, child victims of trafficking shall
13 be guaranteed education that at least matches the general standard of education
14 in the country.

15 Sec. 2. 4 V.S.A. § 437 is amended to read:

16 § 437. CIVIL JURISDICTION OF DISTRICT COURT

17 The district court shall have jurisdiction of the following actions:

18 * * *

19 (14) Human trafficking forfeiture proceedings under subchapter 1 of
20 chapter 60 of Title 13.

