

Sex Trafficking 101

Presentation to Sentencing Commission

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Introduction: Who Am I? (Not?)

- ▶ I practiced immigration & family law for 10 years as a legal aid lawyer working with **dv & trafficking victims**.
- ▶ I teach **immigration** law & in Civil Justice Clinic at QU where we handle **trafficking** cases & conduct trainings.
- ▶ I chair the CBA Committee on Human Trafficking which is working to improve state laws on HT.
- ▶ **CAVEAT**: I am **not** an expert on criminal law or on child sex trafficking (a.k.a DMST or “domestic minor sex trafficking” when it occurs in the U.S.).

What Are We Missing?

- ▶ We're not talking about labor trafficking (forced work).
 - If not now, when?
- ▶ There is very little CT state case law on trafficking. (Why? barriers; prosecution vs. protection “trade-off”)
- ▶ CGA website has not been updated post-2021 (!!!):
 - https://cga.ct.gov/2022/sup/chap_952.htm#sec_53a-192a
 - H.B 6657, P.A. 21-103:
<https://www.cga.ct.gov/2021/act/Pa/pdf/2021PA-00103-R00HB-06657-PA.PDF>

3 Moments of Possible Victimization

- ▶ at the hands of the trafficker
- ▶ in interacting with the criminal justice system/ law enforcement (current case pending)
- ▶ in recovering/reentering society as a survivor (employment, housing, education, therapy, etc.)

3 P's of trafficking (State Department):
Prosecution, Protection, & Prevention

NB: Prosecutions fail without protections to encourage victims to cooperate.

Main Take-Aways

- ▶ STATE TRAFFICKING REGIME IS A BIT MUDDLED
 - due to tinkering & piecemeal amendments (see, e.g., 2021)
 - need complete overhaul? more emphasis on protection? look to feds?
 - need stand-alone provisions specific to trafficking context?
- ▶ COMPARISON of FEDERAL & STATE LAW:
 - (??) third-party buyer (opposed/agnostic): solution? definition vs. penalties
 - coercion vs. coercion (under state v. federal law)
 - mistake of age of defense—federal is more lenient (!?!?)
 - “sexual contact” & “sexual conduct” (state) vs. “commercial sex act” (fed)
 - NEW: safe harbor provisions: affirmative defenses? (only minors?) vacatur?
- ▶ MISC PROTECTIONS:
 - privilege for therapists?
 - mandatory restitution, scope of restitution, special asset forfeiture for trafficking cases?
 - witness protection, notification of right, services, remedies
- ▶ DE-CRIMINALIZE PROSTITUTION/SEX WORK BUT PUNISH BUYERS:
keep patronizing prostitution but eliminate prostitution (do not criminalize sex workers and trafficking victims) (Tom O’Brien, Hartford Community Court: need services, not criminal record)

FEDERAL: 18 U.S.C. § 1591(e):

Sex trafficking of children or by force, fraud, or coercion

▶ (1) ...[whoever] recruits, entices, harbors, transports, provides, obtains, advertises, maintains, **patronizes**, or solicits by any means a person; or

▶ (2) knowing that means of force, threats of force, fraud, [or] coercion, will be used **OR**

▶ (2) knowing, or in reckless disregard of the fact ... that the person has not attained the age of 18 years[,]*****

▶ (3) to cause the person to engage in a commercial sex act.

("acts" not found in state law)

FEDERAL DEFINITIONS: 18 U.S.C. § 1591(e): Sex trafficking of children or by force, fraud, or coercion

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "coercion" means—

- (A)** threats of serious 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 harm to or physical restraint against any person; or
- (C)** the abuse or threatened abuse of law or the legal process.

(3) The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

Sec. 53a-192a. Trafficking in persons: **Class A felony**

(a) A person is guilty of trafficking in persons when such person

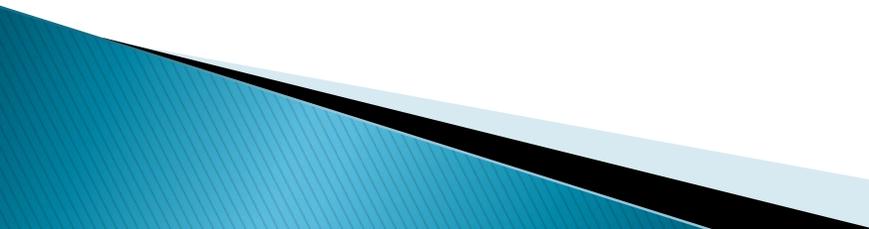
[...] (1) **knowingly** compels or induces another person to engage in conduct involving **sexual contact** with one or more third persons, or provide labor or services that such person has a legal right to refrain from providing, by means of (A) the use of force against such other person or a third person, or by the threat of use of force against such other person or a third person, (B) fraud, or (C) coercion, as provided in section **53a-192**,

[...] (2) (A) **knowingly** compels or induces another person to engage in conduct involving **sexual contact** with one or more third persons **that constitutes sexual contact for which such third person may be charged with a criminal offense**, and **(B) such person who is compelled or induced to engage in such conduct is under eighteen years of age, or**

[...] (3) otherwise **knowingly** commits an act that constitutes **sex trafficking**. For the purposes of this subsection, "**sexual contact**" means any contact with the intimate parts of another person, and "sex trafficking" means the recruitment, harboring, transportation or provision of a person for the purpose of engaging in **sexual conduct** with another person in exchange **for anything of value.**

....

Should Buyers Be Defined As Traffickers?

- culpability: not as culpable so feds don't charge
 - consistency: fed funding? T Visa eligibility?
(need further research)
 - solution (?): revise definition but reduce penalties
(need further research)
- 

“Mistake of Age” Defense: Fed v. State Compared

(2) knowing, or in reckless disregard of the fact ... that the person has not attained the age of 18 years[,]*

(A) knowingly compels or induces another person to engage in conduct involving sexual contact with one or more third persons that constitutes sexual contact for which such third person may be charged with a criminal offense, and (B) such person who is compelled or induced to engage in such conduct is under eighteen years of age
[...]

Federal Definition: “COERCION”

18 U.S.C. § 1591(a):

Sex trafficking of children or by force, fraud, or coercion

(1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term “coercion” means—**(A)** threats of serious 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 harm to or physical restraint against any person; or

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

Sec. 53a-192. Coercion:

Class A misdemeanor or class D felony.

(a) A person is guilty of coercion when he compels or induces another person to engage in conduct which such other person has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which such other person has a legal right to engage, by means of instilling in such other person a fear that, if the demand is not complied with, the actor or another will: (1) Commit any criminal offense; or (2) accuse any person of a criminal offense; or (3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute; or (4) take or withhold action as an official, or cause an official to take or withhold action.

(b) It shall be an affirmative defense to prosecution based on subdivision (2), (3) or (4) of subsection (a) of this section that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other person to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action, as by desisting from further misbehavior or making good a wrong done.

(c) Coercion is a class A misdemeanor except, if the threat is to commit a felony, coercion is a class D felony.

Sec. 53a-65. Definitions.

As used in this part, the following terms have the following meanings:

...

(3) “Sexual contact” means any contact with the intimate parts of a person for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person or any contact of the intimate parts of the actor with a person for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person.

In trafficking statute:

sexual contact with one or more third persons that constitutes sexual contact for which such third person may be charged with a criminal offense,

PROBLEM 1: Why limit to “sexual contact”? Why only chargeable?

PROBLEM 2: meaning of “sexual contact” vs. “sexual conduct”?

(1974: def of “sexual conduct” deleted—lost

“anything of value”—cf. comm. sex exploitation)

Sec. 53a-196i. Commercial sexual exploitation of a minor: Class C felony.

(a) For the purposes of this section:

....

(2) “**Commercial sex act**” means any act of **sexual contact**, as defined in section 53a-65, or **sexual intercourse**, as defined in section 53a-65, for which **something of value** is given to or received by any person;

NB: The state statute does not use this definition.

FEDERAL: 18 U.S.C. § 1591(a): Sex trafficking of children or by force, fraud, or coercion

(3) The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.

NB: Very little limitation on which acts qualify. 😊

NB: But includes buyers of sex. 😞😊

Safe Harbor Provisions
&
Decriminalization
(but not legalization)

Sec. 53a-192a. Trafficking in persons: **Class A felony**

(a) A person is guilty of trafficking in persons when such person ...

.....

(b) It shall be **an affirmative defense** in any prosecution or delinquency proceeding under this section that the defendant was **under eighteen years of age** **and** his or her participation in the offense was a result of having **been a victim of** conduct of another person that constitutes **trafficking** in persons in violation of subsection (a) of this section.

(c) Trafficking in persons is a **class A felony**.

VACATUR (post-conviction relief):

Sec. 53a-95c.

(a) At any time after a court enters a judgment of conviction for any misdemeanor offense or a class C, D or E felony or any unclassified felony offense carrying a term of imprisonment of not more than ten years, the defendant may apply to the Superior Court to vacate [any] such judgment of conviction on the basis that his or her participation in the offense was a result of having been a victim of conduct of another person that constitutes (1) trafficking in persons under section 53a-192a, as amended by this act, or (2) a criminal violation of 18 USC Chapter 77, as amended from time to time.

(b) Any person seeking to have a judgment vacated pursuant to this section shall send notice by registered or certified mail on a form prescribed by the Office of the Chief Court Administrator to any victim of the crime for which such person was convicted. The notice shall inform each victim that such person has applied to vacate such conviction and the victim has the opportunity to be heard by the court on the application.

Sec. 53a-82. Prostitution: Class A misdemeanor.

(a) A person eighteen years of age or older is guilty of prostitution when such person engages or agrees or offers to engage in **sexual conduct** with another person in return for a fee.

(b) In any prosecution for an offense under this section, it shall be an **affirmative defense** that the actor was a victim of conduct by another person that constitutes (1) a violation of section 53a-192a, or (2) a criminal violation of 18 USC Chapter 77, as amended from time to time.

(c) Nothing in this section shall limit a person's right to assert the defense of duress pursuant to section 53a-14 in any prosecution for an offense under this section.

(d) Prostitution is a class A misdemeanor.

Sec. 53a-89. Permitting prostitution: Class A misdemeanor.

(a) A person is guilty of permitting prostitution when, having possession or control of premises which he knows are being used for prostitution purposes, he fails to make reasonable effort to halt or abate such use.

(b) Permitting prostitution is a class A misdemeanor and any person found guilty shall be fined two thousand dollars.

- ▶ (1969, P.A. 828, S. 90; P.A. 16-71, S. 19.)
- ▶ History: P.A. 16-71 amended Subsec. (b) by adding provision re \$2,000 fine.

NB: slap on the wrist; triggered only if “knows”

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Sex Work (“Prostitution”) v. Trafficking

Even though advocates disagree about whether sex work can ever truly be voluntary, virtually all advocates and experts agree that those who provide sex—whether voluntarily or not—should not be punished; rather, they should be provided with a range of protections, including wrap-around services.





Sec. 53a-192a. Trafficking in persons:

Class A felony. OLD STATUTE (pre-2021)

(a) A person is guilty of trafficking in persons when such person

[...] (1) compels or induces another person to engage in conduct involving sexual contact with one or more third persons, or provide labor or services that such person has a legal right to refrain from providing, by means of (A) the use of force against such other person or a third person, or by the threat of use of force against such other person or a third person, (B) fraud, or (C) coercion, as provided in section 53a-192,

[...] (2) compels or induces another person who is under eighteen years of age to engage in conduct involving sexual contact with one or more third persons that constitutes sexual contact for which such third person may be charged with a criminal offense, or [...]

[...] (3) otherwise commits an act that constitutes sex trafficking. For the purposes of this subsection, “sexual contact” means any contact with the intimate parts of another person, and “sex trafficking” means the recruitment, harboring, transportation or provision of a person for the purpose of engaging in sexual conduct with another person for a fee.

(b) Trafficking in persons is a class A felony.

Sec. 53a-83b. Commercial sexual abuse of a minor: Class B felony.

- (a) A person is guilty of commercial sexual abuse of a minor when:
- (1) Such person exchanges anything of value with a minor or third person as compensation for a minor having engaged in sexual conduct with such person;
 - (2) such person exchanges or agrees to exchange anything of value with a minor or a third person pursuant to an understanding that in return the minor will engage in sexual conduct with such person; or
 - (3) such person solicits or requests to engage in sexual conduct with a minor, or any other person that such person reasonably believes to be a minor, in return for anything of value.
- (b) Except as provided in subsection (c) of this section, commercial sexual abuse of a minor is a class B felony.
- (c) Commercial sexual abuse of a minor is a class A felony if the minor has not attained fifteen years of age.
- (d) For purposes of this section, "minor" means a person who has not attained eighteen years of age.