Human Trafficking Definitions

Human trafficking is modern day slavery. Tied with arms dealing, it is the second largest criminal industry in the world after drug dealing, and it is also the fastest growing.¹ Human trafficking occurs in every country, and is not a problem relegated only to the far-flung corners of the globe. In fact, it happens in most regions and cities throughout the United States.

As you learn about the problem of human trafficking, it is important to understand the various definitions of human trafficking. There is much confusion on this issue because different legal jurisdictions each choose their own definition of human trafficking. The following are several of the most widely known and promulgated legal definitions. As you read these, however, consider how they limit the definition of trafficking and keep out others who are still subject to exploitation. As Christians, we should keep a broader definition in order that we do not target our service and outreach too narrowly.

United Nations Human Trafficking Definition


According to the Protocol, Article 3, “trafficking in persons” shall mean:

(a) The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article . . .

In simpler terms, human trafficking may be broken down into three elements:

1) **The Act**
   - Recruitment, transportation, transfer, harboring or receipt of persons

2) **The Means**
   - By threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person

3) **The Purpose**
   - For the purpose of exploitation, which includes the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs

Additionally, it is not possible for a victim of trafficking to have “consented” to his or her exploitation, and any child under the age of eighteen who is exploited is automatically considered to be a victim.

**United States Human Trafficking Definition**

The primary definition of human trafficking in the United States was passed in 2000 as the Trafficking Victims Protection Act. Since then, this act has been reauthorized and revised a couple of times in 2003, 2005, and 2008, but the definition of trafficking still stands, codified in the United States Code as 22 U.S.C. § 7102. The Acts also authorized the establishment of the Trafficking in Persons Office and the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons in order to help with the coordination of efforts to combat human trafficking.

The United States Federal law criminalizes “severe forms of trafficking in persons,” which means:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen years of age; or
- 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.

More specifically, sex trafficking is defined as:

The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

---

22 U.S.C. § 7102 also provides definitions for many of the terms used in the definition for severe forms
of trafficking in persons and sex trafficking:

(1) COERCION:

(A) Threats of serious harm to or physical restraint against any person
(B) Any scheme, plan, or pattern intended to cause a person to believe that failure to
perform an act would result in serious harm to or physical restraint against any person
(C) The abuse or threatened abuse of the legal process.

(2) COMMERCIAL SEX ACT: Any sex act on account of which anything of value is given to or
received by any person.

(3) DEBT BONDAGE: The status or condition of a debtor arising from a pledge by the debtor of
his or her personal services or of those of a person under his or her control as a security for
debt, if the value of those services as reasonably assessed is not applied toward the liquidation of
the debt or the length and nature of those services are not respectively limited and defined.

(5) IN Voluntary Servitude: A condition of servitude induced by means of
(A) any scheme, plan, or pattern intended to cause a person to believe that, if the
person did not enter into or continue in such condition, that person or another person
would suffer serious harm or physical restraint; or
(B) the abuse or threatened abuse of the legal process.

Sample State Laws

Though there is a federal definition in the United States of human trafficking, the definitions of human
trafficking vary from state to state. The following are a couple of laws to show that each state law is
different. These are not meant to be sample laws.

Massachusetts, M.G.L.A. Chapter 265, § 50
(a) Whoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors,
transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport,
provide or obtain by any means, another person to engage in commercial sexual activity, a
sexually-explicit performance or the production of unlawful pornography in violation of
chapter 272, or causes a person to engage in commercial sexual activity, a sexually-explicit
performance or the production of unlawful pornography in violation of said chapter 272; or (ii)
benefits, financially or by receiving anything of value, as a result of a violation of clause (i), shall
be guilty of the crime of trafficking of persons for sexual servitude and shall be punished by
imprisonment in the state prison for not less than 5 years but not more than 20 years and by a
fine of not more than $25,000. Such sentence shall not be reduced to less than 5 years, or
suspended, nor shall any person convicted under this section be eligible for probation, parole,
work release or furlough or receive any deduction from his sentence for good conduct until he
shall have served 5 years of such sentence. No prosecution commenced under this section
shall be continued without a finding or placed on file.\(^6\)

California, C.P.C. § 236.1
(a) Any person who deprives or violates the personal liberty of another with the intent to obtain
forced labor or services, is guilty of human trafficking and shall be punished by imprisonment
in the state prison for 5, 8, or 12 years and a fine of not more than five hundred thousand
dollars ($500,000).

(b) Any person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than five hundred thousand dollars ($500,000).

(c) Any person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than five hundred thousand dollars ($500,000)...

New York, N.Y. Pen. Law § 230.34
A person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by:

1. Unlawfully providing to a person who is patronized, with intent to impair said person’s judgment: (a) a narcotic drug or a narcotic preparation; (b) concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law; (c) methadone; or (d) gamma-hydroxybutyrate (GHB) or flunitrazepam, also known as Rohypnol;

2. Making material false statements, misstatements, or omissions to induce or maintain the person being patronized to engage in or continue to engage in prostitution activity;

3. Withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document of another person with intent to impair said person’s freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;

4. Requiring that prostitution be performed to retire, repay, or service a real or purported debt;

5. Using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one or more of the following:
   (a) cause physical injury, serious physical injury, or death to a person; or
   (b) cause damage to property, other than the property of the actor; or
   (c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this chapter; or
   (d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or
   (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
   (f) testify or provide information or withhold testimony or information with respect to another’s legal claim or defense; or
   (g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
   (h) perform any other act which would not in itself materially benefit the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status.

7 C.P.C. § 236.1.
Sex trafficking is a class B felony.\textsuperscript{8}

**Commentary about the Laws**

It is important to understand that human trafficking does not necessarily involve the movement of individuals across borders, although it certainly does involve this at times. In fact, a woman or child may never leave her hometown and still be a victim of human trafficking because a pimp or trafficker is selling her for the purpose of exploitation. At their core, each of the above laws demonstrates the same three components as were briefly noted in the United Nations Protocol – 1) the act, 2) the means, and 3) the purpose.

Where a lot of controversy arises between these laws is how “the means” are defined. Many people, when talking about human trafficking, will say that it must be by “force, fraud or coercion” or that the victim be a minor. Where the victim is a minor, almost every jurisdiction assumes that he or she is automatically a victim of trafficking because he or she cannot legally consent to sex. However, people vary in their definitions of “force, fraud, or coercion.”

If you define those terms narrowly, some people might say there is relatively little human trafficking that exists. Many victims of trafficking may appear on the surface as though they want to be there. They may not be locked inside of a brothel; in fact, they may have the freedom to leave the brothel at any time. What has led them and what keeps them there, however, may be economic circumstances, past abuse that has convinced them they are not good for anything else besides providing sexual services to men, abusive boyfriends who claim they love them, family pressure, cultural limitations, etc. The reasons women and girls become victims are endless, and if we only look for circumstances in which these women and girls look like victims or identify themselves as victims, the reality is that we may not find too many individuals. What may first look like choice and agency, however, is deceptive, and we must learn to ask deeper questions, including inquiring about their past, about how they came to be there, about who has influenced and who is currently influencing them in the lives they are living.

\textsuperscript{8} Sex Trafficking, N.Y. Pen. Law § 230.34.