



# Prosecuting Human Traffickers

## Recent Legislative Enactments

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### Introduction

Reports of human trafficking in the United States are on the rise. According to data from the National Human Trafficking Hotline, reports of potential cases of human trafficking in America rose 35.7 percent from 2015 to 2016. The growing number could be indicative of the prevalence of the problem, or it could be the result of growing awareness about this crime.

Under the federal [Trafficking Victims Protection Act of 2000](#), sex and labor trafficking are considered “severe forms of trafficking in persons,” and are defined as:

- **Sex trafficking:** A commercial sex act induced by force, fraud or coercion, or in which the person induced to perform such an act is younger than 18.
- **Labor trafficking:** The recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

At the federal level, the prosecution of offenders falls under the jurisdiction of the Department of Justice. In 2015, U.S. attorney’s offices prosecuted 1,049 suspects for human trafficking-related offenses, according to the [Bureau of Justice Statistics](#).

Washington became the first state to criminalize human trafficking in 2003. By 2013, every state had enacted laws establishing criminal penalties for traffickers seeking to profit

from forced labor or sexual servitude. The laws vary in several ways, including who is defined as a “trafficker,” the statutory elements required to prove guilt to obtain a conviction and the seriousness of the criminal and financial penalties those convicted will face. State legislators, through the deliberation and enactment of policy, are at the forefront of the current effort to identify and implement effective procedures to combat human trafficking and effectively prosecute offenders.

## Laws That Aid in the Prosecution of Offenders

As a part of a 2010 National Institute of Justice-funded [study](#), prosecutors from various jurisdictions revealed that there are many challenges when it comes to identifying victims, investigating cases and prosecuting human trafficking cases. The nature of these cases may require prosecutors to work with numerous state, local and federal agencies, which can be difficult to navigate. Some prosecutors indicated that human trafficking cases were challenging to prosecute because the laws were relatively new and lacked precedent in case law and clarity in relevant statutes. Little to no cooperation and a lack of availability of victims and an absence of funding were also noted barriers to prosecution. Recently, state policymakers have enacted legislation to help overcome some of the obstacles in investigating and prosecuting these complex cases.

In 2017, Colorado amended its rules of evidence to allow the hearsay exception for “persons with an intellectual and developmental disability when a defendant is charged with human trafficking or human trafficking of a minor for sexual servitude.” Therefore, an out-of-court statement made by someone with an intellectual or developmental disability is admissible into evidence in any criminal, delinquency or civil proceeding.

The same year, Colorado also enacted legislation that assists investigators in building stronger cases by adding human trafficking to the list of crimes for which a judge can issue an order authorizing the interception of wire, oral or electronic communications. In 2015 legislation, California allowed for the recording of confidential communications if it relates to human trafficking.

In Virginia, the [Hampton Roads Human Trafficking Task Force](#) found that traffickers, after being arrested, pay their own bails, intimidate witnesses and continue their criminal enterprises. The task force recommended legislation to the attorney general and, in 2018, the legislature passed a law creating a presumption that bail not be granted for defendants being tried for sex trafficking crimes.

Data concerning the extent to which state laws criminalizing trafficking have acted as an effective deterrent or been used in prosecutions is uneven. But states such as [Iowa](#) and [Minnesota](#) are beginning to collect data, track and report their prosecutions.

## Prohibiting Certain Defenses for Perpetrators

Changing state law to prohibit defendants from asserting certain defenses is another way policy makers are aiding in the prosecution of human traffickers.

After being arrested for soliciting a child for prostitution, buying a commercial sex act from a minor or engaging in human trafficking of a minor, some defendants may argue they did not know the victim was younger than 18. Thirty-two states have enact-

ed legislation that prohibits defendants who are accused of certain crimes to use their lack of knowledge of a person’s age as a defense.

Many of these laws prohibit the “mistake of age defense” for prostitution and commercial sexual exploitation of child offenses, but in the last three years, state legislatures have been adding “trafficking” in general to the crimes that prohibit the defense. For example, in South Carolina, a person accused of “participating in prostitution of a minor,” “second-degree sexual exploitation of a minor” or “trafficking in persons” may not assert lack of knowledge of the victim’s age as a defense.

In 2018, Arizona amended its law to include that “it is not a defense against any dangerous crimes against children that the minor victim is fictitious, an adult or a peace officer posing as a minor.”

West Virginia currently allows the mistake of age defense for a buyer but does not allow the defense for the offender that is “making the minor available for the purpose of engaging the minor in commercial sexual activity.”

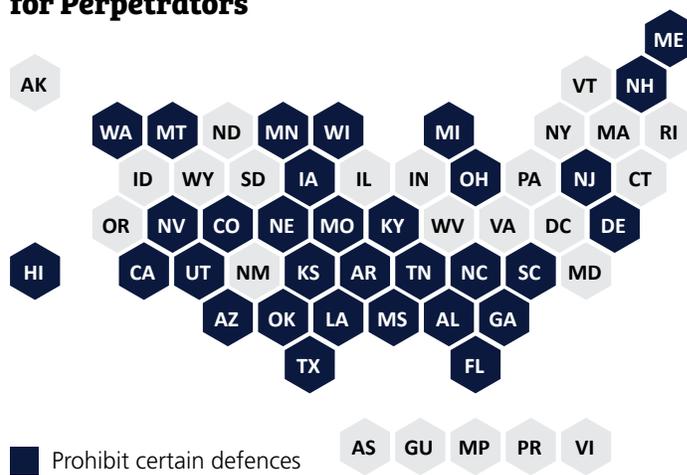
## Asset Forfeiture

Exploiting vulnerable victims for commercial sex or labor generates a substantial amount of profit for traffickers. In 2015, the International Labor Organization [estimated](#) that traffickers make \$150 billion annually. One tool used by law enforcement and prosecutors to combat human trafficking is asset forfeiture, or the seizure of cash, property and other materials they believe are associated with trafficking crimes.

Forfeitures can happen in two ways: criminal or civil. Criminal asset forfeiture proceedings occur after a person has been convicted of an underlying criminal offense. In civil asset forfeiture, once property has been seized, prosecutors can file civil actions to forfeit or keep the property of someone suspected of being involved in an illegal activity. The action is against the property—not the person—and can occur even if the person is not charged or convicted of a crime.

The federal [Trafficking Victims Protection Act](#) provides for asset forfeiture for defendants convicted of human trafficking offenses, and at least 17 states, the District of Columbia and Guam have civil or criminal forfeiture statutes specifically for the crime of human trafficking. In addition, 19 states and American Samoa have general asset forfeiture laws that cover the commission of felonies that would include human trafficking. Many states authorize forfeited assets to be given to the law enforcement agency that investigated the crime, or provide the assets be deposited into a fund used for victim services.

## Prohibit Certain Defenses for Perpetrators

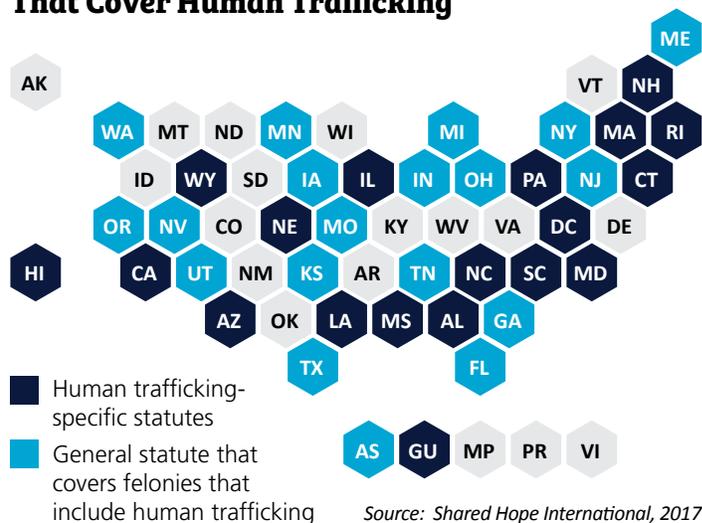


Source: Shared Hope International, 2017

Nebraska enacted a law in 2015 providing for the procedures of civil asset forfeiture in a human trafficking case. Aircrafts, vehicles, vessels, computers, money, weapons, personal property, real estate and any other items of value used in furtherance of the crime of human trafficking are subject to forfeiture by the county. A petition by law enforcement is filed in the county where the seizure was made, and an owner must file an answer within 30 days of being served with the petition. The proceeds of these forfeitures go to the county for costs and then to schools in the state pursuant to Article VII, section 5, of the Constitution of Nebraska.

In 2016, Wyoming set out procedures for criminal asset forfeiture. After a guilty verdict or plea of a felony human trafficking crime, the court will conduct a forfeiture hearing to determine, under a preponderance of evidence standard, if the property is subject to forfeiture. The law allows forfeiture of overseas assets of people convicted of human trafficking to the extent they can be retrieved by the state. The proceeds will be distributed to the court and state for costs incurred, any court ordered restitution, eligible civil judgements and, finally, to the public school fund.

### Asset Forfeiture Laws That Cover Human Trafficking



### Expanding the Scope of Prosecution to Facilitators

State laws include a wide variety of activities under their definitions of trafficking. Most commonly, trafficking activities are defined as the recruitment, transportation, transfer, harboring or receipt of people for exploitation. In recent years, some jurisdictions have expanded their definitions of trafficking to include facilitators of human trafficking. According to Shared Hope International, facilitators of human trafficking are people or business that assist, enable, aid or financially benefit from the trafficking. Many times, these actions are essential to the success of the sex trafficking enterprise. Hawaii’s sex trafficking law criminalizes aiding or facilitating sex trafficking of a child and a convicted facilitator can face up to 20 years in prison and a fine of up to \$50,000.

The Missouri House of Representative’s [Human Trafficking Task Force](#) advised the General Assembly to amend the definition of trafficking for the purposes of sexual exploitation to include the act of “advertising the availability,” which means those who advertise on posters, websites and apps can be prosecuted in the same manner as those perpetrators actually trafficking. Oklahoma has a similar law.

In 2017, Maine made arranging travel for sex tourism with a minor a criminal act. People are guilty of a Class C Crime (a felony carrying a maximum of five years in prison) if they intentionally or knowingly “advertise, arrange, facilitate, offer, promote, purchase or sell or attempts to advertise, arrange, facilitate, offer, promote, purchase or sell travel services involving a commercial sexual act with a minor.” Colorado enacted a similar law in 2017, and at least 12 states have laws that criminalize facilitators who promote or sell sex tourism.

New Jersey created the offense of human trafficking in the second degree. This crime occurs if a person provides “services, resources or assistance with the knowledge that the services, resources or assistance are intended to be used in furtherance” of human trafficking. Services and assistance include “financial support, business services, lodging, transportation, the provision of false documentation or identification, equipment or facilities.” A person commits the crime of second-degree trafficking whether or not they are compensated for providing those services.

## Prosecuting Businesses Involved in Trafficking

Recently, state policymakers have expanded the definition of trafficking to allow, under certain circumstances, businesses and corporations to be prosecuted for trafficking crimes. For example, in Rhode Island a business may be criminally liable if:

- The person that is the business knowingly engages in conduct that constitutes human trafficking; or
- An employee or agent engages in conduct that constitutes human trafficking and the conduct is a part of a pattern of activity that benefits the business and the business knew it was occurring and failed to take effective action to stop.

In addition to applying other penalties for violating human trafficking laws, the court may fine a business entity \$50,000 per offense, order disgorgement of profit from the activity or prohibit the business from entering into state and local government contracts. Three other states—Alabama, Georgia and Mississippi—have similar statutes.

In South Carolina, a person who uses his or her business in a way that participates in human trafficking can be imprisoned for 10 years in addition to penalties for each trafficking violation.

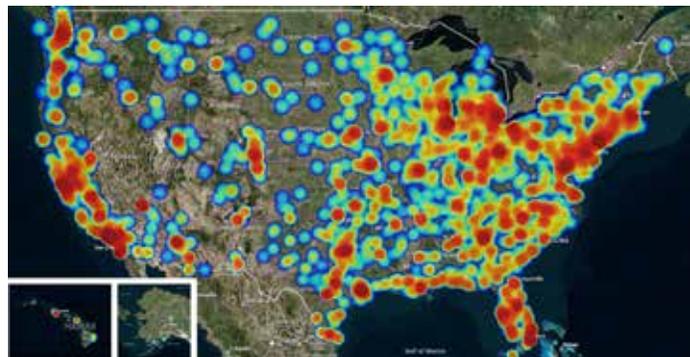
Twenty-four states and the District of Columbia have laws that require access to information about human trafficking through the National Human Trafficking Hotline, a phone and web service the public can use to report suspected trafficking cases. It also allows survivors to seek help, and other interested people can contact the hotline for trafficking information. These laws require the dissemination of information about the hotline, charge state entities with creating educational information for awareness about it and mandate that certain businesses and facilities post information related to the hotline.

### Methods of Contacting Hotlines in 2017

The National Human Trafficking Hotline and BeFree Textline provide survivors of human trafficking with support and options to get help and stay safe.



### U.S. Locations of Potential Human Trafficking Cases



Source: [polarisproject.org](http://polarisproject.org)

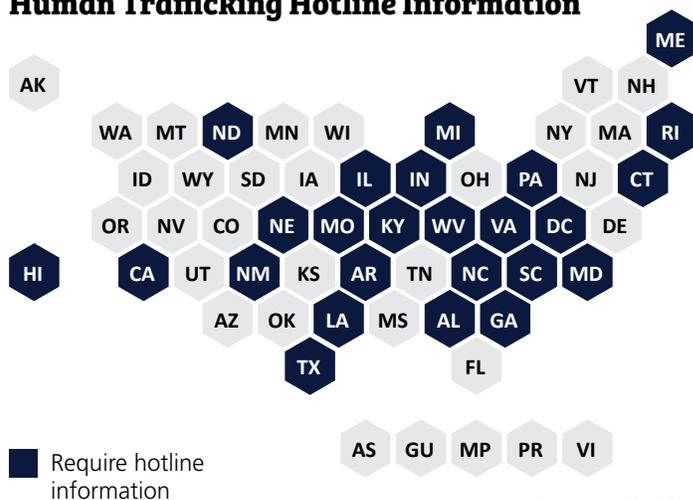
In states that require posting hotline information, some or all of the following locations are required to post hotline signs:

- Lodging facilities
- Agricultural labor contractors
- Adult entertainment services
- Airports, train stations and bus stations
- Hospitals and urgent care centers
- Rest areas and truck stops
- Restaurants, bars and nightclubs
- Any location declared a nuisance
- Major sporting events or conventions
- Massage services

In 2018, Missouri enacted legislation to require the posting of hotline information in “a conspicuous place,” in all the places listed above (except for sporting events) and added privately operated job recruitment centers, women’s health centers and family planning clinics to the list of required locations.

In 2018, West Virginia amended its requirements to include: “If a business has received a warning that they have failed to comply with the posting requirements and they do not correct the violation within 30 days, the business or establishment will be charged with a misdemeanor.”

### Require the Posting of Human Trafficking Hotline Information



Source: NCSL, 2018

For state-by-state information from the National Human Trafficking Hotline, including the number of cases reported, number of people trafficked, demographic information about potential victims and the locations where instances of trafficking occurred, see [www.acf.hhs.gov/otip/resource/profiles](http://www.acf.hhs.gov/otip/resource/profiles).

## Assessments and Requirements of Businesses

While some states are expanding the scope of prosecution to include businesses, at least two states have assessed fees or taxes for certain businesses to fund trafficking survivor services. In 2018, Tennessee **imposed** a \$2 privilege tax on adult performance businesses for each customer who enters the business. Proceeds from the tax will be allocated from the general fund to the sex trafficking victims fund. In 2015, the Georgia legislature passed Senate Resolution 7 and voters approved it in 2016. The measure requires each adult entertainment establishment to pay an assessment equal to the greater of 1 percent of the previous calendar year’s gross revenue or \$5,000 deposited into the Safe Harbor for Sexually Exploited Children Fund. **Opponents** of the bill argued it was government overreach and no evidence exists that connects legal strip clubs to illegal human trafficking. In 2017, a coalition of adult entertainment venues sued Georgia’s attorney general and Department of Revenue commissioner over the new tax. As of August 2018, litigation was still pending.

## Using Existing Law to Target Businesses Complicit in Trafficking

Prosecutors around the country are using existing civil law to pursue businesses complicit in human trafficking.

In November 2016, the Los Angeles city attorney's office filed a civil suit against the Motel 6 hospitality chain as well as the managers of the chain's Sylmar neighborhood property. This Motel 6 location had been known to law enforcement as a hub for human trafficking of sex workers and a base of operations for gang members and drug dealers. Since 2013, Los Angeles police had made multiple arrests at the property, including 10 arrests for prostitution, 22 arrests for narcotics and 34 arrests for criminal activity including battery, burglary and felons in possession of firearms.

The civil abatement lawsuit, which is a lawsuit against the business where a crime occurs, sought physical and managerial improvements to the property including strict registration requirements, restrictions on cash payments, secure parking lots and the implementation of policies prohibiting known criminals, including human traffickers, pimps, prostitutes and gang members, from accessing the property. The abatement order also sought to mandate Motel 6 be ordered to place one of its executive officers or directors at the motel to manage operations at least five days a week until the nuisance ends.

In August 2017, the city attorney's office reached a [settlement](#) with the motel chain. Under the terms, the owner of the Motel 6 agreed to:

- Enforce a "do not rent" list of known criminals.
- Restrict stays of less than 24 hours and cash rental payments.
- Install a 48-camera video monitoring system and hire trained security guards.
- Secure access to the parking lot for guests.
- Post notices about human trafficking.
- Train all employees in human trafficking detection and prevention.
- Implement new policies prohibiting known criminals—including human traffickers, pimps, prostitutes and gang members—from accessing the property.
- Block access to backpage.com, a website known for arranging prostitution through Wi-Fi and LAN networks provided to guests and visitors.

To ensure compliance, an executive member of Motel 6 must conduct quarterly inspections of the property and provide a monthly report of any criminal activity or actions taken. Finally, Motel 6 also agreed to pay \$250,000 to fund a new city attorney program to detect, deter and prevent human trafficking in and around Los Angeles County.

Another example is the California Transparency in Supply Chains Act, which came into effect in January 2012. The act requires certain companies to report on their specific actions to eradicate slavery and human trafficking in their supply chains. It is estimated that the reporting requirement will impact about 3,200 companies headquartered in California or doing business there. Companies failing to comply with regulations like these face fines, civil and even criminal liabilities.

## Judicial Protections for Trafficking Victims

In many states, trafficking victims are prosecuted for crimes related to trafficking, specifically prostitution. In the last decade, states have looked to change laws to distinguish between voluntary prostitution and the trafficking of people who are forced or coerced into selling sex.

At least [23 states](#) now prohibit charging a minor with prostitution. The laws in Michigan and South Dakota apply only to those younger than 16. Proponents of these laws argue they correspond with statutory rape laws already on the books. The theory is, if these young people cannot consent to sex under statutory rape laws, they should not be prosecuted for prostitution when they have been forced to engage in sexual activity. States that allow minors to be criminally charged with prostitution may have narrow exceptions for some trafficking victims. For example, in Alaska, minors can avoid criminal charges if they are victims or witnesses to human trafficking, report it and cooperate with law enforcement and the evidence leads to the prosecution of an offender. It is important to note that federal law considers individuals younger than 18 engaged in commercial sex acts to be victims of trafficking, which means there is some degree of conflict with federal law in the 27 states that allow for minors to be charged with prostitution.

[Thirty-one states](#) enable trafficked victims (adults and minors where prostitution may still be charged) to assert an affirmative defense to criminal charges they face because of actions they were forced to commit by their traffickers. An affirmative defense is evidence that, if found credible, negates criminal liability even if it is proved the defendant committed the acts at issue. Maryland requires a defendant wishing to assert an affirmative defense to notify the state’s attorney at least 10 days prior to trial. Statutes differ in the crimes for which an affirmative defense can be raised, but many cover prostitution, loitering and solicitation. For example, Colorado’s law against facilitating travel services allows for an affirmative defense and requires defendants to prove by a preponderance of the evidence that they were coerced into committing their crimes.

New Jersey law provides an affirmative defense for prostitution, promoting prostitution and first- and second-degree human trafficking. These laws allow women—referred to as “bottoms”—to assert an affirmative defense against crimes they have committed against other victims while both parties were trafficked. “Bottoms” are women who, often, have been trafficked for many years and now have been appointed by the trafficker to supervise others, collect money, book hotel rooms, post ads or inflict punishment on other trafficked girls or boys.

Since so many trafficking victims and survivors have criminal records as a result of actions they were forced to commit by their traffickers, at least [35 states](#) have created procedures for both juvenile and adult survivors to expunge, vacate or seal criminal records related to being trafficked. Arkansas, Colorado, Kansas, New Mexico and Texas allow for sealing of records only, which means the records are closed to the public, but not destroyed or erased. Clearing a survivor’s criminal record removes barriers to obtaining housing, gaining employment, pursuing education and restoring certain civic rights.

## Appendix: Legislation and Laws Referenced in the Report

### **LAWS THAT AID IN THE PROSECUTION**

- CO SB 24 (2017)
- CO HB 1040 (2017)
- CA AB 1671 (2015)
- VA HB 1260 (2018)

### **PROHIBITING CERTAIN DEFENSES FOR PERPETRATORS**

- SC HB 3329 (2018)
- AZ HB 2244 (2018)
- WV HB 2318 (2017)

### **FORFEITURE**

- NE LB 294 (2015)
- WY HB 58 (2016)

### **EXPANDING THE SCOPE OF PROSECUTION TO FACILITATORS**

- Haw. Rev. Stat. Ann. § 712-1202(1)(b)
- MO HB 1562 (2016)
- ME SB 424 (2017)
- NJ AB 3352 (2013)

### **PROSECUTING BUSINESSES INVOLVED IN TRAFFICKING**

- RI HB 5300 (2017)
- SC HB 3329 (2018)
- MO HB 1246 (2018)
- WV SB 1004 a (2018)

### **ASSESSMENTS AND REQUIREMENTS OF BUSINESSES**

- TN HB 1763 (2018)
- GA SR7 (2015)

### **JUDICIAL PROTECTIONS FOR HUMAN TRAFFICKING VICTIMS**

- Alaska Stat. §11.66.100(c)
- Maryland Crim. Code § 11-306
- N.J. Stat. Ann. §2C:34-1(e)
- CO HB 1072 (2017)

## **Additional Resources**

Office for Justice Programs: Office for Victims of Crime: Human Trafficking [web page](#)

NCSL's Human Trafficking [web page](#)

U.S. Department of Health and Human Services, Office of Trafficking in Persons: [Efforts to Combat Human Trafficking: State & Territory Profiles](#)

Polaris Project report: [On-Ramps, Intersections, and Exit Routes: A Roadmap for Systems and Industries to Prevent and Disrupt Human Trafficking](#)

National Association of Attorney's General: [Human Trafficking Committee](#)

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