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STATE OF NEW YORK

1898--D

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IN ASSEMBLY

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AN ACT to amend the penal law, the criminal procedure law, the executive law and the civil practice law and rules, in relation to criminalizing the trafficking of persons for labor servitude and sexual servitude; and to amend the social services law and the executive law, in relation to establishing services and assistance for trafficked persons

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 Section 1. This act shall be known and may be cited as the "anti-human
2 trafficking act of 2006".

3 § 2. The penal law is amended by adding a new article 136 to read as
4 follows:

5 ARTICLE 136

6 TRAFFICKING OF PERSONS FOR
7 LABOR SERVITUDE OR SEXUAL SERVITUDE

8 Section 136.00 Definitions.

9 136.05 Trafficking a person for labor servitude in the second
10 degree.

11 136.06 Trafficking a person for labor servitude in the first
12 degree.

13 136.07 Aggravated trafficking for labor servitude.

14 136.10 Trafficking a person for sexual servitude in the second
15 degree.

16 136.11 Trafficking a person for sexual servitude in the first
17 degree.

18 136.12 Aggravated trafficking for sexual servitude.

19 § 136.00 Definitions.

20 For purposes of this article, the following terms shall be defined as
21 follows:

22 1. "Actor" means a person who violates any of the provisions of this
23 article.

24 2. "Blackmail" means the extortion of money or something else of value
25 from a person by a threat to expose a secret or publicize an asserted
26 fact, whether true or false, tending to subject a person to hatred,
27 contempt or ridicule.

28 3. "Debt bondage" means a condition or arrangement in which a debtor,
29 or a person under the debtor's control, is required to perform services
30 or commercial sexual activity as a security for debt, if the value of
31 those services as reasonably assessed is not applied toward liquidation
32 of the debt, and the length and nature of the services to be provided
33 are not reasonably and respectively limited and defined.

34 4. "Labor servitude" means labor that is performed or provided by
35 another person and is intentionally induced or maintained through the
36 actor's conduct by one or more of the following means:

37 (a) withholding, destroying or confiscating any actual or purported
38 passport, immigration document, or any other actual or purported govern-
39 ment-issued identification document, of another person;

40 (b) abusing or threatening to abuse the law or legal process;

41 (c) causing or threatening to cause physical injury to any person;

42 (d) restraining the person as defined in subdivision one of section
43 135.00 of this title;

44 (e) coercing the person as defined in section 135.60 of this title;

45 (f) providing a narcotic or intoxicating substance to the person with
46 intent to cause or maintain a state of chemical dependence and thereby
47 assure such person's continued labor;

48 (g) blackmail;

49 (h) debt bondage; or

50 (i) causing or threatening to cause serious physical injury or death
51 to any person.

52 5. "Sexual servitude" means commercial sexual activity that is
53 performed or provided by another person and is intentionally induced or
54 maintained through the actor's conduct by one or more of the following
55 means:

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1 (a) withholding, destroying or confiscating any actual or purported
2 passport, immigration document, or any other actual or purported govern-
3 ment-issued identification document, of another person;

4 (b) abusing or threatening to abuse the law or legal process;

5 (c) causing or threatening to cause physical injury to any person;

6 (d) restraining the person as defined in subdivision one of section
7 135.00 of this title;

8 (e) coercing the person as defined in section 135.60 of this title;

9 (f) providing a narcotic or intoxicating substance to the person with
10 intent to cause or maintain a state of chemical dependence and such
11 person's continued commercial sexual activity;

12 (g) blackmail;

13 (h) debt bondage;

14 (i) causing or threatening to cause serious physical injury or death
15 to any person; or

16 (j) deception or fraud constituting a systematic ongoing course of
17 conduct intended to induce a person to engage in or maintain a person's
18 engagement in commercial sexual activity by false or fraudulent
19 pretenses, representations or promises.

20 6. "Labor" means work of economic or financial value connected with
21 any trade, business or service, whether or not for profit.

22 7. "Commercial sexual activity" means any sexual conduct, as defined
23 in subdivision ten of section 130.00 of this title, which is offered, or
24 agreed to, or engaged in, in exchange for a fee or other remuneration.

25 8. "Restrain" has the same meaning as defined in subdivision one of
26 section 135.00 of this title.

27 9. "Coercion" has the same meaning as defined in section 135.60 of
28 this title.

29 10. "Maintain" means, in relation to labor or commercial sexual activ-
30 ity, to secure continued performance thereof, regardless of any initial
31 agreement on the part of the trafficking victim to perform such labor or
32 commercial sexual activity.

33 11. "Trafficking victim" means a person subjected to the practices
34 prohibited by section 136.05, 136.06, 136.07, 136.10, 136.11 or 136.12
35 of this article.

36 12. "Abuse of the law or legal process" means any express or implied
37 threat to bring any person to the attention of police, immigration
38 authorities or any other law enforcement or government agency, or any
39 express or implied threat to report that a person has committed a crime
40 defined in article two hundred thirty of this chapter or an immigration
41 violation, when such threat is made with the purpose of inducing or
42 maintaining a person's compliance with conditions of labor servitude or
43 sexual servitude. "Abuse of the law or legal process" shall not include
44 an attempt to correct a social security administration record or immi-
45 gration agency record in accordance with any local, state or federal
46 agency requirement, where such attempt is not made for the purpose of
47 such an express or implied threat.

48 § 136.05 Trafficking a person for labor servitude in the second degree.

49 A person is guilty of trafficking a person for labor servitude in the
50 second degree when he or she intentionally:

51 1. advances or profits from labor servitude by recruiting, enticing,
52 harboring, transporting, providing or obtaining another person for the
53 purpose of subjecting such person to labor servitude; or

54 2. subjects a person to labor servitude.

55 Trafficking a person for labor servitude in the second degree is a
56 class D felony.

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1 § 136.06 Trafficking a person for labor servitude in the first degree.

2 A person is guilty of trafficking a person for labor servitude in the
3 first degree when he or she commits the crime of trafficking a person
4 for labor servitude in the second degree:

5 1. against a person who is under the age of sixteen and the defendant
6 is four or more years older than the victim;

7 2. against five or more persons; or

8 3. after having been previously convicted, within the preceding ten
9 years, of trafficking a person for labor servitude in the first or
10 second degree, aggravated trafficking for labor servitude, trafficking a
11 person for sexual servitude in the first or second degree or aggravated
12 trafficking for sexual servitude.

13 Trafficking a person for labor servitude in the first degree is a
14 class C felony.

15 § 136.07 Aggravated trafficking for labor servitude.

16 A person is guilty of aggravated trafficking for labor servitude when
17 in the course of committing the crime of trafficking a person for labor
18 servitude in the second or first degree and he or she intentionally,
19 knowingly or recklessly causes serious physical injury or death to the
20 victim, whether as a principal or accomplice.

21 Aggravated trafficking for labor servitude is a class B felony.

22 § 136.10 Trafficking a person for sexual servitude in the second degree.

23 A person is guilty of trafficking a person for sexual servitude in the
24 second degree when he or she intentionally:

25 1. advances or profits from sexual servitude by recruiting, enticing,
26 harboring, transporting, providing or obtaining another person for the
27 purpose of subjecting such person to sexual servitude; or

28 2. subjects a person to sexual servitude.

29 Trafficking a person for sexual servitude in the second degree is a
30 class D felony.

31 § 136.11 Trafficking a person for sexual servitude in the first degree.

32 A person is guilty of trafficking a person for sexual servitude in the
33 first degree when he or she commits the crime of trafficking a person
34 for sexual servitude in the second degree:

35 1. against a person who is under the age of sixteen and the defendant
36 is four or more years older than the victim;

37 2. against two or more persons; or

38 3. after having been previously convicted, within the preceding ten
39 years, of trafficking a person for labor servitude in the first or
40 second degree, aggravated trafficking for labor servitude, trafficking a
41 person for sexual servitude in the first or second degree or aggravated
42 trafficking for sexual servitude.

43 Trafficking a person for sexual servitude in the first degree is a
44 class C felony.

45 § 136.12 Aggravated trafficking for sexual servitude.

46 A person is guilty of aggravated trafficking for sexual servitude when
47 in the course of committing the crime of trafficking a person for sexual
48 servitude in the first or second degree he or she:

49 1. intentionally, knowingly or recklessly causes serious physical
50 injury or death to the victim, whether as a principal or accomplice; or

51 2. subjects the victim to circumstances that he or she knows will and
52 that do result in the victim of such crime being victimized by rape in
53 the first degree, criminal sexual act in the first degree, sexual abuse
54 in the first degree or aggravated sexual abuse in the first, second,
55 third or fourth degree; or

56 3. commits such crime against a person who is under the age of eleven.

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1 Aggravated trafficking for sexual servitude is a class B felony.

2 § 3. Paragraph (a) of subdivision 1 of section 460.10 of the penal
3 law, as amended by chapter 489 of the laws of 2000, is amended to read
4 as follows:

5 (a) Any of the felonies set forth in this chapter: sections 120.05,
6 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relat-
7 ing to homicide; sections 130.25, 130.30 and 130.35 relating to rape;
8 sections 135.20 and 135.25 relating to kidnapping; section 135.65 relat-
9 ing to coercion; sections 136.05, 136.06, 136.07, 136.10, 136.11 and
10 136.12 relating to the trafficking of persons; sections 140.20, 140.25
11 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12
12 relating to criminal mischief; article one hundred fifty relating to
13 arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand
14 larceny; article one hundred sixty relating to robbery; sections 165.45,
15 165.50, 165.52 and 165.54 relating to criminal possession of stolen
16 property; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and
17 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and
18 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and
19 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating
20 to criminal diversion of prescription medications and prescriptions;
21 sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03,
22 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00,
23 215.05 and 215.19 relating to bribery; sections 190.40 and 190.42 relat-
24 ing to criminal usury; section 190.65 relating to schemes to defraud;
25 sections 205.60 and 205.65 relating to hindering prosecution; sections
26 210.10, 210.15, and 215.51 relating to perjury and contempt; section
27 215.40 relating to tampering with physical evidence; sections 220.06,
28 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43,
29 220.46, 220.55 and 220.60 relating to controlled substances; sections
30 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and
31 230.32 relating to promoting prostitution; sections 235.06, 235.07 and
32 235.21 relating to obscenity; section 263.10 relating to promoting an
33 obscene performance by a child; sections 265.02, 265.03, 265.04, 265.11,
34 265.12, 265.13 and the provisions of section 265.10 which constitute a
35 felony relating to firearms and other dangerous weapons; and sections
36 265.14 and 265.16 relating to criminal sale of a firearm; and section
37 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings;
38 and sections 470.05, 470.10, 470.15 and 470.20 relating to money laun-
39 dering; or

40 § 4. Section 460.20 of the penal law, as added by chapter 516 of the
41 laws of 1986, is amended to read as follows:

42 § 460.20 Enterprise corruption.

43 1. A person is guilty of enterprise corruption when, having knowledge
44 of the existence of a criminal enterprise and the nature of its activ-
45 ities, and being employed by or associated with such enterprise, he or
46 she:

47 (a) intentionally conducts or participates in the affairs of an enter-
48 prise by participating in a pattern of criminal activity; or

49 (b) intentionally acquires or maintains any interest in or control of
50 an enterprise by participating in a pattern of criminal activity; or

51 (c) participates in a pattern of criminal activity and knowingly
52 invests any proceeds derived from that conduct, or any proceeds derived
53 from the investment or use of those proceeds, in an enterprise.

54 2. For purposes of this section, a person participates in a pattern of
55 criminal activity when, with intent to participate in or advance the
56 affairs of the criminal enterprise, he or she engages in conduct consti-

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1 tuting, or, is criminally liable for pursuant to section 20.00 of this
2 chapter, at least three of the criminal acts included in the pattern,
3 provided that:

4 (a) Two of his or her acts are felonies other than conspiracy;

5 (b) Two of his or her acts, one of which is a felony, occurred within
6 five years of the commencement of the criminal action; and

7 (c) Each of his or her acts occurred within three years of a prior
8 act.

9 3. For purposes of this section, the enterprise corrupted in violation
10 of subdivision one of this section need not be the criminal enterprise
11 by which the person is employed or with which he or she is associated,
12 and may be a legitimate enterprise.

13 Enterprise corruption is a class B felony.

14 § 5. The penal law is amended by adding a new section 40.20 to read as
15 follows:

16 § 40.20 Victim of human trafficking.

17 1. (a) In any prosecution for a designated offense, where at the time
18 of the alleged commission of such designated offense the defendant was
19 subjected to the practices prohibited by section 136.05, 136.06, 136.07,
20 136.10, 136.11 or 136.12 of this chapter, it shall be a defense that the
21 defendant engaged in the proscribed conduct because he or she was
22 coerced into committing such offense.

23 (b) For purposes of this section, a "designated offense" shall be any
24 crime or violation defined in this chapter, other than the following: a
25 homicide offense as defined in article one hundred twenty-five, an
26 assault offense as defined in article one hundred twenty, a sex offense
27 as defined in article one hundred thirty, a robbery offense as defined
28 in article one hundred sixty, a kidnapping offense as defined in article
29 one hundred thirty-five, an arson offense as defined in article one
30 hundred fifty, a burglary offense as defined in article one hundred
31 forty, criminal possession of a weapon in the second degree as defined
32 in subdivision two of section 265.03, criminal possession of a weapon in
33 the third degree as defined in subdivision four of section 265.02, crim-
34 inal use of a firearm in the first degree as defined in section 265.09,
35 criminal use of a firearm in the second degree as defined in section
36 265.08 of this chapter, a conspiracy to commit any such designated
37 offense as defined in article one hundred five of this chapter, or an
38 attempt to commit any such designated offense as defined in article one
39 hundred ten of this chapter.

40 2. In any prosecution for trafficking a person for labor servitude, as
41 defined in section 136.05, 136.06 or 136.07, a trafficking victim of
42 such offense, as defined in subdivision eleven of section 136.00 of this
43 chapter, shall not be deemed an accomplice.

44 § 6. Section 230.35 of the penal law, as amended by chapter 450 of the
45 laws of 2005, is amended to read as follows:

46 § 230.35 Promoting or compelling prostitution; sexual servitude
47 offenses: accomplice.

48 1. In a prosecution for promoting prostitution or compelling prostitu-
49 tion, a person less than seventeen years of age from whose prostitution
50 activity another person is alleged to have advanced or attempted to
51 advance or profited or attempted to profit shall not be deemed to be an
52 accomplice.

53 2. In a prosecution for trafficking a person for sexual servitude as
54 defined in section 136.10, 136.11 or 136.12 of this chapter, a person
55 from whose prostitution activity or commercial sexual activity another

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1 person is alleged to have advanced or attempted to advance or profited
2 or attempted to profit shall not be deemed an accomplice.

3 § 7. The opening paragraph of paragraph (b) of subdivision 5 of
4 section 60.27 of the penal law is designated subparagraph (i) and a new
5 subparagraph (ii) is added to read as follows:

6 (ii) Victims of human trafficking. Notwithstanding any other
7 provision of law, including but not limited to paragraph (a) of this
8 subdivision, when a defendant is convicted of trafficking a person for
9 labor servitude or trafficking a person for sexual servitude as defined
10 in article one hundred thirty-six of this chapter, the court may impute
11 income or value as follows when necessary to determine the appropriate
12 amount of restitution.

13 (A) For a conviction of trafficking a person for labor servitude, in
14 addition to any other loss identified, the court may include as restitu-
15 tion the greater of:

16 (I) the gross income or value to the defendant of the trafficking
17 victim's labor; or

18 (II) the value of the trafficking victim's labor as specified under
19 the minimum wage and overtime provisions of the fair labor standards act
20 and the state's labor laws.

21 (B) For a conviction of trafficking a person for sexual servitude, in
22 addition to any other loss identified, the court may include as restitu-
23 tion the income or value obtained by the defendant from the sexual
24 servitude of the trafficking victim.

25 (C) For a conviction of trafficking a person for labor servitude or
26 trafficking a person for sexual servitude, in addition to any other loss
27 identified, the court may also include as restitution compensation to
28 the trafficking victim representing the reasonable cost of:

29 (I) medical and psychological assessment and treatment;

30 (II) physical and occupational therapy and rehabilitation;

31 (III) necessary transportation, temporary housing and childcare; and

32 (IV) loss of or damage to property.

33 § 8. The criminal procedure law is amended by adding a new section
34 60.80 to read as follows:

35 § 60.80 Rules of evidence; victim of human trafficking.

36 1. Evidence of the following facts or conditions shall be inadmissi-
37 ble, shall not constitute a defense, and shall not preclude a finding of
38 sexual servitude in any prosecution under section 136.05, 136.06,
39 136.07, 136.10, 136.11 or 136.12 of the penal law:

40 a. a trafficking victim's sexual history, history of commercial sexual
41 activity, or history of conviction for one or more prostitution
42 offenses;

43 b. a trafficking victim's connection to the defendant by consanguinity
44 or marriage; and

45 c. consent of or permission by a trafficking victim under seventeen
46 years of age or anyone else on such victim's behalf to commercial sexual
47 activity.

48 2. For purposes of this section, "trafficking victim" shall have the
49 meaning set forth in subdivision eleven of section 136.00 of the penal
50 law.

51 § 9. Section 647 of the executive law is amended by adding a new
52 subdivision 5 to read as follows:

53 5. A trafficking victim, as defined in subdivision eleven of section
54 136.00 of the penal law, shall be provided with information in his or
55 her appropriate language, about his or her rights and available
56 services, including but not limited to:

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1 (a) pro bono and low-cost legal assistance and services;

2 (b) in every case charged under article one hundred thirty-six of the
3 penal law, an official from the office bringing such charge shall, as
4 soon as possible, give the trafficking victim oral and written referral
5 information concerning local victim assistance organizations in this
6 state, including, but not limited to, coordinators of services for
7 victims of human trafficking, and shall notify at least one such coordi-
8 nator of services for victims of human trafficking that such person may
9 be in need of services; and

10 (c) the right to seek existing federal and state benefits and
11 services, such as regularized immigration status, benefits and services
12 under the federal victims of trafficking and violence protection act of
13 2000, as amended, and to seek crime victim and other compensation.

14 § 10. Paragraph (a) of subdivision 4-b and subdivision 6 of section
15 1310 of the civil practice law and rules, paragraph (a) of subdivision
16 4-b as added by chapter 655 of the laws of 1990 and subdivision 6 as
17 added by chapter 669 of the laws of 1984, are amended to read as
18 follows:

19 (a) a conviction of a person for a violation of section 220.18,
20 220.21, 220.41, or 220.43 of the penal law, or where the accusatory
21 instrument charges one or more of such offenses, conviction upon a plea
22 of guilty to any of the felonies for which such plea is otherwise
23 authorized by law or a conviction of a person for conspiracy to commit a
24 violation of section 220.18, 220.21, 220.41, or 220.43 of the penal law,
25 where the controlled substances which are the object of the conspiracy
26 are located in the real property which is the subject of the forfeiture
27 action, or a felony conviction of a person for a violation of article
28 one hundred thirty-six of the penal law; or

29 6. "Pre-conviction forfeiture crime" means only a felony defined in
30 article two hundred twenty, one hundred thirty-six, or section 221.30 or
31 221.55 of the penal law.

32 § 11. Paragraph (a) of subdivision 1 of section 1311 of the civil
33 practice law and rules, as added by chapter 669 of the laws of 1984, is
34 amended to read as follows:

35 (a) Actions relating to post-conviction forfeiture crimes. An action
36 relating to a post-conviction forfeiture crime must be grounded upon a
37 conviction of a felony defined in subdivision five of section one thou-
38 sand three hundred ten of this article, or upon criminal activity aris-
39 ing from a common scheme or plan of which such a conviction is a part,
40 or upon a count of an indictment or information alleging a felony which
41 was dismissed at the time of a plea of guilty to a felony in satisfac-
42 tion of such count. A court may not grant forfeiture until such
43 conviction has occurred. However, an action may be commenced, and a
44 court may grant a provisional remedy provided under this article, prior
45 to such conviction having occurred. An action under this paragraph must
46 be dismissed at any time after sixty days of the commencement of the
47 action unless the conviction upon which the action is grounded has
48 occurred, or an indictment or information upon which the asserted
49 conviction is to be based is pending in a superior court. An action
50 under this paragraph shall be stayed during the pendency of a criminal
51 action which is related to it; provided, however, that such stay shall
52 not prevent the granting or continuance of any provisional remedy
53 provided under this article or any other provisions of law. In no event
54 shall the amount that a person is eligible to receive pursuant to subdi-
55 vision five of section 60.27 of the penal law be diminished through the
56 application of this section.

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1 § 12. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
2 procedure law, as amended by chapter 264 of the laws of 2003, is amended
3 to read as follows:

4 (b) Any of the following felonies: assault in the second degree as
5 defined in section 120.05 of the penal law, assault in the first degree
6 as defined in section 120.10 of the penal law, reckless endangerment in
7 the first degree as defined in section 120.25 of the penal law, promot-
8 ing a suicide attempt as defined in section 120.30 of the penal law,
9 criminally negligent homicide as defined in section 125.10 of the penal
10 law, manslaughter in the second degree as defined in section 125.15 of
11 the penal law, manslaughter in the first degree as defined in section
12 125.20 of the penal law, murder in the second degree as defined in
13 section 125.25 of the penal law, murder in the first degree as defined
14 in section 125.27 of the penal law, abortion in the second degree as
15 defined in section 125.40 of the penal law, abortion in the first degree
16 as defined in section 125.45 of the penal law, rape in the third degree
17 as defined in section 130.25 of the penal law, rape in the second degree
18 as defined in section 130.30 of the penal law, rape in the first degree
19 as defined in section 130.35 of the penal law, criminal sexual act in
20 the third degree as defined in section 130.40 of the penal law, criminal
21 sexual act in the second degree as defined in section 130.45 of the
22 penal law, criminal sexual act in the first degree as defined in section
23 130.50 of the penal law, sexual abuse in the first degree as defined in
24 section 130.65 of the penal law, unlawful imprisonment in the first
25 degree as defined in section 135.10 of the penal law, kidnapping in the
26 second degree as defined in section 135.20 of the penal law, kidnapping
27 in the first degree as defined in section 135.25 of the penal law,
28 custodial interference in the first degree as defined in section 135.50
29 of the penal law, coercion in the first degree as defined in section
30 135.65 of the penal law, trafficking a person for labor servitude as
31 defined in section 136.05, 136.06 or 136.07 of the penal law, traffick-
32 ing a person for sexual servitude as defined in section 136.10, 136.11
33 or 136.12 of the penal law, criminal trespass in the first degree as
34 defined in section 140.17 of the penal law, burglary in the third degree
35 as defined in section 140.20 of the penal law, burglary in the second
36 degree as defined in section 140.25 of the penal law, burglary in the
37 first degree as defined in section 140.30 of the penal law, criminal
38 mischief in the third degree as defined in section 145.05 of the penal
39 law, criminal mischief in the second degree as defined in section 145.10
40 of the penal law, criminal mischief in the first degree as defined in
41 section 145.12 of the penal law, criminal tampering in the first degree
42 as defined in section 145.20 of the penal law, arson in the fourth
43 degree as defined in section 150.05 of the penal law, arson in the third
44 degree as defined in section 150.10 of the penal law, arson in the
45 second degree as defined in section 150.15 of the penal law, arson in
46 the first degree as defined in section 150.20 of the penal law, grand
47 larceny in the fourth degree as defined in section 155.30 of the penal
48 law, grand larceny in the third degree as defined in section 155.35 of
49 the penal law, grand larceny in the second degree as defined in section
50 155.40 of the penal law, grand larceny in the first degree as defined in
51 section 155.42 of the penal law, robbery in the third degree as defined
52 in section 160.05 of the penal law, robbery in the second degree as
53 defined in section 160.10 of the penal law, robbery in the first degree
54 as defined in section 160.15 of the penal law, unlawful use of secret
55 scientific material as defined in section 165.07 of the penal law, crim-
56 inal possession of stolen property in the fourth degree as defined in

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1 section 165.45 of the penal law, criminal possession of stolen property
2 in the third degree as defined in section 165.50 of the penal law, crim-
3 inal possession of stolen property in the second degree as defined by
4 section 165.52 of the penal law, criminal possession of stolen property
5 in the first degree as defined by section 165.54 of the penal law,
6 trademark counterfeiting in the first degree as defined in section
7 165.73 of the penal law, forgery in the second degree as defined in
8 section 170.10 of the penal law, forgery in the first degree as defined
9 in section 170.15 of the penal law, criminal possession of a forged
10 instrument in the second degree as defined in section 170.25 of the
11 penal law, criminal possession of a forged instrument in the first
12 degree as defined in section 170.30 of the penal law, criminal
13 possession of forgery devices as defined in section 170.40 of the penal
14 law, falsifying business records in the first degree as defined in
15 section 175.10 of the penal law, tampering with public records in the
16 first degree as defined in section 175.25 of the penal law, offering a
17 false instrument for filing in the first degree as defined in section
18 175.35 of the penal law, issuing a false certificate as defined in
19 section 175.40 of the penal law, criminal diversion of prescription
20 medications and prescriptions in the second degree as defined in section
21 178.20 of the penal law, criminal diversion of prescription medications
22 and prescriptions in the first degree as defined in section 178.25 of
23 the penal law, escape in the second degree as defined in section 205.10
24 of the penal law, escape in the first degree as defined in section
25 205.15 of the penal law, absconding from temporary release in the first
26 degree as defined in section 205.17 of the penal law, promoting prison
27 contraband in the first degree as defined in section 205.25 of the penal
28 law, hindering prosecution in the second degree as defined in section
29 205.60 of the penal law, hindering prosecution in the first degree as
30 defined in section 205.65 of the penal law, criminal possession of a
31 weapon in the third degree as defined in subdivisions two, three, four
32 and five of section 265.02 of the penal law, criminal possession of a
33 weapon in the second degree as defined in section 265.03 of the penal
34 law, criminal possession of a dangerous weapon in the first degree as
35 defined in section 265.04 of the penal law, manufacture, transport,
36 disposition and defacement of weapons and dangerous instruments and
37 appliances defined as felonies in subdivisions one, two, and three of
38 section 265.10 of the penal law, sections 265.11, 265.12 and 265.13 of
39 the penal law, or prohibited use of weapons as defined in subdivision
40 two of section 265.35 of the penal law, relating to firearms and other
41 dangerous weapons;

42 § 13. The civil practice law and rules is amended by adding a new
43 section 1311-b to read as follows:

44 § 1311-b. Victim of trafficking; cause of action. A person who has
45 been subject to trafficking under article one hundred thirty-six of the
46 penal law may bring a cause of action against the defendant for actual
47 damages, compensatory damages, injunctive relief, or any combination
48 thereof, or any other appropriate relief. A prevailing plaintiff shall
49 also be awarded attorney fees and costs. Treble damages shall be awarded
50 on proof of actual damages where defendant's acts were willful and mali-
51 cious.

52 § 14. The civil practice law and rules is amended by adding a new
53 section 213-c to read as follows:

54 § 213-c. Action by victim of trafficking. 1. A cause of action by a
55 person subject to one or more acts constituting trafficking under
56 section 136.05, 136.06, 136.07, 136.10, 136.11 or 136.12 of the penal

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1 law against a defendant brought pursuant to section thirteen hundred
2 eleven-b of this chapter may be commenced within seven years of the date
3 of the crime.

4 2. Disability shall toll the running of the statute of limitation
5 established pursuant to this section. As used in this section, "disabil-
6 ity" means that the plaintiff is under the age of eighteen, insane,
7 imprisoned or under other incapacity or that such person is physically
8 or mentally injured to the extent that it is impossible or impractical
9 for him or her to commence or maintain an action pursuant to section
10 thirteen hundred eleven-b of this chapter.

11 § 15. The social services law is amended by adding a new article 12 to
12 read as follows:

13 ARTICLE 12

14 SERVICES FOR TRAFFICKED PERSONS

15 Section 490. Definitions.

16 491. Services for trafficking victims.

17 492. Interagency advisory committee on human trafficking.

18 493. Data collection on human trafficking.

19 494. Residential services for trafficking victims.

20 § 490. Definitions. In this article:

21 1. "Coordinator of services for victims of human trafficking" shall
22 mean a not-for-profit contractor with linguistically and culturally
23 appropriate staff to assist victims of human trafficking. Such assist-
24 ance shall include, but not be limited to, the services described in
25 subparagraph (a) of subdivision one of section four hundred ninety-one
26 of this article.

27 2. "Trafficking victim" shall mean a person who is a victim of a crime
28 of human trafficking as such crime may be defined by state or federal
29 law.

30 § 491. Services for trafficking victims. 1. Coordination of services.

31 a. The office of temporary and disability assistance shall ensure that
32 coordinators of services for victims of human trafficking are reasonably
33 available for victims of human trafficking who are found in New York
34 state. Services provided by such coordinators shall include, but not be
35 limited to, assistance with:

36 (i) applications for T non-immigrant status or U non-immigrant status
37 available under the federal Victims of Trafficking and Violence
38 Protection Act;

39 (ii) applications for legal permanent residence for eligible recipi-
40 ents of T non-immigrant status or U non-immigrant status;

41 (iii) identification of and application for available public benefits,
42 including but not limited to, temporary assistance, refugee match
43 grants, refugee cash assistance, food stamps, child care and medical
44 assistance;

45 (iv) access to both short term and long term safe and appropriate
46 housing;

47 (v) access to needed medical care, dental care, and mental health
48 treatment, including but not limited to, where the victim has been a
49 victim of sexual assault, free optional testing for HIV and other sexu-
50 ally transmitted diseases and a counseling session by a medically
51 trained professional on the accuracy of such tests and the risk of tran-
52 smision of sexually transmitted diseases;

53 (vi) access to job training and placement, where appropriate;

54 (vii) access to language translation services in the victim's native
55 language or language of fluency;

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1 (viii) access to education or English as a second language training,
2 where appropriate; and

3 (ix) access to any other services necessary to safeguard the health
4 and well-being of victims of trafficking.

5 b. Coordinators of services for victims of human trafficking shall
6 assist victims of trafficking with application for T non-immigrant
7 status or U non-immigrant status by completing or assisting the traf-
8 ficking victim in completing an oral or written request to state law
9 enforcement requesting that state law enforcement submit a written
10 request to federal authorities asking that the trafficking victim be
11 granted temporary immigration status known as "continued presence"; by
12 completing or assisting the trafficking victim in completing an oral or
13 written request to state law enforcement for law enforcement documents
14 necessary to support an application for T non-immigrant status or U
15 non-immigrant status such as a declaration of law enforcement officer
16 for victim of trafficking in persons; and by completing or assisting the
17 trafficking victim in completing an oral or written request from law
18 enforcement for documentation necessary to support the trafficking
19 victim's request for benefits and services authorized by the federal
20 Victims of Trafficking and Violence Protection Act.

21 2. Services made available to a victim of human trafficking shall not,
22 unless otherwise required by federal law, be provided to such victim
23 contingent upon his or her immigrant status, willingness to cooperate
24 with a law enforcement investigation, or prosecution or conviction of
25 the alleged human trafficker.

26 § 492. Interagency advisory committee on human trafficking. 1. The
27 interagency advisory committee on human trafficking is hereby created
28 within the executive department to have and exercise the functions,
29 powers and duties provided by the provisions of this section and any
30 other applicable provision of law. The advisory committee shall be
31 comprised of appropriate officials from the office of temporary and
32 disability assistance, the office of children and family services, the
33 department of law, the department of health, the department of criminal
34 justice services, the division of parole, the department of labor, the
35 office of mental health and the office of alcohol and substance abuse
36 services. The advisory committee shall also be comprised of at least ten
37 other individuals from eight or more nongovernmental organizations with
38 expertise in the areas of immigration law and services for trafficking
39 victims. Such nongovernmental organizations shall reflect the geograph-
40 ical diversity of New York state, including representatives from New
41 York city and other upstate regions, and shall possess a range of exper-
42 tise in providing services to trafficking victims subjected to both
43 labor servitude and sexual servitude. A representative from the office
44 of temporary and disability assistance shall be chairperson of the task
45 force and shall appoint the nongovernmental members of the advisory
46 committee. The chairperson shall take into consideration, when appoint-
47 ing such nongovernmental members, organizations that are grantees of
48 federal funds provided through the United States department of justice
49 bureau of justice assistance and office for victims of crime to assist
50 such organizations in the provision of services to victims of human
51 trafficking. The advisory committee shall meet as necessary to carry
52 out its functions, powers and duties, but such meetings shall occur at
53 least once each quarter.

54 2. The advisory committee shall, in consultation with governmental and
55 nongovernmental organizations and in consultation with trafficking
56 victims, provide an interagency forum for the collaboration of various

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1 state agencies and service providers to develop state policies to meet
2 the varied needs of trafficking victims found in New York state. The
3 duties of the advisory committee shall include, but not be limited to:

4 a. coordination of activities necessary to implement the provisions of
5 this article;

6 b. coordination of training based on existing training materials that
7 were developed with federal funding from the department of health and
8 human services to educate individuals likely to come into contact with
9 trafficking victims, including but not limited to, health care provid-
10 ers, state and local law enforcement officer, domestic violence service
11 providers and labor, housing and social services officials. Such train-
12 ing materials shall be used to educate these individuals on the phenome-
13 non of human trafficking, state and federal laws that address traffick-
14 ing and the rights of trafficking victims, the needs of trafficking
15 victims, methods for accurately identifying trafficking victims and to
16 then provide them effective services, advise them of their rights and
17 protect their safety, and procedures and techniques for addressing the
18 specialized needs of trafficking victims that may arise due to cultural
19 or language barriers;

20 c. the development of measures to evaluate state progress in the areas
21 of trafficking prevention, protection, and assistance to victims of
22 trafficking, and the prosecution of and enforcement against perpetrators
23 of human trafficking;

24 d. the creation and oversight of interagency procedures to collect and
25 organize data, which will respect the confidentiality of trafficking
26 victims, relating to trafficking, including but not limited to, signif-
27 icant research and resource information on domestic trafficking;

28 e. the evaluation of available funding streams, including but not
29 limited to, any federal grants that may be available to assist states in
30 establishing or expanding programs for trafficking victims, to provide
31 services to trafficking victims and to create and disseminate training
32 and educational materials on human trafficking and technical assistance
33 to state agencies applying for any such identified funding; and

34 f. the completion of a comprehensive needs assessment to evaluate the
35 needs of trafficking victims, the services that currently exist to meet
36 those needs, the services that are currently in place which could meet
37 the needs of trafficking victims with small changes, and a long term
38 plan to develop a service system to better meet the needs of trafficking
39 victims.

40 3. The advisory committee shall provide a report to the governor, the
41 temporary president of the senate and the speaker of the assembly one
42 year after the effective date of this article and annually thereafter.
43 Such report shall include, but not be limited to, information on the
44 progress of the state in the areas of trafficking prevention, protection
45 of trafficking victims, assistance and services for trafficking victims,
46 the prosecution of and enforcement against traffickers and the number of
47 trafficking victims who received services from coordinators of services
48 for victims of human trafficking and the types of services received by
49 those victims.

50 § 493. Data collection on human trafficking. The office of temporary
51 and disability assistance shall collect the following data on traffick-
52 ing cases served by coordinators of services for victims of human traf-
53 ficking in New York state:

54 1. the number of trafficked persons who received the following, the
55 number of trafficked persons who were refused the following, and the
56 number of trafficked persons whose applications are in process for:

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- 1 a. continuous physical presence status;
- 2 b. T non-immigrant visas; and
- 3 c. U non-immigrant visas;
- 4 2. the number of trafficking cases investigated by law enforcement;
- 5 3. the number of prosecutions, convictions and plea bargains for traf-
- 6 ficking related crimes;
- 7 4. the age, sex and nationality of the trafficking victims and pepe-
- 8 rators of trafficking in all cases prosecuted; and
- 9 5. the form of trafficking for each trafficking case investigated
- 10 including whether the trafficking victim was subjected to sex traffick-
- 11 ing, coercion, debt bondage, involuntary servitude or peonage, as such
- 12 are defined in the federal Victims of Trafficking and Violence
- 13 Protection Act.

14 § 494. Residential services for trafficking victims. The office of
15 children and family services shall prepare a plan to meet the emergency
16 shelter needs of trafficking victims in a manner that ensures safety and
17 confidentiality for trafficking victims.

18 § 16. Paragraph (g) of subdivision 1 of section 158 of the social
19 services law, as added by section 44 of part B of chapter 436 of the
20 laws of 1997, is amended to read as follows:

21 (g) is a qualified alien who is ineligible to receive assistance
22 funded under the temporary assistance for needy families block grant
23 solely because of section four hundred three of the federal personal
24 responsibility and work opportunity reconciliation act of 1996 (P.L.
25 104-193) [~~or~~], is an alien who is permanently residing under color of
26 law but is not a qualified alien, or is an alien who has provided credi-
27 ble evidence that he or she has more likely than not been a victim of
28 trafficking and has not yet received the temporary immigration status of
29 continued presence or T visa status.

30 § 17. Section 63 of the executive law is amended by adding a new
31 subdivision 16 to read as follows:

32 16. Appoint an assistant to function as a liaison with the United
33 States department of justice in order to link the state and federal
34 response to human trafficking, such assistant shall work directly with
35 the federal government to identify federal funding streams for the state
36 to assist trafficking victims and to assist coordinators of services for
37 victims of human trafficking in their work to obtain federal documenta-
38 tion needed for continuous physical presence status, T non-immigrant
39 visas or U non-immigrant visas.

40 § 18. The executive law is amended by adding a new section 214-c to
41 read as follows:

42 § 214-c. Assisting trafficked persons. In order to ensure that traf-
43 ficking victims are able to access all available federal benefits and
44 programs for trafficked persons, the state police shall:

45 (1) keep federal authorities informed about trafficking cases known to
46 the state police;

47 (2) within seventy-two hours of an oral or written request for
48 submission from a person identified by local or state authorities as
49 someone who has, more likely than not, been a victim of trafficking or
50 an oral or written request from his or her authorized representative,
51 submit an oral or written request to the appropriate federal authorities
52 requesting that the trafficking victim be granted the temporary immi-
53 gration status of continued presence;

54 (3) within seventy-two hours of an oral or written request for
55 documentation from a person identified by local or state authorities as
56 someone who has, more likely than not, been a victim of trafficking or

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1 an oral or written request from his or her authorized representative,
 2 provide the person with a declaration of law enforcement officer for
 3 victim of trafficking in persons that satisfies the law enforcement
 4 agency endorsement regulations in support of such person's application
 5 for the T non-immigrant status or the U non-immigrant status available
 6 to trafficking victims; and

7 (4) within seventy-two hours of a request for documentation from a
 8 person identified by local or state authorities as someone who has, more
 9 likely than not, been a victim of trafficking, or an oral or written
 10 request from his or her authorized representative, provide the person
 11 with documentation in support of such person's request for benefits and
 12 services to be provided to trafficking victims by the office of refugee
 13 and resettlement in the department of health and human services.

14 § 19. This act shall take effect on April 1, 2007.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
 MEMORANDUM IN SUPPORT OF LEGISLATION
 submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A1898D

SPONSOR: Dinowitz

TITLE OF BILL: An act to amend the penal law, the criminal procedure law, the executive law and the civil practice law and rules, in relation to criminalizing the trafficking of persons for labor servitude and sexual servitude; and to amend the social services law and the executive law, in relation to establishing services and assistance for trafficked persons

PURPOSE OR GENERAL IDEA OF BILL: To strengthen laws relating to human trafficking by increasing penalties; protecting minors; providing restitution and victim assistance; unifying definitions and concepts related to trafficking of persons to clarify and make more comprehensive anti-trafficking laws; and to provide assistance and services to victims of human trafficking.

SUMMARY OF SPECIFIC PROVISIONS: Bill section 1 entitles the act "The Anti-Human Trafficking Act of 2006."

Bill section 2 adds a new Article 136 to the Penal Law, creating a specific article punishing the trafficking of a person for labor or sexual servitude.

Section 136.00 of the article defines "actor," "blackmail," "debt bondage," "labor servitude," "sexual servitude," "labor," "commercial sexual activity," "restrain," "coercion," "maintain," "trafficking victim," and "abuse of the law or legal process."

Section 136.05 defines the offense of trafficking a person for labor servitude in the second degree, and establishes it as a class D felony

Section 136.06 defines the offense of trafficking a person for labor servitude in the first degree, and establishes it as a class C felony

Section 136.07 defines the offense aggravated trafficking for labor servitude, and establishes it as a class B felony

Section 136.10 defines the offense of trafficking a person for sexual servitude in the second degree, and establishes it as a class D felony

Section 136.11 defines the offense of trafficking a person for sexual servitude in the first degree, and establishes it as a class C felony

Section 136.12 defines the offense aggravated trafficking for sexual servitude, and establishes it as a class B felony

Bill sections three and four add the new trafficking crimes to New York's Enterprise Corruption statute (PL Article 460), allowing class B felony prosecution when trafficking is committed as a part of an otherwise legitimate business or enterprise, or through organized crime activities.

Bill section 5 establishes a defense to prosecution for certain offenses for victims of human trafficking who were coerced into engaging in such conduct.

Bill section 6, in a manner similar to current law with respect to prostitution offenses, provides that a victim of trafficking for sexual servitude shall not, for purposes of criminal prosecution, be deemed an accomplice of the person who enslaved her.

Bill section 7 provides that when sentencing a person for trafficking for labor servitude or sexual servitude, the court may include as restitution to the victims costs for medical and psychological treatment, transportation, temporary housing and child care and the value of lost or damaged property.

Bill section 8 provides that a trafficking victim's history of sexual activity or conviction for prostitution offenses shall not be considered and shall not constitute a defense in the prosecution of the alleged trafficker for the crimes of trafficking for labor or sexual servitude.

Bill section 9 assures that trafficking victims will be advised of their rights and of services available to assist them.

Bill sections 10 and 11 provide that civil forfeiture laws may be used to recover monies and property from persons who perpetrate the crimes of trafficking for labor or sexual servitude.

Bill section 12 allows the use of wiretaps and similar eavesdropping devices in investigations of alleged crimes of trafficking for labor or sexual servitude.

Bill sections 13 and 14 provide that a civil cause of action by a trafficking victim may be brought against the person who committed such acts within seven years after the last of such acts.

Bill sections 15-18 establish a comprehensive program for identifying and providing services to victims of human trafficking in this state.

Bill section 19 is the effective date.

JUSTIFICATION: Human Trafficking is a heinous crime that exploits its victims in unimaginable ways. It is a major national and international problem. Human trafficking is a lucrative business that is clandestine, making it difficult to uncover and stop.

The existing laws on trafficking-like crimes are codified in disparate parts of the New York State criminal code. These crimes, including kidnapping, promoting prostitution and other coercive crimes, set forth, although less than comprehensively, some of the coercive acts traffick-

ers use to obtain and maintain the labor and sexual services of their victims.

This bill strengthens the laws on human trafficking by unifying the key definitions and concepts of anti-trafficking into a new Article 136 of the Penal Law. Traditional crimes like kidnapping and coercion may still be charged in this context, but the bill creates six new felony crimes, ranging from class D felonies to class B felonies, that may be charged and, additionally, authorizes use of the class B felony crime of Enterprise Corruption to prosecute offenders. By unifying and strengthening the law in these areas, the bill makes it more likely that such crimes are recognized, properly charged and effectively punished.

The bill also includes another critical component: a comprehensive plan for services, assistance and protection for the victims of human trafficking. Trafficking victims are often in a precarious legal and financial condition. When rescued, they frequently are far away from family and friends. Many do not have legal immigration status, and many have difficulty communicating with authorities.

This bill requires affirmative steps to identify and aid human trafficking victims. It helps victims access federal benefits and services which are already available under federal law. In addition, the bill provides needed services and assistance under state law.

PRIOR LEGISLATIVE HISTORY: This is a new bill.

FISCAL IMPLICATIONS: To be determined.

EFFECTIVE DATE: The bill will take effect on April 1st 2007.
