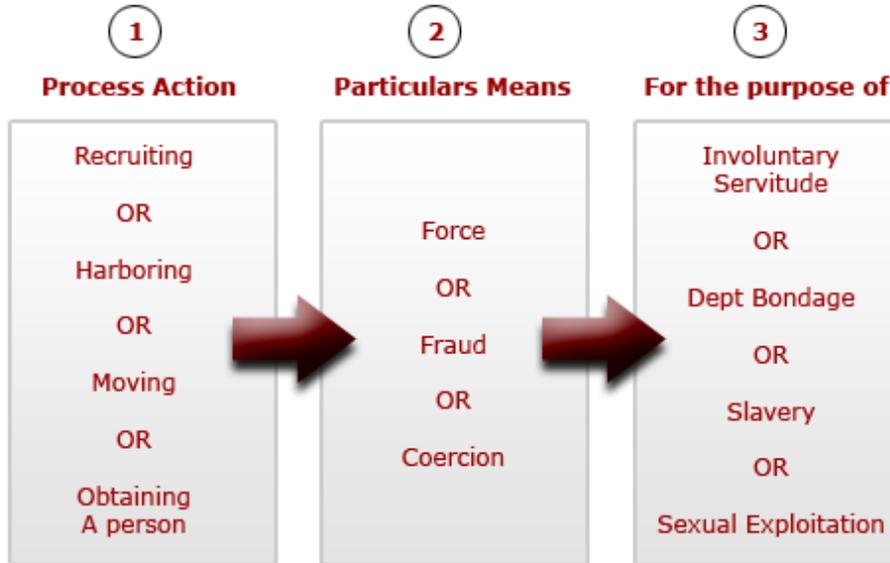


Under Federal Law

Trafficking Victims Protection Act

3 Elements Necessary to Meet Trafficking Definition:



The TVPA defines a human trafficking victim as a person induced to perform labor or a commercial sex act through force, fraud, or coercion. Any person under age 18 who performs a commercial sex act is considered a victim of human trafficking, regardless of whether force, fraud, or coercion was present. The TVPA enhances pre-existing criminal penalties in other related laws, affords new protections to trafficking victims and makes available certain benefits and services to victims of severe forms of trafficking once they become certified by the U.S. Department of Health and Human Services. Under this law, one option that has become available to some victims who assist in the prosecution of their traffickers is the “T-Visa” that allows the victim to remain in the United States.

One important feature of the TVPA’s conceptualization of trafficking is that **physical transport from one locale to another is not a requirement**. Another is that **the law addresses the subtle means of coercion used by traffickers to control victims, including: psychological coercion, trickery, and the seizure of documents, activities which were difficult to prosecute under preexisting involuntary servitude statutes and case law**.

The TVPA seeks to combat trafficking by promoting a policy of “3 Ps”: prosecution, protection, and prevention:

» Prosecution involves **passing the appropriate laws** that criminalize trafficking, and jailing the abusers who exploit other humans for profit.

» Protection involves **identifying victims**, providing them with medical care and shelter (and if necessary witness protection), and, when appropriate, repatriating them.

» Prevention involves **raising awareness** of the inhumane practices involved in the trafficking trade and promoting a paradigm shift that seeks to reduce the demand for the “fruits” of human trafficking.

The United States government reports that since 2001 only 1,168 foreign nationals have been granted a T-visa available to victims of a severe form of trafficking in persons. In contrast, the United States government estimates that between 14,500-17,500 foreign nationals are trafficked into the United States each year. This discrepancy clearly indicates a U.S. failure to implement the Trafficking Victims Protection Act (TVPA) effectively enough to identify and protect all those who are trafficked into the United States. The low numbers of victims identified can be attributed to many different obstacles in implementation. One important obstacle is a lack of access to necessary legal services.

The Trafficking Victims Protection Reauthorization Acts of 2005 and 2008 required the Department of Labor to compile and publish a list of products produced by child labor or forced labor, and the countries where these abuses were prevalent. The first report was finally released in 2009: The Department of Labor’s List of Goods Produced by Child Labor or Forced Labor.

The State Department is tasked with evaluating the efforts of foreign governments to combat human trafficking by ranking them every year and placing countries in one of four categories. Tier 1 countries are those that meet the TVPA’s minimum standards of fighting human trafficking. Tier 2 countries are those states that, while not fully complying with the TVPA’s minimum standards, are making significant efforts to comply. Tier 2 Watch List countries are Tier 2 countries with significant trafficking problems and/or a slippage in their most recent efforts. Tier 3 countries are those that not only do not meet TVPA minimum standards, but also are failing to do much to combat trafficking. In the latest report, out of the 173 states assessed, only 28 merited Tier 1 status. Most countries (76) earned a Tier 2 rating. The remaining 69 nations were placed either on the Tier 2 Watch List (52) or Tier 3 (17).

Additional legislation on Human Trafficking under federal law...

Peonage, 18 U.S.C. § 1581. Section 1581 of Title 18 makes it unlawful to hold a person in “debt servitude,” or peonage, which is closely related to involuntary servitude. Section 1581 prohibits using force, the threat of force, or the threat of legal coercion to compel a person to work against his/her will. In addition, the victim’s involuntary servitude must be tied to the payment of a debt.

Involuntary Servitude, 18 U.S.C. § 1584. Section 1584 of Title 18 makes it unlawful to hold a person in a condition of slavery, that is, a condition of compulsory service or labor against his/her will. A Section 1584 conviction requires that the victim be held against his/her will by actual force, threats of force, or threats of legal coercion. Section 1584 also prohibits compelling a person to work against his/her will by creating a “climate of fear” through the use of force, the threat of force, or the threat of legal coercion [i.e., If you don’t work, I’ll call the immigration officials.] which is sufficient to compel service against a person’s will.

Forced Labor, 18 U.S.C. § 1589. Section 1589 of Title 18, which was passed as part of the TVPA, makes it unlawful to provide or obtain the labor or services of a person through one of three prohibited means. Congress enacted § 1589 in response to the Supreme Court's decision in *United States v. Kozminski*, 487 U.S. 931 (1988), which interpreted § 1584 to require the use or threatened use of physical or legal coercion. Section 1589 broadens the definition of the kinds of coercion that might result in forced labor.

Trafficking with Respect to Peonage, Slavery, Involuntary Servitude, or Forced Labor, 18 U.S.C. § 1590. Section 1590 makes it unlawful to recruit, harbor, transport, or broker persons for labor or services under conditions which violate any of the offenses contained in Chapter 77 of Title 18.

Sex Trafficking of Children or by Force, Fraud, or Coercion, 18 U.S.C. § 1591. Section 1591 criminalizes sex trafficking, which is defined as causing a person to engage in a commercial sex act under certain statutorily enumerated conditions. A commercial sex act means any sex act, on account of which anything of value is given to or received by any person. The specific conditions are the use of force, fraud, or coercion, or conduct involving persons under the age of 18. The punishment for conduct that either involves a victim who is under the age of 14 or involves force, fraud, or coercion is any term of years or life. The punishment for conduct that involves a victim between the ages of 14 and 18 is 40 years.

Unlawful Conduct with Respect to Documents in Furtherance of Trafficking, Peonage, Slavery, Involuntary Servitude, or Forced Labor, 18 U.S.C. § 1592. Section 1592 makes it illegal to seize documents in order to force others to work. By expanding its coverage to false documents as well as official documents, § 1592 recognizes that victims are often immobilized by the withholding of whatever documents they possess, even if the documents are forged or fraudulent. Section 1592 expands the scope of federal trafficking statutes to reach those who prey on the vulnerabilities of immigrant victims by controlling their papers.

Additional Provisions Under the Trafficking Victims Protection Act:

- Mandatory Restitution, 18 U.S.C. § 1593
- Attempt and Forfeiture, 18 U.S.C. §§ 1594(a) and (b) Private Right of Action, 18 U.S.C. § 1595
- Visa Fraud, 18 U.S.C. § 1546

Under Maryland State Law
MD Code, Criminal Law, § 11-303
Formerly cited as MD CODE Art. 27, § 428
§ 11-303. Pandering

Prohibited--In general

(a)(1) A person may not knowingly:

- (i) take or cause another to be taken to any place for prostitution;
- (ii) place, cause to be placed, or harbor another in any place for prostitution;
- (iii) persuade, induce, entice, or encourage another to be taken to or placed in any place for prostitution;
- (iv) receive consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignation;
- (v) engage in a device, scheme, or continuing course of conduct intended to cause another to believe that if the other did not take part in a sexually explicit performance, the other or a third person would suffer physical restraint or serious physical harm; or
- (vi) destroy, conceal, remove, confiscate, or possess an actual or purported passport, immigration document, or government identification document of another while otherwise violating or attempting to violate this subsection.

(2) A parent, guardian, or person who has permanent or temporary care or custody or responsibility for supervision of another may not consent to the taking or detention of the other for prostitution.

Minor status of victim

(b)(1) A person may not violate subsection (a) of this section involving a victim who is a minor.

(2) A person may not knowingly take or detain another with the intent to use force, threat, coercion, or fraud to compel the other to marry the person or a third person or perform a sexual act, sexual contact, or vaginal intercourse.

Penalty

(c)(1)(i) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) of this section is guilty of the misdemeanor of human trafficking and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$5,000 or both.

(ii) A person who violates subsection (a) of this section is subject to § 5-106(b) of the Courts Article.

(2) A person who violates subsection (b) of this section is guilty of the felony of human trafficking and on conviction is subject to imprisonment not exceeding 25 years or a fine not exceeding \$15,000 or both.

Venue

(d) A person who violates this section may be charged, tried, and sentenced in any county in or through which the person transported or attempted to transport the other.

Persons who benefit from participation or aiders or abettors to violations

(e)(1) A person who knowingly benefits financially or by receiving anything of value from participation in a venture that includes an act described in subsection (a) or (b) of this section is subject to the same penalties that would apply if the person had violated that subsection.

(2) A person who knowingly aids, abets, or conspires with one or more other persons to violate any subsection of this section is subject to the same penalties that apply for a violation of that subsection.

Ignorance of age of victim not a defense

(f) It is not a defense to a prosecution under subsection (b)(1) of this section that the person did not know the age of the victim.