

1 S.272

2 Introduced by Senators Sears, Campbell and Mullin

3 Referred to Committee on

4 Date:

5 Subject: Crimes; human trafficking

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

9 An act relating to human trafficking

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

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

12 CHAPTER 60. HUMAN TRAFFICKING

13 Subchapter 1. Criminal Acts

14 § 2651. DEFINITIONS

15 As used in this subchapter:

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

19 (2) “Commercial sex act” shall have the same meaning as in section
20 2635a of this title.

1 (3) "Labor" means work of economic or financial value.

2 (4) "Services" means an ongoing relationship between a person and the
3 actor in which the person performs activities under the supervision of or for the
4 benefit of the actor.

5 (5) "Sexually explicit performance" means a live or public act or show
6 intended to arouse or satisfy the sexual desires or appeal to the prurient
7 interests of patrons.

8 (6) "Venture" shall have the same meaning as in section 2635a of this
9 title.

10 (7) "Victim of human trafficking" means any person, whether a U.S.
11 citizen or foreign national, who has been subject to the crime of human
12 trafficking as described in subsection 2352(a) of this title, or the crime of
13 sexual servitude of a minor as detailed in subsection 2352(b) of this title.

14 § 2652. HUMAN TRAFFICKING

15 (a) No person shall knowingly:

16 (1) recruit, entice, harbor, transport, provide, or obtain another person
17 for the purposes of commercial sex acts, sexually explicit performance, labor,
18 or services through use of any of the following means:

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

20 (B) physically restraining or threatening to physically restrain another
21 person;

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

2 (D) knowingly destroying, concealing, removing, confiscating, or
3 possessing any actual or purported passport or other immigration document or
4 any other actual or purported government identification document of another
5 person;

6 (E) blackmail;

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

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

10 (2) benefit financially or by receiving anything of value from
11 participation in a venture, knowing that force, fraud, or coercion was or will be
12 used to compel any person to engage in a commercial sex act as part of the
13 venture.

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

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

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

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

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

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

11 § 2653. RESTITUTION

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

14 (b) Restitution shall compensate the victim for:

15 (1) costs of medical and psychological treatment;

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

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

18 (4) lost income;

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

20 (6) gross income or value to the defendant of the victim's services or

21 labor;

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

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

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

8 § 2654. SCOPE OF SEIZURE AND FORFEITURE

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

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

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

16 (3) Any consideration, including monies, negotiable instruments, and
17 securities, used or intended for use in violation of this subchapter and any
18 proceeds or derivative proceeds of any human trafficking, including monies,
19 negotiable instruments, and securities. Such consideration, proceeds, or
20 derivative proceeds shall be forfeited to the extent of the interest of an owner
21 only by reason of an action or omission committed or omitted with the

1 knowledge or consent of the owner. As used in this section, “derivative
2 proceeds” shall not include real property which is occupied as the primary
3 residence of a person involved in the violation and a member or members of
4 that person’s family.

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

8 (A) which is used by any person as a common carrier in the
9 transaction of business as a common carrier, unless the owner or other person
10 in charge of such conveyance was a consenting party or privy to a violation of
11 this subchapter;

12 (B) by reason of any act or omission of any person other than the
13 owner while the conveyance was unlawfully in the possession of a person
14 other than the owner in violation of the criminal laws of the United States, this
15 state, or any other state; or

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

19 § 2655. SEIZURE

20 (a) The district court may issue at the request of the state ex parte a
21 preliminary order or process to seize or secure property for which forfeiture is

1 sought and to provide for its custody. Process for seizure of such property
2 shall issue only upon a showing of probable cause that the property is subject
3 to forfeiture. Application therefor and issuance, execution, and return shall be
4 subject to provisions of applicable law.

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

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

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

11 or

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

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

16 § 2656. PETITION FOR FORFEITURE

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

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

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

7 (2) the names of the apparent owner or owners, lienholders who have
8 properly recorded their interests, and any other person appearing to have an
9 interest; and, in the case of a conveyance, the name of the person holding title,
10 the registered owner, and the make, model, and year of the conveyance.

11 § 2657. FORFEITURE HEARING

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

19 (b) A lienholder who has received notice of a forfeiture proceeding may
20 intervene as a party. If the court finds that the lienholder has a valid, good
21 faith interest in the subject property which is not held through a straw

1 purchase, trust, or otherwise for the actual benefit of another and that the
2 lienholder did not at any time have knowledge or reason to believe that the
3 property was being or would be used in violation of the law, the court upon
4 forfeiture shall order compensation to the lienholder to the extent of the
5 lienholder's interest.

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

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

12 § 2658. REMISSION OR MITIGATION OF FORFEITURE

13 (a) On petition filed within 90 days of completion of a forfeiture
14 proceeding, the claims commission established in section 931 of Title 32 may
15 order that the forfeiture be remitted or mitigated. The petition shall be sworn
16 and shall include all information necessary for its resolution or shall describe
17 where such information may be obtained. Upon receiving a petition, the
18 claims commission shall investigate and may conduct a hearing if, in its
19 judgment, it would be helpful to the resolution of the petition. The claims
20 commission shall either grant or deny the petition within 90 days.

1 (b) The claims commission may remit or mitigate a forfeiture upon finding
2 that relief should be granted to avoid extreme hardship or upon finding that the
3 petitioner has a valid, good faith interest in the property which is not held
4 through a straw purchase, trust, or otherwise for the benefit of another, and that
5 the petitioner did not at any time have knowledge or reason to believe that the
6 property was being or would be used in violation of the law.

7 § 2659. MAINTENANCE

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

19 § 2660. DISPOSITION OF PROPERTY

20 (a) Whenever property is forfeited and delivered to the state treasurer under
21 this subchapter, the state treasurer shall, at least 90 days after the date the

1 property is delivered, sell the property at a public sale held under chapter 13 of
2 Title 27.

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

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

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

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

10 § 2661. RECORDS

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

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

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

18 (3) the value of the property;

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

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

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

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

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

9 Subchapter 2. Human Trafficking Prevention

10 § 2671. HUMAN TRAFFICKING PREVENTION TASK FORCE

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

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

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

3 (1) the attorney general's office;

4 (2) the department of labor;

5 (3) the department of public safety;

6 (4) the police chiefs' association;

7 (5) the department of health;

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

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

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

16 (2) Coordinate the implementation of the plan.

17 (3) Coordinate the collection and sharing of trafficking data among
18 government agencies, which data collection shall respect the privacy of victims
19 of trafficking.

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

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

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

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

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

15 § 2672. DATA COLLECTION AND DISSEMINATION

16 (a) The state shall collect and periodically publish statistical data on
17 trafficking.

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

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

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

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

8 (3) trafficking routes and patterns;

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

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

13 § 2673. TRAINING

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

16 (b) Such training shall focus on:

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

20 (2) methods for prosecuting traffickers;

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

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

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

10 § 2674. PUBLIC AWARENESS

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

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

20 (2) information about the risks of visiting a brothel and possible
21 punishment; and

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

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

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

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

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

3 § 2675. ROLE OF NONGOVERNMENT ORGANIZATIONS

4 For each state initiative for the prevention of trafficking, including those
5 listed in this subchapter, the state shall seek out and enlist the cooperation and
6 assistance of nongovernment organizations, especially those specializing in the
7 subject of trafficking in persons, those representing diverse communities
8 disproportionately affected by trafficking, agencies devoted to child services
9 and runaway services, and academic researchers dedicated to the subject of
10 trafficking.

11 Subchapter 3. Victim Protection

12 § 2681. SAFETY OF VICTIMS AND WITNESSES

13 (a) Investigative, prosecutorial, and other appropriate authorities shall take
14 all steps necessary to identify victims of trafficking, both U.S. citizens and
15 foreign national victims, including interviewing all persons arrested on charges
16 of prostitution. Once victims are identified, these authorities shall provide
17 reasonable protection to victims of trafficking to prevent recapture by the
18 traffickers and their associates; secure the victim and the victim's family from
19 threats, reprisals, or intimidation by the traffickers and their associates; and
20 ensure the victim has an opportunity to consult with a victim advocate or other
21 appropriate person to develop a safety plan.

1 (b) Victims of trafficking in persons, whether U.S. citizens or foreign
2 nationals, who are witnesses or potential witnesses may be eligible for
3 applicable witness relocation and protection programs for victims of organized
4 criminal activity or other serious offenses if it is determined that an offense
5 involving a crime of violence directed at the witness or potential witness is
6 likely to be committed. The programs may include:

7 (1) relocation;

8 (2) new identity and documents establishing identity;

9 (3) new residence;

10 (4) employment or work permits; or

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

12 § 2682. PROTECTION FOR THE PRIVACY OF VICTIMS

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

17 § 2683. INFORMATION FOR VICTIMS

18 (a) The state shall inform victims of trafficking, in a language they can
19 understand, of their legal rights and the progress of relevant court and
20 administrative proceedings, as appropriate, including prosecution of the
21 criminal offenders, proceedings for the return of the victim to a country of

1 citizenship or lawful residence, and procedures for seeking legal immigration
2 status.

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

6 § 2684. OPPORTUNITY FOR PRESENTATION OF VICTIM'S VIEWS

7 AND CONCERNS

8 The state shall provide an opportunity to a victim of trafficking to present
9 the victim's views and concerns at appropriate stages of criminal proceedings
10 against traffickers, in a manner not prejudicial to the rights of the defendant.

11 An interpreter who speaks a language the victim understands should be made
12 available to the victim during the course of legal proceedings.

13 § 2685. SUPPORT FOR VICTIMS

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

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

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

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

5 (4) other material assistance as appropriate;

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

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

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

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

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

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

1 § 2686. APPROPRIATE IMPLEMENTATION FOR CHILD VICTIMS

2 The provisions of this chapter shall be provided to trafficking victims who
3 are children in a manner that is in the child's best interests and appropriate to
4 the situation. Child trafficking victims shall be provided with appropriate
5 services, which may include understanding of their rights, privacy, housing,
6 care, and age-appropriate support and rights specified in this chapter. Special
7 programs should be developed to accommodate child witnesses, including:

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

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

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

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

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

