

ACT NO. 8059

BILL NO. 32-0129

THIRTY-SECOND LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2018

An Act amending title 14 Virgin Islands Code, chapter 3A relating to human trafficking, to enact the Virgin Islands Uniform Prevention of and Remedies for Human Trafficking Act and amending title 5, chapter 303, section 3541 relating to the statute of limitations for prosecuting the crime of human trafficking

---0---

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 14 Virgin Islands Code is amended by striking all the provisions in chapter 3A and inserting new provisions that read as follows:

“CHAPTER 3A. Prevention of and Remedies for Human Trafficking

§ 131. Short title This chapter may be cited as the Virgin Islands Uniform Prevention of and Remedies for Human Trafficking Act.

§ 132. Definitions In this chapter:

- (1) “Adult” means an individual 18 years of age or older.
- (2) “Coercion” means:
 - (A) the use or threat of force against, abduction of, serious harm to, or physical restraint of, an individual;
 - (B) the use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of, an individual;
 - (C) the abuse or threatened abuse of law or legal process;

(D) controlling or threatening to control an individual's access to a controlled substance as defined in 19 V.I. C. §§ 593 (7) and 595, and any drug that has been declared by the Virgin Islands, state, or federal law to be illegal for sale, use, or possession unless lawfully dispensed under a prescription or over the counter;

(E) the destruction or taking of or the threatened destruction or taking of an individual's identification document or other property;

(F) the use of debt bondage;

(G) the use of an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function; or

(H) the commission of civil or criminal fraud.

(3) "Commercial sexual activity" means sexual activity for which anything of value is given to, promised to, or received by a person.

(4) "Debt bondage" means inducing an individual to provide:

(A) commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(B) labor or services in payment toward or satisfaction of a real or purported debt if:

(i) the reasonable value of the labor or services is not applied toward the liquidation of the debt; or

(ii) the length of the labor or services is not limited and the nature of the labor or services is not defined.

(5) "Human trafficking" means the commission of an offense created under sections 133 through 137.

(6) "Identification document" means a passport, driver's license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.

(7) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard of an element, fact, or circumstance.

(8) "Labor or services" means activity having economic value.

(9) "Minor" means an individual under 18 years of age.

(10) "Person" means an individual, estate, business, or nonprofit entity, or other legal entity. The term does not include a public corporation, or government, or governmental subdivision, agency, authority, or instrumentality of the government.

(11) "Serious harm" means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor, or services, or sexual activity to avoid incurring the harm.

(12) "Sexual activity" means, cunnilingus, fellatio, anal intercourse, intrusion by any object into the genital or anal opening of another's body, and the stimulation by hand or an object of another individual's genitals or breasts for the purpose of arousing or gratifying the sexual desire of any individual. The term includes a sexually-explicit performance.

(13) "State" means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(14) "Victim" means an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this chapter been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

§ 133. Trafficking an individual

(a) A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

- (1) forced labor in violation of section 134; or
- (2) sexual servitude in violation of section 135.

(b) Trafficking an individual who is an adult is a felony punishable by imprisonment for not more than 25 years.

(c) Trafficking an individual who is a minor is a felony punishable by imprisonment for not less than 25 years.

§ 134. Forced labor

(a) A person commits the offense of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except when such conduct is permissible under federal law or law of the Virgin Islands other than this chapter.

(b) Forced labor of an individual who is an adult is a felony punishable by imprisonment not more than 30 years and a fine of not more than \$25,000.

(c) Forced labor of an individual who is a minor is a felony punishable by imprisonment for not more than 30 years and a fine of not more than \$40,000.

§ 135. Sexual servitude

(a) A person commits the offense of sexual servitude if the person knowingly:

(1) maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activities; or

(2) uses coercion or deception to compel an adult to engage in commercial sexual activity.

(b) It is not a defense in a prosecution under subsection (a)(1) that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(c) Sexual servitude under subsection (a)(1) is a felony punishable by imprisonment for life or a term of years but not less than 30 years and a fine of not more than \$100,000.

(d) Sexual servitude under subsection (a)(2) is a felony punishable by imprisonment of not less than 30 years, but not more than 50 years.

§ 136. Patronizing a victim of sexual servitude

(a) A person commits the offense of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.

(b) Patronizing a victim of sexual servitude who is an adult is a felony punishable by imprisonment of not more than 10 years.

(b) Patronizing a victim of sexual servitude who is a minor is a felony punishable by imprisonment for not more than 20 years.

§ 137. Patronizing a Minor for Commercial Sexual Activity

(a) A person commits the offense of patronizing a minor for commercial sexual activity if:

(1) with the intent that an individual engage in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or

(2) the person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.

(b) Patronizing a minor for commercial sexual activity under subsection (a)(1) is a felony punishable by imprisonment for not more than 15 years.

(c) Patronizing a minor for commercial sexual activity under subsection (a)(2) is a felony punishable by imprisonment for not more than 10 years.

§ 138 Business entity liability

(a) A person that is a business entity may be prosecuted for an offense under sections 133 through 137 only if:

(1) the entity knowingly engages in conduct that constitutes human trafficking; or

(2) an employee or nonemployee agent of the entity engages in conduct that constitutes human trafficking and the conduct is part of a pattern of activity in violation of this chapter for the benefit of the entity, which the entity knew was occurring and failed to take effective action to stop.

(b) When a person that is a business entity is prosecuted for an offense under sections 133 through 137, the court may consider the severity of the entity's conduct and order penalties in addition to those otherwise provided for the offense, including:

(1) a fine of not more than \$1,000,000 per offense;

(2) disgorgement of profit from activity in violation of this chapter; and

(3) debarment from government contracts.

§ 139. Aggravating circumstance

(a) An aggravating circumstance during the commission of an offense under section 133, 134, or 135 occurs when the defendant recruited, enticed, or obtained the victim of the offense from a shelter that serves individuals subjected to human trafficking, domestic violence, or sexual assault, runaway youth, foster children, or the homeless.

(b) If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under section 133, 134, or 135, the defendant may be imprisoned for not more than 10 years in addition to the period of imprisonment prescribed for the offense.

§ 140 Restitution

(a) The court shall order a person convicted of an offense under section 133, 134, or 135 to pay restitution to the victim of the offense for:

(1) expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney's fees and costs; and

(2) an amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:

(A) the gross income to the defendant for, or the value to the defendant of, the victim's labor, or services, or sexual activity;

(B) the amount the defendant contracted to pay the victim; or

(C) the value of the victim's labor, or services, or sexual activity, calculated under the minimum-wage and overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, or the Fair Labor Standards under 24 V.I.C. § 1 *et seq.* whichever is higher, even if the provisions do not apply to the victim's labor or services or sexual activity.

(b) The court shall order restitution under subsection (a) even if the victim is unavailable to accept payment of restitution.

(c) If the victim does not claim restitution ordered under subsection (a) for five years after entry of the order, the restitution must be paid to the victim's compensation fund to help other victims.

§ 141. Forfeiture

(a) On motion, the court shall order a person convicted of an offense under section 133, 134, or 135 to forfeit any interest in real or personal property that:

(1) was used or intended to be used to commit or facilitate the commission of the offense; or

(2) constitutes proceeds or was derived from proceeds that the person obtained, directly or indirectly, as a result of the offense.

(b) In a proceeding against real or personal property under this section, the person convicted of the offense may assert a defense that the forfeiture is manifestly disproportional to the seriousness of the offense. The person has the burden to establish the defense by a preponderance of the evidence.

(c) Proceeds from the public sale or auction of property forfeited under subsection (a) must be distributed in the manner provided for the distribution of the proceeds of criminal forfeitures under 14 V.I.C. § 608, but the Attorney General shall

ensure that proceeds from the public sale or auction of property forfeited are distributed first to a victim who has been awarded restitution or obtained a judgment in a civil action for a human trafficking offense, such as the action authorized by section 147.

§ 142. Victim confidentiality In an investigation of or a prosecution for an offense under this chapter, law-enforcement officers and the Attorney General's Office shall keep confidential the identity, pictures, and images of the alleged victim and the family of the alleged victim, except to the extent that disclosure is:

- (1) necessary for the purpose of investigation or prosecution;
- (2) required by law or court order; or
- (3) necessary to ensure provision of services or benefits for the victim or the victim's family.

§ 143. Past sexual behavior of victim In a prosecution for an offense under this chapter or a civil action under section 147, evidence of a specific instance of the alleged victim's past sexual behavior, or reputation, or opinion evidence of past sexual behavior of the alleged victim is not admissible unless the evidence offered pursuant to Virgin Islands Rule of Evidence 412 (b) is offered by the prosecution to prove a pattern of human trafficking by the defendant.

§ 144. Immunity of minor

(a) An individual is not criminally liable or subject to a juvenile-delinquency proceeding for prostitution or other nonviolent crimes if the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim.

(b) An individual who has engaged in commercial sexual activity is not criminally liable or subject to a juvenile-delinquency proceeding for prostitution if the individual was a minor at the time of the offense.

(c) A minor who under subsection (a) or (b) is not subject to criminal liability or a juvenile-delinquency proceeding is presumed to be a person in need of supervision as defined in 5 V.I.C. § 2502 (23).

(d) This section does not apply in a prosecution or a juvenile-delinquency proceeding for patronizing a prostitute.

§ 145. Affirmative defense of victim

An individual charged with prostitution or other nonviolent offenses committed as a direct result of being a victim may assert an affirmative defense that the individual is a victim.

§ 146. Motion to vacate and expunge conviction

(a) An individual convicted of prostitution or other nonviolent offenses committed as a direct result of being a victim may apply by motion to the Superior Court to vacate the conviction and expunge the record of conviction. The court may grant the motion on a finding that the individual's participation in the offense was a direct result of being a victim.

(b) No official determination or documentation is required to grant a motion by an individual under subsection (a), but an official determination or documentation from a federal, state, local, or tribal agency that the individual was a victim at the time of the offense creates a presumption that the individual's participation was a direct result of being a victim.

(c) A motion filed under subsection (a), any hearing conducted on the motion, and any relief granted are governed by 5 V.I.C., ch. 314.

§ 147. Civil action

(a) A victim may bring a civil action against a person that commits an offense against the victim under section 133, 134, or 135 for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

(b) If a victim prevails in an action under this section, the court shall award the victim reasonable attorney's fees and costs.

(c) An action under this section must be commenced not later than 10 years after the later of the date on which the victim:

- (1) no longer was subject to human trafficking; or
- (2) attained 18 years of age

(d) Damages awarded to a victim under this section for an item must be offset by any restitution paid to the victim pursuant to section 140 for the same item.

(e) This section does not preclude any other remedy available to a victim under federal law or law of the Virgin Islands other than this chapter.

§ 148. Council on Human Trafficking

(a) The Council on Human Trafficking is established in the Virgin Islands Department of Justice. The Governor shall appoint the chair and members of the Council. Members must include representatives of:

- (1) the Department of Justice, Office of the Attorney General, the Department of Human Services, the Virgin Islands Law Enforcement Planning Commission, the Virgin Islands Criminal Victims Compensation Commission, and

such other departments and agencies of the Government having contact with victims of crimes;

(2) non-governmental organizations that represent, advocate for, or provide services to victims; and

(3) other organizations and individuals, including victims, whose expertise would benefit the Council.

(b) Members of the Council shall serve four-year terms and may be reappointed.

(c) The Government agencies represented on the Council established under this section shall provide staff and administrative services to the Council.

(d) The Council established under this section shall meet on a regular basis and:

(1) develop a coordinated and comprehensive plan to provide victims with services;

(2) collect and evaluate data on human trafficking in the Virgin Islands and submit an annual report to the Governor and the Legislature;

(3) promote public awareness about human trafficking, victim remedies and services, and trafficking prevention;

(4) create a public-awareness sign that contains the Virgin Islands and National Human Trafficking Resource Center hotline information;

(5) coordinate training on human trafficking prevention and victim services for Government employees who may have recurring contact with victims or perpetrators; and

(6) conduct other appropriate activities.

§ 149. Display of public awareness sign; penalty for failure to display

(a) The Department of Justice shall cause to be displayed a public-awareness sign that contains the Virgin Islands and the National Human Trafficking Resource Center hotline information in every airport, marine transportation terminal facility rest area, and visitors center in the Territory, which are open to the public.

(b) An employer shall display the public-awareness sign described in subsection (a) in a place that is clearly conspicuous and visible to employees and the public at each of the following locations in the Virgin Islands at which the employer has employees:

- (1) a strip club or other sexually-oriented business;
- (2) a business entity found to be a house of prostitution under 14 V.I.C. §1624;
- (3) a job-recruitment center;
- (4) a hospital; or
- (5) an emergency-care provider.

(b) The Virgin Islands Department of Labor shall impose a \$500 fine per violation on an employer that knowingly fails to comply with subsection (b).

§ 150. Eligibility for benefit or services

(a) A victim is eligible for a benefit or service available through the Criminal Victims Compensation Commission and other agencies identified in the plan developed under section 148 (d) (1), regardless of immigration status.

(b) A minor who has engaged in commercial sexual activity is eligible for a benefit or service available through the Department of Human Services and other agencies identified in the plan developed under section 148(d)(1), regardless of immigration status.

(c) As soon as practicable after a first encounter with an individual who reasonably appears to the Department of Justice, the Department of Human Services, or other department or agency of the Government to be a victim or a minor who has engaged in commercial sexual activity, the department or agency shall notify the appropriate agency identified in the comprehensive plan developed under section 148(d)(1) that the individual may be eligible for a benefit or service under the law of the Virgin Islands.

§ 151. Law enforcement protocol

(a) On request from an individual, who the Attorney General reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. section 1101(a)(15)(T) or 8 U.S.C. section 1101(a)(15)(U), or for continued presence under 22 U.S.C. section 7105(c)(3), the Attorney General, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website and ask a federal law enforcement officer to request continued presence.

(b) If the Attorney General determines that an individual does not meet the requirements for the Attorney General to comply with subsection (a), the Attorney General shall inform the individual of the reason and that the individual may make another request under subsection (a) and submit additional evidence satisfying the requirements.

§ 152. Grant to or contract with service

(a) To the extent that funds are appropriated for this purpose, the Virgin Islands Law Enforcement Planning Committee may make a grant to the Council for Human Trafficking or nongovernmental victim's service organization to develop or expand service programs for victims.

(b) A recipient of a grant or contract under subsection (a) shall report annually to the Council established by section 148, the Law Enforcement Planning Commission, the Governor, and the Legislature of the Virgin Islands the number and demographic information of all victims receiving services under the grant or contract.

§ 153. Uniformity of application and construction

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among jurisdictions that enact it.

§ 154. Severability

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 2. Title 5 Virgin Islands Code, chapter 303, section 3541, subsection (a) is amended in paragraph (1) after "victim," by inserting "human trafficking"

Thus passed by the Legislature of the Virgin Islands on June 14, 2018.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 25th Day of June, A.D., 2018.



Myron D. Jackson
President

Jean A. Forde
Legislative Secretary



Bill No. 32-0129 is hereby approved.

**Witness my hand and the seal of the Government of
the United States Virgin Islands at Charlotte Amalie,
St. Thomas, this 9th day of July, 2018 A.D.**

**Kenneth E. Mapp
Governor**