

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 60 Session of 2019

INTRODUCED BY PHILLIPS-HILL, MARTIN, YAW, FOLMER, K. WARD, REGAN, MENSCH, AUMENT, SCARNATI, DINNIMAN, BLAKE, DiSANTO, HUTCHINSON, BROWNE, KILLION, BROOKS, J. WARD, SCHWANK, ALLOWAY, BREWSTER, SANTARSIERO, YUDICHAK, COLLETT, HAYWOOD, MUTH, TARTAGLIONE, KEARNEY AND IOVINO, JANUARY 23, 2019

AS AMENDED ON SECOND CONSIDERATION, NOVEMBER 18, 2019

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in human trafficking, further providing for the
4 offense of trafficking in individuals and, for the offense of <--
5 patronizing a victim of sexual servitude; in public <--
6 indecency, further providing for the offense of prostitution-
7 and related offenses; AND FOR ASSET FORFEITURE; and, in <--
8 depositions and witnesses, further providing for definitions
9 and for recorded testimony. <--

10 This act may be cited as the Buyer Beware Act.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Sections 3011 and 3013(a) and (c) of Title 18 of <--
14 the Pennsylvania Consolidated Statutes are amended to read:

15 SECTION 1. SECTION 3011 OF TITLE 18 OF THE PENNSYLVANIA <--
16 CONSOLIDATED STATUTES IS AMENDED TO READ:

17 § 3011. Trafficking in individuals.

18 (a) Offense defined.--A person commits a felony [of the
19 second degree if the person]:

20 (1) of the first degree if the person recruits, entices,

1 solicits, advertises, harbors, transports, provides, obtains
2 or maintains an individual if the person knows or recklessly
3 disregards that the individual will be subject to
4 [involuntary] sexual servitude; [or]

5 (2) of the first degree if the person knowingly benefits
6 financially or receives anything of value from any act that
7 facilitates any activity described in paragraph (1)[.]; <--

8 (3) of the second degree if the person: <--

9 ~~(i) recruits, entices, solicits, advertises,~~
10 ~~harbors, transports, provides, obtains or maintains an~~
11 ~~individual; and~~ <--

12 ~~(ii) knows that, or is reckless as to whether, IF~~ <--
13 THE PERSON KNOWS OR RECKLESSLY DISREGARDS THAT the
14 individual will be subject to labor servitude; and OR <--

15 (4) of the second degree if the person knowingly
16 benefits financially or receives anything of value from an
17 act which facilitates activity under paragraph (3).

18 (b) Trafficking in minors.--[A person commits a felony of
19 the first degree if the person engages in any activity listed in
20 subsection (a) that results in a minor's being subjected to
21 sexual servitude.] Notwithstanding section 1103 (relating to
22 sentence of imprisonment for felony), a person shall be
23 sentenced to a term of imprisonment fixed by the court at not
24 more than 40 years if:

25 (1) the person violates subsection (a) (1) or (2); and

26 (2) the violation:

27 (i) results in a minor being subjected to sexual
28 servitude; ~~or~~ AND <--

29 (ii) is part of a course of conduct subjecting
30 individuals MINORS to sexual servitude by the person. <--

1 SECTION 2. SECTION 3013(A) AND (C) OF TITLE 18 ARE AMENDED <--

2 AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

3 § 3013. Patronizing a victim of sexual servitude.

4 ~~(a) Offense defined. A person commits a felony of the <--~~

5 (A) OFFENSE DEFINED.-- <--

6 (1) A PERSON COMMITS A FELONY OF THE [second] first

7 degree if the person engages in any sex act or performance

8 with another individual [knowing] and knows, or recklessly <--

9 disregards the fact, that the act or performance is the

10 result of the individual being a victim of human trafficking.

11 (2) A PERSON COMMITS AN OFFENSE IF THE PERSON ENGAGES IN <--

12 ANY SEX ACT OR PERFORMANCE WITH ANOTHER INDIVIDUAL WITH

13 RECKLESS DISREGARD FOR WHETHER THE ACT OR PERFORMANCE IS THE

14 RESULT OF THE INDIVIDUAL BEING A VICTIM OF HUMAN TRAFFICKING.

15 AN OFFENSE UNDER THIS PARAGRAPH CONSTITUTES:

16 (I) A FELONY OF THE THIRD DEGREE WHEN THE OFFENSE IS

17 A FIRST OFFENSE.

18 (II) A FELONY OF THE FIRST DEGREE WHEN THE OFFENSE

19 IS A SECOND OR SUBSEQUENT OFFENSE.

20 * * *

21 (c) Fine.--A person whose violation of this section results

22 in a judicial disposition other than acquittal or dismissal

23 shall also pay a fine [of \$500] in one of the following amounts

24 to the court, to be distributed to the commission to fund the

25 grant program established under section 3031 (relating to

26 grants) [.]:

27 (1) Not less than \$1,000 and not more than \$30,000. <--

28 (2) Not less than \$5,000 and not more than \$100,000 if

29 the victim of sexual servitude was a minor at the time of the

30 offense.

1 Section 2. ~~Section 5902 of Title 18 is amended by adding~~
2 ~~subsections to read:~~

3 ~~§ 5902. Prostitution and related offenses.~~

4 * * *

5 ~~(e.3) Additional assessment for offenses under subsection~~
6 ~~(e).~~

7 ~~(1) A person convicted of a second offense under~~
8 ~~subsection (e) shall pay an additional assessment of not less~~
9 ~~than \$1,000 nor more than \$20,000.~~

10 ~~(2) A person convicted of a third offense under~~
11 ~~subsection (e) shall pay an additional assessment of not less~~
12 ~~than \$5,000 nor more than \$30,000.~~

13 ~~(3) A person convicted of a fourth or subsequent offense~~
14 ~~under subsection (e) shall pay an additional assessment of~~
15 ~~not less than \$10,000 nor more than \$50,000.~~

16 ~~(e.4) Distribution of fines. Fines collected under this~~
17 ~~section shall be distributed equally to the Safe Harbor for~~
18 ~~Sexually Exploited Children Fund established under section 3064~~
19 ~~(relating to Safe Harbor for Sexually Exploited Children Fund)~~
20 ~~and grants under section 3031 (relating to grants).~~

21 * * *

22 ~~(1) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (2):~~ <--

23 ~~(I) NOT LESS THAN \$1,000 AND NOT MORE THAN THE~~
24 ~~MAXIMUM AMOUNT APPLICABLE UNDER SECTION 1101 (RELATING TO~~
25 ~~FINES).~~

26 ~~(II) A PERSON CONVICTED OF A SECOND OFFENSE SHALL~~
27 ~~PAY A FINE OF NOT LESS THAN \$5,000 NOR MORE THAN \$25,000.~~

28 ~~(III) A PERSON CONVICTED OF A THIRD OR SUBSEQUENT~~
29 ~~OFFENSE SHALL PAY A FINE OF NOT LESS THAN \$10,000 NOR~~
30 ~~MORE THAN \$50,000.~~

1 (2) NOT LESS THAN \$10,000 NO MORE THAN \$50,000, IF THE
2 VICTIM OF SEXUAL SERVITUDE WAS A MINOR AT THE TIME OF THE
3 OFFENSE.

4 (D) DISTRIBUTION OF FINES.--

5 (1) FROM ALL FINES COLLECTED UNDER THIS SECTION, 50%
6 SHALL BE DEPOSITED IN THE SAFE HARBOR FOR SEXUALLY EXPLOITED
7 CHILDREN FUND ESTABLISHED UNDER SECTION 3064 (RELATING TO
8 SAFE HARBOR FOR SEXUALLY EXPLOITED CHILDREN FUND) AND 50%
9 SHALL BE DEPOSITED IN THE RESTRICTED ACCOUNT ESTABLISHED IN
10 PARAGRAPH (2).

11 (2) THE PREVENTION OF HUMAN TRAFFICKING RESTRICTED ACCOUNT
12 IS ESTABLISHED IN THE GENERAL FUND. THE MONEY IN THE RESTRICTED
13 ACCOUNT IS APPROPRIATED ON A CONTINUING BASIS TO THE COMMISSION
14 FOR THE PURPOSE OF FUNDING THE GRANT PROGRAMS UNDER SECTION 3031
15 (RELATING TO GRANTS).

16 SECTION 3. SECTION 3021(M) OF TITLE 18 IS AMENDED TO READ:
17 § 3021. ASSET FORFEITURE.

18 * * *

19 (M) DISPOSITION OF PROCEEDS.--SUBJECT TO SUBSECTION (D), ALL
20 MONEYS FORFEITED AND THE PROCEEDS FROM THE SALE OF ALL PROPERTY
21 FORFEITED AND SEIZED UNDER THIS SECTION SHALL BE PAID AS
22 FOLLOWS:

23 (1) ANY LAW ENFORCEMENT AGENCY SHALL BE REIMBURSED IF IT
24 HAS USED ITS OWN FUNDS IN THE DETECTION, INVESTIGATION,
25 APPREHENSION AND PROSECUTION OF PERSONS FOR VIOLATION OF
26 SECTIONS 3011 AND 3012.

27 (2) ANY AMOUNT REMAINING AFTER REIMBURSEMENT UNDER
28 PARAGRAPH (1) SHALL BE DISTRIBUTED UNDER THE FOLLOWING
29 FORMULA:

30 (I) THIRTY PERCENT TO THE OFFICE OF THE PROSECUTING

1 ATTORNEY TO BE USED TO INVESTIGATE AND PROSECUTE HUMAN
2 TRAFFICKING CASES.

3 (II) SEVENTY PERCENT TO THE COMMISSION, ONE-HALF OF
4 WHICH SHALL BE [USED] DEPOSITED IN THE RESTRICTED ACCOUNT
5 ESTABLISHED IN SECTION 3013(D)(2) (RELATING TO
6 PATRONIZING A VICTIM OF SEXUAL SERVITUDE) TO FUND THE
7 GRANT PROGRAMS ESTABLISHED UNDER SECTION 3031 (RELATING
8 TO GRANTS) AND ONE-HALF TO BE USED BY THE OFFICE OF
9 VICTIMS' SERVICES WITHIN THE COMMISSION TO PROVIDE
10 SERVICES TO VICTIMS OF HUMAN TRAFFICKING IN THE MANNER
11 SET FORTH IN CHAPTER 9 OF THE ACT OF NOVEMBER 24, 1998
12 (P.L.882, NO.111), KNOWN AS THE CRIME VICTIMS ACT.

13 * * *

14 Section ~~3~~ 4. ~~Sections 5982 and 5984.1~~ SECTION 5982 of Title <--
15 42 ~~are~~ IS amended to read: <--

16 § 5982. Definitions.

17 The following words and phrases when used in this subchapter
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Child" or "children." An individual or individuals under
21 [16] 18 years of age.

22 "Contemporaneous alternative method." Any method of
23 capturing the visual images, oral communications and other
24 information presented during a prosecution or adjudication
25 involving a child victim or a child material witness and
26 transmitting and receiving such images, communications and other
27 information at or about the time of their creation, including,
28 but not limited to, closed-circuit television, streaming image
29 sent via the Internet or an intranet and any other devices or
30 systems used to accomplish such ends.

1 "Minor." An individual who, at the time of the commission of
2 the offense involving sexual or physical abuse, is under 18
3 years of age.

4 "Qualified shorthand reporter." An individual engaged in the
5 active practice of general shorthand reporting who is skilled in
6 the art of verbatim reporting by the use of a written shorthand
7 system, whether manual or machine; or any individual who is an
8 official court or legislative reporter; or any individual who is
9 the holder of a certified shorthand reporter certificate
10 mandated by State or Federal law.

11 ~~§ 5984.1. Recorded testimony.~~

<--

12 ~~(a) Recording. Subject to subsection (b), in any~~
13 ~~prosecution or adjudication involving a child victim or child~~
14 ~~material witness, including a child victim of sexual or labor~~
15 ~~servitude, the court may order that the child victim's or child~~
16 ~~material witness's testimony be recorded for presentation in~~
17 ~~court by any method that accurately captures and preserves the~~
18 ~~visual images, oral communications and other information~~
19 ~~presented during such testimony. The testimony shall be taken~~
20 ~~under oath or affirmation before the court in chambers or in a~~
21 ~~special facility designed for taking the recorded testimony of~~
22 ~~children. Only the attorneys for the defendant and for the~~
23 ~~Commonwealth, persons necessary to operate the equipment, a~~
24 ~~qualified shorthand reporter and any person whose presence would~~
25 ~~contribute to the welfare and well being of the child victim or~~
26 ~~child material witness, including persons designated under~~
27 ~~section 5983 (relating to rights and services), may be present~~
28 ~~in the room with the child during testimony. The court shall~~
29 ~~permit the defendant to observe and hear the testimony of the~~
30 ~~child victim or child material witness but shall ensure that the~~

1 ~~child victim or child material witness cannot hear or see the~~
2 ~~defendant. Examination and cross examination of the child victim~~
3 ~~or child material witness shall proceed in the same manner as~~
4 ~~normally permitted. The court shall make certain that the~~
5 ~~defendant and defense counsel have adequate opportunity to~~
6 ~~communicate for the purpose of providing an effective defense.~~

7 ~~(b) Determination. Before the court orders the child victim~~
8 ~~or the child material witness, including a child victim of~~
9 ~~sexual or labor servitude, to testify by recorded testimony, the~~
10 ~~court must determine, based on evidence presented to it, that~~
11 ~~testifying either in an open forum in the presence and full view~~
12 ~~of the finder of fact or in the defendant's presence will result~~
13 ~~in the child victim or child material witness suffering serious~~
14 ~~emotional distress that would substantially impair the child~~
15 ~~victim's or child material witness's ability to reasonably~~
16 ~~communicate. In making this determination, the court may do any~~
17 ~~of the following:~~

18 ~~(1) Observe and question the child victim or child~~
19 ~~material witness, either inside or outside the courtroom.~~

20 ~~(2) Hear testimony of a parent or custodian or any other~~
21 ~~person, such as a person who has dealt with the child victim~~
22 ~~or child material witness in a medical or therapeutic~~
23 ~~setting.~~

24 ~~(c) Counsel and confrontation.—~~

25 ~~(1) If the court observes or questions the child victim~~
26 ~~or child material witness, including a child victim of sexual~~
27 ~~or labor servitude, under subsection (b) (1), the attorney for~~
28 ~~the defendant and the attorney for the Commonwealth have the~~
29 ~~right to be present, but the court shall not permit the~~
30 ~~defendant to be present.~~

1 ~~(2) If the court hears testimony under subsection (b)~~
2 ~~(2), the defendant, the attorney for the defendant and the~~
3 ~~attorney for the Commonwealth have the right to be present.~~
4 Section 4 5. This act shall take effect in 60 days. <--