

New York State Report State Ratings 2014

The Polaris annual state ratings process tracks the presence or absence of 10 categories of state statutes that Polaris believes are critical to a comprehensive anti-trafficking legal framework. It is important to note that these 10 categories are not exhaustive of all the important legislation that helps combat human trafficking in a given state. Moreover, the ratings do not assess the effectiveness or implementation of these laws, nor the anti-trafficking efforts of task forces, law enforcement, prosecutors, judges, service providers, and advocates in the state. The purpose of the annual state ratings process is to document laws on the books, to motivate legislators and policy advocates, and to focus the attention of states on the statutes that still need to be enacted in order to achieve a strong anti-trafficking legal framework.

Rating: Tier One (green)

Total Points: 7

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 3(b) Investigative Tools; 4(a) Training for Law Enforcement; 7 Safe Harbor for Minors; 8 Victim Assistance; and 10 Vacating Convictions.

Categories Still Needed: 3(a) Asset Forfeiture; 4(b) Human Trafficking Task Force; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 6 Posting of a Hotline; and 9 Civil Remedy.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

§ 483-aa. Definitions

The following definitions shall apply to this article:

(a) “Human trafficking victim” means a person who is a victim of sex trafficking as defined in section 230.34 of the penal law or a victim of labor trafficking as defined in section 135.35 of the penal law.

(b) “Pre-certified victim of human trafficking” is a person who has a pending application for federal certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection) but has not yet obtained such certification, or a person who has reported a crime to law enforcement and it reasonably appears to law enforcement that the person is such a victim.

§ 230.34 Sex trafficking

A person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by:

1. unlawfully providing to a person who is patronized, with intent to impair said person's judgment:

(a) a narcotic drug or a narcotic preparation;



- (b) concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law;
 - (c) methadone; or
 - (d) gamma-hydroxybutyrate (GHB) or flunitrazepan, also known as Rohypnol;
2. making material false statements, misstatements, or omissions to induce or maintain the person being patronized to engage in or continue to engage in prostitution activity;
 3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;
 4. requiring that prostitution be performed to retire, repay, or service a real or purported debt;
 5. using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one or more of the following:
 - (a) cause physical injury, serious physical injury, or death to a person; or
 - (b) cause damage to property, other than the property of the actor; or
 - (c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this chapter; or
 - (d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or
 - (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
 - (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
 - (g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
 - (h) perform any other act which would not in itself materially benefit the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status.
- Sex trafficking is a class B felony

§ 230.36 Sex trafficking; accomplice.

In a prosecution for sex trafficking, a person from whose prostitution activity another person is alleged to have advanced or attempted to advance or profited or attempted to profit shall not be deemed to be an accomplice.



Category 2: Labor Trafficking Statute

§ 135.35 Labor trafficking.

A person is guilty of labor trafficking if he or she compels or induces another to engage in labor or recruits, entices, harbors, or transports such other person by means of intentionally:

1. unlawfully providing a controlled substance to such person with intent to impair said person's judgment;
 2. requiring that the labor be performed to retire, repay, or service a real or purported debt that the actor has caused by a systematic ongoing course of conduct with intent to defraud such person;
 3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document, of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;
 4. using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in or continue to engage in labor activity by means of instilling a fear in such person that, if the demand is not complied with, the actor or another will do one or more of the following:
 - (a) cause physical injury, serious physical injury, or death to a person; or
 - (b) cause damage to property, other than the property of the actor; or
 - (c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this chapter; or
 - (d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against such person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or
 - (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
 - (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
 - (g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.
- Labor trafficking is a class D felony.

§ 135.36 Labor trafficking; accomplice.

In a prosecution for labor trafficking, a person who has been compelled or induced or recruited, enticed, harbored or transported to engage in labor shall not be deemed to be an accomplice.

Category 3(a): Asset Forfeiture

None.



Category 3(b): Investigative Tools

§ 460.10 Definitions

The following definitions are applicable to this article.

1. “Criminal act” means conduct constituting any of the following crimes, or conspiracy or attempt to commit any of the following felonies:
 - (a) Any of the felonies set forth in this chapter: . . . section 135.35 relating to labor trafficking; section 135.65 relating to coercion; and 230.32 relating to promoting prostitution; section 230.34 relating to sex trafficking; sections 235.06, 235.07, 235.21 and 235.22 relating to obscenity; sections 263.10 and 263.15 relating to promoting a sexual performance by a child. . .
2. “Enterprise” means either an enterprise as defined in subdivision one of section 175.00 of this chapter or criminal enterprise as defined in subdivision three of this section.
3. “Criminal enterprise” means a group of persons sharing a common purpose of engaging in criminal conduct, associated in an ascertainable structure distinct from a pattern of criminal activity, and with a continuity of existence, structure and criminal purpose beyond the scope of individual criminal incidents.
4. “Pattern of criminal activity” means conduct engaged in by persons charged in an enterprise corruption count constituting three or more criminal acts that:
 - (a) were committed within ten years of the commencement of the criminal action;
 - (b) are neither isolated incidents, nor so closely related and connected in point of time or circumstance of commission as to constitute a criminal offense or criminal transaction, as those terms are defined in section 40.10 of the criminal procedure law; and
 - (c) are either: (i) related to one another through a common scheme or plan or (ii) were committed, solicited, requested, importuned or intentionally aided by persons acting with the mental culpability required for the commission thereof and associated with or in the criminal enterprise.

§ 700.05 Eavesdropping and video surveillance warrants; definitions of terms

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

1. “Eavesdropping” means “wiretapping”, “mechanical overhearing of conversation,” or the “intercepting or accessing of an electronic communication”, as those terms are defined in section 250.00 of the penal law, but does not include the use of a pen register or trap and trace device when authorized pursuant to article 705 of this chapter.
2. “Eavesdropping warrant” means an order of a justice authorizing or approving eavesdropping.
3. “Intercepted communication” means (a) a telephonic or telegraphic communication which was intentionally overheard or recorded by a person other than the sender or receiver thereof, without the consent of the sender or receiver, by means of any instrument, device or equipment, or (b) a conversation or discussion which was intentionally overheard or recorded, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment; or (c) an electronic communication which was intentionally intercepted or accessed, as that term is defined in section 250.00 of the penal law. The term “contents,” when used with respect to a communication, includes any information concerning the identity of the parties to such communications, and the existence, substance, purport, or



meaning of that communication. The term “communication” includes conversation and discussion.

3-a. “Telephonic communication”, “electronic communication”, and “intentionally intercepted or accessed” have the meanings given to those terms by subdivisions three, five, and six respectively, of section 250.00 of the penal law.

4. “Justice,” except as otherwise provided herein, means any justice of an appellate division of the judicial department in which the eavesdropping warrant is to be executed, or any justice of the supreme court of the judicial district in which the eavesdropping warrant is to be executed, or any county court judge of the county in which the eavesdropping warrant is to be executed. When the eavesdropping warrant is to authorize the interception of oral communications occurring in a vehicle or wire communications occurring over a telephone located in a vehicle, “justice” means any justice of the supreme court of the judicial department or any county court judge of the county in which the eavesdropping device is to be installed or connected or of any judicial department or county in which communications are expected to be intercepted. When such a justice issues such an eavesdropping warrant, such warrant may be executed and such oral or wire communications may be intercepted anywhere in the state.

5. “Applicant” means a district attorney or the attorney general or if authorized by the attorney general, the deputy attorney general in charge of the organized crime task force. If a district attorney or the attorney general is actually absent or disabled, the term “applicant” includes that person designated to act for him and perform his official function in and during his actual absence or disability.

6. “Law enforcement officer” means any public servant who is empowered by law to conduct an investigation of or to make an arrest for a designated offense, and any attorney authorized by law to prosecute or participate in the prosecution of a designated offense.

7. “Exigent circumstances” means conditions requiring the preservation of secrecy, and whereby there is a reasonable likelihood that a continuing investigation would be thwarted by alerting any of the persons subject to surveillance to the fact that such surveillance had occurred.

8. “Designated offense” means any one or more of the following crimes:

(a) A conspiracy to commit any offense enumerated in the following paragraphs of this subdivision, or an attempt to commit any felony enumerated in the following paragraphs of this subdivision which attempt would itself constitute a felony;

(b) Any of the following felonies: . . . labor trafficking as defined in section 135.35 of the penal law . . . ;

(h) Promoting prostitution in the first degree, as defined in section 230.32 of the penal law, promoting prostitution in the second degree, as defined by subdivision one of section 230.30 of the penal law;

Category 4(a): Training for Law Enforcement

§ 447-b. Services for exploited children.

6. The local social services commissioner may, to the extent that funds are available, in conjunction with the division of criminal justice services and local law enforcement officials, contract with an appropriate not-for-profit agency with experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. Local social services districts may work cooperatively to provide such training and such



training may be provided on a regional basis. The division of criminal justice services shall assist local social services districts in obtaining any available funds for the purposes of conducting law enforcement training from the federal justice department and the office of juvenile justice and delinquency prevention.

Category 4(b): Human Trafficking Task Force

None. § 483-ee, Establishment of interagency task force on human trafficking, repealed by L.2004, c. 74, section 13, eff. Sept. 1, 2013.

Category 5: No Requirement of Force, Fraud, or Coercion for Sex Trafficking of Minors

None.

Category 6: Posting of a Human Trafficking Hotline

None.

Category 7: Safe Harbor

§ 447-a. Definitions.

1. The term "sexually exploited child" means any person under the age of eighteen who has been subject to sexual exploitation because he or she:
 - (a) is the victim of the crime of sex trafficking as defined in section 230.34 of the penal law;
 - (b) engages in any act as defined in section 230.00 of the penal law;
 - (c) is a victim of the crime of compelling prostitution as defined in section 230.33 of the penal law;
 - (d) engages in acts or conduct described in article two hundred sixty-three or section 240.37 of the penal law.
2. The term "short-term safe house" means a residential facility operated by an authorized agency as defined in subdivision ten of section three hundred seventy-one of this article including a residential facility operating as part of an approved runaway program as defined in subdivision four of section five hundred thirty-two-a of the executive law or a not-for-profit agency with experience in providing services to sexually exploited youth and approved in accordance with the regulations of the office of children and family services that provides emergency shelter, services and care to sexually exploited children including food, shelter, clothing, medical care, counseling and appropriate crisis intervention services at the time they are taken into custody by law enforcement and for the duration of any legal proceeding or proceedings in which they are either the complaining witness or the subject child. The short-term safe house shall also be available at the point in time that a child under the age of eighteen has first come into the custody of juvenile detention officials, law enforcement, local jails or the local commissioner of social services or is residing with the local runaway and homeless youth authority.
3. The term "advocate" means an employee of the short-term safe house defined in subdivision two of this section that has been trained to work with and advocate for the



needs of sexually exploited children. The advocate shall accompany the child to all court appearances and will serve as a liaison between the short-term safe house and the court.

4. The term "safe house" means a residential facility operated by an authorized agency as defined in subdivision ten of section three hundred seventy-one of this article including a residential facility operating as part of an approved runaway program as defined in subdivision four of section five hundred thirty-two-a of the executive law or a not-for-profit agency with experience in providing services to sexually exploited youth and approved in accordance with the regulations of the office of children and family services that provides shelter for sexually exploited children. In addition, a long-term safe house may be operated by a transitional independent living support program as defined in subdivision six of section five hundred thirty-two-a of the executive law. A safe house serving sexually exploited children as defined in this title shall provide or assist in securing necessary services for such sexually exploited children either through direct provision of services, or through written agreements with other community and public agencies for the provision of services including but not limited to housing, assessment, case management, medical care, legal, mental health and substance and alcohol abuse services. Where appropriate such safe house in accordance with a service plan for such sexually exploited child may also provide counseling and therapeutic services, educational services including life skills services and planning services to successfully transition residents back to the community. Nothing in the provisions of this title or article nineteen-H of the executive law shall prevent a child who is the subject of a proceeding which has not reached final disposition from residing at the safe house for the duration of that proceeding nor shall it prevent any sexually exploited child who is not the subject of a proceeding from residing at the safe house. An advocate employed by a short-term safe house or other appropriate staff of a short-term safe house shall, to the maximum extent possible, preferably within twenty-four hours but within no more than seventy-two hour following a sexually exploited child's admission into the program other than pursuant to a court order, notify such child's parent, guardian or custodian of his or her physical and emotional condition and the circumstances surrounding the child's presence at the program, unless there are compelling circumstances why the parent, guardian or custodian should not be so notified. Where such circumstances exist, the advocate or other appropriate staff member shall either file an appropriate petition in the family court, refer the youth to the local social services district, or in instances where abuse or neglect is suspected, report such case pursuant to title six of this article.
5. The term "community-based program" means a program operated by a not-for-profit organization that provides services such as street outreach, voluntary drop-in services, peer counseling, individual counseling, family-therapy and referrals for services such as educational and vocational training and health care. Any such community-based program may also work with the safe house serving sexually exploited children as defined in this title to provide transitional services to such children returning to the community.

§ 447-b. Services for exploited children

1. Notwithstanding any inconsistent provision of law, pursuant to regulations of the office of children and family services, every local social services district shall as a component of the district's multi-year consolidated services child welfare services plan address the



child welfare services needs of sexually exploited children and to the extent that funds are available specifically therefore ensure that a short-term safe house or another short-term safe placement such as an approved runaway and homeless youth program, approved respite or crisis program providing crisis intervention or respite services or community-based program to serve sexually exploited children is available to children residing in such district. Nothing in this section shall prohibit a local social services district from utilizing existing respite or crisis intervention services already operated by such social services district or homeless youth programs or services for victims of human trafficking pursuant to article ten-D of this chapter so long as the staff members have received appropriate training approved by the office of children and family services regarding sexually exploited children and the existing programs and facilities provide a safe, secure and appropriate environment for sexually exploited children. Crisis intervention services, short-term safe house care and community-based programming may, where appropriate, be provided by the same not-for-profit agency. Local social services districts may work cooperatively to provide such short-term safe house or other short-term safe placement, services and programming and access to such placement, services and programming may be provided on a regional basis, provided, however, that every local social services district shall to the extent that funds are available ensure that such placement, services and programs shall be readily accessible to sexually exploited children residing within the district.

2. All of the services created under this title may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, as a condition of an adjournment in contemplation of dismissal issued in criminal court, through the diversion services created under section seven hundred thirty-five of the family court act, through a proceeding under article three of the family court act, a proceeding under article ten of the family court act or through a referral from a local social services agency.
3. The capacity of the crisis intervention services and community-based programs in subdivision one of this section shall be based on the number of sexually exploited children in each district who are in need of such services. A determination of such need shall be made in two thousand ten and every five years thereafter in every social services district by the local commissioner of social services and be included in the integrated county plan. Such determination shall be made in consultation with local law enforcement, runaway and homeless youth program providers, local probation departments, local social services commissioners, the runaway and homeless youth coordinator for the local social services district, local law guardians, presentment agencies, public defenders and district attorney's offices and child advocates and services providers who work directly with sexually exploited youth.
4. In determining the need for and capacity of the services created under this section, each local social services district shall recognize that sexually exploited youth have separate and distinct service needs according to gender and, where a local social services district determines that the need exists, to the extent that funds are available, appropriate programming shall be made available.
5. To the extent funds are specifically appropriated therefore, the office of children and family services shall contract with an appropriate not-for-profit agency with experience working with sexually exploited children to operate at least one long-term safe house in a geographically appropriate area of the state which shall provide safe and secure long



term housing and specialized services for sexually exploited children throughout the state. The appropriateness of the geographic location shall be determined taking into account the areas of the state with high numbers of sexually exploited children and the need for sexually exploited children to find shelter and long term placement in a region that cannot be readily accessed by the perpetrators of sexual exploitation. The need for more than one long-term safe house shall be determined by the office of children and family services based on the numbers and geographical location of sexually exploited children within the state. Nothing herein shall be construed to preclude an agency from applying for and accepting grants, gifts and bequests of funds from private individuals, foundations and the federal government for the purpose of creating or carrying out the duties of a long-term safe house.

6. The local social services commissioner may, to the extent that funds are available, in conjunction with the division of criminal justice services and local law enforcement officials, contract with an appropriate not-for-profit agency with experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. Local social services districts may work cooperatively to provide such training and such training may be provided on a regional basis. The division of criminal justice services shall assist local social services districts in obtaining any available funds for the purposes of conducting law enforcement training from the federal justice department and the office of juvenile justice and delinquency prevention.

Category 8: Victim Assistance

§ 483-bb. Services for victims of human trafficking.

- (a) The office of temporary and disability assistance may coordinate with and assist law enforcement agencies and district attorney's offices to access appropriate services for human trafficking victims.
- (b) In providing such assistance, the office of temporary and disability assistance may enter into contracts with non-government organizations for providing services to pre-certified victims of human trafficking as defined in subdivision (b) of section four hundred eighty-three-aa of this article, insofar as funds are available for that purpose. Such services may include, but are not limited to, case management, emergency temporary housing, health care, mental health counseling, drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training and placement assistance, post-employment services for job retention, and services to assist the individual and any of his or her family members to establish a permanent residence in New York state or the United States. Nothing in this section shall preclude the office of temporary and disability assistance, or any local social services district, from providing human trafficking victims who are United States citizens or human trafficking victims who meet the criteria pursuant to section one hundred twenty-two of this chapter with any benefits or services for which they otherwise may be eligible.

§ 483-cc. Confirmation as a victim of human trafficking.

- (a) As soon as practicable after a first encounter with a person who reasonably appears to a law enforcement agency or a district attorney's office to be a human trafficking victim, that



agency or office shall notify the office of temporary and disability assistance and the division of criminal justice services that such person may be eligible for services under this article.

(b) Upon receipt of such a notification, the division of criminal justice services, in consultation with the office of temporary and disability assistance and the referring agency or office, shall make a preliminary assessment of whether such victim or possible victim appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection) or appears to be otherwise eligible for any federal, state or local benefits and services. If it is determined that the victim appears to meet such criteria, the office of temporary and disability assistance shall report the finding to the victim, and to the referring law enforcement agency or district attorney's office, and may assist that agency or office in having such victim receive services from a case management provider who may be under contract with the office of temporary and disability assistance, or from any other available source. If the victim or possible victim is under the age of eighteen, the office of temporary and disability assistance also shall notify the local department of social services in the county where the child was found.

§ 483-dd. Law enforcement assistance with respect to immigration.

Upon the request of a human trafficking victim or a representative of a human trafficking victim, the state or local law enforcement agency or district attorney's office shall provide the victim with the United States Citizenship and Immigration Service (USCIS) Form I-914 Supplement B Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. In order to provide persuasive evidence, the state or local law enforcement agency endorsement must contain a description of the victimization upon which the application is based, including the dates the trafficking in persons occurred. The endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor servitude or services or for the purposes of a commercial sex act as defined in subdivision three of section 7102 of title 22 of the United States Code.

Category 9: Civil Remedy

None.

Category 10: Vacating Convictions

§ 440.10 Motion to vacate judgment.

1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that:

(i) The judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a prostitute or promoting prostitution) or 230.00 (prostitution) of the penal law, and the defendant's participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78); provided that:



- (i) a motion under this paragraph shall be made with due diligence, after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such trafficking, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; and
- (ii) official documentation of the defendant's status as a victim of sex trafficking or trafficking in persons at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking or trafficking in persons, but shall not be required for granting a motion under this paragraph.

If you would like assistance in enacting laws to fill in the gaps, please contact the Polaris Policy Program at policy@polarisproject.org.