

Florida Anti-Trafficking Laws

I. Overview

State laws constitute a vital part of U.S. efforts to eliminate modern slavery. The introduction of Florida law on human trafficking now allows—and mandates—that Florida courts and Florida law enforcement agencies share the federal mission of investigating and prosecuting human trafficking cases. In an era of limited fiscal resources, such collaborative efforts are absolutely necessary. State resources for victim care are also greatly needed given the proliferation of trafficking cases in recent years in Florida.

Florida’s anti-trafficking laws have been “a work in progress” for much of the past decade. The state enacted its first laws criminalizing trafficking in 2004, in the wake of landmark federal legislation—the Trafficking Victim Protection Act—that had been introduced in 2000. In the past six years Florida has done much to conform its state criminal statutes to federal ones dealing with human trafficking, as well as to respond to trafficking issues specific to Florida. (See Appendix B for a listing of all relevant Florida laws regarding human trafficking.)

The Florida Legislature criminalized human trafficking for the first time in 2004, establishing a new section in the Florida Criminal Code, §787.06, Florida Statutes, that defined and described human trafficking offenses. This included a second degree felony for labor trafficking at §787.05, Florida Statutes, a first degree felony for the sex trafficking of minors at §796.035, Florida Statutes, and a second degree felony for the sex trafficking of adults at §796.045, Florida Statutes. It also designated sex trafficking as a Racketeering Influenced and Corrupt Organizations (RICO) offense that would allow for enhanced criminal penalties for Florida offenders at §895.02, Florida Statutes.

The Legislature revisited the state’s criminal statutes on human trafficking in 2006 in an effort to add additional “teeth” to Florida law and to close a number of gaps that had become evident. In §787.06, Florida Statutes Florida law improved the definition of forced labor to include inducement through fraud or coercion and introduced a specific legal definition for debt

bondage. This section clarified that anyone who knowingly benefits financially or who receives anything of value from human trafficking can be prosecuted. It likewise established that all human trafficking offenses, and not solely sex trafficking offenses, can be prosecuted as RICO crimes in Florida at §895.02, Florida Statutes.

Statutes addressing training and victim care were also introduced in 2006 legislation. The Legislature directed that as of January 1, 2007, all Florida law enforcement recruits are to undergo a basic skills course on human trafficking as part of their academy training at §787.06, Florida Statutes. It also directed the Criminal Justice Standards and Training Commission to create an advanced law enforcement training on human trafficking, and called upon each state attorney to develop standards for training prosecutors on the investigation and prosecution of human trafficking offenses. The Legislature finally called upon the state Supreme Court and the Florida Bar to prepare and implement training on human trafficking for judges and attorneys in this same section of Florida law.

The plight of Florida trafficking victims was also considered in the 2006 legislation. A civil cause of action was enacted for labor trafficking victims, allowing them to sue their traffickers for three times the actual financial damages that their trafficking had caused them to suffer at §772.104, Florida Statutes. A similar provision was introduced for victims of sex trafficking. Because prostitution is not legally recognized as a form of labor—there is no “prevailing wage” estimation done by the federal government assessing the value of prostitution transactions—the Legislature created a separate yardstick to govern financial damages for forced prostitution. It determined that damages are to be awarded to victims of sex trafficking equal to three times their pimps’ profits from the illegal prostitution in which they have induced victims to participate. In addition, the Legislature called upon Florida’s Department of Children and Families to ensure that victims of human trafficking can access social services and benefits to alleviate their plight at §787.06, Florida Statutes.

The most recent—and most significant—change in Florida law on human trafficking occurred in 2008. Responding to the fact that up until then Florida law had defined child sex trafficking differently than did federal law, the Legislature changed Florida’s definition of child sex trafficking by removing the requirement that a child establish that force, fraud, or coercion had been used to induce them to participate in prostitution, pornography, or stripping at §796.035, Florida Statutes. (See Appendix B for further detail on this enactment, including both the enrolled as passed by the Legislature.) This change in Florida law was vitally important for several reasons. It first of all brought Florida criminal statutes into conformity with the federal Trafficking Victim Protection Act by clarifying that minors do not face the normal evidentiary burden of adult trafficking victims to demonstrate that force, fraud, or coercion has been employed against them. In so doing, Florida explicitly recognized that in any instance in which prostitution by a minor is facilitated by a third party, that child shall be considered to be a victim of sex trafficking. The law enforcement policy implications of this 2008 change in Florida law are still the object of considerable discussion.

II. Analysis and Recommendations

Florida law currently mirrors federal law very closely on human trafficking. It defines human trafficking offenses in a manner virtually identical to federal law, and has roughly commensurate criminal penalties. There remain areas of law and policy however that still need to be addressed by Florida lawmakers:

22. The 2006 legislative mandate that each State Attorney develop training standards for their prosecutors regarding human trafficking has yet to be realized. Likewise awaiting implementation is the legislative mandate directing the Florida Supreme Court and the Florida Bar to develop trainings on human trafficking for Florida judges and attorneys. This latter directive is especially important for Florida judges who are already being called upon to adjudicate criminal prosecutions of alleged trafficking brought under Florida statutes, and for juvenile law judges who may encounter victims of domestic minor sex trafficking in their courtrooms. All of these key groups should develop and implement needed training on human trafficking.

23. Florida has statutes in place that criminalize labor law offenses perpetrated against migrant farm workers, as well as statutes that regulate employee leasing companies. What remains largely unlicensed are temporary employment agencies, a number of which are engaging in the routine exploitation of immigrant workers—often in Florida’s hotel, landscaping, and resort industries. Laws regulating such companies should be introduced to fill this gap.
24. Florida law on sex trafficking is at last being used by prosecutors in Florida. Designated as a second degree felony, sex trafficking can result in a penalty of up to 15 years. A problem has emerged however, with the fact that convictions under this statute are governed by Level 4 Sentencing Guidelines, which even allow for non-prison sanctions. The Florida sentencing guidelines for sex trafficking convictions should be much higher in order to reflect the gravity of the crime.
25. While Florida law on domestic minor sex trafficking is in a separate statute Chapter 796 instead of the statute describing and defining human trafficking Chapter 787, it nonetheless conforms with federal law in establishing that minors whose participation in prostitution is facilitated by a third party are *per se* victims of sex trafficking. Florida law appropriately does not require actual knowledge on the part of a third party that one whom they have caused to engage in prostitution is a minor; like statutory rape provisions domestic minor sex trafficking is now a strict liability offense in Florida.
26. Nevertheless, the 2008 change in the law identifying minors engaged in facilitated prostitution as sex trafficking victims *per se* (eliminating the requirement that such minors demonstrate that force, fraud, or coercion had been used against them) has yet to be consistently implemented in statewide practice. While arrests of minors on prostitution charges appear to be declining, children in some instances are still arrested and detained on criminal grounds throughout the state. Florida policy makers, including those in law enforcement, need to formulate statewide practices that reflect this 2008 change in Florida law. Florida must continue to seek alternatives to traditional incarceration for children exploited in the commercial sex industry.

27. Florida law should also be changed to establish an advocate privilege in Florida courts of law. Communications between anti-trafficking advocates and the human trafficking victims whom they serve are currently not protected communications and are therefore vulnerable to discovery in court proceedings. This has a significant chilling effect on communications between these advocates and the human trafficking survivors to whom they provide such critical services. The gap should be remedied by law. The Legislature should create such a privilege, and model it after the similar privilege it has created for domestic violence and sexual violence advocates in Florida. Human trafficking advocates who serve trafficking victims should be given the opportunity to undergo a 40 hour training course similar to the ones designed to accredit domestic violence and sexual violence advocates. The Florida Office of the Attorney General would be an optimal agency to maintain and administer such an accreditation program. Advocates who successfully complete this training should then be covered by a communications privilege.
28. Pursuant to practices in other states, Florida legislators should enact a requirement that wherever liquor is sold, it be mandatory that information about human trafficking—including information about the national human trafficking hotline number, in several languages—be posted. This has proved to be a critical strategy for reaching out to victims in other states, and Florida should likewise utilize this practice. Florida law should also look to promoting information about human trafficking in other places where workers rights are publicized such as in materials disseminated by the Department of Business and Professional Regulation and the Agency for Workforce Innovation.
29. This *Strategic Plan* recommends a number of actions to be taken by agencies of the State of Florida related to human trafficking. If these agencies do not have the statutory authority to act on implementation of any of these recommendations, the Florida Legislature should provide needed statutory and/or administrative authority.

30. Finally, the Florida Legislature should look to other sources than the general revenue pool for funding improved victim care and law enforcement efforts to combat trafficking. In an era of economic austerity, other funding sources than taxpayer dollars should be explored. Specifically, the legislature should consider fining labor contractors and other employers who accrue egregious records of human trafficking violations or labor law offenses to supplement traditional state funding sources. Such funds could be used for victim care, public awareness campaigns, or underwriting anti-trafficking efforts on the part of Florida law enforcement agencies.