

A GUIDE TO COMMERCIAL SEX TRAFFICKING IN  
VIRGINIA AND HOW COMMONWEALTH ATTORNEYS  
CAN PROSECUTE THE ISSUE

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## INTRODUCTION

According to United States Attorney General Loretta Lynch, “human trafficking is a monstrous and devastating crime that steals lives and degrades our nation.”<sup>1</sup>

It seems that most people have heard of human trafficking by now. They generally know it exists and it is “bad.” This awareness is the first step in combating human trafficking. However, many still believe that it is a third-world problem or it is not prevalent in the United States. Therefore, it is time to take the second step, to inform the local community of exactly what human trafficking is, and that it is a worldwide problem that reaches even the Commonwealth of Virginia.

On a global scale there is an estimated 20.9 million<sup>2</sup> to 35.8 million<sup>3</sup> people enslaved in human trafficking. The United Nations defines “Trafficking in Persons” in Article 3, paragraph (a), of the Protocol to Prevent, Suppress and Punish Trafficking in Persons as, “the recruitment, transportation, transfer, harbouring 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>4</sup>

Whereas on the domestic level, the United States federal government defines sex trafficking, involuntary servitude, and severe forms of trafficking as:

## (10) Sex trafficking

The term “sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.<sup>5</sup>

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<sup>1</sup> Doris Taylor & Nadeem Yanes, *Five accused Virginia Beach pimps arrested in sex trafficking bust denied bond*, News Channel 3, <http://wtkr.com/2015/10/13/five-accused-virginia-beach-pimps-denied-bond/> (last updated Oct. 14, 2015, 5:35 PM).

<sup>2</sup> *Human Trafficking*, Polaris, <https://polarisproject.org/human-trafficking> (last visited Nov. 25, 2015).

<sup>3</sup> Euan McKirdy, *World has 35.8 million slaves, report finds*, CNN, <http://www.cnn.com/2014/11/17/world/walk-free-global-slavery-index-2014/> (last updated Jan. 4, 2015, 1:15 PM).

<sup>4</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children art. 3(a), Nov. 15, 2000, 2237 U.N.T.S. 319.

<sup>5</sup> 22 U.S.C. § 7102(10) (2012).

## (6) Involuntary servitude

The term “involuntary servitude” includes 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.<sup>6</sup>

## (9) Severe forms of trafficking in persons

The term “severe forms of trafficking in persons” means--

(A) 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 18 years of age; or

(B) 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.<sup>7</sup>

Although there are multiple different organizations that collect statistical data on human trafficking in the United States, the National Human Trafficking Resource Center (NHTRC), a NGO, is among the most creditable. The NHTRC reports that their human trafficking hotline has been contacted 103,026 times between December 7, 2007 and June 30, 2015.<sup>8</sup> Out of those contacts, 21,434, or 21.8 percent, were reported as cases of human trafficking.<sup>9</sup> Furthermore, an estimated 14,500 to 17,500 victims are trafficked into the United States every year.<sup>10</sup>

After years of effort by NGOs, such as Shared Hope International, and individual Commonwealth Attorneys, such as Michael Feinmel, Virginia joined the world, the federal government, and forty-eight other states in passing a standalone statute that criminalizes commercial sex trafficking.<sup>11</sup> The purpose of this paper is to provide a detailed analysis of

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<sup>6</sup> *Id.* § 7102(6).

<sup>7</sup> *Id.* § 7102(9).

<sup>8</sup> *Virginia*, NHTRC, <http://www.traffickingresourcecenter.org/state/virginia> (last visited Nov. 25, 2015).

<sup>9</sup> *Id.*

<sup>10</sup> Christian Sabyan, Emily Smith, & Manav Tanneeru, *Trafficking and the U.S.*, CNN (June 17, 2011, 12:45 P.M.), <http://thecnnfreedomproject.blogs.cnn.com/2011/06/17/trafficking-and-the-u-s/>.

<sup>11</sup> Note, Virginia’s statute that criminalizes commercial sex trafficking is narrower than the U.N. Protocol and the Federal definitions provided above that prohibit multiple

Virginia's new sex trafficking statute, Virginia Code § 18.2-357.1, so that Commonwealth Attorneys are better equipped to use it in the prosecution of sex traffickers. Virginia Governor Terry McAuliffe signed the statute into law on April 1, 2015,<sup>12</sup> and it went into effect on July 1, 2015.<sup>13</sup> This paper's first section discusses cases of human trafficking in Virginia on a macro statistical level and then looks at five recent case studies. The second section explores prosecuting human traffickers in Virginia by first describing how traffickers were prosecuted before the new statute, then how traffickers can be prosecuted under the new statute, and lastly by reviewing other statutes that utilize the new statute. This paper concludes by providing several examples of what Virginia can do next to combat human trafficking within the Commonwealth.

## I. HUMAN TRAFFICKING IN VIRGINIA

Human trafficking in the Commonwealth of Virginia is real. Various NGOs collect statistical data on trafficking in Virginia and produce reports with that data. In addition, media sources and judicial opinions document specific cases of trafficking including some of the first cases that use Virginia's new sex trafficking statute.

### A. *Human Trafficking Statistics in Virginia*

The National Human Trafficking Resource Center operates a national anti-trafficking hotline, 1 (888) 373-7888, and a resource center.<sup>14</sup> Its specific mission is to run "a national anti-trafficking hotline and resource center serving victims and survivors of human trafficking and the anti-trafficking community in the United States."<sup>15</sup> It is funded by the United States Department of Health and Human Services and is operated by the Polaris Project.<sup>16</sup> NHTRC's toll-free hotline is available in over 200 languages and is accessible throughout the entire country at anytime.<sup>17</sup> Tips about human trafficking can be made through phone calls, emails,

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forms of human trafficking. In Virginia, there are other statutes that criminalize trafficking for other purposes, such as for force labor.

<sup>12</sup> Taryn Offenbacher, *Virginia: Last State In Nation to Establish a Human Trafficking Law*, Shared Hope International (April 1, 2015), <http://sharedhope.org/2015/04/01/virginia-last-state-in-nation-establishes-first-standalone-sex-trafficking-law/>.

<sup>13</sup> Va. Code Ann. § 18.2-357.1 (Westlaw through Acts 2015, c. 691).

<sup>14</sup> *Mission*, NHTRC, <http://www.traffickingresourcecenter.org/mission> (last visited Nov. 25, 2015).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

and online tip reports.<sup>18</sup> NHTRC collects all of the tip data and publishes the information through their resource center. Their data can be viewed at the national level or at the state level, such as Virginia.

NHTRC's data on Virginia begins on December 7, 2007, and is current through June 30, 2015. It is important to note upfront that the statistics are not cumulative and that some demographic information was not reported, meaning reported cases may involve multiple victims and some demographic statistics are incomplete.<sup>19</sup> For the Commonwealth of Virginia, NHTRC has received a total of 2,803 tips, 628 of which were reported as human trafficking cases.<sup>20</sup> A total of 467 of those cases occurred between 2012 and 2015.<sup>21</sup> Out of those 467 cases there were 383 female victims and 75 male victims.<sup>22</sup> When age was reported as either the victim being an adult or minor, there were 312 minor victims and 114 adult victims.<sup>23</sup> Furthermore, out of the 467 reported human trafficking cases, 310 were reported as specifically involving sex trafficking.<sup>24</sup> Lastly, in 2014, Virginia ranked sixth highest in call volume out of the fifty states and the District of Columbia.<sup>25</sup>

#### B. Recent Cases of Human Trafficking in Virginia

Cases of human trafficking have been recently documented in Virginia. For example, the news has reported on a number of cases this year including a nationwide sting operation. Federal courts in Virginia

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<sup>18</sup> *Hotline Statistics*, NHTRC, <http://www.traffickingresourcecenter.org/states> (last visited Nov. 25, 2015). The NHTRC hotline number is 1-888-373-7888, their hotline email is [nhtc@polarisproject.org](mailto:nhtc@polarisproject.org), and their anonymous tip reports web-link is <http://www.traffickingresourcecenter.org/report-trafficking>.

<sup>19</sup> National Human Trafficking Resource Center, *supra* note 8.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* (adding 93 cases in 2012, 126 cases in 2013, 175 cases in 2014, and 73 cases in 2015 for a total of 467 human trafficking cases between 2012 and 2015).

<sup>22</sup> *Id.* (adding together 74 victims in 2012, 107 victims in 2013, 144 victims in 2014, and 58 victims in 2015 for a total of 383 female victims between 2012 and 2015 as well as 10 victims in 2012, and 18 victims in 2013, and 35 victims in 2014, and 12 victims in 2015 for a total of 75 male victims between 2012 and 2015).

<sup>23</sup> *Id.* (adding together 54 victims in 2012, 86 victims in 2013, 124 victims in 2014, and 48 victims in 2015 for a total of 312 minor aged victims between 2012 and 2015 as well as 22 victims in 2012, and 31 victims in 2013, and 49 victims in 2014, and 12 victims in 2015 for a total of 114 adult aged victims between 2012 and 2015).

<sup>24</sup> *Id.* (adding together sex trafficking with sex and labor trafficking reports as follows: 63 in 2012; 76 in 2013; 118 in 2014; and 53 in 2015 for a total of 467 human trafficking cases between 2012 and 2015).

<sup>25</sup> *National Human Trafficking Resource Center (NHTRC) Data Breakdown Virginia State Report 1/1/2014 - 12/31/2014*, NHTRC 1, [http://www.traffickingresourcecenter.org/sites/default/files/NHTRC%202014%20Virginia%20State%20Report%20-%20VA%20-%2001.01.14%20-%202012.31.14\\_0](http://www.traffickingresourcecenter.org/sites/default/files/NHTRC%202014%20Virginia%20State%20Report%20-%20VA%20-%2001.01.14%20-%202012.31.14_0). (last visited Nov. 25, 2015).

have also documented multiple cases of human trafficking in the last several years.

Hampton Roads media sources reported that twelve pimps were arrested in the beginning of October 2015 for sex trafficking.<sup>26</sup> The arrests took place over several days and required the Chesapeake, Hampton, Norfolk, and Virginia Beach police departments to coordinate their efforts.<sup>27</sup> Moreover, the arrests were part of a nationwide operation spearheaded by the FBI in Operation Cross Country IX. Operation Cross Country IX resulted in 153 arrests and 149 minor aged victims being rescued.<sup>28</sup> In the Hampton Roads area, three minor-aged children were rescued.<sup>29</sup> In Virginia Beach, five men were arrested at the Econo Lodge on 5819 Northampton Blvd.<sup>30</sup> They were identified as Cordario Uzzle, aged 22; Darryl Threat, aged 21; Shade Castro, aged 22; Keith Threat, aged 21; and Tajaika Blackston, aged 21.<sup>31</sup> Their charges range from frequenting a bawdy place, sex trafficking, prostitution, aiding and assisting in procurement, prostitution-enticement, procurement employed by enterprise, participation in racketeering, pandering, felony violation, receiving money from a prostitute, and pimping.<sup>32</sup> During their bond hearings a detective testified that one of the suspects trafficked a minor-aged victim for two weeks in various hotels in Norfolk and Virginia Beach.<sup>33</sup> The victim was able to escape by telling her trafficker that a relative of hers died. The trafficker permitted the victim to leave, but threatened if she did not return he would hurt her sister and then prostitute her sister.<sup>34</sup> During the bond hearing, the Commonwealth Attorney revealed that the suspects posted an ad for one of the victims on [www.backpage.com](http://www backpage.com).<sup>35</sup>

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<sup>26</sup> Stephanie Ballesteros, *A dozen pimps arrested in Hampton Roads human trafficking operation*, Wavy 10 (Oct. 13, 2015, 4:07 PM), <http://wavy.com/2015/10/13/a-dozen-pimps-arrested-in-hampton-roads-human-trafficking-operation/>; Doris Taylor & Nadeem Yanes, *Five accused Virginia Beach pimps arrested in sex trafficking bust denied bond*, News Channel 3, <http://wtkr.com/2015/10/13/five-accused-virginia-beach-pimps-denied-bond/> (last updated Oct. 14, 2015, 5:35 PM).

<sup>27</sup> Ballesteros, *supra* note 27.

<sup>28</sup> *Id.*

<sup>29</sup> Doris Taylor & Nadeem Yanes, *Five accused Virginia Beach pimps arrested in sex trafficking bust denied bond*, News Channel 3, <http://wtkr.com/2015/10/13/five-accused-virginia-beach-pimps-denied-bond/> (last updated Oct. 14, 2015, 5:35 PM).

<sup>30</sup> *Id.*

<sup>31</sup> Ballesteros, *supra* note 27.

<sup>32</sup> *Id.*

<sup>33</sup> Becca Mitchell & Nadeem Yanes, *More revealed in Virginia Beach sex trafficking case during Thursday bond hearing*, News Channel 3, <http://wtkr.com/2015/10/29/more-revealed-in-virginia-beach-sex-trafficking-case-during-thursday-bond-hearing/> (last updated Oct. 29, 2015, 7:01 PM).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

In a similar news report on November 2015, the *Richmond Times-Dispatch* reported that Jamil O. Ahmad II, aged 27, became the first person in Chesterfield County Virginia to be charged with Virginia's new sex trafficking statute. Ahmad, a Portsmouth native, transported two women, including a minor, from the Hampton Road's area to the InTown Suites at 11551 Green Spring Road with the intention of prostituting them. He advertised the women online. The Chesterfield Police Department was notified through a call reporting a robbery. Chesterfield police Sgt. Brad Conner said, "[t]here were some things that came up that led us to do a little more probing, so we continued asking questions, which led us to suspect that she was the victim of commercial sex trafficking [and the robbery]." In addition to sex trafficking, Ahmad was charged with "racketeering . . . seven counts of receiving stolen money from a prostitution of a minor; six counts of receiving money from prostitution; seven counts of detaining a minor for prostitution; seven counts of keeping or frequenting a bawdy house; and one count each of contributing to the delinquency of a minor; distribution of a controlled substance and possession of marijuana." He was denied bond and is currently awaiting trial.<sup>36</sup>

Similarly, the *Franklin News-Post* reported that on November 17, 2015, Tremayne Rontae Kirby, aged 25, pled guilty to human trafficking in the U.S. District Court in Roanoke, Virginia. The court ordered Kirby to pay \$11,000 in restitution to his victim and sentenced him to fifteen years in federal prison that will be followed by ten years of supervised release. Earlier in the year, he and several other people admitted to running a prostitution ring that victimized women across Virginia, North Carolina, and New Jersey. Kirby initially got his victims addicted to drugs. Then he used physical violence (hitting, body-slammng, and shaking), threats, and withholding drugs from his victims to force his victims to have intercourse with other men. Like the previous two cases, Kirby also used the internet to advertise his victims.<sup>37</sup>

In another federal case, the *Roanoke-Chowan News-Herald* reported that Dana O'Brien Knight, aged 33, was arrested in Virginia Beach in 2014 after one of his victims called 911 requesting emergency assistance.<sup>38</sup>

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<sup>36</sup> Mark Bowes, *Portsmouth man charged in Chesterfield's 1st case of commercial sex trafficking*, *Richmond Times-Dispatch*, [http://m.richmond.com/news/local/central-virginia/article\\_8b7228dd-8c57-5e4a-87c1-8a4ca96e77a5.html?mode=jqm](http://m.richmond.com/news/local/central-virginia/article_8b7228dd-8c57-5e4a-87c1-8a4ca96e77a5.html?mode=jqm) (last visited Nov. 22, 2015) (misspells commercial as "commerical" in the article's title).

<sup>37</sup> The Franklin News-Post, *Franklin County man sentenced on human trafficking charges*, (Friday, Nov. 20, 2015, 6:00 AM), [http://www.thefranklinnews.com/news/franklin-county-man-sentenced-on-human-trafficking-charges/article\\_067f0218-8eea-11e5-9245-db0d7c58dff5.html](http://www.thefranklinnews.com/news/franklin-county-man-sentenced-on-human-trafficking-charges/article_067f0218-8eea-11e5-9245-db0d7c58dff5.html).

<sup>38</sup> Note, Westlaw Next and Lexis Advance do not contain a published or unpublished opinion for the Dana O'Brien Knight case.

The article states that Knight transported at least three women between North Carolina, New York, Pennsylvania, D.C., and Virginia and that he trafficked women for about nine years. He made approximately \$20,000 a month. Knight beat his victims “to a bloody pulp” and withheld their social security cards and identification to coerce his victims to perform intercourse. He also advertised the women on [www.backpage.com](http://www.backpage.com). He rotated his victims around from hotel to hotel and kept all of their earnings. The federal court sentenced Knight to twenty years in prison followed by a lifetime of supervised release for violating 18 USC §1591, “Sex trafficking of children or by force, fraud, or coercion.”<sup>39</sup>

In *U.S. v. Juarez-Santamaria*, an unpublished case from the United States Court of Appeals for the Fourth Circuit, the court recited the facts that resulted in Jose Ciro Juarez-Santamaria being convicted of sex trafficking as follows. Juarez prostituted girls as a member of the MS-13 gang.<sup>40</sup> One of these girls was only twelve years old.<sup>41</sup> Over a period of three months he transported, though never personally drove, the girl between Maryland, Virginia, and Washington D.C. for the purpose of prostituting her.<sup>42</sup> Although Juarez attempted to plead to a lesser offense, the trial court rejected his plea deal because he said “[i]t [was] not the truth” when the court asked him about the validity of his plea deal statement.<sup>43</sup> Juarez was subsequently tried and convicted of sex trafficking.<sup>44</sup>

These recent cases of human trafficking in Virginia illustrate the larger sex trafficking problem throughout the Commonwealth. They have several common elements that lawyers, law enforcement officers, and citizens should recognize. First, the traffickers recruit their victims. This is typically accomplished by providing some sort of life necessity or promising affection. Second, the traffickers transport the girls to various locations to prostitute them. Third, they harbor their victims and threaten them with violence. Lastly, the traffickers market their victims. Four of the cited cases report that the traffickers marketed their victims online; two of the articles explicitly state that [www.backpage.com](http://www.backpage.com) was used.

## II. PROSECUTING HUMAN TRAFFICKERS IN VIRGINIA

The following section explains prosecuting human traffickers in three parts. The first part explores how law enforcement officers and

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<sup>39</sup> Cal Bryant, *Gates man sentenced for prostitution*, Roanoke-Chowan News-Herald.com (Oct. 30, 2015, 6:13 PM), <http://www.roanoke-chowannewsheald.com/2015/10/30/gates-man-sentenced-for-prostitution/>.

<sup>40</sup> *United States v. Juarez-Santamaria*, 513 F. App'x 306, 307 (4th Cir. 2013).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 307–08.

<sup>43</sup> *Id.* at 308.

<sup>44</sup> *Id.*



Commonwealth Attorneys were forced to use the common law and a conglomeration of statutes to prosecute traffickers before Virginia's new statute was enacted. The second part is the heart of this paper. It provides the text of Virginia's new sex trafficking statute and breaks it down into an elements test. A checklist for the elements test can be found in Appendix 1. The third and final part covers how Virginia's new sex trafficking statute is incorporated into six previously existing statutes throughout the Virginia Code.

A. *How Police Officers Charged and Commonwealth Attorneys  
Prosecuted Human Traffickers Before Virginia Enacted Their New Sex  
Trafficking Statute*

Without a specific statute criminalizing sex trafficking, Virginia law enforcement officers were forced to use a variety of statutes to charge traffickers. For example, Henrico County, Norfolk, and Richmond police officers have used abduction, pandering, extortion, assault, and aiding in prostitution to charge traffickers.<sup>45</sup> Because of this lack of uniformity across Virginia, Virginia's legislature charged the Virginia Department of Criminal Justice Services in conjunction with the Attorney General's office with advising law enforcement officers and Commonwealth Attorneys on how to identify, investigate, and prosecute human traffickers under the common law and existing statutes.<sup>46</sup>

Erin Kulpa, Assistant Attorney General for Virginia, led the advising effort by holding several regional training seminars that reached nearly the entire state.<sup>47</sup> One of these *Human Trafficking "Red Flag" Training* seminars was held on March 28, 2013, at Shenandoah University in Winchester, Virginia. Billy Woolf, a detective for Fairfax County Police Department, instructed the participants on the "red flags" that law enforcement officers should look for to identify victims of human trafficking. Tony Giorno, First Assistant U.S. Attorney for the Western District of Virginia, presented on federal law. Lastly, Mrs. Kulpa discussed Virginia statutes that govern human trafficking in the Commonwealth.<sup>48</sup>

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<sup>45</sup> *Rapid Assessment on Domestic Minor Sex Trafficking Virginia*, Shared Hope International 33 (October 2011), <http://sharedhope.org/wp-content/uploads/2012/09/VirginiaRA.pdf>.

<sup>46</sup> Va. Code Ann. § 9.1-102(55) (Acts 2015, c. 730, eff. July 1, 2018).

<sup>47</sup> Interview with Patrick J. McKenna, Esq., Co-Founder and Director, Virginia Beach Justice Initiative, in Va. Beach, Va. (Nov. 13, 2015).

<sup>48</sup> *Human Trafficking "Red Flag" Training*, Virginia Department of Criminal Justice Services (March 28, 2013), <http://www.dcjs.virginia.gov/trainingevents/cple/HumanTraffickingRedFlagTraining/agenda.pdf>.

In addition to hosting the training seminars, in 2014 the Virginia Office of the Attorney General, under former Attorney General Kenneth T. Cuccinelli II, created an annotated list of all the possible statutes a Commonwealth Attorney may use to prosecute a trafficker.<sup>49</sup> The statutes outlined in former Attorney General Cuccinelli's memo titled *Virginia Statutes Relating to Human Trafficking* are broken down into five categories: (1) Substantive Laws: Labor Trafficking; (2) Substantive Laws: Sex Trafficking; (3) Completed Sex Offenses; (4) Virginia Racketeer Influenced and Corrupt Organization (RICO) Act; and (5) Other Statutes. Several of the more substantial statutes include section 18.2-47(B), "Abduction for forced labor;" section 18.2-356, "Receiving money for procuring person;" section 18.2-48, "Abduction;" section 18.2-346(B), "Solicitation of prostitution;" section 18.2-347, "Keeping, residing in or frequenting a bawdy place (brothel);" section 18.2-355, "Taking person for prostitution, or consenting thereto;" and section 18.2-61, "Rape."<sup>50</sup>

In addition to the statutes listed above section 40.1-11.3, "Human trafficking hotline; posted notice required; civil penalty," was and still is used to combat human trafficking in Virginia. Section 40.1-11.3 contains several different requirements. First, owners of strip bars, topless entertainment, or similar business must post notices of a human trafficking hotline. Businesses that fail to comply are subject to a civil fine of \$500.<sup>51</sup> Second, truck stops operators ("facility[ies] that . . . are capable of fueling a qualified highway vehicle that bears an IFTA identification") must post notices of a human trafficking hotline.<sup>52</sup> Operators who fail to post a human trafficking hotline notification are given a seventy-two hour grace period to post a notification. Operators who continue to not post a notification after the grace period are subject to a civil penalty of \$100 per truck stop.<sup>53</sup> The money collected through these civil penalties is given to the Virginia literary fund.<sup>54</sup> The literary fund's purpose is to provide "low-interest loans for school construction, grants under the interest rate subsidy program, debt service for technology funding, and support for the

<sup>49</sup> See *infra* Appendix 1; see *infra* Appendix 2.

<sup>50</sup> See *infra* Appendix 2. Several of the cited statutes have since been renamed and are currently titled as: § 18.2-47, "Abduction and kidnapping defined; punishment;" § 18.2-48, "Abduction with intent to extort money or for immoral purpose;" § 18.2-346, "Prostitution; commercial sexual conduct; commercial exploitation of a minor; penalties;" § 18.2-347, "Keeping, residing in or frequenting a bawdy place; 'bawdy place' defined;" and § 18.2-355, "Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking."

<sup>51</sup> § 40.1-11.3(A) (Acts 2013, c. 304).

<sup>52</sup> *Id.* § 40.1-11.3(B)

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* § 40.1-11.3.

state's share of teacher retirement required by the Standards of Quality."<sup>55</sup>

*B. How to Prosecute Human Traffickers Under Virginia's New Commercial Sex Trafficking Statute*

The following section provides the text for Virginia's new sex trafficking statute, section 18.2-357.1, and then provides an elements test for the statute. The elements test for the statute is also provided in a checklist format in Appendix 1. The text of Virginia's new sex trafficking statute cross-references section 18.2-346, which in turn cross-references section 18.2-361. The text of all three statutes is as follows,

§ 18.2-357.1. Commercial sex trafficking; penalties

(A) Any person who, with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing from the earnings of a person from prostitution or unlawful sexual intercourse in violation of subsection A of § 18.2-346, solicits, invites, recruits, encourages, or otherwise causes or attempts to cause a person to violate subsection A of § 18.2-346 is guilty of a Class 5 felony.

(B) Any person who violates subsection A through the use of force, intimidation, or deception is guilty of a Class 4 felony.

(C) Any adult who violates subsection A with a person under the age of 18 is guilty of a Class 3 felony.<sup>56</sup>

§ 18.2-346. Prostitution; commercial sexual conduct; commercial exploitation of a minor; penalties

(A) Any person who, for money or its equivalent, (i) commits adultery, fornication, or any act in violation of § 18.2-361, performs cunnilingus, fellatio, or anilingus upon or by another person, or engages in anal intercourse or (ii) offers to commit adultery, fornication, or any act in violation of § 18.2-361, perform cunnilingus, fellatio, or anilingus upon or by another person, or engage in anal intercourse and thereafter does any substantial act in furtherance thereof is guilty of prostitution, which is punishable as a Class 1 misdemeanor.<sup>57</sup>

§ 18.2-361. Crimes against nature; penalty

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<sup>55</sup> *Facility Construction & Maintenance Literary Fund Loans*, Virginia Department of Education, [http://www.doe.virginia.gov/support/facility\\_construction/literary\\_fund\\_loans/](http://www.doe.virginia.gov/support/facility_construction/literary_fund_loans/) (last visited Nov. 25, 2015).

<sup>56</sup> § 18.2-357.1 (Westlaw through Acts 2015, c. 691).

<sup>57</sup> *Id.* § 18.2-346 (Westlaw through Acts 2014, c. 794, eff. April 23, 2014).

(A) If any person carnally knows in any manner any brute animal or voluntarily submits to such carnal knowledge, he is guilty of a Class 6 felony.

(B) Any person who performs or causes to be performed cunnilingus, fellatio, anilingus, or anal intercourse upon or by his daughter or granddaughter, son or grandson, brother or sister, or father or mother is guilty of a Class 5 felony. However, if a parent or grandparent commits any such act with his child or grandchild and such child or grandchild is at least 13 but less than 18 years of age at the time of the offense, such parent or grandparent is guilty of a Class 3 felony.

(C) For the purposes of this section, parent includes step-parent, grandparent includes step-grandparent, child includes step-child, and grandchild includes step-grandchild.<sup>58</sup>

After a plain reading of the black letter law, the next step is to distill the statutes into an easier to understand elements test. The heart of Virginia's sex trafficking statute can be summarized as it being unlawful to intentionally prostitute another for personal or another person's profit. Section 18.2-357.1 is split into three subsections. Subsection A contains the elements test for sex trafficking, and subsections B and C amend subsection A by increasing the punishment if certain aggravating elements are present. Specifically, subsection A's test for sex trafficking can be broken down into two elements: first, a mens rea (mental intent) element; and second, an actus reus (physical action) element.

The first mens rea element is divided into three subelements, and the latter two elements each contain sub-subelements. The mens rea element is distilled from, "[a]ny person who, with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing from the earnings of a person from prostitution or unlawful sexual intercourse in violation of subsection A of § 18.2-346."<sup>59</sup> The first subelement is based on, "any person . . ." Thus requiring the defendant to be a "person." A "person" is defined as, "includ[ing] any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof."<sup>60</sup>

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<sup>58</sup> *Id.* § 18.2-361

<sup>59</sup> *Id.* § 18.2-357.1(A) (Westlaw through Acts 2015, c. 691).

<sup>60</sup> *Id.* § 1-230 (Westlaw through Acts 2005, c. 839, eff. Oct. 1, 2005). Please note that §-18.2-357.1 is contained in Article 4 of Chapter 8 of title 18.2. Section 18.2-357.1 does not define "person." Article 4 of Chapter 8 does not define "person." Furthermore, Chapter 8 also does not contain a general definition for a "person." Lastly, Chapter 18.2 does not define

The mens rea element's second subelement is derived from, "with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing . . ." Therefore the second subelement is disjunctive and can be satisfied by any one of four ways: (1) with the intent to personally receive money; (2) with the intent to personally receive some other valuable thing; (3) with the intent to assist another in receiving money; or (4) with the intent to assist another in receiving some other valuable thing.<sup>61</sup>

The third subelement of the mens rea element is based on, "from the earnings of a person from prostitution or unlawful sexual intercourse in violation of subsection A of § 18.2-346 . . ." Like the second subelement, the third subelement is disjunctive. The earnings of a person can either be from: (1) prostitution; or (2) the unlawful sexual intercourse in violation of subsection A of § 18.2-346. Section 18.2-346 is titled "Prostitution; commercial sexual conduct; commercial exploitation of a minor; penalties."<sup>62</sup> Both options indicate that the intended earnings must come from a prostitute. It is most likely the first choice is intended to be a broad catch all definition of prostitution in cases where the victim does not neatly fall into the nuanced definition of section 18.2-346.

Section 18.2-346 defines prostitution using a three-part conjunctive elements test. The first two elements are straight forward, whereas the third element presents itself as a two-prong disjunctive test, but, in reality, is a six option disjunctive test. The first element is "any person who."<sup>63</sup> The second element is "for money or its equivalent."<sup>64</sup> Lastly, the third element can be satisfied by any one of the following six options: (1) "commits adultery, fornication, or any act in violation of § 18.2-361;"<sup>65</sup> (2) "performs cunnilingus, fellatio, or anilingus upon or by another person;"<sup>66</sup> (3) "engages in anal intercourse;"<sup>67</sup> (4) "offers to commit adultery, fornication, or any act in violation of § 18.2-361 . . . [and] does any substantial act in furtherance therefore;"<sup>68</sup> (5) offers to "perform cunnilingus, fellatio, or anilingus upon or by another person . . . [and] does any substantial act in furtherance therefore;"<sup>69</sup> or (6) offers to "engage in anal intercourse . . . [and] does any substantial act in furtherance

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"person." Therefore, the definition of "person" used is from the codes overall definition section, § 1-230.

<sup>61</sup> *Id.* § 18.2-357.1(A) (Westlaw through Acts 2015, c. 691).

<sup>62</sup> *Id.* § 18.2-346 (Westlaw through Acts 2014, c. 794, eff. April 23, 2014).

<sup>63</sup> *Id.* § 18.2-346(A).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

therefore.”<sup>70</sup> The first and fourth options cross-reference section 18.2-361, which is titled “Crimes against nature; penalty.”<sup>71</sup>

The two options that cross-reference section 18.2-361 will most likely never be implicated for the following reasons. Subsection A of section 18.2-361 implicitly requires the victim’s trafficker to force his victim to have intercourse with an animal, which is unlikely.<sup>72</sup> Subsections B & C of section 18.2-361 implicitly requires the victim’s trafficker to force the victims to have incest.<sup>73</sup> Therefore, options one and four of the six option disjunctive test listed in the previous paragraph will most likely never be implicated.

If all the mens rea subelements are satisfied, then the analysis transitions to the second main element, the actus reus element. The actus reus element also contains three subelements. The actus reus element is distilled from “[a]ny person who . . . solicits, invites, recruits, encourages, or otherwise causes or attempts to cause a person to violate subsection A of § 18.2-346 . . . .”<sup>74</sup> The first subelement is the same as the mens rea first element and is based on “[a]ny person who . . . ,” thus requiring the actor to be a “person.”<sup>75</sup> The second subelement is a two part disjunctive test that looks at causation. The person must either (1) solicit, invite, recruit, encourage or otherwise cause; or (2) attempt to cause subelement three.<sup>76</sup> The Virginia Supreme Court explains in case law that “[a]ttempted prostitution, unlike attempts to commit crimes generally, is defined solely by Code § 18.1-194 [now codified as § 18.2-346] . . . .”<sup>77</sup> Therefore, “[a]n attempt to commit prostitution requires an offer to engage in sexual intercourse for pay and a substantial act performed in furtherance of the offer.”<sup>78</sup> Lastly, the third subelement is based on, “violate subsection A of § 18.2-346.”<sup>79</sup> In other words, the person must cause or attempt to cause a “violat[ion] subsection A of § 18.2-346.”<sup>80</sup> Subsection A of section 18.2-346 is the technical definition of prostitution that is explained above.

If both the mens rea and the actus reus elements are satisfied, then the person is guilty of commercial sex trafficking and is subject to a Class 5 felony.<sup>81</sup> A Class 5 felony is punishable by either: (1) one to ten years

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.* § 18.2-361.

<sup>72</sup> *Id.* § 18.2-361(A).

<sup>73</sup> *Id.* §§ 18.2-361(B–C).

<sup>74</sup> *Id.* § 18.2-361.

<sup>75</sup> *Id.* § 18.2-357.1(A) (Westlaw through Acts 2015, c. 691).

<sup>76</sup> *Id.*

<sup>77</sup> *Adams v. Commonwealth*, 215 Va. 257, 258, 208 S.E.2d 742, 743 (1974).

<sup>78</sup> *Id.* at 258–59.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> § 18.2-357.1(A) (Westlaw through Acts 2015, c. 691).

imprisonment; or (2) at the discretion of the jury (during a jury trial) or the trial judge (during a bench trial) either a fine up to \$2,500, up to twelve months in jail, or both.<sup>82</sup>

Virginia's sex trafficking statute increases the punishment from a Class 5 felony to a Class 4 felony in subsection B and to a Class 3 felony in subsection C if certain aggravating factors that are considered to be more heinous are present.<sup>83</sup> A Class 4 felony is punishable by a fine of up to \$100,000, imprisonment for two to ten years, or both.<sup>84</sup> A Class 3 felony is punishable by a fine of up to \$100,000, imprisonment for five to twenty years, or both.<sup>85</sup>

Subsection B of Virginia's sex trafficking statute states that "[a]ny person who violates subsection A through the use of *force, intimidation, or deception* is guilty of a Class 4 felony."<sup>86</sup> Although in the context of section 18.2-47(B), "Abduction for forced labor," Virginia's courts elaborate on the meaning of force, intimidation, or deception in case law.<sup>87</sup> Force, intimidation, or deception does not need to be directed at the victim, nor does the victim need to be aware of it and resist it.<sup>88</sup> The force requirement can be satisfied "by a minimal amount of force."<sup>89</sup> For example, the following should satisfy the force requirement: forcing a female upstairs at gun point;<sup>90</sup> pointing a gun at a male victim then manhandling him into a vehicle;<sup>91</sup> grabbing a female victim's head, putting a gun to her head, and threatening to shoot her;<sup>92</sup> or someone grabbing a child's wrist and refusing to let go in spite of the victim's pleas and struggles to break free.<sup>93</sup> For intimidation, section 18.2-47(B) states that intimidation includes: "destroying, concealing, confiscating, withholding, or threatening to withhold a passport, immigration document, or other governmental identification or threatening to report another as being illegally present in the United States."<sup>94</sup> Lastly, the trafficker can use deception by lying to

<sup>82</sup> *Id.* § 18.2-10 (Westlaw through Acts 2008, c. 579).

<sup>83</sup> *Id.* § 18.2-357.1(B-C) (Westlaw through Acts 2015, c. 691).

<sup>84</sup> *Id.* § 18.2-10(d) (Westlaw through Acts 2008, c. 579).

<sup>85</sup> *Id.* § 18.2-10(c).

<sup>86</sup> *Id.* § 18.2-357.1(B) (Westlaw through Acts 2015, c. 691) (emphasis added).

<sup>87</sup> See *infra* Appendix 2.

<sup>88</sup> *Clanton v. Commonwealth*, 53 Va. App. 561, 573-74, 673 S.E.2d 904, 910 (2009).

<sup>89</sup> *Id.* at 911 (quoting *Stancil v. State*, 78 Md. 376, 553 A.2d 268, 272 (1989)).

<sup>90</sup> *Id.* (citing *Wilson v. Commonwealth*, 249 Va. 95, 103, 452 S.E.2d 669, 675 (1995)).

<sup>91</sup> *Id.* (citing *Walker v. Commonwealth*, 47 Va. App. 114, 121, 622 S.E.2d 282, 285 (2005)).

<sup>92</sup> *Id.* (citing *Simms v. Commonwealth*, 2 Va. App. 614, 618, 346 S.E.2d 734, 736 (1986)).

<sup>93</sup> *Moreno v. Commonwealth*, No. 2237-98-4, 2000 WL 33252092, at \*1-2 (Va. Ct. App. May 23, 2000).

<sup>94</sup> Va. Code Ann. § 18.2-10(b) (Westlaw through Acts 2008, c. 579).

a victim to achieve his goal.<sup>95</sup> The deception does not need to be verbalized; it can be proven by circumstantial evidence.<sup>96</sup>

Subsection C of Virginia's sex trafficking statute states that "[a]ny adult who violates subsection A with a person under the age of 18 is guilty of a Class 3 felony."<sup>97</sup> It is important to note that subsection C requires the offender to be an adult. The Virginia Code defines adult as any "person 18 years of age or more."<sup>98</sup> Therefore, subsection C and its Class 3 felony ramification only applies if the trafficker is eighteen years old or older and traffics someone under eighteen.

### C. *Other Statutes that Cross-Reference or Use Virginia's New Sex Trafficking Statute*

Virginia's new sex trafficking statute is cross-referenced in or is used by six other statutes in the Virginia Code. These statutes include: section 19.2-386.35, "Seizure of property used in connection with certain offenses;" section 9.1-902, "Offenses requiring [sex offender] registration;" section 17.1-805(C), "Adoption of initial discretionary sentencing guideline midpoints;" section 19.2-215.1, "Functions of a multijurisdiction grand jury;" section 18.2-46.1, "Definitions;" and section 18.2-513, "Definitions."

First, section 19.2-386.35, "Seizure of property used in connection with certain offenses," states, "[a]ll money, equipment, motor vehicles, and other personal and real property of any kind or character together with any interest or profits derived from the investment of such proceeds or other property that (i) was used in connection with the commission of, or in an attempt to commit, a violation of . . . 18.2-357.1, . . . is subject to lawful seizure by a law-enforcement officer and subject to forfeiture to the Commonwealth pursuant to Chapter 22.1 (§ 19.2-386.1 et seq.)."<sup>99</sup> Therefore, any property that a sex trafficker uses while violating or attempting to violate Virginia's sex trafficking statute is subject to seizure by the police and forfeiture to Virginia.

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<sup>95</sup> *Turner v. Commonwealth*, 56 Va. App. 391, 420, 694 S.E.2d 251, 266 (2010) (citing *Jerman v. Dir. of the Dep't. of Corr.*, 267 Va. 432, 439, 593 S.E.2d 255, 259 (2004) where "an abduction occurred where the evidence proved that one of the petitioner's confederates convinced the victim to come with her under the ruse of selling illegal narcotics to her and petitioner when their true intent was to harm the victim.").

<sup>96</sup> *Id.*

<sup>97</sup> § 18.2-357.1(C) (Westlaw through Acts 2015, c. 691).

<sup>98</sup> *Id.* § 1-203 (Westlaw through Acts 2005, c. 839, eff. Oct. 1, 2005). Please note that § 18.2-357.1 is contained in Article 4 of Chapter 8 of title 18.2. Section 18.2-357.1 does not define "adult." Article 4 of Chapter 8 does not define "adult." Furthermore, Chapter 8 also does not contain a general definition for an "adult." Lastly, Chapter 18.2 does not define "adult." Therefore, the definition of "adult" used is from title 18.2's overall definition section.

<sup>99</sup> *Id.* § 19.2-386.35 (Westlaw through Acts 2015, c. 691).



Second, section 9.1-902, “Offenses requiring [sex offender] registration,” requires offenders convicted under subsection C of Virginia’s sex trafficking statute to be register with Virginia’s sex offender registry.<sup>100</sup> Subsection C of section 18.2-357.1 provides that “[a]ny adult who violates subsection A with a person under the age of 18 is guilty of a Class 3 felony.”<sup>101</sup> Therefore, any adult offender who is convicted of sex trafficking a victim under eighteen years of age must register with Virginia’s sex offender registry.<sup>102</sup>

Third, section 17.1-805(C), “Adoption of initial discretionary sentencing guideline midpoints,” regulates how the sentencing guidelines for criminal offenses are determined. As of now there is no sentencing guideline for Virginia’s sex trafficking statute because it is new.<sup>103</sup> The Virginia Criminal Sentencing Commission requires several years of data before it can create a sentencing guideline by using a technical and nuanced formula.<sup>104</sup> Moreover, section 17.1-805(C) lists Virginia’s sex trafficking statute as a “violent felony offense,” meaning the punishment for a repeat offender is increased. It is critical that traffickers prosecuted under Virginia’s new sex trafficking statute over the next several years receive long sentences because those sentences will be used to set the guidelines for future years.<sup>105</sup>

Fourth, section 19.2-215.1, “Functions of a multijurisdiction grand jury,”<sup>106</sup> permits a multi-jurisdictional grand jury to be utilized when considering bills of indictment and to investigate conditions that increase violations of Virginia’s sex trafficking statute.<sup>107</sup> Typically a grand jury performs two functions: (1) considering whether a bill of indictment is “a true bill;” and (2) “investigate[ing] and report[ing] on any condition that

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<sup>100</sup> *Id.* § 9.1-902.

<sup>101</sup> *Id.* § 18.2-357.1(C)

<sup>102</sup> For more information on Virginia’s Sex Offender and Crimes Against Minors Registry and how it works, visit their website at <http://sex-offender.vsp.virginia.gov/sor/index.html>.

<sup>103</sup> Telephone Interview with Michael Y. Feinmel, Esq., Assistant Commonwealth’s Attorney, Henrico County Commonwealth Attorney’s Office (Oct. 28, 2015).

<sup>104</sup> *See* § 18.2-357.1(A) (Westlaw through Acts 2015, c. 691) (using year 1988 through 1992, five years, to create the original guidelines).

<sup>105</sup> Telephone Interview with Michael Y. Feinmel, Esq., *supra* note 102.

<sup>106</sup> “A Regular Grand Jury is convened at each term of the Circuit Court of each city and county, to attend to the usual matters needing Grand Jury action. . . . Multi-Jurisdiction Grand Juries involve more than one jurisdiction and are primarily used to investigate drug law violations.” *Handbook for Virginia Grand Jurors*, Virginia’s Judicial System 1, [http://www.courts.state.va.us/courts/circuit/handbook\\_grand\\_jurors.pdf](http://www.courts.state.va.us/courts/circuit/handbook_grand_jurors.pdf) (last visited Dec. 6, 2015).

<sup>107</sup> § 19.2-215.1 (Westlaw through Acts 2015, c. 691).

involves or tends to promote criminal activity.”<sup>108</sup> With respect to Virginia’s new sex trafficking statute, a multijurisdictional grand jury may similarly be used in two situations.<sup>109</sup> First, “[t]o investigate any condition that involves or tends to promote criminal violations of . . . [Virginia’s sex trafficking statute].”<sup>110</sup> Second, “[t]o consider bills of indictment prepared by a special counsel to determine whether there is sufficient probable cause to return each such indictment as a “true bill.”<sup>111</sup> Therefore, a multi-jurisdictional grand jury may be used instead of a normal grand jury when Virginia’s sex trafficking statute is at issue.

Fifth, Virginia’s sex trafficking statute is cross-referenced in section 18.2-46.1, which is a definition section for Article 2.1, Crimes by Gangs, of Chapter 4, Crimes against the Person, of title 18.2, Crimes and Offenses Generally. Specifically, section 18.2-46.1 states, “[a]s used in this article unless the context requires otherwise or it is otherwise provided: . . . ‘[p]redicate criminal act’ means . . . any violation of . . . § 18.2-357.1 . . . [among other criminal violations].”<sup>112</sup> Predicate criminal act is used once in Article 2.1. Specifically section 18.2-46.2(A) prescribes that, “[a]ny person who actively participates in or is a member of a criminal street gang and who knowingly and willfully participates in any *predicate criminal act* committed for the benefit of, at the direction of, or in association with any criminal street gang shall be guilty of a Class 5 felony.”<sup>113</sup> Section 18.2-46.2(A) also elevates the punishment to a Class 4 felony if the trafficker is an adult who knows or has reason to know that the criminal street gang has juvenile members.<sup>114</sup> Therefore, if an offender violates Virginia’s sex trafficking statute while participating in or as a member of a criminal street gang, then the offender can be prosecuted under both section 18.2-357.1 and section 18.2-46.2(A).

Lastly, Virginia’s sex trafficking statute is also cross-referenced in section 18.2-513,<sup>115</sup> which is a portion of what is commonly known as the Virginia Racketeer Influenced and Corrupt Organization (RICO) Act.<sup>116</sup>

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<sup>108</sup> *Id.* § 19.2-191 (Westlaw through Acts 2001, c. 4). A “true bill” is a decision made by a grand jury after it has heard all the necessary or available witnesses in a case. A “true bill” indicates that that the grand jury has found enough evidence to indict a suspect. *Handbook for Virginia Grand Jurors, Virginia’s Judicial System* 1, [http://www.courts.state.va.us/courts/circuit/handbook\\_grand\\_jurors.pdf](http://www.courts.state.va.us/courts/circuit/handbook_grand_jurors.pdf) (last visited Dec. 6, 2015).

<sup>109</sup> *Id.* § 19.2-191.

<sup>110</sup> *Id.* § 19.2-191(1).

<sup>111</sup> *Id.* § 19.2-191(2).

<sup>112</sup> *Id.* § 18.2-46.1 (Westlaw through Acts 2015, c. 691).

<sup>113</sup> *Id.* § 18.2-46.2(A) (Westlaw through Acts 2000, c. 332) (emphasis added).

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* § 18.2-513 (Westlaw through Acts 2015, c. 691).

<sup>116</sup> *Id.* § 18.2-512 (Westlaw through Acts 2004, c. 996).

Section 18.2-513 is RICO's definition section. It defines "racketeering activity" as "to commit, attempt to commit, conspire to commit, or to solicit, coerce, or intimidate another person to commit two or more of the following offenses . . ." <sup>117</sup> One of the many listed offenses is violating Virginia's new sex trafficking statute. <sup>118</sup> Section 18.2-514, "Racketeering offenses," and section 18.2-516, "Prohibition of illegal money transmitting," describe the requirements to convict a defendant with racketeering activity. <sup>119</sup> Therefore, an offender of Virginia's sex trafficking statute might also be subject to RICO, if all of RICO's elements are additionally met.

#### CONCLUSION

Most people know that commercial sex trafficking is a very real problem and are now learning that trafficking covers the entire globe. Until July 1, 2015, Virginia law enforcement officers and Commonwealth Attorneys were forced to use the common law and a conglomeration of statutes to bring sex traffickers to justice. Now Virginia has a dedicated statute criminalizing commercial sex trafficking. Generally sex traffickers violate the statute when they have the mens rea and actus reus to personally profit, or cause another person to profit, from a prostitute's earnings. However, implementing Virginia's new sex trafficking statute is just the second step that the Commonwealth has to take. To be a true leader in the fight against human trafficking, Virginia should take the next step by providing trafficking victims standing for civil actions; <sup>120</sup> providing full confidentiality privileges to social workers and counselors serving trafficking victims; <sup>121</sup> setting up a victims fund; <sup>122</sup> and creating an affirmative defense for victims. <sup>123</sup>

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<sup>117</sup> *Id.* § 18.2-513 (Westlaw through Acts 2015, c. 691).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* § 18.2-514 (Westlaw through Acts 2009, c. 847); *Id.* § 18.2-516 (Westlaw through Acts 2004, c. 996).

<sup>120</sup> *E.g.*, 18 U.S.C. § 1595 (2012) (stating that in federal cases a victim of trafficking may bring a civil action against their perpetrator).

<sup>121</sup> *E.g.*, D.C. Code § 14-311(b)(1) (Westlaw through Oct. 23, 2010, D.C. Law 18-239, § 203(c), 57 DCR 5405).

<sup>122</sup> *E.g.*, Haw. Rev. Stat. § 706-650.5 (Westlaw through Laws 2014, ch. 119, § 1); *e.g.*, Iowa Code § 915.95 (Westlaw through Acts 2014 (85 G.A.) ch. 1097); and *e.g.*, Miss. Code Ann. § 97-3-54.8 (Westlaw through Laws 2013, Ch. 543 (H.B. 673), § 8, eff. July 1, 2013).

<sup>123</sup> *E.g.*, S.C. Code Ann. § 16-3-2020(J) (Westlaw through 2015 Act No. 74 (S.183), § 1, eff. June 8, 2015).

APPENDIX 1: ELEMENTS TEST CHECKLIST FOR VIRGINIA'S NEW  
SEX TRAFFICKING STATUTE

§ 18.2-357.1. Commercial sex trafficking; penalties.

A. Any person who, with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing from the earnings of a person from prostitution or unlawful sexual intercourse in violation of subsection A of § 18.2-346, solicits, invites, recruits, encourages, or otherwise causes or attempts to cause a person to violate subsection A of § 18.2-346 is guilty of a Class 5 felony.

B. Any person who violates subsection A through the use of force, intimidation, or deception is guilty of a Class 4 felony.

C. Any adult who violates subsection A with a person under the age of 18 is guilty of a Class 3 felony.

Under subsection A—Class 5 felony. (Conjunctive).

Element 1: Did the defendant have the mens reas to commit commercial sex trafficking?

Subelement 1: Is the defendant a person?

- A “person” is defined as “includ[ing] any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.” Va. Code Ann. § 1-230 (Westlaw through Acts 2005, c. 839, eff. Oct. 1, 2005).

Subelement 2: Did the defendant have the intent to either:

Sub-subelement 1: personally receive money;

Sub-subelement 2: personally receive some other valuable thing;

Sub-subelement 3: assist another in receiving money; or

Sub-subelement 4: assist another in receiving some other valuable thing?

Subelement 3: Did the defendant intend to receive the money or some other valuable thing in subelement 2 from:

Sub-subelement 1: a prostitute; or

Sub-subelement 2: the unlawful sexual intercourse in violation of subsection A of § 18.2-346?

- Subsection A of § 18.2-346 can be met by the following elements test. (Conjunctive).

Element 1: Is the victim a person?

Element 2: Did the victim commit element 3 for money or its equivalent?

Element 3: Did the defendant intend that their victim would do any of the following:

- Subelement 1: commit adultery, fornication, or any act in violation of § 18.2-361 (bestiality or incest);
- Subelement 2: perform cunnilingus, fellatio, or anilingus upon or by another person;
- Subelement 3: engage in anal intercourse;
- Subelement 4: offers to commit adultery, fornication, or any act in violation of § 18.2-361 (bestiality or incest) and does any substantial act in furtherance therefore;
- Subelement 5: offer to perform cunnilingus, fellatio, or anilingus upon or by another person and does any substantial act in furtherance therefore; or
- Subelement 6: offer to engage in anal intercourse and does any substantial act in furtherance therefore.
- Element 2: Did the defendant have the actus reus to commit commercial sex trafficking?
  - Subelement 1: Is the defendant a person?
  - Subelement 2: Did the defendant either:
    - Sub-subelement 1: solicit, invite, recruit, encourage, or otherwise causes subelement 3; or
    - Sub-subelement 2: attempt to cause subelement 3?
    - Subelement 3: As a result of subelement 2, did the victim commit unlawful sexual intercourse in violation of subsection A of § 18.2-346?
      - Subsection A of § 18.2-346 can be met by the following elements test.
        - Element 1: Is the victim a person?
        - Element 2: Did the victim commit Element 3 for money or its equivalent?
        - Element 3: Did the victim do any of the following:
          - Subelement 1: commit adultery, fornication, or any act in violation of § 18.2-361 (bestiality or incest);
          - Subelement 2: perform cunnilingus, fellatio, or anilingus upon or by another person;
          - Subelement 3: engage in anal intercourse;
          - Subelement 4: offers to commit adultery, fornication, or any act in violation of § 18.2-361 (bestiality or incest) and does any substantial act in furtherance therefore;
          - Subelement 5: offer to perform cunnilingus, fellatio, or anilingus upon or by another person and does any substantial act in furtherance therefore;
          - Subelement 6: offer to engage in anal intercourse and does any substantial act in furtherance therefore; or

Subelement 7: attempt to commit prostitution (any of the previous six) by offering to engage in sexual intercourse for pay and took a substantial act performed in furtherance of the offer? *Adams v. Commonwealth*, 215 Va. 257, 258–59, 208 S.E.2d 742, 744 (1974).

Under subsection B—Class 4 felony. (Disjunctive).

Element 1: Did the defendant violate subsection A through either:

Subelement 1: force;

• The force requirement can be satisfied by a minimal amount of force. For example by: forcing a female upstairs at gun point; pointing a gun at a male victim then manhandling him into a vehicle; grabbing a female victim's head, putting a gun to her head, and threatening to shoot her; or someone grabbing a child's wrist and refusing to let go in spite of the victims pleas and struggles to break free. *Clanton v. Commonwealth*, 53 Va. App. 561, 573–74, 673 S.E.2d 904, 910–11 (2009); *Moreno v. Commonwealth*, No. 2237-98-4, 2000 WL 33252092, at \*1–2 (Va. Ct. App. May 23, 2000).

Subelement 2: intimidation; or

• Intimidation includes destroying, concealing, confiscating, withholding, or threatening to withhold a passport, immigration document, or other governmental identification or threatening to report another as being illegally present in the United States. Va. Code Ann. § 18.2-47(B) (Westlaw through Acts 2009, c. 662).

Subelement 3: deceit?

• Deception can be accomplished by the trafficker lying to a victim to achieve his goal. Furthermore, the deception does not need to be verbalized, and it can be proven by circumstantial evidence. *Turner v. Commonwealth*, 56 Va. App. 391, 420–22, 694 S.E.2d 251, 266 (2010).

Under subsection C—Class 3 felony. (Conjunctive).

Element 1: Was the defendant an adult, a person eighteen-years-old or older?

Element 2: Did the defendant violate subsection A of section 18.2-371.1?

Element 3: Was the victim under the age of eighteen?

APPENDIX 2: VIRGINIA STATUTES RELATING TO HUMAN TRAFFICKING<sup>124</sup>

The following sections of the *Code of Virginia* are statutes relating to human trafficking. Clicking on the links provided will take you directly to the on-line *Code of Virginia* containing the complete text of the Code section.

*Substantive Laws: Labor Trafficking*

18.2-47(B): Abduction for forced labor  
<http://leg1.state.va.us/cgi-bin/legp504.e000+cod+18.2-47>

18.2-49: Threatening, attempting or assisting in such abduction  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-49>

18.2-59: Extortion  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-59>

18.2-356: Receiving money for procuring person  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+coh+18.2-356+701202>

*Substantive Laws: Sex Trafficking*

18.2-48: Abduction  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-48>

18.2-49: Threatening, attempting or assisting in such abduction  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-49>

18.2-346(B): Solicitation of prostitution  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-346>

18.2-347 Keeping, residing in or frequenting a bawdy place (brothel)  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-347>

18.2-348: Aiding prostitution  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-348>

18.2-349: Using vehicles to promote prostitution  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-349>

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<sup>124</sup> *Virginia Statutes Relating to Human Trafficking*, Virginia Department of Criminal Justice Services, <https://www.dcis.virginia.gov/victims/humantrafficking/> HTStatutes.pdf (last visited Nov. 25, 2015).

18.2-355: Taking person for prostitution, or consenting thereto  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-355>

18.2-356: Receiving money for procuring person  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-356>

18.2-357: Receiving money from earnings of prostitute  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-357>

18.2-370(B): Taking indecent liberties with children: Sexually explicit  
visual material  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-370>

18.2-374.1: Production of child pornography  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-374.1>

18.2-374.3: Use of communication systems to facilitate certain offenses  
involving children  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-374.3>

*Completed Sex Offenses*

18.2-61: Rape  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-61>

18.2-63: Knowledge of child between thirteen and fifteen years of age  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-63>

18.2-67.1: Forcible sodomy  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-67.1>

18.2-67.2: Object sexual penetration  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-67.2>

18.2-67.3: Aggravated sexual battery  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-67.3>

18.2-67.4: Sexual battery  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-67.4>

18.2-67.4.2: Sexual abuse of a child under 15 years of age  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-67.4C2>



18.2-370(A): Taking indecent liberties with children  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-370>

18.2-371: Contributing to the delinquency of a minor  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-371>

*Virginia Racketeer Influenced and Corrupt Organization (RICO) Act*

18.2-514: Racketeering offenses  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-514>

18.2-515: Criminal penalties; forfeiture  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-515>

18.2-516: Prosecution  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-516>

*Other Statutes*

18.2-18: Principals in the second degree & accessories before the fact  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-18>

18.2-22: Conspiracy to commit felony  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-22>

18.2-29: Criminal solicitation  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-29>

18.2-46.1: Criminal street gangs  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-46.1>

18.2-359(A): Venue for prosecutions  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-359>

19.2-386.16: Forfeiture of motor vehicles used in commission of certain crimes  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+19.2-386.16>

19.2-386.31: Seizure and forfeiture of property used in connection with the exploitation and solicitation of children  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+19.2-386.31>

APPENDIX 3: VIRGINIA ANTI-TRAFFICKING LAWS: CRIMINAL<sup>125</sup>

COMMONWEALTH of VIRGINIA  
Office of the Attorney General

Kenneth T. Cuccinelli II  
Attorney General

SUBSTANTIVE LAWS: LABOR TRAFFICKING

**§ 18.2-47(B). Abduction for Forced Labor.** “Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to subject him to forced labor or services shall be deemed guilty of abduction.”

- Punishment:<sup>\*</sup> 1 to 10 years in prison, *or* 12 months in jail and fine of up to \$2,500.
- Elements of the Offense:
  1. *Use of force, intimidation or deception:*
    - Force:
      - Minimal amount/threats of force /violence sufficient. *Clanton v. Comm.*, 53 Va. App. 561, 673 S.E.2d 904 (2009) (*en banc*).
      - Pointing gun at victim. *Wilson v. Comm.*, 249 Va. 95, 452 S.E.2d 669 (1995).
      - Pointing gun at another while taking victim. *Clanton*.
      - Stranger grabbing 10-year-old victim’s wrist and refusing to let go, forcing the victim to kick and physically struggle to break free. *Moreno v. Comm.*, UNPUBLISHED (2000).
    - Intimidation:
      - Includes “destroying, concealing, confiscating, withholding, or threatening to withhold a passport,

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<sup>125</sup> *Virginia Anti-Trafficking Laws: Criminal*, Virginia Department of Criminal Justice Services, <http://www.dcjs.virginia.gov/victims/humantrafficking/ca/documents/VAAnti-TraffickingLaws-Criminal-2011.pdf> (last visited Nov. 25, 2015).

immigration document, or other governmental identification.” Section 18.2-47(B).

- Includes “threatening to report another as being illegally present in the United States.” Section 18.2-47(B).

- Deception:

- Specific lies to the victim to get them to go willingly. *Jerman v. Dir., Dep’t of Corr.*, 267 Va. 432 (2004).
- Need not be verbalized, can be inferred from conduct observed by others. *Turner v. Comm.*, 56 Va. App. 391 (2010) (*en banc*) (pending appeal in SCV).

2. *Seizes, takes, transports, detains or secretes another:* Also known as the “Asportation/Detention Element.”

- The slightest asportation or detention will suffice.

3. *Without legal justification or excuse:* Without “[a] lawful or sufficient reason for one’s acts or omissions.” *Taylor v. Comm.*, 260 Va. 683, 690, 537 S.E.2d 592 (2000).

- Justification/necessity defense.
- Biological parent of child victim does not qualify. *Taylor*.
- Victims trespassing on defendant’s property, and defendant holding them at gunpoint until police arrive, does not qualify. *Hitchcock v. Comm.*, UNPUBLISHED (1998).

4. *Intent to subject him to forced labor or services:*

- Without a direct admission, must rely on circumstantial evidence of intent, and the defendant’s acts, conduct, and statements may be considered to discern his state of mind. *Long v. Comm.*, 8 Va. App. 194, 379 S.E.2d 473 (1989).
- “Forced labor or services” undefined in the

Va. Code – courts will rely on the plain and ordinary meaning of the words. (Common sense).

- Forced: Enforced or compulsory.
- Labor or Services: Work.

**§ 18.2-59. Extortion.** “Any person who (i) threatens injury to the character, person, or property of another person, (ii) accuses him of any offense, (iii) threatens to report him as being illegally present in the United States, or (iv) knowingly destroys, conceals, removes, confiscates, withholds or threatens to withhold, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person, and thereby extorts money, property, or pecuniary benefit or any note, bond, or other evidence of debt from him or any other person, is guilty of a Class 5 felony.”

- Punishment: 1 to 10 years in prison, *or* 12 months in jail and fine of up to \$2,500.
- Elements of Offense:
  1. *Extorts money, property or pecuniary benefit by –*
  2. *(a) Threatening injury to character, person or property, or (b) threatening to report him as illegal, or (c) knowingly destroys, withholds, etc. travel or immigration documents of the victim.*
- Defining Threat: “[C]ommunication relaying an intention to injure another’s person or property which, taken in context, reasonably causes the listener to believe that the speaker will carry out his intention.” *DiMaio v. Comm.*, 46 Va. App. 755, 621 S.E.2d 696 (2005).
  - Evaluated in light of all of the circumstances under which the statement was made.
  - No need to be direct; veiled threats implying harm sufficient.

**§ 18.2-356. Receiving money for procuring person.** (*Effective July 1, 2011*) “Any person who receives any money or other valuable thing for or on account of . . . (ii) causing any person to engage in forced labor or services . . . shall be guilty of a Class 4 felony.”

- Punishment: 2 to 10 years in prison, plus of fine of up to \$100,000.

- Elements of the Offense:
  1. *Receipt of money or other valuable thing:*
    - Any money or thing of value, no matter what the amount, received by the defendant.
  2. *For or on account of: Knowledge element.*
    - Must prove defendant knew money he received was for illegal activity. *Collins v. Comm.*, 226 Va. 223, 307 S.E.2d 884 (1983).
  3. *Causing any person:*
    - Cause: To be the cause of; bring about.
    - Must be another person. *Stewart v. Comm.*, 225 Va. 473, 303 S.E.2d 877 (1983).
  4. *To engage in forced labor or services:*
    - “Forced labor or services” undefined in the Va. Code – courts will rely on the plain and ordinary meaning of the words. (Common sense)
      - Forced: Enforced or compulsory.
      - Labor or Services: Work.

#### SUBSTANTIVE LAWS: SEX TRAFFICKING

**§ 18.2-48. Abduction.** (*Effective July 1, 2011*) “Abduction . . . (ii) of any person with intent to defile such person, (iii) of any child under sixteen years of age for the purpose of concubinage or prostitution, (iv) of any person for the purpose of prostitution, or (v) of any minor for the purpose of manufacturing child pornography shall be punishable as a Class 2 felony.”

- Punishment: 20 years to life in prison, and a fine up to \$100,000.
- Elements of Offense: Enhanced penalty for abduction (§ 18.2-47(A)) done with one of the stated purposes; elements are the same as those for general abduction statute.
  1. *Use of force, intimidation or deception:*
    - Force:
      - Minimal amount/threats of force/violence sufficient. *Clanton.*

- Pointing gun at victim. *Wilson*.
  - Pointing gun at another while taking victim. *Clanton*.
  - Stranger grabbing 10-year-old's wrist and refusing to let go, forcing the victim to kick and physically struggle to break free. *Moreno*.
  - Intimidation:
    - Includes "destroying, concealing, confiscating, withholding, or threatening to withhold a passport, immigration document, or other governmental identification." § 18.2-47(B).
    - Includes "threatening to report another as being illegally present in the United States." § 18.2-47(B).
  - Deception:
    - Specific lies to the victim to get them to go willingly. *Jerman*.
    - Need not be verbalized, can be inferred from conduct observed by others. *Turner*.
2. *Seizes, takes, transports, detains or secretes another:*  
Also known as the "Asportation/Detention Element."  
  - The slightest asportation or detention will suffice.
3. *Without legal justification or excuse:* Without "[a] lawful or sufficient reason for one's acts or omissions." *Taylor*.  
  - Justification/necessity defense.
  - Biological parent of child victim does not qualify. *Taylor*.
  - Victims trespassing on defendant's property, and defendant holding them at gunpoint until police arrive, does not qualify. *Hitchcock*.
4. *With the intent to . . . /For the purpose of . . .*

- Defile: Synonymous with “sexually molest.” *Crawford*.
  - Can be useful in gang abductions, where victims sexually assaulted before placing them into prostitution.
- Child under 16 for Concubinage/Prostitution
  - Concubinage is treating one as a secondary wife or mistress.
  - Conviction under this provision places the defendant on the sex offender registry.
- Adult Prostitution
- Child Under 18 for Manufacture of Child Pornography

**§ 18.2-346(B). Solicitation of prostitution.** Prohibits offering money or its equivalent to another for the purpose of engaging in sexual acts and “thereafter does any substantial act in furtherance thereof.”

- Punishment: Class 1 misdemeanor; Up to 12 months in jail.

**§ 18.2-347. Keeping, residing in or frequenting a bawdy place (brothel).** Prohibits “keep[ing]” “any bawdy place.” Also punishes one who frequents such a place “with an immoral purpose.”

- Punishment: Class 1 misdemeanor; Up to 12 months in jail
- Elements of Offense:
  - “Bawdy place” is any place, whether inside a building or not, used for prostitution. § 18.2-347.
    - Motel parking lot. *Harrison v. City of Norfolk*, 16 Va. App. 572, 431 S.E.2d 658 (1993).
  - Each day in operation is a separate offense.
  - Can use general reputation of place as proof it is used for prostitution.

**§ 18.2-348. Aiding prostitution.** Makes it unlawful for any person or “employee” of “any firm, association or corporation, with knowledge of, or good reason to believe, the immoral purpose of such visit,” either (1) “to take or transport . . . or offer to take or transport . . . any person

to a place . . . used or to be used for the purpose of . . . prostitution” or (2) to “procure or assist in procuring for the purpose of illicit sexual intercourse” or (3) “to give any information or direction to any person” “with intent to enable such person to commit an act of prostitution.”

- Punishment: Class 1 misdemeanor; Up to 12 months in jail.
- Elements of Offense:
  - *Substantial act in furtherance of prostitution. Fine v. Comm.*, 31 Va. App. 636, 525 S.E.2d 69 (2000) (discussion of money not enough).
    - Comes from the language of the solicitation of prostitution statute.
  - *Procure* means to take care of, bring about, obtain: achieve.
 

*Bakran v. Comm.*, 57 Va. App. 197, 700 S.E.2d 471 (2010) (on appeal to SCV).
  - *Transportation* can be by foot or any vehicle.

**§ 18.2-349. Using vehicles to promote prostitution.** Prohibits “any owner or chauffeur of any vehicle, with knowledge or reason to believe the same is to be used for such purpose, to use the same or to allow the same to be used for the purpose of prostitution or unlawful sexual intercourse, or to aid or promote such prostitution or unlawful sexual intercourse by the use of any such vehicle.”

- Punishment: Class 1 misdemeanor; Up to 12 months in jail.
- Elements of Offense:
  - *Substantial act in furtherance of prostitution. Fine.* (discussion of money not enough).
    - Comes from the language of the solicitation of prostitution statute.
  - *Owner or chauffeur*: One using a vehicle owned by another does not fall under this section.
    - Allowing another to use vehicle, knowing it will be used for the purpose of aiding or promoting prostitution.



- Covers traffickers using their vehicle to drive victims to the “Johns.”

**§ 18.2-355. Taking person for prostitution, or consenting thereto.** Prohibits (1) any person who “for purposes of prostitution or unlawful sexual intercourse” “takes any person into, or persuades, encourages or causes any person to enter, a bawdy place, or takes or causes such person to be taken to any place against his or her will for such purposes;” or (3) being parent or guardian “consents” to a person “being taken or detained by any person for the purpose of prostitution or unlawful sexual intercourse.”

- Punishment: 2 to 10 years in prison, plus of fine of up to \$100,000.
- Elements of the Offense:
  1. *For purpose of prostitution or unlawful sexual intercourse.*
  2. (a) *Takes victim into brothel, or (b) persuades, encourages or causes victim to enter brothel, or (c) causes another to take the victim there against the victim’s will, or (d) if the parent, consents to such.*

**§ 18.2-356. Receiving money for procuring person.** “Any person who receives any money or other valuable thing for or on account of (i) procuring for or placing in a house of prostitution or elsewhere any person for the purpose of causing such person to engage in unlawful sexual intercourse or any act in violation of Section 18.2-361 . . . shall be guilty of a Class 4 felony.”

- Punishment: 2 to 10 years in prison, plus of fine of up to \$100,000.
- Elements of the Offense:
  1. *Receipt of money or other valuable thing:*
    - Any money or thing of value, no matter what the amount, received by the defendant.
  2. *For or on account of:* Knowledge element.
    - Must prove defendant knew money was for illegal activity. *Collins.*
  3. *Procuring for or placing in a house of prostitution:*
    - *Procure* means to take care of, bring about, obtain: achieve. *Bakran.*

4. *For the purpose of causing victim to engage in unlawful sexual intercourse.*

- A bellman in a hotel given \$10 by a guest to procure for him a prostitute, and does so, guilty. *Edwards v. Comm.*, 218 Va. 994, 243 S.E.2d 834 (1978).

**§ 18.2-357. Receiving money from earnings of prostitute.**

Prohibits knowing receipt of any money or other valuable thing “from the earnings of any male or female engaged in prostitution, except for a consideration deemed good and valuable in law.”

- Punishment: 2 to 10 years in prison, plus of fine of up to \$100,000.
- Elements of the Offense:
  1. *Receipt of money or other valuable thing*:
    - Any money or thing of value, no matter what the amount, received by the defendant.
  2. *Knowledge* that money received was from earnings of prostitution.
- *Good and valuable consideration* is an *affirmative defense*; defendant must come forward with some evidence of consideration. *Tart v. Comm.*, 52 Va. App. 272, (2008).
  - Food, lodging and transportation not lawful consideration, as these items furthered prostitution. *Tart*.
  - Illicit drugs and alcohol (given to minor) not lawful consideration. *Tart*.

**§ 18.2-374.1. Production of child pornography.** Prohibits one who

(1) “accosts, entices or solicits” a minor “with intent to induce or force such person to perform in or be a subject of child pornography,” or (2) “produces or makes or attempts or prepares to produce or make child pornography,” or (3) “knowingly . . . participates in the . . . production of child pornography by any means,” or (4) “knowingly finances or attempts or prepares to finance child pornography.”

- Punishment:
  - Victim under 15 – 5 to 30 years in prison.
  - Victim 15 to 17 – 1 to 20 years in prison.

- Defendant 7 years older than victim – 3 to 30 years in prison.

- Elements of the Offense:

- *Child pornography*: Sexually explicit visual material which utilizes or has as a subject an identifiable minor.
- *Identifiable minor*: Person who was a minor at the time the visual depiction was created, adapted, or modified and who is recognizable as an actual person.

**§ 18.2-370(B). Taking indecent liberties with children: Sexually Explicit Visual Material.** Any adult who, “with lascivious intent, knowingly and intentionally receives money, property, or any other remuneration” either (1) “for allowing, encouraging, or enticing” any minor “to perform in or be a subject of sexually explicit visual material” or (2) “who knowingly encourages such person to perform in or be a subject of sexually explicit material” is guilty of a Class 5 felony.

- Punishment: 1 to 10 years in prison, *or* 12 months in jail and fine of up to \$2,500.

- Elements of Offense:

- *Lascivious intent* :
- *Knowing and intentional*
- *Receipt of money or property or anything of value.*
- *(1) Allowing, encouraging, or enticing or (2) knowingly encouraging a minor to perform in or be a subject of sexually explicit material.*

**Completed Sex Offenses:** *Can be useful in prosecuting either traffickers or “Johns,” depending on the circumstances and the age of the trafficking victim. Must be able to show defendant either knew or should have known the victim’s age.*

**§ 18.2-61. Rape.** Prohibits sexual intercourse with a victim accomplished “(i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or . . . (iii) with a child under age 13 as the victim.”

**§ 18.2-63. Carnal knowledge of child between thirteen and fifteen years of age.** Prohibits “carnal knowledge,” “without

the use of force,” of “a child thirteen years of age or older but under fifteen years of age.” “[C]arnal knowledge includes the acts of sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, and animate and inanimate object sexual penetration.”

**§ 18.2-67.1. Forcible sodomy.** Prohibits engaging in “cunnilingus, fellatio, anilingus, or anal intercourse” with a victim or “caus[ing]” a victim “to engage in such acts with any other person,” and either (1) the victim is “less than 13 years of age,” or (2) “the act is accomplished against the will” of the victim “by force, threat or intimidation of or against the [victim] or another person.”

- Effective in prosecuting traffickers who *cause* a victim to engage in the enumerated sex acts *with any other person* and the act is accomplished by force, threat or intimidation of or against the victim *or another person*.

**§ 18.2-67.2. Object sexual penetration.** Prohibits “penetrate[ing] . . . the labia majora or anus” of a victim or “caus[ing]” a victim “to so penetrate his or her own body with an object” or “caus[ing]” a victim “to engage in such acts with any other person” and either (1) the victim is “less than 13 years of age,” or (2) “the act is accomplished against the will” of the victim “by force, threat or intimidation of or against the [victim] or another person.”

- Effective in prosecuting traffickers who *cause* a victim to engage in the enumerated sex acts *with any other person* and the act is accomplished by force, threat or intimidation of or against the victim *or another person*.

**§ 18.2-67.4. Sexual Battery.** Prohibits “sexual abuse” of a victim against the will of the victim, by force, threat, intimidation, or ruse.

- Under § 18.2-67.10, sexual abuse defined as intentional touching of victim’s intimate parts (even above the clothing), forcing the victim to touch their intimate parts or those of another (even above the clothing), or causing or assisting a victim under 13 to touch their own intimate parts or those of another (even above the clothing). Such touching must be done with the defendant’s intent to sexually molest, arouse or gratify any person

**§ 18.2-67.3. Aggravated sexual battery.** Enhanced penalty when either (1) the victim is “less than 13 years of age” or (2) the act is accomplished “against the will of the complaining witness by force, threat or intimidation,” and either (a) the victim is “at least 13 but less than 15 years of age,” or (b) the “accused causes serious bodily or mental injury to the complaining witness,” or (c) the “accused uses or threatens to use a dangerous weapon.”

**§ 18.2-67.4:2. Sexual abuse of a child under 15 years of age.** Prohibits sexual abuse, with lascivious intent, of a victim 13 years of age or older but under 15 years of age.

**§ 18.2-370(A). Taking indecent liberties with children.** Prohibits adult who “with lascivious intent, knowingly and intentionally commits” “with any child under . . . 15 years” an act to either (1) “expose his or her sexual or genital parts to any child . . . or propose that any such child expose his or her sexual or genital parts to such person,” or (3) “propose that any such child feel or fondle the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child,” or (4) “propose” performance of a sexual act, or (5) “entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth above.”

**§ 18.2-371. Contributing to the delinquency of a minor.** Prohibits adult who “(i) willfully contributes to, encourages, or causes any act, omission, or condition which renders a child delinquent, in need of services, in need of supervision, or abused or neglected,” or “(ii) engages in consensual sexual intercourse with a child 15 or older.

#### OTHER HELPFUL LAWS

**§ 18.2-18: Principals in the Second Degree & Accessories Before the Fact.** “In the case of every felony, every principal in the second degree and every accessory before the fact may be indicted, tried, convicted and punished in all respects as if a principal in the first degree.”

- “A principal in the second degree is one not the perpetrator, but present, aiding and abetting the act done, or keeping watch or guard at some convenient distance.” *Brown v. Commonwealth*, 130 Va. 733, 736, 107 S.E. 809, 810 (1921).

- In some way “procured, encouraged, countenanced, or approved commission of the crime.” *Augustine v. Commonwealth*, 226 Va. 120, 124, 306 S.E.2d 886, 888 (1983).

**§ 18.2-22. Conspiracy to commit felony.** Any person who “shall conspire, confederate or combine with another . . . to commit a felony . . . he shall be guilty of . . . a Class 5 felony.”

**§ 18.2-29. Criminal solicitation.** “Any person who commands, entreats, or otherwise attempts to persuade another person to commit a felony . . . shall be guilty of a Class 6 felony. Any [adult] who commands, entreats, or otherwise attempts to persuade [a minor] to commit a felony

. . . shall be guilty of a Class 5 felony.”

- Includes forcible sodomy, object sexual penetration, carnal knowledge.
- Solicited crime need not even be attempted for conviction under this section. *Ford v. Comm.*, 10 Va. App. 224, 391 S.E.2d 603 (1990).

**§ 18.2-46.1. Criminal street gangs.** A violation of section 18.2-356, receiving money for procuring a person, is one of the “predicate criminal acts” that defines a criminal street gang.

**§ 18.2-359(A). Venue for prosecutions.** “Any person transporting or attempting to transport through or across this Commonwealth, any person for the purposes of unlawful sexual intercourse or prostitution . . . may be presented, indicted, tried, and convicted in any county or city in which any part of such transportation occurred.”