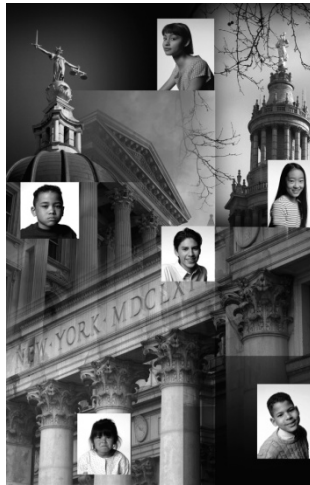


**CHILDREN'S STUDIES CENTER  
FOR RESEARCH, POLICY AND PUBLIC SERVICE**

**BROOKLYN COLLEGE OF THE CITY UNIVERSITY OF NEW YORK**



**ALTERNATIVE REPORT  
and  
LEGISLATIVE ANNEX  
on**

**NEW YORK STATE MEASURES GIVING EFFECT TO THE OPTIONAL PROTOCOL  
TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF  
CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

**Submitted to  
UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD  
U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS**

**Submitted by  
Dr. Gertrud Lenzer  
Professor of Children's Studies and Sociology  
Founding Director, Children and Youth Studies Program  
Founding Director, Children's Studies Center for Research, Policy and Public Service  
Brooklyn College, The City University of New York**

**on  
May 11, 2012**

prepared by the Children's Studies Center for Research, Policy and Public Service  
Brooklyn College of The City University of New York

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For additional copies please contact:

James Hall, 2900 Bedford Avenue

Brooklyn, N.Y. 11210

Tel.: 718 951 3192

[Childrensstudies@brooklyn.cuny.edu](mailto:Childrensstudies@brooklyn.cuny.edu)

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Pornography”

Optional Protocol to the U. N. Convention on the Rights of the Child on the Sale of Children,  
Child Prostitution and Child Pornography (OPSC)

**UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD**

**OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD  
ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD  
PORNOGRAPHY**

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THE CHILDREN'S STUDIES CENTER,  
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## Foreword

This Alternative Report “On New York State Measures Giving Effect to the Optional Protocol” has been prepared by the Children's Studies Center for Research, Policy and Public Service of Brooklyn College of the City University of New York as a supplementary report to the “Periodic Report of the United States of America and U.S. Response to Recommendations in Committee Concluding Observations of June 25, 2008,” January 22, 2010.

The Children's Study Program has a long history of active advocacy for the rights of children. On February 6, 2009, it convened the Third Child Policy Forum of New York on the Implementation and Monitoring of the OPSC in New York State, proceedings to be found at [http://www.brooklyn.cuny.edu/pub/departments/childrensstudies/documents/childrens\\_documents/3rdChildPolicyForum2.pdf](http://www.brooklyn.cuny.edu/pub/departments/childrensstudies/documents/childrens_documents/3rdChildPolicyForum2.pdf). This Child Policy Forum of New York, convened at the Church Center for the United Nations in New York City on February 6, 2009, was prepared in response to the “Concluding Observations: United States of America” of the Committee on the Rights of the Child, June 25, 2008.

The groundbreaking role of the Children's Study Center in the ongoing implementation of the Optional Protocol has been recognized by the United States Department of State in its January 22, 2010, Periodic Report on the Optional Protocol:

The interdisciplinary Children's Studies Center of Brooklyn College of The City University of New York is one example of the essential role of academic and non-profit institutions in developments in this area. Prompted by the Concluding Observations of the Committee, on February 6, 2009, the Center convened its Third Child Policy Forum of New York: Implementation and Monitoring of the Optional Protocol to the U.N. Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The Proceedings, together with the text of the Optional Protocol and the Committee's Concluding Observations have been published and are also available online at <http://www.brooklyn.cuny.edu/pub/departments/childrensstudies/>. The Forum reviewed the degree to which statutes, regulations, and programs of New York State serve to protect children and adolescents from sexual exploitation with a focus upon necessary law reform and mechanisms to implement and monitor the articles of the Optional Protocol. . . . The work of the Center, along with other non-governmental advocates, has been crucial in the adoption of new laws in the state of New York. The Safe Harbor for Sexually Exploited Youth Act, enacted September 25, 2008, made New York the first state in the nation to provide specialized services and safe housing for children who have been sexually exploited. Effective April 1, 2010, the Safe Harbor law allows for child victims of prostitution to defer criminal prosecution and instead petition for consideration as a person in need of supervision; the act also provides critical support and social services to child victims of prostitution. The New York Anti-Human Trafficking Act of 2007 (Ch. 74 of The Laws of 2007) created new crimes of sex and labor trafficking and facilitation of sex tourism, and established services for human trafficking victims. The Center's 2004 policy symposium Children and the Law in New York led directly to the drafting of legislation for an independent New York State Office of the Child Advocate; the legislation has passed the New York Assembly annually but

has yet to be enacted. (US Periodic Report, ¶¶ 102-103). See also the press release at [http://www.brooklyn.cuny.edu/pub/departments/childrensstudies/documents/childrens\\_documents/treaty\\_report.pdf](http://www.brooklyn.cuny.edu/pub/departments/childrensstudies/documents/childrens_documents/treaty_report.pdf).

Postscript: The legislation for an Independent New York State Office of the Child Advocate was passed by both the New York State Senate and Assembly in June 2010. It was vetoed by Governor David Paterson. As stated in the “Periodic Report of the United States of America,” January 22, 2010, the Children’s Studies Center Policy Symposium on “Children and the Law in New York” of 2004 led to the drafting of this legislation, and the Children’s Studies Center worked with New York State legislators throughout the subsequent years.

From the outset, the concept of the independent New York State Office of the Child Advocate was synonymous with the concept “Child Ombudsman,” an office first established in Norway. We are aware of No. 18, “National Human Rights Institutions” in the Concluding Observations of the Committee of June 2008, which states: “While the Committee recognizes the difficulty in creating an independent agency at the federal level to monitor the implementation of the Optional Protocol, because most of the laws and services required are a state responsibility, the Committee is concerned that there is no agency such as an Ombudsman at the federal or state level to monitor the implementation of the Optional Protocol.” Had the New York State Independent Office of the Child Advocate come into effect, it could also have served as the agency to monitor the implementation of the Optional Protocol.

\*\*\*\*\*

More recently, in November 2011, the Children's Studies Program sponsored its 20th Anniversary National Consultation "Social Justice for Children: To End Child Abuse and Violence Against Children" with a website containing materials from that consultation at <http://www.brooklyn.cuny.edu/pub/departments/childrensstudies/conference>. In the context of this National Consultation, the sexual exploitation of children represented one of the central themes. A striking outcome of this consultation has been Assembly Member William Scarborough's plan to introduce New York legislation to establish a New York State Commission on Child Abuse and Violence against Children.

## **Introduction**

We welcome this opportunity to report to the Committee on the Rights of the Child on measures giving effect to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (the "Protocol"). This Alternative Report is limited to New York State law only.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, of the Convention on the Rights of the Child was ratified by the United States on September 14, 2002. That Protocol is not self-executing. Rather, it requires that states who are parties to the Protocol assess their legislation and enforcement activities and where necessary amend their laws and conform their activities to meet the minimum standards set out in the Protocol.

The following is an analysis of New York State statutes insofar as they deal with the subject matter of the Protocol. Where New York meets or exceeds the standards set out in the Protocol, that fact is indicated. Where New York either does not address a subject, or where New York law and regulation fail to meet the standards of the Protocol, the need for amendments or new legislation is indicated.

This analysis includes the text of relevant portions of the United States Understandings on the basis of which the Senate gave its advice and consent to the ratification of the Optional Protocol.

The purpose of this Alternative Report "On New York State Measures Giving Effect to the Optional Protocol" was to provide a first attempt to review the existing statutes of one state in the United States and to examine and monitor the degree to which they implement the Optional Protocol. It was undertaken in the hope that other states in the United States might use it in part as a model in their efforts to implement the Optional Protocol in future. It is also our understanding that other state parties with federal systems will be confronted with the challenge of how to implement and monitor the Optional Protocol on state levels.

## **Acknowledgments**

We thank all those who have helped to make this Report possible. In particular, we thank Mary Foutz, Esq., the Legal Research Associate of the Children's Studies Center, for her research and writing of the Report for the U.N. Committee on the Rights of the Child. We also thank Douglas Cox, Associate Law Library Professor at the City University of New York School of Law. We would like to thank the members of the staff of the Children's Studies Center for their commitment and help over these last years to bring this Report into existence. Our thanks also go to the members of the New York State Legislature, and in particular to A.M. William Scarborough, former Chair of the Committee on Children and Families in the N.Y.S. Assembly, and A.M. Barbara M. Clark, member of this Committee. Our major debt of gratitude goes to the Oak Foundation of Geneva for welcoming this initiative and for their generous grant which made this entire initiative and Report possible. Finally, we want to thank Marta Santos Pais, the Special Representative of the U.N. Secretary-General on Violence against Children, for her unfailing support of our work at the Children's Studies Center on behalf of the human rights of children everywhere.

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## **INFORMATION ON MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE PROTOCOL**

### **Article 1**

**States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.**

1. This introductory paragraph does not set forth the specific duties of States Parties. Those duties, and the extent to which New York law complies with them, are discussed below.

### **Article 2**

**For the purposes of the present Protocol:**

**(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;**

**United States Understanding:**

**The United States understands that the term "sale of children", as defined in Article 2(a) of the Protocol, is intended to cover any transaction in which remuneration or other consideration is given and received under circumstances in which a person who does not have a lawful right to custody of the child thereby obtains de facto control over the child.**

2. Before dealing with the specific definitions in Article 2, it should be noted that the Protocol has no definition of child. The definition in the Convention on the Rights of the Child is: a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

3. New York statutes do not use the term "child" generally; instead reference is made to "infancy." For purposes of civil obligations, such as contracts, a person is an infant until he reaches the age of 18 (General Obligations Law § 3-101(1)). For purposes of criminal liability, a person is an infant until he reaches the age of 16 (Penal Law § 30.00(1)).

4. The term "child victim" is used in the Crime Victims Board article of the Executive Law to refer to victims of crime who are under the age of 18 years (Executive Law § 621). However, in dealing with the age of a victim of a crime, New York does not uniformly treat all victims under 18 as child victims. The extent to which New York law covers victims under 18 will be discussed below with respect to each crime.

5. New York does not have a criminal statute dealing with the sale of children, and therefore there is no definition of that crime in New York statute law. New York court decisions state that the selling of children is contrary to public policy, but do not define that term. See, e.g., In the



Matter of the Adoption of Paul, 146 Misc. 2d 379, 550 N.Y.S.2d 815 (Fam. Ct. Kings County 1990), referring to "New York's well-established policy against trafficking in children." New York also criminalizes the "abandonment" of a child under the age of 14, Penal Law § 260.00, but that section does not expressly cover the transfer of a child from one party to another.

**(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;**

6. The use of a child in sexual activities is not defined by New York as "child prostitution." However, New York does criminalize the use of certain persons in sexual activities, under the terms "promoting prostitution," "patronizing a prostitute," and "use of a child in a sexual performance." The details of these crimes is discussed below, in Article Three.

**(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.**

**United States Understanding:**

**The United States understands the term "child pornography", as defined in Article 2(c) of the Protocol, to mean the visual representation of a child engaged in real or simulated sexual activities or of the genitalia of a child where the dominant characteristic is depiction for a sexual purpose.**

7. New York does criminalize this activity, under the term "Sexual performance by a child." The details of this crime are discussed below in Article 3.

**Article 3**

**1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:**

**(a) In the context of sale of children as defined in article 2:**

**(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:**

- a. Sexual exploitation of the child;**
- b. Transfer of organs of the child for profit;**
- c. Engagement of the child in forced labour;**

**United States Understanding:**

**The United States understands that (A) the term "transfer of organs for profit", as used in Article 3(1)(a)(i) of the Protocol, does not cover any situation in which a child donates an organ pursuant to lawful consent; and (B) the term "profit", as used in Article 3(1)(a)(i) of the Protocol, does not include the lawful payment of a reasonable amount associated with**

**the transfer of organs, including any payment for the expense of travel, housing, lost wages, or medical costs.**

8. This Article 3(a)(i) indicates that the States Parties' duty to criminalize the sale of children applies when the child is sold for purposes of sexual exploitation, transfer of organs, or forced labor. It is clear that New York does not criminalize the sale of children.

9. However, New York criminalizes the three purposes for which the sale of children is prohibited by the Protocol. First, New York criminalizes the sexual exploitation of the child, as discussed below under the topics of child prostitution and child pornography. New York also criminalizes the sale of human organs in Public Health Law § 4307. That prohibition applies to any sale or transfer for valuable consideration of any human organ, and does not speak of child victims.

10. Finally, New York criminalizes forced labor in Penal Law § 135.35. That prohibition applies to any victim of force used to compel labor and does not speak of child victims.

11. When a child is sold for the purpose of the commission of any of these crimes, it appears that the sale itself may be treated as aiding in the commission of these crimes. Penal Law § 20.00 states that intentionally aiding in the commission of a crime is itself a crime. Further, the sale of a child could potentially constitute a crime under more general provisions, such as Penal Law §§ 260.00 and 260.10, which criminalize child abandonment and endangering the welfare of a child.

12. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That New York adopt a criminal statute expressly outlawing the sale of children.

**(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;**

#### **United States Understanding**

**(A) Understanding Of Applicable International Legal Instruments".-The United States understands that the term "applicable international legal instruments" in Articles 3(1)(a)(ii) and 3(5) of the Protocol refers to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993 (in this paragraph referred to as "The Hague Convention").**

**(B) No Obligation To Take Certain Action.-The United States is not a party to The Hague Convention, but expects to become a party. Accordingly, until such time as the United States becomes a party to The Hague Convention, it understands that it is not obligated to criminalize conduct proscribed by Article 3(1)(a)(ii) of the Protocol or to take all appropriate legal and administrative measures required by Article 3(5) of the Protocol.**

**(C) Understanding Of "Improperly Inducing Consent".-The United States understands that the term "improperly inducing consent" in Article 3(1)(a)(ii) of the Protocol means**

**knowingly and willfully inducing consent by offering or giving compensation for the relinquishment of parental rights.**

13. The United States Understanding quoted above does not state the current situation, since the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the "Adoption Convention") was ratified by the Senate, and came into effect on April 1, 2008.

14. The Adoption Convention provides in Article 4 that an adoption shall take place only if the competent authorities in the state of origin have insured that all necessary consents have been given freely and have not been induced by payment or compensation of any kind.

15. New York statutes make it a crime to pay or accept compensation in connection with the adoption of a child, in Social Services Law §§ 374(6), 389(2). However, New York makes certain exceptions which allow the payment of medical costs, and the birth mother's reasonable and actual expenses for housing, maternity clothing, clothing for the child and transportation. Social Services Law § 374(6). These exceptions seem to be inconsistent with the Adoption Convention's prohibition on "payment or compensation of any kind."

16. Whether New York's exceptions to the rule against compensation in connection with adoption are actually inconsistent with the Adoption Convention may require research into the travaux préparatoires, which has not at this time been done.

**(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;**

17. New York defines "advancing prostitution" as any form of facilitating prostitution, including providing a person for purposes of prostitution. Penal Law 230.15. The degree of seriousness of the crime is increased with the decreasing age of the persons prostituted:

1. Under 19                      Class D felony (Penal Law § 230.25)
2. Under 16                      Class C felony (Penal Law § 230.30)
3. Under 11                      Class B felony (Penal Law § 230.32)

New York therefore does comply with the requirements of the Protocol with respect to child prostitution, by creating a higher degree of offense for victims up to the age of 19 - a greater degree of protection than that required by the Protocol.

18. A proposed law before the New York State Assembly, A9804, Trafficking Victims Protection and Justice Act, if adopted, would create new offenses, including aggravated patronizing a minor for prostitution, and increase penalties for certain offenses against children. It would also require that any prosecution of a child for prostitution offenses be handled by Family Court rather than the criminal courts. The text of this proposed law appears at the end of the Legislative Annex.

19. New York also criminalizes two forms of forced prostitution. The offense of "sex trafficking", under Penal Law § 235.34, includes inducing a person to engage in prostitution by

threats or otherwise. That crime is not divided into degrees depending upon the age of the victim. The crime of "compelling prostitution," under Penal Law § 235.35, consists in using force or threats to cause a person under the age of 16 to engage in prostitution. Both the crimes of sex trafficking and compelling prostitution have the same penalty.

**(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.**

19. New York refers to child pornography as "sexual performance by a child." Producing and distributing child pornography are criminalized in Art. 263 of the Penal Law. §§ 263.01 et seq. The prohibitions against producing and distributing child pornography use a definition of "child" as a person under the age of 17.

20. The same article also provides that possessing child pornography is a crime if the child portrayed is under the age of 16.

21. Therefore New York does not entirely comply with the Protocol, as it does not protect all persons under the age of 18 from being used in child pornography.

22. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That the age of the victim in Article 263 of the Penal Law be raised to 18 throughout.

**2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.**

23. New York's Penal Law complies with this requirement. Attempts to commit a crime are punishable under Penal Law § 110.00. Aiding or soliciting a crime are punishable under Penal Law § 20.00.

**3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.**

24. This section appears to require that in every case in which a person under 18 is a victim of one of the crimes described above, the penalty shall be enhanced beyond that imposed when the victim is above 18.

25. New York does not meet this requirement in certain areas. Besides the area of child pornography, discussed above, there is no enhanced penalty for selling the organs of a child or for forced labor by a child. New York does meet this requirement as to the prohibition against child prostitution. New York's prohibition against using force to compel prostitution creates a

separate crime when the victim is under 16, but sets the same penalty for this crime whether committed against a child or an adult.

26. To conform New York law to the requirements of the Protocol, the following legislative changes are needed:

1. That the Public Health Law and Penal Law be amended to create new crimes of sale of the organs of a person under 18, and forced labor by a person under eighteen. These new crimes are to be classified as higher degrees of felony, with increased penalties.
2. That the Penal Law's provisions in 230.33 and 230.34 set forth a higher degree of felony for crimes of compelling and forcing prostitution committed against persons under 18.

**4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.**

27. This section deals with the enforcement activities of the state, rather than the laws applicable.

**5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.**

#### **United States Understanding**

**(A) Understanding Of Applicable International Legal Instruments".-The United States understands that the term "applicable international legal instruments" in Articles 3(1)(a)(ii) and 3(5) of the Protocol refers to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993 (in this paragraph referred to as "The Hague Convention").**

**(B) No Obligation To Take Certain Action.-The United States is not a party to The Hague Convention, but expects to become a party. Accordingly, until such time as the United States becomes a party to The Hague Convention, it understands that it is not obligated to criminalize conduct proscribed by Article 3(1)(a)(ii) of the Protocol or to take all appropriate legal and administrative measures required by Article 3(5) of the Protocol.**

28. The United States Understanding quoted above does not state the current situation, since the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the "Adoption Convention") was ratified by the Senate, and came into effect on April 1, 2008.

29. The United States has enacted the Intercountry Adoption Act, P.L. 106-279, 114 Stat. 825. That law incorporates the provisions of the Adoption Convention. As a federal law, it preempts

any New York legislation on this subject, and therefore no New York legislation is needed to comply with this requirement of the Protocol.

#### **Article 4**

**1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.**

**2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:**

**(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;**

**(b) When the victim is a national of that State.**

**3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.**

**4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.**

30. This article deals with national matters, not those on a state level.

#### **Article 5**

**1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.**

**2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.**

**3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.**

**4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.**

**5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.**

31. This article deals with national matters, not those on a state level.

## **Article 6**

**1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.**

**2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.**

32. This article deals with national matters, not those on a state level.

## **Article 7**

**States Parties shall, subject to the provisions of their national law:**

**(a) Take measures to provide for the seizure and confiscation, as appropriate, of:**

**(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;**

**(ii) Proceeds derived from such offences;**

33. The proceeds of felonies generally are subject to forfeiture under Civil Practice Law & Rules § 1311, which includes provision for the seizure of property used in the commission of a felony. In addition, New York has provisions for forfeiture of equipment used in the making of pornography, Penal Law § 410.00.

34. To the extent, then, that New York treats crimes under the Protocol as felonies, then, New York is in compliance with the Protocol. All the crimes under the Protocol are felonies in New

York, with one exception: the paying or accepting of money in connection with adoption is only a misdemeanor. However, a second or subsequent offense is a felony, which would seem to satisfy the requirements of the Protocol requiring seizure "as appropriate."

**(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);**

35. New York will enforce money judgements entered in foreign countries, Civil Practice Law & Rules § 5303. Foreign judgments that involve the seizure of goods must be sought in New York courts, under the procedural and substantive laws governing judgments in equity. These provisions appear to comply with the Protocol, which states that measures to execute these requests are subject to the provisions of New York's law.

**(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.**

36. New York has provisions for abating the nuisance of a house of prostitution, Public Health Law §§ 2320-2329, which permit the temporary or permanent closing of premises used for prostitution. It does not have any measures to temporarily close premises used to commit the offenses of sale of children or of child pornography, although such premises can be seized under Civil Practice Law & Rules § 1311.

37. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That Public Health Law § 2320 be amended to include in the premises subject to abatement as a nuisance any premises regularly used to commit the crimes of sale of children (as defined in a statute to be enacted) and of promoting, producing or distributing a sexual performance of a child, as defined by Article 263 of the Penal Law.

## **Article 8**

**1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:**

**(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;**

38. New York recognizes the special needs of children as witnesses, by providing for closed-circuit television testimony of children under the age of 15, when appearing as witnesses in cases of rape or incest, Criminal Procedure Law, Article 65. No special procedure is provided in cases of the sale of children, child prostitution or child pornography.



39. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That the provisions of Article 65 of the Criminal Procedure Law be amended to extend its protection to victims under the age of 18, and to the crimes of sale of children, promotion of prostitution, and sexual performance by a child.

**(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;**

40. New York recognizes the rights of victims of all crimes to this information. The fair treatment guidelines for victims is described in Executive Law § 641. Those guidelines appear to comply with the requirements of the Protocol.

**(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;**

41. New York provides that the views of victims of certain violent felonies, and the families of child victims of those crimes, be taken into consideration by district attorneys, under Executive Law § 642. This provision should be extended to cover child victims of the crimes prohibited by the Protocol.

42. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That Executive Law § 642 be extended to cover victims of the sale of children, child prostitution, and child pornography.

**(d) Providing appropriate support services to child victims throughout the legal process;**

43. These services are now provided in some cases by New York's Crime Victims Board, which provides support services to crime victims generally. See Executive Law § 620 *et seq.* The services are provided to (1) victims who suffer physical injury due to crimes; and (2) victims of certain specified crimes who do not suffer physical injuries. The specified crimes include sex trafficking, but not any of the other crimes prohibited by the Protocol.

44. Under the provisions of the Safe Harbour for Exploited Children Act (the " Safe Harbour Act", which came into effect April 1, 2010), Title 8-A of the Social Services Law, victims of child prostitution, sexual trafficking, child pornography, and abused children will be assured of all necessary social services. Victims of the sale of children, who do not otherwise fall in any of these categories, are not presently entitled to these services.

45. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

As part of legislation outlawing the sale of children in New York, provision shall be made to include the victims of such sale as persons entitled to the protections of the Safe Harbour for Exploited Children Act.

**(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;**

46. New York provides that the identity of victims of rape and child abuse are to be held confidential, Civil Rights Law § 50-b. This provision should be extended to victims of the crimes prohibited by the Protocol.

47. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That Civil Rights Law § 50-b be amended to cover victims of the sale of children, child prostitution, and child pornography.

**(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;**

48. The New York Crime Victims Board, under Executive Law § 621, provides for reimbursement of the reasonable costs of security devices, and relocation expenses, of certain victims. See the legislative proposal above with respect to enlarging the scope of the Crime Victims Board to cover victims of crimes prohibited by the Protocol.

49. Additionally, intimidation of witnesses is a crime punishable under Penal Law §§ 215.15-215.17.

**(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.**

50. New York provides guidelines providing for speedy disposition of cases involving victims of child abuse, Executive Law § 642-A(3). These provisions should be extended to victims of the offenses prohibited by the Protocol.

51. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That § 462-a(3) of the Executive Law be extended to cover victims of the sale of children, child prostitution, and child pornography.

**2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.**

52. New York has specific evidentiary provisions with respect to determining the age of a person who appears in a sexual performance, to determine if that person was a child at the time of the performance, Penal Law § 263.25. That section allows for the wide reception of any form of proof determining the age of the person. Since the age of children who are victims of the other crimes can be determined directly, there is no need for additional legislation in this area for New York to comply with the Protocol.

**3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.**

54. New York does not have any statutory provisions in this area. However, there are guidelines dealing with the treatment of victims of child abuse that call for a person supportive of the child to be present at all times during the child's testimony, Executive Law § 642-A(6). This provision appears to offer the child the opportunity to have his or her best interest considered.

55. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That section § 642-A(6) of the Executive Law be extended to cover victims of the sale of children, child prostitution, and child pornography.

**4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.**

56. New York provides that victim assistance training, with special consideration to be given to child victims, be given at law enforcement training programs, Executive Law § 642. In addition, New York provides for special multi-disciplinary teams to work with victims of child abuse, Executive Law § 642-A(1). This provisions should be extended to victims of the offenses prohibited by the Protocol.

57. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That § 642-A(1) of the Executive Law be extended to cover victims of the sale of children, child prostitution, and child pornography.

**5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.**

58. This section requires policy decisions as to the most effective programs to protect the persons and organizations, depending on the actual reported need for such protections.

**6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.**

59. Due process of law is guaranteed to the accused by the New York Constitution, Art. I, Sec. 6. New York complies with the Protocol in this area.

## **Article 9**

**1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.**

60. This section requires policy decisions as to the most effective programs to prevent the crimes prohibited by the Protocol.

**2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.**

61. This section requires policy decisions as to the most effective programs to educate the public on the crimes prohibited by the Protocol.

**3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.**

62. New York provides for the welfare of victims of human trafficking generally in Social Services Law Article 10-D, §§ 483-AA *et seq.* Those services include referral to local social service agencies in case of victims under the age of 18.

63. New York also provides for the reimbursement of out-of-pocket and medical expenses for victims of certain crimes, by the Crime Victims Board, in Executive Law §§ 620 *et seq.* These expenses include counseling, as needed. A legislative proposal to extend the services of the Crime Victims Board to the victims of the crimes prohibited by the Protocol appears above.

64. The Safe Harbour Act, Social Services Law Title 8-A, discussed in paragraph 44 above, is aimed at providing appropriate services to victims of child abuse, child pornography and child prostitution. The services contemplated include counseling and therapeutic services, educational services, life skills services and planning services to successfully transition victims back to the community.

65. As discussed in paragraph 45 above, the benefits of the Safe Harbour Act should be extended to victims of the sale of children, to the extent that they are not already covered.

**4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.**

66. New York law does not create any form of discrimination against child victims in seeking compensation for damage done to them. Crime victims generally have seven years from the date of the crime in which to commence an action for damages caused by it, Civil Practice Law & Rules § 213-b.

67. Persons under 18 have the benefit of tolling provisions under Civil Practice Law & Rules § 208, so that their right to bring a lawsuit will not expire before they reach the age of 18.

68. In addition, New York provides that restitution or reparations to crime victims may be ordered as part of the sentence, Penal Law § 60.27. Therefore New York complies with the Protocol.

**5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.**

69. New York prohibits the advertising of sexual performances by a child, Penal Law Article 263. There appear to be no specific prohibitions against advertising prostitution, but the definition of "promoting prostitution" includes engaging in any conduct designed to facilitate an act of prostitution, Penal Law § 230.15. It appears, then, that New York effectively prohibits the advertising of child prostitution and pornography. The advertising of the sale of children should be expressly prohibited.

70. To conform New York law to the requirements of the Protocol, the following legislative change is needed:

That in adopting a statute criminalizing the sale of children, the activities prohibited shall include the advertising of such sale.

## **Article 10**

**1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.**

**2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.**

**3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.**

**4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.**

71. This article deals with national matters, not those on a state level.

## **Article 11**

**Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:**

**(a) The law of a State Party;**

**(b) International law in force for that State.**

72. This article does not impose any requirements on New York State.

## **Article 12**

**1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.**

**2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.**

**3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.**

73. This article does not impose any requirements on New York State. The present report is presented voluntarily, and not as a requirement of the Protocol.

### **Article 13**

**1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.**

**2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary- General of the United Nations.**

74. This article deals with national matters, not those on a state level.

### **Article 14**

**1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.**

**2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.**

75. This article deals with national matters, not those on a state level.

### **Article 15**

**1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary- General of the United Nations, who shall thereafter inform the other States**

**Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.**

**2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.**

76. This article deals with national matters, not those on a state level.

#### **Article 16**

**1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.**

**2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.**

**3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.**

77. This article deals with national matters, not those on a state level.

#### **Article 17**

**1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.**

**2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.**

78. This article deals with national matters, not those on a state level.



**UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD**

**OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD  
ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD  
PORNOGRAPHY**

**LEGISLATIVE ANNEX  
TO THE**

**ALTERNATIVE REPORT  
OF  
THE CHILDREN'S STUDIES CENTER,  
BROOKLYN COLLEGE OF THE CITY UNIVERSITY OF NEW YORK  
ON  
NEW YORK STATE MEASURES  
GIVING EFFECT  
TO THE OPTIONAL PROTOCOL**

**May 11, 2012**

prepared by the Children's Studies Center for Research, Policy and Public Service  
Brooklyn College of The City University of New York

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For additional copies please contact:

James Hall, 2900 Bedford Avenue  
Brooklyn, N.Y. 11210  
Tel.: 718 951 3192

[Childrensstudies@brooklyn.cuny.edu](mailto:Childrensstudies@brooklyn.cuny.edu)

**LEGISLATIVE ANNEX TO THE ALTERNATIVE REPORT ON  
NEW YORK STATE MEASURES  
GIVING EFFECT  
TO THE OPTIONAL PROTOCOL**

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## NEW YORK CONSTITUTION

### Art I, Sec. 6

. . . . . No person shall be deprived of life, liberty or property without due process of law.

## CIVIL PRACTICE LAW & RULES

### § 208. Infancy, insanity.

Infancy, insanity. If a person entitled to commence an action is under a disability because of infancy or insanity at the time the cause of action accrues, and the time otherwise limited for commencing the action is three years or more and expires no later than three years after the disability ceases, or the person under the disability dies, the time within which the action must be commenced shall be extended to three years after the disability ceases or the person under the disability dies, whichever event first occurs; if the time otherwise limited is less than three years, the time shall be extended by the period of disability. The time within which the action must be commenced shall not be extended by this provision beyond ten years after the cause of action accrues, except, in any action other than for medical, dental or podiatric malpractice, where the person was under a disability due to infancy. This section shall not apply to an action to recover a penalty or forfeiture, or against a sheriff or other officer for an escape.

### § 213-b. Action by a victim of a criminal offense.

Action by a victim of a criminal offense. Notwithstanding any other limitation set forth in this article or in article five of the estates, powers and trusts law, an action by a crime victim, or the representative of a crime victim, as defined in subdivision six of section six hundred twenty-one of the executive law, may be commenced to recover damages from a defendant: (1) convicted of a crime which is the subject of such action, for any injury or loss resulting therefrom within seven years of the date of the crime or (2) convicted of a specified crime as defined in paragraph (e) of subdivision one of section six hundred thirty-two-a of the executive law which is the subject of such action for any injury or loss resulting therefrom within ten years of the date the defendant was convicted of such specified crime.

### § 1311. Forfeiture actions.

1. A civil action may be commenced by the appropriate claiming authority against a criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime or the real property instrumentality of a crime or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime. A civil action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime provided, however, that a judgment of forfeiture predicated upon

clause (A) of subparagraph (iv) of paragraph (b) of subdivision three hereof shall be limited to the amount of the proceeds of the crime. Any action under this article must be commenced within five years of the commission of the crime and shall be civil, remedial, and in personam in nature and shall not be deemed to be a penalty or criminal forfeiture for any purpose. Except as otherwise specially provided by statute, the proceedings under this article shall be governed by this chapter. An action under this article is not a criminal proceeding and may not be deemed to be a previous prosecution under article forty of the criminal procedure law.

(a) Actions relating to post-conviction forfeiture crimes. An action relating to a post-conviction forfeiture crime must be grounded upon a conviction of a felony defined in subdivision five of section one thousand three hundred ten of this article, or upon criminal activity arising from a common scheme or plan of which such a conviction is a part, or upon a count of an indictment or information alleging a felony which was dismissed at the time of a plea of guilty to a felony in satisfaction of such count. A court may not grant forfeiture until such conviction has occurred. However, an action may be commenced, and a court may grant a provisional remedy provided under this article, prior to such conviction having occurred. An action under this paragraph must be dismissed at any time after sixty days of the commencement of the action unless the conviction upon which the action is grounded has occurred, or an indictment or information upon which the asserted conviction is to be based is pending in a superior court. An action under this paragraph shall be stayed during the pendency of a criminal action which is related to it; provided, however, that such stay shall not prevent the granting or continuance of any provisional remedy provided under this article or any other provisions of law.

(b) Actions relating to pre-conviction forfeiture crimes. An action relating to a pre-conviction forfeiture crime need not be grounded upon conviction of a pre-conviction forfeiture crime, provided, however, that if the action is not grounded upon such a conviction, it shall be necessary in the action for the claiming authority to prove the commission of a pre-conviction forfeiture crime by clear and convincing evidence. An action under this paragraph shall be stayed during the pendency of a criminal action which is related to it; provided, that upon motion of a defendant in the forfeiture action or the claiming authority, a court may, in the interest of justice and for good cause, and with the consent of all parties, order that the forfeiture action proceed despite the pending criminal action; and provided that such stay shall not prevent the granting or continuance of any provisional remedy provided under this article or any other provision of law.

2. All defendants in a forfeiture action brought pursuant to this article shall have the right to trial by jury on any issue of fact.

3. In a forfeiture action pursuant to this article the following burdens of proof shall apply:

(a) In a forfeiture action commenced by a claiming authority against a criminal defendant, except for those facts referred to in paragraph (b) of subdivision nine of section one thousand three hundred ten and paragraph (b) of subdivision one of this section which must be proven by clear and convincing evidence, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture.

(b) In a forfeiture action commenced by a claiming authority against a non-criminal defendant:

(i) in an action relating to a pre-conviction forfeiture crime, the burden shall be upon the claiming authority to prove by clear and convincing evidence the commission of the crime by a person, provided, however, that it shall not be necessary to prove the identity of such person.

(ii) if the action relates to the proceeds of a crime, except as provided in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew or should have known that the proceeds were obtained through the commission of a crime, or (B) fraudulently obtained his or her interest in the proceeds to avoid forfeiture.

(iii) if the action relates to the substituted proceeds of a crime, except as provided in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew that the property sold or exchanged to obtain an interest in the substituted proceeds was obtained through the commission of a crime, or (B) fraudulently obtained his or her interest in the substituted proceeds to avoid forfeiture.

(iv) if the action relates to an instrumentality of a crime, except as provided for in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew that the instrumentality was or would be used in the commission of a crime or (B) knowingly obtained his or her interest in the instrumentality to avoid forfeiture.

(v) if the action relates to a real property instrumentality of a crime, the burden shall be upon the claiming authority to prove those facts referred to in subdivision four-b of section thirteen hundred ten of this article by clear and convincing evidence. The claiming authority shall also prove by a clear and convincing evidence that the non-criminal defendant knew that such property was or would be used for the commission of specified felony offenses, and either (A) knowingly and unlawfully benefitted from such conduct or (B) voluntarily agreed to the use of such property for the commission of such offenses by consent freely given. For purposes of this subparagraph, a non-criminal defendant knowingly and unlawfully benefits from the commission of a specified felony offense when he derives in exchange for permitting the use or occupancy of such real property by a person or persons committing such specified offense a substantial benefit that would otherwise not accrue as a result of the lawful use or occupancy of such real property. "Benefit" means benefit as defined in subdivision seventeen of section 10.00 of the penal law.

(c) In a forfeiture action commenced by a claiming authority against a non-criminal defendant the following rebuttable presumptions shall apply:

(i) a non-criminal defendant who did not pay fair consideration for the proceeds of a crime, the substituted proceeds of a crime or the instrumentality of a crime shall be presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(ii) a non-criminal defendant who obtains an interest in the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime with knowledge of an order of provisional remedy relating to said property issued pursuant to this article, shall be presumed to know that such property was the proceeds of a crime, substituted proceeds of a crime, or an instrumentality of a crime.

(iii) in an action relating to a post-conviction forfeiture crime, a non-criminal defendant who the claiming authority proves by clear and convincing evidence has criminal liability under section 20.00 of the penal law for the crime of conviction or for criminal activity arising from a common scheme or plan of which such crime is a part and who possesses an interest in the

proceeds, the substituted proceeds, or an instrumentality of such criminal activity is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(iv) a non-criminal defendant who participated in or was aware of a scheme to conceal or disguise the manner in which said non-criminal obtained his or her interest in the proceeds of a crime, substituted proceeds of a crime, or an instrumentality of a crime is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(d) In a forfeiture action commenced by a claiming authority against a defendant, the following rebuttable presumption shall apply: all currency or negotiable instruments payable to the bearer shall be presumed to be the proceeds of a pre-conviction forfeiture crime when such currency or negotiable instruments are (i) found in close proximity to a controlled substance unlawfully possessed by the defendant in an amount sufficient to constitute a violation of section 220.18 or 220.21 of the penal law, or (ii) found in close proximity to any quantity of a controlled substance or marihuana unlawfully possessed by such defendant in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, distribute, package or otherwise prepare for sale such controlled substance or marihuana.

(e) The presumption set forth pursuant to paragraph (d) of this subdivision shall be rebutted by credible and reliable evidence which tends to show that such currency or negotiable instrument payable to the bearer is not the proceeds of a preconviction forfeiture crime. In an action tried before a jury, the jury shall be so instructed. Any sworn testimony of a defendant offered to rebut the presumption and any other evidence which is obtained as a result of such testimony, shall be inadmissible in any subsequent proceeding relating to the forfeiture action, or in any other civil or criminal action, except in a prosecution for a violation of article two hundred ten of the penal law. In an action tried before a jury, at the commencement of the trial, or at such other time as the court reasonably directs, the claiming authority shall provide notice to the court and to the defendant of its intent to request that the court charge such presumption.

3-a. Conviction of a person in a criminal action upon an accusatory instrument which includes one or more of the felonies specified in subdivision four-b of section thirteen hundred ten of this article, of any felony other than such felonies, shall not preclude a defendant, in any subsequent proceeding under this article where that conviction is at issue, from adducing evidence that the conduct underlying the conviction would not establish the elements of any of the felonies specified in such subdivision other than the one to which the criminal defendant pled guilty. If the defendant does adduce such evidence, the burden shall be upon the claiming authority to prove, by clear and convincing evidence, that the conduct underlying the criminal conviction would establish the elements of the felony specified in such subdivision. Nothing contained in this subdivision shall affect the validity of a settlement of any forfeiture action negotiated between the claiming authority and a criminal defendant contemporaneously with the taking of a plea of guilty in a criminal action to any felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, or to a felony conspiracy to commit the same.

4. The court in which a forfeiture action is pending may dismiss said action in the interests of justice upon its own motion or upon an application as provided for herein.

(a) At any time during the pendency of a forfeiture action, the claiming authority who instituted the action, or a defendant may (i) apply for an order dismissing the complaint



and terminating the forfeiture action in the interest of justice, or (ii) may apply for an order limiting the forfeiture to an amount equivalent in value to the value of property constituting the proceeds or substituted proceeds of a crime in the interest of justice.

(b) Such application for the relief provided in paragraph (a) hereof must be made in writing and upon notice to all parties. The court may, in its discretion, direct that notice be given to any other person having an interest in the property.

(c) An application for the relief provided for in paragraph (a) hereof must be brought exclusively in the superior court in which the forfeiture action is pending.

(d) The court may grant the relief provided in paragraph (a) hereof if it finds that such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture of the property of any part thereof, would not serve the ends of justice. Among the factors, considerations and circumstances the court may consider, among others, are:

(i) the seriousness and circumstances of the crime to which the property is connected relative to the impact of forfeiture of property upon the person who committed the crime; or

(ii) the adverse impact of a forfeiture of property upon innocent persons; or

(iii) the appropriateness of a judgment of forfeiture in an action relating to pre-conviction forfeiture crime where the criminal proceeding based on the crime to which the property is allegedly connected results in an acquittal of the criminal defendant or a dismissal of the accusatory instrument on the merits; or

(iv) in the case of an action relating to an instrumentality, whether the value of the instrumentality substantially exceeds the value of the property constituting the proceeds or substituted proceeds of a crime.

(e) The court must issue a written decision stating the basis for an order issued pursuant to this subdivision.

4-a. (a) The court in which a forfeiture action relating to real property is pending may, upon its own motion or upon the motion of the claiming authority which instituted the action, the defendant, or any other person who has a lawful property interest in such property, enter an order:

(i) appointing an administrator pursuant to section seven hundred seventy-eight of the real property actions and proceedings law when the owner of a dwelling is a defendant in such action, and when persons who are not defendants in such action lawfully occupy one or more units within such dwelling, in order to maintain and preserve the property on behalf of such persons or any other person or entity who has a lawful property interest in such property, or in order to remedy any other condition which is dangerous to life, health or safety; or

(ii) otherwise limiting, modifying or dismissing the forfeiture action in order to preserve or protect the lawful property interest of any non-criminal defendant or any other person who is not a criminal defendant, or the lawful property interest of a defendant which is not subject to forfeiture; or

(iii) where such action involves interest in a residential leasehold or a statutory tenancy, directing that upon entry of a judgment of forfeiture, the lease or statutory tenancy will be modified as a matter of law to terminate only the interest of the defendant or defendants, and to continue the occupancy or tenancy of any other person or persons who lawfully reside in such demised premises, with such rights as such parties would otherwise have had if the defendant's interest had not been forfeited pursuant to this article.

(b) For purposes of this subdivision the term "owner" has the same meaning as prescribed for that term in section seven hundred eighty-one of the real property actions and proceedings law and the term "dwelling" shall mean any building or structure or portion thereof which is principally occupied in whole or part as the home, residence or sleeping place of one or more human beings.

5. An action for forfeiture shall be commenced by service pursuant to this chapter of a summons with notice or summons and verified complaint. No person shall forfeit any right, title, or interest in any property who is not a defendant in the action. The claiming authority shall also file a copy of such papers with the state division of criminal justice services; provided, however, failure to file such papers shall not be grounds for any relief by a defendant in this section.

6. On the motion of any party to the forfeiture action, and for good cause shown, a court may seal any papers, including those pertaining to any provisional remedy, which relate to the forfeiture action until such time as the property which is the subject of the forfeiture action has been levied upon. A motion to seal such papers may be made ex parte and in camera.

7. Remission. In addition to any other relief provided under this chapter, at any time within one year after the entry of a judgment of forfeiture, any person, claiming an interest in the property subject to forfeiture who did not receive actual notice of the forfeiture action may petition the judge before whom the forfeiture action was held for a remission or mitigation of the forfeiture and restoration of the property or the proceeds of any sale resulting from the forfeiture, or such part thereof, as may be claimed by him. The court may restore said property upon such terms and conditions as it deems reasonable and just if (i) the petitioner establishes that he or she was without actual knowledge of the forfeiture action or any related proceeding for a provisional remedy and did not know or should not have known that the forfeited property was connected to a crime or fraudulently conveyed and (ii) the court determines that restoration of the property would serve the ends of justice.

8. The total amount that may be recovered by the claiming authority against all criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime or substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against criminal defendants for the value of the proceeds of the crime or substituted proceeds of the crime shall be reduced by an amount which equals the value of the same proceeds of the same crime or the same substituted proceeds of the same crime recovered against all non-criminal defendants. Any such recovery for the value of an instrumentality of a crime shall be reduced by an amount which equals the value of the same instrumentality recovered against any non-criminal defendant. The total amount that may be recovered against all non-criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime or the substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against non-criminal defendants for the value of the proceeds of the crime or substituted proceeds of the crime shall be reduced by an amount which equals the value of the proceeds of the crime or substituted proceeds of the crime recovered against all criminal defendants. A judgment against a non-criminal defendant pursuant to clause (A) of subparagraph (iv) of paragraph (b) of subdivision three of this section shall be limited to the amount of the proceeds of the crime. Any recovery for the value of an

instrumentality of the crime shall be reduced by an amount equal to the value of the same instrumentality recovered against any criminal defendant.

9. Any defendant in a forfeiture action who knowingly and intentionally conceals, destroys, dissipates, alters, removes from the jurisdiction, or otherwise disposes of, property specified in a provisional remedy ordered by the court or in a judgment of forfeiture in knowing contempt of said order or judgment shall be subject to criminal liability and sanctions under sections 80.05 and 215.80 of the penal law.

10. The proper venue for trial of an action for forfeiture is:

(a) In the case of an action for post-conviction forfeiture commenced after conviction, the county where the conviction occurred.

(b) In all other cases, the county where a criminal prosecution could be commenced under article twenty of the criminal procedure law, or, in the case of an action commenced by the office of prosecution, special narcotics courts of the city of New York, under section one hundred seventy-seven-b of the judiciary law.

11. (a) Any stipulation or settlement agreement between the parties to a forfeiture action shall be filed with the clerk of the court in which the forfeiture action is pending. No stipulation or settlement agreement shall be accepted for filing unless it is accompanied by an affidavit from the claiming authority that written notice of the stipulation or settlement agreement, including the terms of such, has been given to the office of victim services, the state division of criminal justice services, and in the case of a forfeiture based on a felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, to the state division of substance abuse services.

(b) No judgment or order of forfeiture shall be accepted for filing unless it is accompanied by an affidavit from the claiming authority that written notice of judgment or order, including the terms of such, has been given to the office of victim services, the state division of criminal justice services, and in the case of a forfeiture based on a felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, to the state division of substance abuse services.

(c) Any claiming authority or claiming agent which receives any property pursuant to chapter thirteen of the food and drug laws (21 U.S.C. §801 et seq.) of the United States and/or chapter four of the customs duties laws (19 U.S.C. §1301 et seq.) of the United States and/or chapter 96 of the crimes and criminal procedure laws (18 U.S.C. §1961 et seq.) of the United States shall provide an affidavit to the commissioner of the division of criminal justice services stating the estimated present value of the property received.

12. Property acquired in good faith by an attorney as payment for the reasonable and bona fide fees of legal services or reimbursement of reasonable and bona fide expenses related to the representation of a defendant in connection with a civil or criminal forfeiture proceeding or a related criminal matter, shall be exempt from a judgment of forfeiture. For purposes of this subdivision and subdivision four of section one thousand three hundred twelve of this article, "bona fide" means that the attorney who acquired such property had no reasonable basis to believe that the fee transaction was a fraudulent or sham transaction designed to shield property from forfeiture, hide its existence from governmental investigative agencies, or was conducted for any purpose other than for legitimate legal representation.

**§ 5303. Recognition and enforcement.**

Recognition and enforcement. Except as provided in section 5304, a foreign country judgment meeting the requirements of section 5302 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. Such a foreign judgment is enforceable by an action on the judgment, a motion for summary judgment in lieu of complaint, or in a pending action by counterclaim, cross-claim or affirmative defense.

**CIVIL RIGHTS LAW**

**§ 50-b. Right of privacy; victims of sex offenses or offenses involving the transmission of the human immunodeficiency virus.**

1. The identity of any victim of a sex offense, as defined in article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law, or of an offense involving the alleged transmission of the human immunodeficiency virus, shall be confidential. No report, paper, picture, photograph, court file or other documents, in the custody or possession of any public officer or employee, which identifies such a victim shall be made available for public inspection. No such public officer or employee shall disclose any portion of any police report, court file, or other document, which tends to identify such a victim except as provided in subdivision two of this section.

2. The provisions of subdivision one of this section shall not be construed to prohibit disclosure of information to:

a. Any person charged with the commission of an offense, as defined in subdivision one of this section, against the same victim; the counsel or guardian of such person; the public officers and employees charged with the duty of investigating, prosecuting, keeping records relating to the offense, or any other act when done pursuant to the lawful discharge of their duties; and any necessary witnesses for either party; or

b. Any person who, upon application to a court having jurisdiction over the alleged offense, demonstrates to the satisfaction of the court that good cause exists for disclosure to that person. Such application shall be made upon notice to the victim or other person legally responsible for the care of the victim, and the public officer or employee charged with the duty of prosecuting the offense; or

c. Any person or agency, upon written consent of the victim or other person legally responsible for the care of the victim, except as may be otherwise required or provided by the order of a court.

3. The court having jurisdiction over the alleged offense may order any restrictions upon disclosure authorized in subdivision two of this section, as it deems necessary and proper to preserve the confidentiality of the identity of the victim.

4. Nothing contained in this section shall be construed to require the court to exclude the public from any stage of the criminal proceeding.

5. No disclosure of confidential HIV related information, as defined in section twenty-seven hundred eighty of the public health law, including the identity of the victim of an

offense involving transmission of the human immunodeficiency virus, shall be permitted under this section contrary to article twenty-seven-F of the public health law.

## **CRIMINAL PROCEDURE LAW**

### **Article 65, Use of Closed-Circuit Television for Certain Child Witnesses.**

[Note: this Article will be repealed September 1, 2013]

#### **§ 65.00 Definitions.**

As used in this article:

1. "Child witness" means a person fourteen years old or less who is or will be called to testify in a criminal proceeding, other than a grand jury proceeding, concerning an offense defined in article one hundred thirty of the penal law or section 255.25, 255.26 or 255.27 of such law which is the subject of such criminal proceeding.

2. "Vulnerable child witness" means a child witness whom a court has declared to be vulnerable.

3. "Testimonial room" means any room, separate and apart from the courtroom, which is furnished comfortably and less formally than a courtroom and from which the testimony of a vulnerable child witness can be transmitted to the courtroom by means of live, two-way closed-circuit television.

4. "Live, two-way closed-circuit television" means a simultaneous transmission, by closed-circuit television, or other electronic means, between the courtroom and the testimonial room in accordance with the provisions of section 65.30.

5. "Operator" means the individual authorized by the court to operate the closed-circuit television equipment used in accordance with the provisions of this article.

6. A person occupies "a position of authority with respect to a child" when he or she is a parent, guardian or other person responsible for the custody or care of the child at the relevant time or is any other person who maintains an ongoing personal relationship with such parent, guardian or other person responsible for custody or care, which relationship involves his or her living, or his or her frequent and repeated presence, in the same household or premises as the child.

#### **§ 65.10 Closed-circuit television; general rule; declaration of vulnerability.**

1. A child witness shall be declared vulnerable when the court, in accordance with the provisions of section 65.20, determines by clear and convincing evidence that it is likely that such child witness will suffer serious mental or emotional harm if required to testify at a criminal proceeding without the use of live, two-way closed-circuit television and that the use of such live, two-way closed-circuit television will diminish the likelihood or extent of, such harm.

2. When the court declares a child witness to be vulnerable, it shall, except as provided in subdivision four of section 65.30, authorize the taking of the testimony of the vulnerable child witness from the testimonial room by means of live, two-way closed-circuit television.

Under no circumstances shall the provisions of this article be construed to authorize a closed-circuit television system by which events in the courtroom are not transmitted to the testimonial room during the testimony of the vulnerable child witness.

3. Nothing herein shall be construed to preclude the court from exercising its power to close the courtroom or from exercising any authority it otherwise may have to protect the well-being of a witness and the rights of the defendant.

**§ 65.20 Closed-circuit television; procedure for application and grounds for determination.**

1. Prior to the commencement of a criminal proceeding; other than a grand jury proceeding, either party may apply to the court for an order declaring that a child witness is vulnerable.

2. A child witness should be declared vulnerable when the court, in accordance with the provisions of this section, determines by clear and convincing evidence that the child witness would suffer serious mental or emotional harm that would substantially impair the child witness' ability to communicate with the finder of fact without the use of live, two-way closed-circuit television.

3. A motion pursuant to subdivision one of this section must be made in writing at least eight days before the commencement of trial or other criminal proceeding upon reasonable notice to the other party and with an opportunity to be heard.

4. The motion papers must state the basis for the motion and must contain sworn allegations of fact which, if true, would support a determination by the court that the child witness is vulnerable. Such allegations may be based upon the personal knowledge of the deponent or upon information and belief, provided that, in the latter event, the sources of such information and the grounds for such belief are stated.

5. The answering papers may admit or deny any of the alleged facts and may, in addition, contain sworn allegations of fact relevant to the motion, including the rights of the defendant, the need to protect the child witness and the integrity of the truth-finding function of the trier of fact.

6. Unless all material facts alleged in support of the motion made pursuant to subdivision one of this section are conceded, the court shall, in addition to examining the papers and hearing oral argument, conduct an appropriate hearing for the purpose of making findings of fact essential to the determination of the motion. Except as provided in subdivision six of this section, it may subpoena or call and examine witnesses, who must either testify under oath or be permitted to give unsworn testimony pursuant to subdivision two of section 60.20 and must authorize the attorneys for the parties to do the same.

7. Notwithstanding any other provision of law, the child witness who is alleged to be vulnerable may not be compelled to testify at such hearing or to submit to any psychological or psychiatric examination.

The failure of the child witness to testify at such hearing shall not be a ground for denying a motion made pursuant to subdivision one of this section. Prior statements made by the child witness relating to any allegations of conduct constituting an offense defined in article one hundred thirty of the penal law or incest as defined in section 255.25, 255.26 or 255.27 of such

law or to any allegation of words or conduct constituting an attempt to prevent, impede or deter the child witness from cooperating in the investigation or prosecution of the offense shall be admissible at such hearing, provided, however, that a declaration that a child witness is vulnerable may not be based solely upon such prior statements.

8. (a) Notwithstanding any of the provisions of article forty-five of the civil practice law and rules, any physician, psychologist, nurse or social worker who has treated a child witness may testify at a hearing conducted pursuant to subdivision five of this section concerning the treatment of such child witness as such treatment relates to the issue presented at the hearing, provided that any otherwise applicable statutory privileges concerning communications between the child witness and such physician, psychologist, nurse or social worker in connection with such treatment shall not be deemed waived by such testimony alone, except to the limited extent of permitting the court alone to examine in camera reports, records or documents, if any, prepared by such physician, psychologist, nurse or social worker. If upon such examination the court determines that such reports, records or documents, or any one or portion thereof, contain information material and relevant to the issue of whether the child witness is a vulnerable child witness, the court shall disclose such information to both the attorney for the defendant and the district attorney.

(b) At any time after a motion has been made pursuant to subdivision one of this section, upon the demand of the other party the moving party must furnish the demanding party with a copy of any and all of such records, reports or other documents in the possession of such other party and must, in addition, supply the court with a copy of all such reports, records or other documents which are the subject of the demand.

At any time after a demand has been made pursuant to this paragraph, the moving party may demand that property of the same kind or character in possession of the party that originally made such demand be furnished to the moving party and, if so furnished, be supplied, in addition, to the court.

9. (a) Prior to the commencement of the hearing conducted pursuant to subdivision five of this section, the district attorney shall, subject to a protective order, comply with the provisions of subdivision one of section 240.45 of this chapter as they concern any witness whom the district attorney intends to call at the hearing and the child witness.

(b) Before a defendant calls a witness at such hearing, he or she must, subject to a protective order, comply with the provisions of subdivision two of section 240.45 of this chapter as they concern all the witnesses the defendant intends to call at such hearing.

10. The court may consider, in determining whether there are factors which would cause the child witness to suffer serious mental or emotional harm, a finding that any one or more of the following circumstances have been established by clear and convincing evidence:

(a) The manner of the commission of the offense of which the defendant is accused was particularly heinous or was characterized by aggravating circumstances.

(b) The child witness is particularly young or otherwise particularly subject to psychological harm on account of a physical or mental condition which existed before the alleged commission of the offense.

(c) At the time of the alleged offense, the defendant occupied a position of authority with respect to the child witness.

(d) The offense or offenses charged were part of an ongoing course of conduct committed by the defendant against the child witness over an extended period of time.

(e) A deadly weapon or dangerous instrument was allegedly used during the commission of the crime.

(f) The defendant has inflicted serious physical injury upon the child witness.

(g) A threat, express or implied, of physical violence to the child witness or a third person if the child witness were to report the incident to any person or communicate information to or cooperate with a court, grand jury, prosecutor, police officer or peace officer concerning the incident has been made by or on behalf of the defendant.

(h) A threat, express or implied, of the incarceration of a parent or guardian of the child witness, the removal of the child witness from the family or the dissolution of the family of the child witness if the child witness were to report the incident to any person or communicate information to or cooperate with a court, grand jury, prosecutor, police officer or peace officer concerning the incident has been made by or on behalf of the defendant.

(i) A witness other than the child witness has received a threat of physical violence directed at such witness or to a third person by or on behalf of the defendant.

(j) The defendant, at the time of the inquiry, (i) is living in the same household with the child witness, (ii) has ready access to the child witness or (iii) is providing substantial financial support for the child witness.

(k) The child witness has previously been the victim of an offense defined in article one hundred thirty of the penal law or incest as defined in section 255.25, 255.26 or 255.27 of such law.

(l) According to expert testimony, the child witness would be particularly susceptible to psychological harm if required to testify in open court or in the physical presence of the defendant.

11. Irrespective of whether a motion was made pursuant to subdivision one of this section, the court, at the request of either party or on its own motion, may decide that a child witness may be vulnerable based on its own observations that a child witness who has been called to testify at a criminal proceeding is suffering severe mental or emotional harm and therefore is physically or mentally unable to testify or to continue to testify in open court or in the physical presence of the defendant and that the use of live, two-way closed-circuit television is necessary to enable the child witness to testify. If the court so decides, it must conduct the same hearing that subdivision five of this section requires when a motion is made pursuant to subdivision one of this section, and it must make findings of fact pursuant to subdivisions nine and eleven of this section, before determining that the child witness is vulnerable.

12. In deciding whether a child witness is vulnerable, the court shall make findings of fact which reflect the causal relationship between the existence of any one or more of the factors set forth in subdivision nine of this section or other relevant factors which the court finds are established and the determination that the child witness is vulnerable.

If the court is satisfied that the child witness is vulnerable and that, under the facts and circumstances of the particular case, the defendant's constitutional rights to an impartial jury or of confrontation will not be impaired, it may enter an order granting the application for the use of live, two-way closed-circuit television.

13. When the court has determined that a child witness is a vulnerable child witness, it shall make a specific finding as to whether placing the defendant and the child witness in the same room during the testimony of the child witness will contribute to the likelihood that the child witness will suffer severe mental or emotional harm. If the court finds that placing the defendant and the child witness in the same room during the testimony of the child witness will contribute



to the likelihood that the child witness will suffer severe mental or emotional harm, the order entered pursuant to subdivision eleven of this section shall direct that the defendant remain in the courtroom during the testimony of the vulnerable child witness.

**§ 65.30 Closed-circuit television; special testimonial procedures.**

1. When the court has entered an order pursuant to section 65.20, the testimony of the vulnerable child witness shall be taken in the testimonial room and the image and voice of the vulnerable child witness, as well as the image of all other persons other than the operator present in the testimonial room, shall be transmitted live by means of closed-circuit television to the courtroom. The courtroom shall be equipped with monitors sufficient to permit the judge, jury, defendant and attorneys to observe the demeanor of the vulnerable child witness during his or her testimony. Unless the courtroom has been closed pursuant to court order, the public shall also be permitted to hear the testimony and view the image of the vulnerable child witness.

2. In all instances, the image of the jury shall be simultaneously transmitted to the vulnerable child witness in the testimonial room. If the court order issued pursuant to section 65.20 specifies that the vulnerable child witness shall testify outside the physical presence of the defendant, the image of the defendant and the image and voice of the person examining the vulnerable child witness shall also be simultaneously transmitted to the vulnerable child witness in the testimonial room.

3. The operator shall place herself or himself and the closed-circuit television equipment in a position that permits the entire testimony of the vulnerable child witness to be transmitted to the courtroom but limits the ability of the vulnerable child witness to see or hear the operator or the equipment.

4. Notwithstanding any provision of this article, if the court in a particular case involving a vulnerable child witness determines that there is no live, two-way closed-circuit television equipment available in the court or another court in the county or which can be transported to the court from another county or that such equipment, if available, is technologically inadequate to protect the constitutional rights of the defendant, it shall not permit the use of the closed-circuit television procedures authorized by this article.

5. If the order of the court entered pursuant to section 65.20 requires that the defendant remain in the courtroom, the attorney for the defendant and the district attorney shall also remain in the courtroom unless the court is satisfied that their presence in the testimonial room will not impede full and private communication between the defendant and his or her attorney and will not encourage the jury to draw an inference adverse to the interest of the defendant.

6. Upon request of the defendant, the court shall instruct the jury that they are to draw no inference from the use of live, two-way closed-circuit television in the examination of the vulnerable child witness.

7. The vulnerable child witness shall testify under oath except as specified in subdivision two of section 60.20. The examination and cross-examination of the vulnerable child witness shall, in all other respects, be conducted in the same manner as if the vulnerable child witness had testified in the courtroom.

8. When the testimony of the vulnerable child witness is transmitted from the testimonial room into the courtroom, the court stenographer shall record the testimony in the same manner as if the vulnerable child witness had testified in the courtroom.

## EXECUTIVE LAW

### § 620. Declaration of policy and legislative intent.

The legislature recognizes that many innocent persons suffer personal physical injury or death as a result of criminal acts. Such persons or their dependents may thereby suffer disability, incur financial hardships, or become dependent upon public assistance. The legislature finds and determines that there is a need for government financial assistance for such victims of crime. Accordingly, it is the legislature's intent that aid, care and support be provided by the state, as a matter of grace, for such victims of crime.

### § 621. Definitions.

For the purposes of this article:

1. "Board" shall mean the crime victims board.
2. "Claimant" shall mean the person filing a claim pursuant to this article.
3. "Crime" shall mean (a) an act committed in New York state which would, if committed by a mentally competent criminally responsible adult, who has no legal exemption or defense, constitute a crime as defined in and proscribed by law; or
  - (b) an act committed outside the state of New York against a resident of the state of New York which would be compensable had it occurred within the state of New York and which occurred in a state which does not have an eligible crime victim compensation program as such term is defined in the federal victims of crime act of 1984; or
  - (c) an act of terrorism, as defined in section 2331 of title 18, United States Code, committed outside of the United States against a resident of New York state.
4. "Family", when used with reference to a person, shall mean (a) any person related to such person within the third degree of consanguinity or affinity, (b) any person maintaining a sexual relationship with such person, or (c) any person residing in the same household with such person.
5. "Victim" shall mean (a) a person who suffers personal physical injury as a direct result of a crime; (b) a person who is the victim of either the crime of (1) unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, (2) kidnapping in the second degree as defined in section 135.20 of the penal law, (3) kidnapping in the first degree as defined in section 135.25 of the penal law, (4) labor trafficking as defined in section 135.35 of the penal law, or (5) sex trafficking as defined in section 230.34 of the penal law; or a person who has had a frivolous lawsuit filed against them.
6. "Representative" shall mean one who represents or stands in the place of another person, including but not limited to an agent, an assignee, an attorney, a guardian, a committee, a conservator, a partner, a receiver, an administrator, an executor or an heir of another person, or a parent of a minor.
7. "Good samaritan" shall mean a person who, other than a law enforcement officer, acts in good faith (a) to apprehend a person who has committed a crime in his presence or who has in

fact committed a felony, (b) to prevent a crime or an attempted crime from occurring, or (c) to aid a law enforcement officer in effecting an arrest.

8. "Essential personal property" shall mean articles of personal property necessary and essential to the health, welfare or safety of the victim.

9. "Elderly victim" shall mean a person sixty years of age or older who suffers loss, or damage as a direct result of a crime.

10. "Disabled victim" shall mean a person who has (a) physical, mental or medical impairment from anatomical, physiological or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment.

11. For purposes of this article "child victim" shall mean a person less than eighteen years of age who suffers physical, mental or emotional injury, or loss or damage, as a direct result of a crime or as a result of witnessing a crime.

12. "Frivolous lawsuit" shall mean a lawsuit brought by the individual who committed a crime against the victim of the crime, found to be frivolous, meritless and commenced to harass, intimidate or menace the victim by a court and costs were imposed upon the plaintiff pursuant to section eighty-three hundred three-a of the civil practice law and rules.

13. "Crime scene cleanup" shall mean removing, or attempting to remove from the crime scene, blood, dirt, stains, debris, odors, or other impurities caused by the crime or the processing of the crime scene and the repair or replacement of permanent fixtures and floor coverings, soiled, damaged, or rendered unusable or uncleanable by the crime, the processing of the crime scene, or by being taken into evidence.

14. "Securing a crime scene" shall mean taking immediate, emergency steps to return the residence where the crime occurred to the level of safety present prior to the crime. It shall include, but not be limited to, the repair or replacement of doors, windows, screens and locks or other points of entry damaged or rendered unusable by the crime.

15. "Livery" shall mean a for-hire vehicle duly licensed by the appropriate local licensing authority, designed to carry no more than five passengers for direct cash payment by such passenger and which is affiliated with a livery car base. The term "livery" shall not include a vehicle driven by a "black car operator", as defined in section one hundred sixty-cc of this chapter.

16. "Livery car base" shall mean a central facility, wherever located, that dispatches the livery operator to both pick-up and discharge passengers in the state.

17. "Livery operator" shall mean the registered owner of a livery, or a driver designated by such registered owner to operate the registered owner's livery as the registered owner's authorized designee, whose status as a livery operator victim arose out of and in the course of providing services while affiliated with a livery car base. The term "livery operator" shall not include a "black car operator", as defined in section one hundred sixty-cc of this chapter.

18. "Livery operator victim" shall mean a livery operator homicide victim or a livery operator assault victim.

19. "Livery operator assault victim" shall mean a livery operator who is the victim of a violent felony offense, as defined in subdivision one of section 70.02 of the penal law, which offense directly results in a serious physical injury, as defined in subdivision ten of section 10.00 of the penal law.

20. "Livery operator homicide victim" shall mean a livery operator who is the victim of a homicide, as defined in article one hundred twenty-five of the penal law.

21. "Local licensing authority" shall mean the governmental agency in the state, if any, that is authorized to license a livery and/or a livery car base.

22. "Financial counselling" shall mean financial services provided by an experienced financial counsellor or adviser which may include, but are not limited to: analysis of a victim's financial situation such as income producing capacity and crime related financial obligations, assistance with restructuring budget and debt, assistance in accessing insurance, public assistance and other benefits, assistance in completing the financial aspects of victim impact statements, and assistance in settling estates and handling guardianship matters.

23. "Relocation expenses" shall mean the cost of relocating a crime victim, when relocation is necessary for the health or safety of the victim. Relocation expenses shall include the reasonable cost of moving and transportation expenses.

#### **§ 624. Eligibility.**

1. Except as provided in subdivision two of this section, the following persons shall be eligible for awards pursuant to this article:

- (a) a victim of a crime;
- (b) a surviving spouse, grandparent, parent, stepparent, child or stepchild of a victim of a crime who died as a direct result of such crime;
- (c) any other person dependent for his principal support upon a victim of a crime who died as a direct result of such crime;
- (d) any person who has paid for or incurred the burial expenses of a victim who died as a direct result of such crime, except such person shall not be eligible to receive an award for other than burial expenses unless otherwise eligible under paragraph (a), (b) or (c) of this subdivision;
- (e) an elderly victim of a crime;
- (f) a disabled victim of a crime;
- (g) a child victim of a crime;
- (h) a parent, stepparent, grandparent, guardian, brother, sister, stepbrother or stepsister of a child victim of a crime;
- (i) a surviving spouse of a crime victim who died from causes not directly related to the crime when such victim died prior to filing a claim with the board or subsequent to filing a claim but prior to the rendering of a decision by the board. Such award shall be limited to out-of-pocket loss incurred as a direct result of the crime; and
- (j) a spouse, child or stepchild of a victim of a crime who has sustained personal physical injury as a direct result of a crime.

2. A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person shall not be eligible to receive an award with respect to such claim. A member of the family of a person criminally responsible for the crime upon which a claim is based or a member of the family of an accomplice of such person, shall be eligible to receive an award, unless the board determines pursuant to regulations adopted by the board, that the person criminally responsible will receive substantial economic benefit or unjust enrichment from the compensation. In such circumstances the award may be reduced or structured in such way as to remove the substantial economic benefit or unjust enrichment to such person or the claim may be denied.

**§ 626. Out-of-pocket loss; definition.**

1. Out-of-pocket loss shall mean unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based, including such expenses incurred as a result of the exacerbation of a pre-existing disability or condition directly resulting from the crime or causally related to the crime. Such expenses or indebtedness shall include the cost of counseling for the eligible spouse, grandparents, parents, stepparents, guardians, brothers, sisters, stepbrothers, stepsisters, children or stepchildren of a homicide victim, and crime victims who have sustained a personal physical injury as the direct result of a crime and the spouse, children or stepchildren of such physically injured victim. For the purposes of this subdivision, the victim of a sex offense as defined in article one hundred thirty of the penal law is presumed to have suffered physical injury. Such counseling may be provided by local victim service programs, where available. It shall also include the cost of residing at or utilizing services provided by shelters for battered spouses and children who are eligible pursuant to subdivision two of section six hundred twenty-four of this article, and the cost of reasonable attorneys' fees for representation before the board and/or before the appellate division upon judicial review not to exceed one thousand dollars.

2. Out-of-pocket loss shall also include the cost of counseling for a child victim and the parent, stepparent, grandparent, guardian, brother, sister, stepbrother or stepsister of such victim, pursuant to regulations of the board.

3. Notwithstanding any inconsistent provision of this article, and without regard to the financial difficulty of the claimant, out-of-pocket loss also shall include the cost of unreimbursed and unreimbursable counseling expense or indebtedness reasonably incurred by relief workers who worked at the World Trade Center site in the immediate aftermath of the September eleventh, two thousand one terrorist attacks, or incurred by individuals who personally witnessed such attacks, where such counseling expense or indebtedness is incurred as a direct result of such work or of the witnessing of such attacks, and is incurred on or before December thirty-first, two thousand seven.

**§ 641. Objectives of fair treatment standards.**

The object of such fair treatment standards shall be to:

1. Ensure that crime victims routinely receive emergency social and medical services as soon as possible and are given information pursuant to section six hundred twenty-five-a of this chapter on the following:

(a) availability of crime victim compensation;

(b) availability of appropriate public or private programs that provide counseling, treatment or support for crime victims, including but not limited to the following: rape crisis centers, victim/witness assistance programs, elderly victim services, victim assistance hotlines and domestic violence shelters;

(c) the role of the victims in the criminal justice process, including what they can expect from the system as well as what the system expects from them; and

(d) stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.

2. Ensure routine notification of a victim or witness as to steps that law enforcement officers or district attorneys can take to protect victims and witnesses from intimidation.

3. Ensure notification of victims, witnesses, relatives of those victims and witnesses who are minors, and relatives of homicide victims, if such persons provide the appropriate official with a current address and telephone number, either by phone or by mail, if possible, of judicial proceedings relating to their case, including:

(a) the arrest of an accused;

(b) the initial appearance of an accused before a judicial officer;

(c) the release of an accused pending judicial proceedings; and

(d) proceedings in the prosecution of the accused including entry of a plea of guilty, trial, sentencing, but prior to sentencing specific information shall be provided regarding the right to seek restitution and reparation, and where a term of imprisonment is imposed, specific information shall be provided regarding maximum and minimum terms of such imprisonment.

#### **§ 642. Criteria for fair treatment standards.**

Such fair treatment standards shall provide that:

1. The victim of a violent felony offense, a felony involving physical injury to the victim, a felony involving property loss or damage in excess of two hundred fifty dollars, a felony involving attempted or threatened physical injury or property loss or damage in excess of two hundred fifty dollars or a felony involving larceny against the person shall, unless he or she refuses or is unable to cooperate or his or her whereabouts are unknown, be consulted by the district attorney in order to obtain the views of the victim regarding disposition of the criminal case by dismissal, plea of guilty or trial. In such a case in which the victim is a minor child, or in the case of a homicide, the district attorney shall, unless the family refuses or is unable to cooperate or his, her or their whereabouts are unknown, consult for such purpose with the family of the victim. In addition, the district attorney shall, unless he or she (or, in the case in which the victim is a minor child or a victim of homicide, his or her family) refuses or is unable to cooperate or his, her or their whereabouts are unknown, consult and obtain the views of the victim or family of the victim, as appropriate, concerning the release of the defendant in the victim's case pending judicial proceedings upon an indictment, and concerning the availability of sentencing alternatives such as community supervision and restitution from the defendant. The failure of the district attorney to so obtain the views of the victim or family of the victim shall not be cause for delaying the proceedings against the defendant nor shall it affect the validity of a conviction, judgment or order.

2. The victims and other prosecution witnesses shall, where possible, be provided, when awaiting court appearances, a secure waiting area that is separate from all other witnesses.

2-a. (a) All police departments, as that term is defined in subdivision a of section eight hundred thirty-seven-c of this chapter, district attorneys' offices and presentment agencies, as that term is defined in subdivision twelve of section 301.2 of the family court act, shall provide a private setting for interviewing victims of a crime defined in article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law. For purposes of this subdivision, "private setting" shall mean an enclosed room from which the occupants are not visible or otherwise identifiable, and whose conversations cannot be heard, from outside such room. Only (i) those persons directly and immediately related to the interviewing of a particular victim, (ii) the victim, (iii) a social worker, rape crisis counselor, psychologist or other professional providing

emotional support to the victim, unless the victim objects to the presence of such person and requests the exclusion of such person from the interview, and (iv) where appropriate, the parent or parents of the victim, if requested by the victim, shall be present during the interview of the victim.

(b) All police departments, as that term is defined in subdivision a of section eight hundred thirty-seven-c of this chapter, shall provide victims of a crime defined in article one hundred thirty of the penal law with the name, address, and telephone of the nearest rape crisis center in writing.

3. Law enforcement agencies and district attorneys shall promptly return property held for evidentiary purposes unless there is a compelling reason for retaining it relating to proof at trial.

4. The victim or witness who so requests shall be assisted by law enforcement agencies and district attorneys in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. In addition, a victim or witness who, as a direct result of a crime or of cooperation with law enforcement agencies or the district attorney in the investigation or prosecution of a crime is unable to meet obligations to a creditor, creditors or others should be assisted by such agencies or the district attorney in providing to such creditor, creditors or others accurate information about the circumstances of the crime, including the nature of any loss or injury suffered by the victim, or about the victim's or witness' cooperation, where appropriate.

5. Victim assistance education and training, with special consideration to be given to victims of domestic violence, sex offense victims, elderly victims, child victims, and the families of homicide victims, shall be given to persons taking courses at state law enforcement training facilities and by district attorneys so that victims may be promptly, properly and completely assisted.

#### **§ 642-a Fair treatment of child victims as witnesses.**

To the extent permitted by law, criminal justice agencies, crime victim-related agencies, social services agencies and the courts shall comply with the following guidelines in their treatment of child victims:

1. To minimize the number of times a child victim is called upon to recite the events of the case and to foster a feeling of trust and confidence in the child victim, whenever practicable and where one exists, a multi-disciplinary team as established pursuant to subdivision six of section four hundred twenty-three of the social services law and/or a child advocacy center shall be used for the investigation and prosecution of child abuse cases involving abuse of a child, as described in paragraph (i), (ii) or (iii) of subdivision (e) of section one thousand twelve of the family court act, sexual abuse of a child or the death of a child.

2. Whenever practicable, the same prosecutor should handle all aspects of a case involving an alleged child victim.

3. To minimize the time during which a child victim must endure the stress of his involvement in the proceedings, the court should take appropriate action to ensure a speedy trial in all proceedings involving an alleged child victim. In ruling on any motion or request for a delay or continuance of a proceeding involving an alleged child victim, the court should consider and give weight to any potential adverse impact the delay or continuance may have on the well-being of the child.

4. The judge presiding should be sensitive to the psychological and emotional stress a child witness may undergo when testifying.

5. In accordance with the provisions of article sixty-five of the criminal procedure law, when appropriate, a child witness as defined in subdivision one of section 65.00 of such law should be permitted to testify via live, two-way closed-circuit television.

6. In accordance with the provisions of section 190.32 of the criminal procedure law, a person supportive of the "child witness" or "special witness" as defined in such section should be permitted to be present and accessible to a child witness at all times during his testimony, although the person supportive of the child witness should not be permitted to influence the child's testimony.

7. A child witness should be permitted in the discretion of the court to use anatomically correct dolls and drawings during his testimony.

## **GENERAL OBLIGATIONS LAW**

### **§ 3-101.**

When contracts may not be disaffirmed on ground of infancy.

1. A contract made on or after September first, nineteen hundred seventy-four by a person after he has attained the age of eighteen years may not be disaffirmed by him on the ground of infancy.

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## **PENAL LAW**

### **§ 20.00 Criminal liability for conduct of another.**

When one person engages in conduct which constitutes an offense, another person is criminally liable for such conduct when, acting with the mental culpability required for the commission thereof, he solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct.

### **§ 30.00(1) Infancy.**

1. Except as provided in subdivision two of this section, a person less than sixteen years old is not criminally responsible for conduct.

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### **§ 60.27 Restitution and reparation.**

1. In addition to any of the dispositions authorized by this article, the court shall consider restitution or reparation to the victim of the crime and may require restitution or reparation as part of the sentence imposed upon a person convicted of an offense, and after providing the district attorney with an opportunity to be heard in accordance with the provisions of this subdivision, require the defendant to make restitution of the fruits of his or her offense or



reparation for the actual out-of-pocket loss caused thereby and, in the case of a violation of section 190.78, 190.79, 190.80, 190.82 or 190.83 of this chapter, any costs or losses incurred due to any adverse action taken against the victim. The district attorney shall where appropriate, advise the court at or before the time of sentencing that the victim seeks restitution or reparation, the extent of injury or economic loss or damage of the victim, and the amount of restitution or reparation sought by the victim in accordance with his or her responsibilities under subdivision two of section 390.50 of the criminal procedure law and article twenty-three of the executive law. The court shall hear and consider the information presented by the district attorney in this regard. In that event, or when the victim impact statement reports that the victim seeks restitution or reparation, the court shall require, unless the interests of justice dictate otherwise, in addition to any of the dispositions authorized by this article that the defendant make restitution of the fruits of the offense and reparation for the actual out-of-pocket loss and, in the case of a violation of section 190.78, 190.79, 190.80, 190.82 or 190.83 of this chapter, any costs or losses incurred due to any adverse action, caused thereby to the victim. In the event that restitution or reparation are not ordered, the court shall clearly state its reasons on the record. Adverse action as used in this subdivision shall mean and include actual loss incurred by the victim, including an amount equal to the value of the time reasonably spent by the victim attempting to remediate the harm incurred by the victim from the offense, and the consequential financial losses from such action.

2. Whenever the court requires restitution or reparation to be made, the court must make a finding as to the dollar amount of the fruits of the offense and the actual out-of-pocket loss to the victim caused by the offense. In making this finding, the court must consider any victim impact statement provided to the court. If the record does not contain sufficient evidence to support such finding or upon request by the defendant, the court must conduct a hearing upon the issue in accordance with the procedure set forth in section 400.30 of the criminal procedure law.

3. The provisions of sections 420.10, 420.20 and 420.30 of the criminal procedure law shall apply in the collection and remission of restitution and reparation.

4. For purposes of the imposition, determination and collection of restitution or reparation, the following definitions shall apply:

(a) the term "offense" shall include the offense for which a defendant was convicted, as well as any other offense that is part of the same criminal transaction or that is contained in any other accusatory instrument disposed of by any plea of guilty by the defendant to an offense.

(b) the term "victim" shall include the victim of the offense, the representative of a crime victim as defined in subdivision six of section six hundred twenty-one of the executive law, an individual whose identity was assumed or whose personal identifying information was used in violation of section 190.78, 190.79 or 190.80 of this chapter, or any person who has suffered a financial loss as a direct result of the acts of a defendant in violation of section 190.78, 190.79, 190.80, 190.82 or 190.83 of this chapter, a good samaritan as defined in section six hundred twenty-one of the executive law and the crime victims' board or other governmental agency that has received an application for or has provided financial assistance or compensation to the victim.

5. (a) Except upon consent of the defendant or as provided in paragraph (b) of this subdivision, or as a condition of probation or conditional discharge as provided in paragraph (g) of subdivision two of section 65.10 of this chapter, the amount of restitution or reparation required by the court shall not exceed fifteen thousand dollars in the case of a conviction for a felony, or ten thousand dollars in the case of a conviction for any offense other than a felony.

Notwithstanding the provisions of this subdivision, if an officer of a school district is convicted of violating any section of article one hundred fifty-five of this chapter where the victim of such crime is such officer's school district, the court may require an amount of restitution up to the full amount of the fruits of the offense or reparation up to the full amount of the actual out-of-pocket loss suffered by the victim, provided further that in such case the provisions of paragraph (b) of this subdivision shall not apply.

(b) The court in its discretion may impose restitution or reparation in excess of the amounts specified in paragraph (a) of this subdivision, provided however that the amount in excess must be limited to the return of the victim's property, including money, or the equivalent value thereof; and reimbursement for medical expenses actually incurred by the victim prior to sentencing as a result of the offense committed by the defendant.

6. Any payment made as restitution or reparation pursuant to this section shall not limit, preclude or impair any liability for damages in any civil action or proceeding for an amount in excess of such payment.

7. In the event that the court requires restitution or reparation to be made to a person and that person dies prior to the completion of said restitution or reparation, the remaining payments shall be made to the estate of the deceased.

8. The court shall in all cases where restitution or reparation is imposed direct as part of the disposition that the defendant pay a designated surcharge of five percent of the entire amount of a restitution or reparation payment to the official or organization designated pursuant to subdivision eight of section 420.10 of the criminal procedure law. The designated surcharge shall not exceed five percent of the amount actually collected. Upon the filing of an affidavit of the official or organization designated pursuant to subdivision eight of section 420.10 of the criminal procedure law demonstrating that the actual cost of the collection and administration of restitution or reparation in a particular case exceeds five percent of the entire amount of the payment or the amount actually collected, as the case may be, the court shall direct that the defendant pay an additional surcharge of not more than five percent of the entire amount of a restitution or reparation payment to such official or organization, or the actual cost of collection or administration, whichever is less unless, upon application of the defendant, the court determines that imposition of such additional surcharge would cause undue hardship to the defendant, or any other person who is financially supported by the defendant, or would otherwise not be in the interest of justice. Such additional surcharge, when added to the initial five percent surcharge, shall not exceed ten percent of the amount actually collected.

9. If the offense of which a person is convicted is a class A, class B, class C, or class D felony involving the sale of a controlled substance, as defined in article two hundred twenty of this chapter, and no other victim who is a person is seeking restitution in the case, the term "victim" as used in this section, in addition to its ordinary meaning, shall mean any law enforcement agency of the state of New York or of any subdivision thereof which has expended funds in the purchase of any controlled substance from such person or his agent as part of the investigation leading to such conviction. Any restitution which may be required to be made to a law enforcement agency pursuant to this section shall be limited to the amount of funds expended in the actual purchase of such controlled substance by such law enforcement agency, less the amount of any funds which have been or will be recovered from any other source, and shall not include a designated surcharge pursuant to subdivision eight of this section. Any law enforcement agency seeking restitution pursuant to this section shall file with the court and the district attorney an affidavit stating that funds expended in the actual purchase of a controlled

substance for which restitution is being sought have not been and will not be recovered from any other source or in any other civil or criminal proceeding. Any law enforcement agency receiving restitution pursuant to this section shall promptly transmit to the commissioner of the division of criminal justice services a report stating the dollar amount of the restitution received.

10. If the offense of which a person is convicted is defined in section 150.10, 150.15 or 150.20 of this chapter, and no other victim who is a person is seeking restitution in the case, the term "victim" as used in this section, in addition to its ordinary meaning, shall mean any municipality which has expended funds or will expend funds for the purpose of restoration, rehabilitation or clean-up of the site of the arson. Any restitution which may be required to be made to a municipality pursuant to this section shall be limited to the amount of funds reasonably expended or to be expended for the purpose of restoration, rehabilitation or clean-up of the site of the arson, less the amount of any funds which have been or will be recovered from any other source, and shall not include a designated surcharge pursuant to subdivision eight of this section. Any municipality seeking restitution pursuant to this section shall file with the court, district attorney and defense counsel an affidavit stating that the funds reasonably expended or to be expended for which restitution is being sought have not been and will not be recovered from any other source or in any other civil or criminal proceeding.

11. Notwithstanding any other provision of this section to the contrary, when a person is convicted of harming an animal trained to aid a person with a disability in the second degree as defined in section 195.11 of this chapter, or harming an animal trained to aid a person with a disability in the first degree as defined in section 195.12 of this chapter, the court, in addition to any other sentence, shall order the payment of restitution to the person with a disability who was aided by such animal.

12. If the offense of which a person is convicted is defined in section 155.25, 155.30, 155.35, 155.40 or 155.42 of this chapter, and the property taken is timber, the court may upon conviction, in addition to any other sentence, direct the defendant to pay the rightful owner of such timber an amount equal to treble the stumpage value of the timber stolen as defined in section 71-0703 of the environmental conservation law and for any permanent and substantial damage caused to the land or the improvements thereon as a result of such violation. Such reparations shall be of such kind, nature and extent as will reasonably restore the lands affected by the violation to their condition immediately before the violation and may be made by physical restoration of such lands and/or by the assessment of monetary payment to make such restoration.

13. If the offense of which a person is convicted is defined in section 240.50, subdivision one or two of section 240.55, section 240.60, section 240.61, section 240.62 or section 240.63 of this chapter, and no other victim who is a person is seeking restitution in the case, the term "victim" as used in this subdivision, in addition to the ordinary meaning, shall mean any school, municipality, fire district, fire company, fire corporation, ambulance association, ambulance corporation, or other legal or public entity engaged in providing emergency services which has expended funds for the purpose of responding to a false report of an incident or false bomb as defined in section 240.50, subdivision one or two of section 240.55, section 240.60, section 240.61, section 240.62, or section 240.63 of this chapter. Any restitution which may be required to be made to a victim pursuant to this subdivision shall be limited to the amount of funds reasonably expended for the purpose of responding to such false report of incident or false bomb, less the amount of any funds which have been or will be recovered from any other source and

shall not include a designated surcharge pursuant to subdivision eight of this section. Any victim seeking restitution pursuant to this subdivision shall file with the court, district attorney and defense counsel an affidavit stating that the funds reasonably expended for which restitution is being sought have not been and will not be recovered from any other source or in any other civil or criminal proceeding, except as provided for by section 3-112 of the general obligations law.

**§ 110.00 Attempt to commit a crime.**

A person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime.

**§ 135.35 Labor trafficking.**

A person is guilty of labor trafficking if he or she compels or induces another to engage in labor or recruits, entices, harbors, or transports such other person by means of intentionally:

1. unlawfully providing a controlled substance to such person with intent to impair said person's judgment;
2. requiring that the labor be performed to retire, repay, or service a real or purported debt that the actor has caused by a systematic ongoing course of conduct with intent to defraud such person;
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. using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in or continue to engage in labor activity by means of instilling a fear in such person 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 such 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.

Labor trafficking is a class D felony.

**§ 215.15 Intimidating a victim or witness in the third degree.**

A person is guilty of intimidating a victim or witness in the third degree when, knowing that another person possesses information relating to a criminal transaction and other than in the course of that criminal transaction or immediate flight therefrom, he:

1. Wrongfully compels or attempts to compel such other person to refrain from communicating such information to any court, grand jury, prosecutor, police officer or peace officer by means of instilling in him a fear that the actor will cause physical injury to such other person or another person; or

2. Intentionally damages the property of such other person or another person for the purpose of compelling such other person or another person to refrain from communicating, or on account of such other person or another person having communicated, information relating to that criminal transaction to any court, grand jury, prosecutor, police officer or peace officer.

Intimidating a victim or witness in the third degree is a class E felony.

**§ 215.16 Intimidating a victim or witness in the second degree.**

A person is guilty of intimidating a victim or witness in the second degree when, other than in the course of that criminal transaction or immediate flight therefrom, he:

1. Intentionally causes physical injury to another person for the purpose of obstructing, delaying, preventing or impeding the communication by such other person or another person of information relating to a criminal transaction to any court, grand jury, prosecutor, police officer or peace officer or for the purpose of compelling such other person or another person to swear falsely; or

2. Intentionally causes physical injury to another person on account of such other person or another person having communicated information relating to a criminal transaction to any court, grand jury, prosecutor, police officer or peace officer; or

3. Recklessly causes physical injury to another person by intentionally damaging the property of such other person or another person, for the purpose of obstructing, delaying, preventing or impeding such other person or another person from communicating, or on account of such other person or another person having communicated, information relating to a criminal transaction to any court, grand jury, prosecutor, police officer or peace officer.

Intimidating a victim or witness in the second degree is a class D felony.

**§ 215.17 Intimidating a victim or witness in the first degree.**

A person is guilty of intimidating a victim or witness in the first degree when, other than in the course of that criminal transaction or immediate flight therefrom, he:

1. Intentionally causes serious physical injury to another person for the purpose of obstructing, delaying, preventing or impeding the communication by such other person or another person of information relating to a criminal transaction to any court, grand jury,

prosecutor, police officer or peace officer or for the purpose of compelling such other person or another person to swear falsely; or

2. Intentionally causes serious physical injury to another person on account of such other person or another person having communicated information relating to a criminal transaction to any court, grand jury, prosecutor, police officer or peace officer.

Intimidating a victim or witness in the first degree is a class B felony.

### **§ 230.15 Promoting prostitution; definitions of terms.**

The following definitions are applicable to this article:

1. "Advance prostitution." A person "advances prostitution" when, acting other than as a prostitute or as a patron thereof, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.

2. "Profit from prostitution." A person "profits from prostitution" when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity.

### **§ 230.25 Promoting prostitution in the third degree.**

A person is guilty of promoting prostitution in the third degree when he knowingly:

1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes, or a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a prostitute, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction; or

2. Advances or profits from prostitution of a person less than nineteen years old.

Promoting prostitution in the third degree is a class D felony.

### **§ 230.30 Promoting prostitution in the second degree.**

A person is guilty of promoting prostitution in the second degree when he knowingly:

1. Advances prostitution by compelling a person by force or intimidation to engage in prostitution, or profits from such coercive conduct by another; or

2. Advances or profits from prostitution of a person less than sixteen years old.

Promoting prostitution in the second degree is a class C felony.

**§ 230.32 Promoting prostitution in the first degree.**

A person is guilty of promoting prostitution in the first degree when he knowingly advances or profits from prostitution of a person less than eleven years old.

Promoting prostitution in the first degree is a class B felony.

**§ 230.33 Compelling prostitution.**

A person is guilty of compelling prostitution when, being twenty-one years of age or older, he or she knowingly advances prostitution by compelling a person less than sixteen years old, by force or intimidation, to engage in prostitution.

Compelling prostitution is a class B felony

**§ 230.34 Sex trafficking.**

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 flunitrazepan, 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.

Sex trafficking is a class B felony.

### **§ 260.00 Abandonment of a child.**

1. A person is guilty of abandonment of a child when, being a parent, guardian or other person legally charged with the care or custody of a child less than fourteen years old, he or she deserts such child in any place with intent to wholly abandon such child.

2. A person is not guilty of the provisions of this section when he or she engages in the conduct described in subdivision one of this section:

(a) with the intent that the child be safe from physical injury and cared for in an appropriate manner; (b) the child is left with an appropriate person, or in a suitable location and the person who leaves the child promptly notifies an appropriate person of the child's location; and (c) the child is not more than thirty days old.

Abandonment of a child is a class E felony.

## **Article 263. Sexual Performance by a Child.**

### **§ 263.00 Definitions.**

As used in this article the following definitions shall apply:

1. "Sexual performance" means any performance or part thereof which, for purposes of section 263.16 of this article, includes sexual conduct by a child less than sixteen years of age or, for purposes of section 263.05 or 263.15 of this article, includes sexual conduct by a child less than seventeen years of age.

2. "Obscene sexual performance" means any performance which, for purposes of section 263.11 of this article, includes sexual conduct by a child less than sixteen years of age or, for purposes of section 263.10 of his article, includes sexual conduct by a child less than seventeen years of age, in any material which is obscene, as such term is defined in section 235.00 of this chapter.

3. "Sexual conduct" means actual or simulated sexual intercourse, oral sexual conduct, anal sexual conduct, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals.

4. "Performance" means any play, motion picture, photograph or dance. Performance also means any other visual representation exhibited before an audience.

5. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.



6. "Simulated" means the explicit depiction of any of the conduct set forth in subdivision three of this section which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals or buttocks.

7. "Oral sexual conduct" and "anal sexual conduct" mean the conduct defined by subdivision two of section 130.00 of this chapter.

8. "Sado-masochistic abuse" means the conduct defined in subdivision five of section 235.20 of this chapter.

#### **§ 263.05 Use of a child in a sexual performance.**

A person is guilty of the use of a child in a sexual performance if knowing the character and content thereof he employs, authorizes or induces a child less than seventeen years of age to engage in a sexual performance or being a parent, legal guardian or custodian of such child, he consents to the participation by such child in a sexual performance.

Use of a child in a sexual performance is a class C felony.

#### **§ 263.15 Promoting a sexual performance by a child.**

A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he produces, directs or promotes any performance which includes sexual conduct by a child less than seventeen years of age.

Promoting a sexual performance by a child is a class D felony.

#### **§ 263.16 Possessing a sexual performance by a child.**

A person is guilty of possessing a sexual performance by a child when, knowing the character and content thereof, he knowingly has in his possession or control any performance which includes sexual conduct by a child less than sixteen years of age.

Possessing a sexual performance by a child is a class E felony.

#### **§ 263.20 Sexual performance by a child; affirmative defenses.**

1. Under this article, it shall be an affirmative defense that the defendant in good faith reasonably believed the person appearing in the performance was, for purposes of section 263.11 or 263.16 of this article, sixteen years of age or over or, for purposes of section 263.05, 263.10 or 263.15 of this article, seventeen years of age or over.

#### **§ 263.25 Proof of age of child.**

Whenever it becomes necessary for the purposes of this article to determine whether a child who participated in a sexual performance was under an age specified in this article, the court or jury may make such determination by any of the following: personal inspection of the child; inspection of a photograph or motion picture which constituted the sexual performance;

oral testimony by a witness to the sexual performance as to the age of the child based upon the child's appearance; expert medical testimony based upon the appearance of the child in the sexual performance; and any other method authorized by any applicable provision of law or by the rules of evidence at common law.

**§ 263.30 Facilitating a sexual performance by a child with a controlled substance or alcohol.**

1. A person is guilty of facilitating a sexual performance by a child with a controlled substance or alcohol when he or she:

(a) (i) knowingly and unlawfully possesses a controlled substance as defined in section thirty-three hundred six of the public health law or any controlled substance that requires a prescription to obtain, (ii) administers that substance to a person under the age of seventeen without such person's consent, (iii) intends to commit against such person conduct constituting a felony as defined in section 263.05, 263.10, or 263.15 of this article, and (iv) does so commit or attempt to commit such conduct against such person; or

(b) (i) administers alcohol to a person under the age of seventeen without such person's consent, (ii) intends to commit against such person conduct constituting a felony defined in section 263.05, 263.10, or 263.15 of this article, and (iii) does so commit or attempt to commit such conduct against such person.

2. For the purposes of this section, "controlled substance" means any substance or preparation, compound, mixture, salt, or isomer of any substance defined in section thirty-three hundred six of the public health law.

Facilitating a sexual performance by a child with a controlled substance or alcohol is a class B felony.

**§ 410.00 Seizure and forfeiture of equipment used in photographing, filming, producing, manufacturing, projecting or distributing pornographic still or motion pictures.**

1. Any peace officer, acting pursuant to his special duties, or police officer of this state may seize any equipment used in the photographing, filming, printing, producing, manufacturing or projecting of pornographic still or motion pictures and may seize any vehicle or other means of transportation, other than a vehicle or other means of transportation used by any person as a common carrier in the transaction of business as such common carrier, used in the distribution of such obscene prints and articles and such equipment or vehicle or other means of transportation shall be subject to forfeiture as hereinafter in this section provided.

2. The seized property shall be delivered by the police officer or peace officer having made the seizure to the custody of the district attorney of the county wherein the seizure was made, except that in the cities of New York, Yonkers and Buffalo, the seized property shall be delivered to the custody of the police department of such cities, together with a report of all the facts and circumstances of the seizure.

3. It shall be the duty of the district attorney of the county wherein the seizure was made, if elsewhere than in the cities of New York or Buffalo, and where the seizure is made in either such city it shall be the duty of the corporation counsel of the city, to inquire into the facts of the seizure so reported to him and if it appears probable that a forfeiture has been incurred, for the determination of which the institution of proceedings in the supreme court is necessary, to cause

the proper proceedings to be commenced and prosecuted, at any time after thirty days from the date of seizure, to declare such forfeiture, unless, upon inquiry and examination such district attorney or corporation counsel decides that such proceedings can not probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case, the district attorney or corporation counsel shall cause such seized property to be returned to the owner thereof.

4. Notice of the institution of the forfeiture proceeding shall be served either (a) personally on the owners of the seized property or (b) by registered mail to the owners' last known address and by publication of the notice once a week for two successive weeks in a newspaper published or circulated in the county wherein the seizure was made.

5. Forfeiture shall not be adjudged where the owners established by preponderance of the evidence that (a) the use of such seized property was not intentional on the part of any owner, or (b) said seized property was used by any person other than an owner thereof, while such seized property was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States, or of any state.

6. The district attorney or the police department having custody of the seized property, after such judicial determination of forfeiture, shall, by a public notice of at least five days, sell such forfeited property at public sale. The net proceeds of any such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the county wherein the seizure was made except that the net proceeds of the sale of property seized in the cities of New York and Buffalo shall be paid into the respective general funds of such cities.

7. Whenever any person interested in any property which is seized and declared forfeited under the provisions of this section files with a justice of the supreme court a petition for the recovery of such forfeited property, the justice of the supreme court may restore said forfeited property upon such terms and conditions as he deems reasonable and just, if the petitioner establishes either of the affirmative defenses set forth in subdivision five of this section and that the petitioner was without personal or actual knowledge of the forfeiture proceeding. If the petition be filed after the sale of the forfeited property, any judgment in favor of the petitioner shall be limited to the net proceeds of such sale, after deduction of the lawful expenses and costs incurred by the district attorney, police department or corporation counsel.

8. No suit or action under this section for wrongful seizure shall be instituted unless such suit or action is commenced within two years after the time when the property was seized.

9. For the purposes of this section only, a pornographic still or motion picture, is defined as a still or motion picture showing acts of sexual intercourse or acts of sexual perversion. This section shall not be construed as applying to bona fide medical photographs or films.

## **PUBLIC HEALTH LAW**

### **§ 2320. Houses of prostitution; equipment; nuisance.**

1. Whoever shall erect, establish, continue, maintain, use, own, or lease any building, erection, or place used for the purpose of lewdness, assignation, or prostitution is guilty of maintaining a nuisance.

2. The building, erection, or place, or the ground itself, in or upon which any lewdness, assignation, or prostitution is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining such nuisance, are hereby declared to be a nuisance and shall be enjoined and abated as hereafter provided.

**§ 2329. Houses of prostitution; injunction; order of abatement; sale and removal of property; fees.**

1. If the existence of the nuisance be admitted or established in an action as provided in this article, or in a criminal proceeding in any court, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance and shall direct the sale of such in the manner provided for the sale of chattels under execution, and shall direct the effectual closing of the building, erection or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released as hereinafter provided. Such closing, however, shall not be deemed, in any manner or form, to be an assumption of the supervision and care of the building, erection or place by any officer authorized to act pursuant to this section, if provision is made in the order of abatement that the owner or lessor of the building, erection or place shall be permitted access to supervise and maintain the building, erection or place. In cities having a population of one million or more, the order of abatement which shall be entered pursuant to this section may, in addition to or in lieu of the provisions set forth in this subdivision, direct the commissioner of the department of buildings of such city, or such other competent city official as may be appropriate, to issue an order to vacate for the purpose of assisting in the effectual closing of the building pursuant to this section. The issuance of such order to vacate and the closing of the building, erection or place in accordance therewith shall not be deemed, in any manner or form, an assumption of the supervision and care of the building, erection or place by any city authorized to act pursuant to this subdivision, if provision is made in the order of abatement that the owner or lessor of the building, erection or place shall be permitted access to supervise and maintain the building, erection or place.

2. For removing and selling the movable property, the officer shall be entitled to a charge and receive the same fees as he would for levying upon and selling like property, on execution and for closing the premises and keeping it closed a reasonable sum shall be allowed by the court.

**§ 4307. Prohibition of sales and purchases of human organs.**

1. It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer for valuable consideration any human organ for use in human transplantation. The term human organ means the human kidney, liver, heart, lung, bone marrow, and any other human organ or tissue as may be designated by the commissioner but shall exclude blood. The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human

organ in connection with the donation of the organ. Any person who violates this section shall be guilty of a class E felony.

2. For the purposes of this section, the donation of a kidney or other organ from a live donor for transplantation into an individual conditioned upon the donation and transplantation of a similar organ into an individual specified by the donor shall not, in and of itself, be considered to be "valuable consideration" provided that such donation and transplant are performed in accordance with other applicable laws, rules and regulations, including any specific rules and regulations the commissioner may adopt, with the advice and consent of the transplant council, with respect to such conditional donations. No individual may make a donation conditioned upon the race, color, creed, national origin or religious affiliation of the recipient, and no hospital, organ procurement organization, tissue bank, physician or other professional may participate in the performance of any procedure or otherwise facilitate the donation and/or transfer of organs and/or tissue conditioned on such factors.

## **SOCIAL SERVICES LAW**

### **§ 374(6). Authority to place out or board out children**

....  
 6. . . . [N]o person may or shall request, accept or receive any compensation or thing of value, directly or indirectly, in connection with the placing out or adoption of a child . . . ; and no person may or shall pay or give to any person or to any agency, association, corporation, institution, society or organization, except such an authorized agency, any compensation or thing of value in connection with the placing out or adoption of a child . . .

### **§ 389. Penalty for violations**

2. (a) Any person, corporation, society, institution or other organization who or which violates the provisions of subdivision six of section three hundred seventy-four of this chapter shall be guilty of a misdemeanor, for the first such offense. Any person, corporation, society, institution or other organization who or which violates the provisions of subdivision six of section three hundred seventy-four of this chapter, after having been once convicted of violating such provisions, shall be guilty of a felony.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, any person, corporation, society, institution or other organization who or which violates subdivision six of section three hundred seventy-four of this title, where such unlawful compensation or thing of value accepted or received exceeds five thousand dollars in value, shall be guilty of a class E felony as defined in the penal law. Any person, corporation, society, institution, or other organization who or which violates subdivision six of section three hundred seventy-four of this title, where such unlawful compensation or thing of value accepted or received exceeds five thousand dollars in

value, after having been previously convicted of violating subdivision six of section three hundred seventy-four of this title, shall be guilty of a class D felony as defined in the penal law.

## **Title 8-A, SAFE HARBOUR FOR EXPLOITED CHILDREN ACT**

### **§ 447-a. Definitions.**

As used in this title:

1. The term "sexually exploited child" means any person under the age of eighteen who has been subject to sexual exploitation because he or she:

(a) is the victim of the crime of sex trafficking as defined in section 230.34 of the penal law;

(b) is an abused child as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act;

(c) engages in any act as defined in section 230.00 or 240.37 of the penal law;

(d) is a victim of the crime of compelling prostitution as defined in section 230.33 of the penal law;

(e) engages in acts or conduct described in article two hundred sixty-three of the penal law.

2. The term "short-term safe house" means a residential facility operated by an authorized agency as defined in subdivision ten of section three hundred seventy-one of this article including a residential facility operating as part of an approved runaway program as defined in subdivision four of section five hundred thirty-two-a of the executive law or a not-for-profit agency with experience in providing services to sexually exploited youth and approved in accordance with the regulations of the office of children and family services that provides emergency shelter, services and care to sexually exploited children including food, shelter, clothing, medical care, counseling and appropriate crisis intervention services at the time they are taken into custody by law enforcement and for the duration of any legal proceeding or proceedings in which they are either the complaining witness or the subject child. The short-term safe house shall also be available at the point in time that a child under the age of eighteen has first come into the custody of juvenile detention officials, law enforcement, local jails or the local commissioner of social services or is residing with the local runaway and homeless youth authority.

3. The term "advocate" means an employee of the short-term safe house defined in subdivision two of this section that has been trained to work with and advocate for the needs of sexually exploited children. The advocate shall accompany the child to all court appearances and will serve as a liaison between the short-term safe house and the court.

4. The term "safe house" means a residential facility operated by an authorized agency as defined in subdivision ten of section three hundred seventy-one of this article including a residential facility operating as part of an approved runaway program as defined in subdivision four of section five hundred thirty-two-a of the executive law or a not-for-profit agency with experience in providing services to sexually exploited youth and approved in accordance with the regulations of the office of children and family services that provides shelter for sexually exploited children. A safe house created under this article shall provide or assist in

securing necessary services for such sexually exploited children either through direct provision of services, or through written agreements with other community and public agencies for the provision of services including but not limited to housing, assessment, case management, medical care, legal, mental health and substance and alcohol abuse services. Where appropriate such safe house in accordance with a service plan for such sexually exploited child may also provide counseling and therapeutic services, educational services including life skills services and planning services to successfully transition residents back to the community. The safe house shall be available as a final disposition pursuant to section seven hundred fifty-six of the family court act to any sexually exploited child who is in need of long term housing. Nothing in the provisions of this article shall prevent a child who is the subject of a proceeding which has not reached final disposition from residing at the safe house for the duration of that proceeding nor shall it prevent any sexually exploited child who is not the subject of a proceeding from residing at the safe house.

5. The term "community-based program" means a program operated by a not-for-profit organization that provides services such as street outreach, voluntary drop-in services, peer counseling, individual counseling, family-therapy and referrals for services such as educational and vocational training and health care. Any community-based program funded under this article shall also work with the safe house created under this article to provide transitional services to children returning to the community.

#### **§ 447-b. Services for exploited children.**

1. Notwithstanding any inconsistent provision of law, pursuant to regulations of the office of children and family services, every local social services district shall as a component of the district's multi-year consolidated services child welfare services plan address the child welfare services needs of sexually exploited children and to the extent that funds are available ensure that preventative services including a short-term safe house or another short-term safe placement such as an approved runaway and homeless youth program, approved respite or crisis program providing crisis intervention or respite services or community-based program to serve sexually exploited children is available to children residing in such district. Nothing in this section shall prohibit a local social services district from utilizing existing respite or crisis intervention services already operated by such social services district or homeless youth programs or services for victims of human trafficking pursuant to article ten-D of this chapter so long as the staff members have received appropriate training approved by the office of children and family services regarding sexually exploited children and the existing programs and facilities provide a safe, secure and appropriate environment for sexually exploited children. Crisis intervention services, short-term safe house care and community-based programming may, where appropriate, be provided by the same not-for-profit agency. Local social services districts may work cooperatively to provide such short-term safe house or other short-term safe placement, services and programming and access to such placement, services and programming may be provided on a regional basis, provided, however, that every local social services district shall to the extent that funds are available ensure that such placement, services and programs shall be readily accessible to sexually exploited children residing within the district.

2. All of the services created under this article may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, as a

condition of an adjournment in contemplation of dismissal issued in criminal court, through the diversion services created under section seven hundred thirty-five of the family court act, through a proceeding under article three of the family court act, a proceeding under article ten of the family court act or through a referral from a local social services agency.

3. The capacity of the crisis intervention services and community-based programs in subdivision one of this section shall be based on the number of sexually exploited children in each district who are in need of such services. A determination of such need shall be made annually in every social services district by the local commissioner of social services and be included in the integrated county plan. Such determination shall be made in consultation with local law enforcement, runaway and homeless youth program providers, local probation departments, local social services commissioners, the runaway and homeless youth coordinator for the local social services district, local law guardians, presentment agencies, public defenders and district attorney's offices and child advocates and services providers who work directly with sexually exploited youth.

4. In determining the need for and capacity of the services created under this section, each local social services district shall recognize that sexually exploited youth have separate and distinct service needs according to gender and, where a local social services district determines that the need exists, to the extent that funds are available, appropriate programming shall be made available.

5. The office of children and family services shall contract with an appropriate not-for-profit agency with experience working with sexually exploited children to operate at least one safe house in a geographically appropriate area of the state which shall provide safe and secure long term housing and specialized services for sexually exploited children throughout the state. The appropriateness of the geographic location shall be determined taking into account the areas of the state with high numbers of sexually exploited children and the need for sexually exploited children to find shelter and long term placement in a region that cannot be readily accessed by the perpetrators of sexual exploitation. The need for more than one safe house shall be determined by the office of children and family services based on the numbers and geographical location of sexually exploited children within the state.

6. The local social services commissioner may, to the extent that funds are available, in conjunction with local law enforcement officials, contract with an appropriate not-for-profit agency with experience working with sexually exploited children to train law enforcement officials who are likely to encounter sexually exploited children in the course of their law enforcement duties on the provisions of this section and how to identify and obtain appropriate services for sexually exploited children. Local social services districts may work cooperatively to provide such training and such training may be provided on a regional basis. The office of children and family services shall assist local social services districts in obtaining any available funds for the purposes of conducting law enforcement training from the federal justice department and/or the office of juvenile justice and delinquency prevention.



## **Article 10-D. Services for Victims of Human Trafficking**

[Note: this Article will be repealed on September 1, 2012]

### **§ 483-aa. Definitions.**

The following definitions shall apply to this article:

(a) "Human trafficking victim" means a person who is a victim of sex trafficking as defined in section 230.34 of the penal law or a victim of labor trafficking as defined in section 135.35 of the penal law.

(b) "Pre-certified victim of human trafficking" is a person who has a pending application for federal certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection) but has not yet obtained such certification, or a person who has reported a crime to law enforcement and it reasonably appears to law enforcement that the person is such a victim.

### **§ 483-bb. Services for victims of human trafficking.**

(a) The office of temporary and disability assistance may coordinate with and assist law enforcement agencies and district attorney's offices to access appropriate services for human trafficking victims.

(b) In providing such assistance, the office of temporary and disability assistance may enter into contracts with non-government organizations for providing services to pre-certified victims of human trafficking as defined in subdivision (b) of section four hundred eighty-three-aa of this article, insofar as funds are available for that purpose. Such services may include, but are not limited to, case management, emergency temporary housing, health care, mental health counseling, drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training and placement assistance, post-employment services for job retention, and services to assist the individual and any of his or her family members to establish a permanent residence in New York state or the United States. Nothing in this section shall preclude the office of temporary and disability assistance, or any local social services district, from providing human trafficking victims who are United States citizens or human trafficking victims who meet the criteria pursuant to section one hundred twenty-two of this chapter with any benefits or services for which they otherwise may be eligible.

### **§ 483-cc. Confirmation as a victim of human trafficking.**

(a) As soon as practicable after a first encounter with a person who reasonably appears to a law enforcement agency or a district attorney's office to be a human trafficking victim, that agency or office shall notify the office of temporary and disability assistance and the division of criminal justice services that such person may be eligible for services under this article.

(b) Upon receipt of such a notification, the division of criminal justice services, in consultation with the office of temporary and disability assistance and the referring agency or

office, shall make a preliminary assessment of whether such victim or possible victim appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection) or appears to be otherwise eligible for any federal, state or local benefits and services. If it is determined that the victim appears to meet such criteria, the office of temporary and disability assistance shall report the finding to the victim, and to the referring law enforcement agency or district attorney's office, and may assist that agency or office in having such victim receive services from a case management provider who may be under contract with the office of temporary and disability assistance, or from any other available source. If the victim or possible victim is under the age of eighteen, the office of temporary and disability assistance also shall notify the local department of social services in the county where the child was found.

**PROPOSED LEGISLATION: A9804, Trafficking Victims Protection and Justice Act, as introduced in the New York State Assembly on April 10, 2012.**

Note: Language in capitals is being added; language in brackets is being repealed]

**Section 1.** Short title. This act shall be known and may be cited as the "trafficking victims protection and justice act".

**Section 2.** Section 60.13 of the penal law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

§60.13 Authorized dispositions; felony sex offenses.

When a person is to be sentenced upon a conviction for any felony defined in article one hundred thirty of this chapter, including a sexually motivated felony, or patronizing a [prostitute] PERSON FOR PROSTITUTION in the first degree as defined in section 230.06 of this chapter, AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE THIRD DEGREE AS DEFINED IN SECTION 230.11 OF THIS CHAPTER, AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE SECOND DEGREE AS DEFINED IN SECTION 230.12 OF THIS CHAPTER, AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 230.13 OF THIS CHAPTER, incest in the second degree as defined in section 255.26 of this chapter, or incest in the first degree as defined in section 255.27 of this chapter, or a felony attempt or conspiracy to commit any of these crimes, the court must sentence the defendant in accordance with the provisions of section 70.80 of this title.

**Section 3.** Paragraph (a) of subdivision 1 of section 70.02 of the penal law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10,

kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, SEX TRAFFICKING AS DEFINED IN SECTION 230.34, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

**Section 4.** Paragraph (a) of subdivision 1 of section 70.80 of the penal law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

(a) For the purposes of this section, a "felony sex offense" means a conviction of any felony defined in article one hundred thirty of this chapter, including a sexually motivated felony, or patronizing a [prostitute] PERSON FOR PROSTITUTION in the first degree as defined in section 230.06 of this chapter, PATRONIZING A PERSON FOR PROSTITUTION IN THE SECOND DEGREE AS DEFINED IN SECTION 230.05 OF THIS CHAPTER, AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE THIRD DEGREE AS DEFINED IN SECTION 230.11 OF THIS CHAPTER, AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE SECOND DEGREE AS DEFINED IN SECTION 230.12 OF THIS CHAPTER, AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 230.13 OF THIS CHAPTER, incest in the second degree as defined in section 255.26 of this chapter, or incest in the first degree as defined in section 255.27 of this chapter, or a felony attempt or conspiracy to commit any of the above.

**Section 5.** The closing paragraph of section 135.35 of the penal law, as added by chapter 74 of the laws of 2007, is amended to read as follows:

Labor trafficking is a class [D] B felony.

**Section 6.** The penal law is amended by adding a new section 230.01 to read as follows:  
§ 230.01 PROSTITUTION; DEFENSE.

IN ANY PROSECUTION UNDER SECTION 230.00 OR SUBDIVISION THREE OF SECTION 240.37 OF THIS PART, IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT'S PARTICIPATION IN THE OFFENSE WAS A RESULT OF HAVING BEEN A

VICTIM OF SEX TRAFFICKING UNDER SECTION 230.34 OF THIS ARTICLE OR A VICTIM OF TRAFFICKING IN PERSONS UNDER THE TRAFFICKING VICTIMS PROTECTION ACT (UNITED STATES CODE, TITLE 22, CHAPTER 78).

**Section 7.** The section heading and subdivision 1 of section 230.02 of the penal law, as amended by chapter 627 of the laws of 1978, are amended to read as follows:

Patronizing a [prostitute] PERSON FOR PROSTITUTION; definitions.

1. A person patronizes a [prostitute] PERSON FOR PROSTITUTION when:

(a) Pursuant to a prior understanding, he OR SHE pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him OR HER; or

(b) He OR SHE pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person or a third person will engage in sexual conduct with him OR HER; or

(c) He OR SHE solicits or requests another person to engage in sexual conduct with him OR HER in return for a fee.

**Section 8.** Subdivision 2 of section 230.03 of the penal law, as added by chapter 191 of the laws of 2011, is amended to read as follows:

2. For the purposes of this section, SECTION 230.08 and section 230.19 of this article, "school zone" means (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or

(b) any public sidewalk, street, parking lot, park, playground or private land, located immediately adjacent to the boundary line of such school.

**Section 9.** Section 230.07 of the penal law is REPEALED and a new section 230.08 is added to read as follows:

§ 230.08 PATRONIZING A PERSON FOR PROSTITUTION IN A SCHOOL ZONE.

1. A PERSON IS GUILTY OF PATRONIZING A PERSON FOR PROSTITUTION IN A SCHOOL ZONE WHEN HE OR SHE COMMITS THE CRIME OF PATRONIZING A PERSON FOR PROSTITUTION IN VIOLATION OF SECTION 230.04, 230.05, OR 230.06 OF THIS ARTICLE IN A SCHOOL ZONE DURING THE HOURS THAT SCHOOL IS IN SESSION.

2. FOR PURPOSES OF THIS SECTION, "SCHOOL ZONE" SHALL MEAN "SCHOOL ZONE" AS DEFINED IN SUBDIVISION TWO OF SECTION 230.03 OF THIS ARTICLE. PATRONIZING A PERSON FOR PROSTITUTION IN A SCHOOL ZONE IS A CLASS E FELONY.

**Section 10.** Section 230.04 of the penal law, as amended by chapter 74 of the laws of 2007, is amended to read as follows:

§ 230.04 Patronizing a [prostitute] PERSON FOR PROSTITUTION in the third degree.

A person is guilty of patronizing a [prostitute] PERSON FOR PROSTITUTION in the third degree when he or she patronizes a [prostitute] PERSON FOR PROSTITUTION.

Patronizing a [prostitute] PERSON FOR PROSTITUTION in the third degree is a class A misdemeanor.

**Section 11.** Section 230.05 of the penal law, as added by chapter 627 of the laws of 1978, is amended to read as follows:

§ 230.05 Patronizing a [prostitute] PERSON FOR PROSTITUTION in the second degree.

A person is guilty of patronizing a [prostitute] PERSON FOR PROSTITUTION in the second degree when, being [over] eighteen years [of age] OLD OR MORE, he OR SHE patronizes a [prostitute] PERSON FOR PROSTITUTION and the person patronized is less than [fourteen] FIFTEEN years [of age] OLD.

Patronizing a [prostitute] PERSON FOR PROSTITUTION in the second degree is a class E felony.

**Section 12.** Section 230.06 of the penal law, as added by chapter 627 of the laws of 1978, is amended to read as follows:

§ 230.06 Patronizing a [prostitute] PERSON FOR PROSTITUTION in the first degree.

A person is guilty of patronizing a [prostitute] PERSON FOR PROSTITUTION in the first degree when [he]:

1. HE OR SHE patronizes a [prostitute] PERSON FOR PROSTITUTION and the person patronized is less than eleven years [of age] OLD; OR
2. BEING EIGHTEEN YEARS OLD OR MORE, HE OR SHE PATRONIZES A PERSON FOR PROSTITUTION AND THE PERSON PATRONIZED IS LESS THAN THIRTEEN YEARS OLD.

Patronizing a [prostitute] PERSON FOR PROSTITUTION in the first degree is a class D felony.

**Section 13.** The section heading and the opening paragraph of section 230.10 of the penal law are amended to read as follows:

Prostitution and patronizing a [prostitute] PERSON FOR PROSTITUTION; no defense.

In any prosecution for prostitution or patronizing a [prostitute] PERSON FOR PROSTITUTION, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated or solicited is immaterial, and it is no defense that:

**Section 14.** The penal law is amended by adding three new sections 230.11, 230.12 and 230.13 to read as follows:

§ 230.11 AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE THIRD DEGREE.

A PERSON IS GUILTY OF AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE THIRD DEGREE WHEN, BEING TWENTY-ONE YEARS OLD OR MORE, HE OR SHE PATRONIZES A PERSON FOR PROSTITUTION AND THE PERSON PATRONIZED IS LESS THAN EIGHTEEN YEARS OLD AND THE PERSON GUILTY OF PATRONIZING ENGAGES IN SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT, ANAL SEXUAL CONDUCT, OR AGGRAVATED SEXUAL CONDUCT. AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE THIRD DEGREE IS A CLASS E FELONY.

§ 230.12 AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE SECOND DEGREE.

A PERSON IS GUILTY OF AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE SECOND DEGREE WHEN, BEING EIGHTEEN YEARS OLD OR MORE, HE OR SHE PATRONIZES A PERSON FOR PROSTITUTION AND THE PERSON PATRONIZED IS LESS THAN FIFTEEN YEARS OLD AND THE PERSON GUILTY OF PATRONIZING ENGAGES IN SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT, ANAL SEXUAL CONDUCT, OR AGGRAVATED SEXUAL CONDUCT. AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE SECOND DEGREE IS A CLASS D FELONY.

§ 230.13 AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE FIRST DEGREE.

A PERSON IS GUILTY OF AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE FIRST DEGREE WHEN HE OR SHE PATRONIZES A PERSON FOR PROSTITUTION AND THE PERSON PATRONIZED IS LESS THAN ELEVEN YEARS OLD, BEING EIGHTEEN YEARS OLD OR MORE, HE OR SHE PATRONIZES A PERSON FOR PROSTITUTION AND THE PERSON PATRONIZED IS LESS THAN THIRTEEN YEARS OLD, AND THE PERSON GUILTY OF PATRONIZING ENGAGES IN SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT, ANAL SEXUAL CONDUCT, OR AGGRAVATED SEXUAL CONDUCT.

AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE FIRST DEGREE IS A CLASS B FELONY.

**Section 15.** Subdivisions 1 and 2 of section 230.15 of the penal law are amended to read as follows:

1. "Advance prostitution." A person "advances prostitution" when, acting other than as a [prostitute] PERSON IN PROSTITUTION or as a patron thereof, he OR SHE knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.
2. "Profit from prostitution." A person "profits from prostitution" when, acting other than as a [prostitute] PERSON IN PROSTITUTION receiving compensation for personally rendered prostitution services, he OR SHE accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he OR SHE participates or is to participate in the proceeds of prostitution activity.

**Section 16.** Subdivision 1 of section 230.19 of the penal law, as added by chapter 191 of the laws of 2011, is amended to read as follows:

1. A person is guilty of promoting prostitution in a school zone when, being nineteen years [of age] OLD or [older] MORE, he or she knowingly advances or profits from prostitution [that he or she knows or reasonably should know is or will be committed in violation of section 230.03 of this article] in a school zone during the hours that school is in session.

**Section 17.** The opening paragraph and subdivisions 1 and 2 of section 230.25 of the penal law, the opening paragraph and subdivision 2 as amended by chapter 627 of the laws of 1978 and subdivision 1 as amended by chapter 74 of the laws of 2007, are amended to read as follows:

A person is guilty of promoting prostitution in the third degree when he OR SHE knowingly:

1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more [prostitutes] PERSONS IN PROSTITUTION, or a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a [prostitute] PERSON FOR PROSTITUTION, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction; or
2. PROFITS FROM PROSTITUTION BY ENGAGING, EITHER ALONE OR IN ASSOCIATION WITH OTHERS, IN A BUSINESS OR ENTERPRISE CONSISTING OF THE TRANSPORTING OF A PERSON OR PERSONS FOR THE PURPOSES OF PROSTITUTION; OR
3. Advances or profits from prostitution of a person less than nineteen years old.

**Section 18.** The opening paragraph of section 230.30 of the penal law, as amended by chapter 627 of the laws of 1978, is amended to read as follows:

A person is guilty of promoting prostitution in the second degree when he OR SHE knowingly:

**Section 19.** The first undesignated paragraph of section 230.32 of the penal law, as added by chapter 627 of the laws of 1978, is amended to read as follows:

A person is guilty of promoting prostitution in the first degree when he OR SHE knowingly advances or profits from prostitution of a person less than [eleven] THIRTEEN years old.

**Section 20.** Section 230.33 of the penal law, as added by chapter 450 of the laws of 2005, is amended to read as follows:

§ 230.33 Compelling prostitution.

A person is guilty of compelling prostitution when, being twenty-one years [of age or older] OLD OR MORE, he or she knowingly advances prostitution by compelling a person less than [sixteen] EIGHTEEN years old, by force or intimidation, to engage in prostitution.

Compelling prostitution is a class B felony.

**Section 21.** Subdivision 1 and paragraph (h) of subdivision 5 of section 230.34 of the penal law, as added by chapter 74 of the laws of 2007, are amended and a new subdivision 6 is added to read as follows:

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) MARIJUANA OR 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 flunitrazepan, also known as Rohypnol; OR (E) METHYLENEDIOXYMETH AMPHETAMINE (MDMA), ALSO KNOWN AS ECSTASY;

(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[.]; OR

6. KNOWINGLY ADVANCING PROSTITUTION OF A PERSON LESS THAN EIGHTEEN YEARS OLD.

**Section 22.** Section 230.35 of the penal law, as amended by chapter 450 of the laws of 2005, is amended to read as follows:

§ 230.35 Promoting or compelling prostitution; accomplice.

In a prosecution for promoting prostitution or compelling prostitution, a person less than [seventeen] EIGHTEEN years [of age] OLD from whose prostitution activity another person is alleged to have advanced or attempted to advance or profited or attempted to profit shall not be deemed to be an accomplice.

**Section 23.** The first undesignated paragraph of section 230.40 of the penal law is amended to read as follows:

A person is guilty of permitting prostitution when, having possession or control of premises OR VEHICLE which he OR SHE knows are being used for prostitution purposes OR FOR THE PURPOSE OF ADVANCING PROSTITUTION, he OR SHE fails to make reasonable effort to halt or abate such use.

**Section 24.** Subdivision 2 of section 240.37 of the penal law, as added by chapter 344 of the laws of 1976, is amended, subdivision 3 is renumbered subdivision 4 and a new subdivision 3 is added to read as follows:

2. Any person who remains or wanders about in a public place and repeatedly beckons to, or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons, for the purpose of prostitution[, or of patronizing a prostitute as those terms are] AS THAT TERM IS defined in article two hundred thirty of [the penal law] THIS PART, shall be guilty of a violation and is guilty of a class B misdemeanor if such person has previously been convicted of a violation of this section or of [sections] SECTION 230.00 [or 230.05] of [the penal law] THIS PART.

3. ANY PERSON WHO REMAINS OR WANDERS ABOUT IN A PUBLIC PLACE AND REPEATEDLY BECKONS TO, OR REPEATEDLY STOPS, OR REPEATEDLY ATTEMPTS TO STOP, OR REPEATEDLY ATTEMPTS TO ENGAGE PASSERS-BY IN CONVERSATION, OR REPEATEDLY STOPS OR ATTEMPTS TO STOP MOTOR

VEHICLES, OR REPEATEDLY INTERFERES WITH THE FREE PASSAGE OF OTHER PERSONS, FOR THE PURPOSE OF PATRONIZING A PERSON FOR PROSTITUTION AS DEFINED IN SECTION 230.02 OF THIS PART, SHALL BE GUILTY OF A VIOLATION AND IS GUILTY OF A CLASS B MISDEMEANOR IF SUCH PERSON HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF THIS SECTION OR OF SECTION 230.04, 230.05, 230.06 OR 230.08 OF THIS PART.

**Section 25.** The section heading of section 170.15 of the criminal procedure law, as amended by chapter 661 of the laws of 1972, is amended and a new subdivision 5 is added to read as follows:

Removal of action from [one local] criminal court to another COURT.

5. (A) WHEN A DEFENDANT WHO IS LESS THAN EIGHTEEN YEARS OLD AND ALLEGED TO HAVE ENGAGED IN ANY ACT DEFINED IN SECTION 230.00 OR SUBDIVISION TWO OF SECTION 240.37 OF THE PENAL LAW IS BROUGHT FOR ARRAIGNMENT UPON AN INFORMATION, SIMPLIFIED INFORMATION OR MISDEMEANOR COMPLAINT CHARGING SUCH OFFENSE, THE COURT MUST ORDER THE ACTION REMOVED TO FAMILY COURT FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH ARTICLE SEVEN OF THE FAMILY COURT ACT. THE ORDER OF REMOVAL MUST DIRECT THAT ALL OF THE PLEADINGS AND PROCEEDINGS IN THE ACTION, OR A CERTIFIED COPY OF THE SAME, BE TRANSFERRED TO THE DESIGNATED FAMILY COURT AND BE DELIVERED TO AND FILED WITH THE CLERK OF THAT COURT. THE PROCEDURES SET FORTH IN SECTIONS 725.10, 725.15 AND 725.20 OF THIS CHAPTER FOR TRANSFER AND SEALING OF RECORDS SHALL APPLY TO THIS PROVISION WHENEVER APPLICABLE.

(B) THE COURT MUST INFORM THE DEFENDANT OF THE AVAILABILITY OF SERVICES UNDER SECTION 447-B OF THE SOCIAL SERVICES LAW.

**Section 26.** Subdivision 6 of section 380.50 of the criminal procedure law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

6. Regardless of whether the victim requests to make a statement with regard to the defendant's sentence, where the defendant is sentenced for a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law: sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.04, 230.05, 230.06, 230.08, 230.11, 230.12, 230.13, subdivision two of section 230.30 or 230.32, the prosecutor shall, within sixty days of the imposition of sentence, provide the victim with a form on which the victim may indicate a demand to be informed of any petition to change the name of such defendant. Such forms shall be maintained by such prosecutor. Upon receipt of a notice of a petition to change the name of any such defendant, pursuant to subdivision two of section sixty-two of the civil rights law, the prosecutor shall promptly notify the victim at the most current address or telephone number provided by such victim in the most reasonable and expedient possible manner of the time and place such petition will be presented to the court.

**Section 27.** The opening paragraph of paragraph (i) of subdivision 1 of section 440.10 of the criminal procedure law, as added by chapter 332 of the laws of 2010, is amended to read as follows:

The judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not



alleged to be loitering for the purpose of patronizing a [prostitute] PERSON FOR PROSTITUTION or promoting prostitution) or 230.00 (prostitution) of the penal law, and the defendant's participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78); provided that

**Section 28.** Paragraph (h) of subdivision 8 of section 700.05 of the criminal procedure law, as amended by chapter 154 of the laws of 1990, is amended to read as follows:

(h) Promoting prostitution in the first degree, as defined in section 230.32 of the penal law, promoting prostitution in the second degree, as defined by subdivision one of section 230.30 of the penal law, PROMOTING PROSTITUTION IN THE THIRD DEGREE, AS DEFINED IN SECTION 230.25 OF THE PENAL LAW;

**Section 29.** Subdivision (a) of section 483-cc of the social services law, as added by chapter 74 of the laws of 2007, is amended to read as follows:

(a) As soon as practicable after a first encounter with a person who reasonably appears to a law enforcement agency [or a], district attorney's office, OR AN ESTABLISHED PROVIDER OF SOCIAL OR LEGAL SERVICES DESIGNATED BY THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE OR THE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE to be a human trafficking victim, that agency [or], office OR PROVIDER shall notify the office of temporary and disability assistance and the division of criminal justice services that such person may be eligible for services under this article.

**Section 30.** Subdivision (p) of section 10.03 of the mental hygiene law, as added by chapter 7 of the laws of 2007, is amended to read as follows:

(p) "Sex offense" means an act or acts constituting: (1) any felony defined in article one hundred thirty of the penal law, including a sexually motivated felony; (2) patronizing a [prostitute] PERSON FOR PROSTITUTION in the first degree as defined in section 230.06 of the penal law, AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 230.13 OF THE PENAL LAW, AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE SECOND DEGREE AS DEFINED IN SECTION 230.12 OF THE PENAL LAW, AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE THIRD DEGREE AS DEFINED IN SECTION 230.11 OF THE PENAL LAW, incest in the second degree as defined in section 255.26 of the penal law, or incest in the first degree as defined in section 255.27 of the penal law; (3) a felony attempt or conspiracy to commit any of the foregoing offenses set forth in this subdivision; or (4) a designated felony, as defined in subdivision (f) of this section, if sexually motivated and committed prior to the effective date of this article.

**Section 31.** Subparagraph (i) of paragraph (a) of subdivision 2 of section 168-a of the correction law, as amended by chapter 405 of the laws of 2008, is amended to read as follows:

(i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 120.70, 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, 230.34, 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, [where the person patronized is in fact less than seventeen years of age.] 230.05 [or], 230.06, 230.08, [or] 230.11, 230.12, 230.13, subdivision two of section 230.30, [or] section 230.32 [or], 230.33, OR 230.34 of the penal law, OR SECTION 230.25 OF

THE PENAL LAW WHERE THE PERSON PROSTITUTED IS IN FACT LESS THAN SEVENTEEN YEARS OLD, or

**Section 32.** Paragraph (b) of subdivision 1 of section 168-d of the correction law, as amended by chapter 74 of the laws of 2007, is amended to read as follows:

(b) Where a defendant stands convicted of an offense defined in paragraph (b) of subdivision two of section one hundred sixty-eight-a of this article or where the defendant was convicted of patronizing a [prostitute] PERSON FOR PROSTITUTION in the third degree under section 230.04 of the penal law OR OF PATRONIZING A PERSON FOR PROSTITUTION IN THE SECOND DEGREE UNDER SECTION 230.05 OF THE PENAL LAW, OR OF PATRONIZING A PERSON FOR PROSTITUTION IN THE FIRST DEGREE UNDER SECTION 230.06 OF THE PENAL LAW, OR OF PATRONIZING A PERSON FOR PROSTITUTION IN A SCHOOL ZONE UNDER SECTION 230.08 OF THE PENAL LAW, OR OF AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 230.13 OF THE PENAL LAW, OR OF AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE SECOND DEGREE AS DEFINED IN SECTION 230.12 OF THE PENAL LAW, OR OF AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE THIRD DEGREE AS DEFINED IN SECTION 230.11 OF THE PENAL LAW, and the defendant controverts an allegation that the victim of such offense was less than eighteen years [of age or, in the case of a conviction under section 230.04 of the penal law, less than seventeen years of age] OLD, the court, without a jury, shall, prior to sentencing, conduct a hearing, and the people may prove by clear and convincing evidence that the victim was less than eighteen years [of age] OLD or less than seventeen years [of age] OLD, as applicable, by any evidence admissible under the rules applicable to a trial of the issue of guilt. The court in addition to such admissible evidence may also consider reliable hearsay evidence submitted by either party provided that it is relevant to the determination of the age of the victim. Facts concerning the age of the victim proven at trial or ascertained at the time of entry of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. At the conclusion of the hearing, or if the defendant does not controvert an allegation that the victim of the offense was less than eighteen years [of age] OLD or less than seventeen years [of age] OLD, as applicable, the court must make a finding and enter an order setting forth the age of the victim. If the court finds that the victim of such offense was under eighteen years [of age] OLD or under seventeen years [of age] OLD, as applicable, the court shall certify the defendant as a sex offender, the provisions of paragraph (a) of this subdivision shall apply and the defendant shall register with the division in accordance with the provisions of this article.

**Section 33.** Paragraph (d) of subdivision 7 of section 995 of the executive law, as amended by chapter 2 of the laws of 2006, is amended to read as follows:

(d) any of the following felonies, or an attempt thereof where such attempt is a felony offense: aggravated assault upon a person less than eleven years old, as defined in section 120.12 of the penal law; menacing in the first degree, as defined in section 120.13 of the penal law; reckless endangerment in the first degree, as defined in section 120.25 of the penal law; stalking in the second degree, as defined in section 120.55 of the penal law; criminally negligent homicide, as defined in section 125.10 of the penal law; vehicular manslaughter in the second degree, as defined in section 125.12 of the penal law; vehicular manslaughter in the first degree, as defined in section 125.13 of the penal law; persistent sexual abuse, as defined in section 130.53 of the penal law; aggravated sexual abuse in the fourth degree, as

defined in section 130.65-a of the penal law; female genital mutilation, as defined in section 130.85 of the penal law; facilitating a sex offense with a controlled substance, as defined in section 130.90 of the penal law; unlawful imprisonment in the first degree, as defined in section 135.10 of the penal law; custodial interference in the first degree, as defined in section 135.50 of the penal law; criminal trespass in the first degree, as defined in section 140.17 of the penal law; criminal tampering in the first degree, as defined in section 145.20 of the penal law; tampering with a consumer product in the first degree, as defined in section 145.45 of the penal law; robbery in the third degree as defined in section 160.05 of the penal law; identity theft in the second degree, as defined in section 190.79 of the penal law; identity theft in the first degree, as defined in section 190.80 of the penal law; promoting prison contraband in the first degree, as defined in section 205.25 of the penal law; tampering with a witness in the third degree, as defined in section 215.11 of the penal law; tampering with a witness in the second degree, as defined in section 215.12 of the penal law; tampering with a witness in the first degree, as defined in section 215.13 of the penal law; criminal contempt in the first degree, as defined in subdivisions (b), (c) and (d) of section 215.51 of the penal law; aggravated criminal contempt, as defined in section 215.52 of the penal law; bail jumping in the second degree, as defined in section 215.56 of the penal law; bail jumping in the first degree, as defined in section 215.57 of the penal law; patronizing a [prostitute] PERSON FOR PROSTITUTION in the second degree, as defined in section 230.05 of the penal law; patronizing a [prostitute] PERSON FOR PROSTITUTION in the first degree, as defined in section 230.06 of the penal law; AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE FIRST DEGREE AS DEFINED IN SECTION 230.13 OF THE PENAL LAW; AGGRAVATED PATRONIZING A MINOR FOR PROSTITUTION IN THE SECOND DEGREE AS DEFINED IN SECTION 230.12 OF THE PENAL LAW; promoting prostitution in the second degree, as defined in section 230.30 of the penal law; promoting prostitution in the first degree, as defined in section 230.32 of the penal law; compelling prostitution, as defined in section 230.33 of the penal law; disseminating indecent [materials] MATERIAL to minors in the second degree, as defined in section 235.21 of the penal law; disseminating indecent [materials] MATERIAL to minors in the first degree, as defined in section 235.22 of the penal law; riot in the first degree, as defined in section 240.06 of the penal law; criminal anarchy, as defined in section 240.15 of the penal law; aggravated harassment of an employee by an inmate, as defined in section 240.32 of the penal law; unlawful surveillance in the second degree, as defined in section 250.45 of the penal law; unlawful surveillance in the first degree, as defined in section 250.50 of the penal law; endangering the welfare of a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the second degree, as defined in section 260.32 of the penal law; endangering the welfare of a vulnerable elderly person, OR AN INCOMPETENT OR PHYSICALLY DISABLED PERSON in the first degree, as defined in section 260.34 of the penal law; use of a child in a sexual performance, as defined in section 263.05 of the penal law; promoting an obscene sexual performance by a child, as defined in section 263.10 of the penal law; possessing an obscene sexual performance by a child, as defined in section 263.11 of the penal law; promoting a sexual performance by a child, as defined in section 263.15 of the penal law; possessing a sexual performance by a child, as defined in section 263.16 of the penal law; criminal possession of a weapon in the third degree, as defined in section 265.02 of the penal law; criminal sale of a firearm in the third degree, as defined in section 265.11 of the penal law; criminal sale of a firearm to a minor, as defined in section 265.16 of the penal law; unlawful wearing of a body

vest, as defined in section 270.20 of the penal law; hate crimes as defined in section 485.05 of the penal law; and crime of terrorism, as defined in section 490.25 of the penal law; or

**Section 34.** Paragraph (c) of subdivision 4 of section 509-cc of the vehicle and traffic law, as amended by chapter 400 of the laws of 2011, is amended to read as follows:

(c) The offenses referred to in subparagraph (i) of paragraph (b) of subdivision one and subparagraph (i) of paragraph (c) of subdivision two of this section that result in disqualification for a period of five years shall include a conviction under sections 100.10, 105.13, 115.05, 120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13, 125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17, 140.25, 140.30, 145.12, 150.10, 150.15, 160.05, 160.10, 220.06, 220.09, 220.16, 220.31, 220.34, 220.60, 220.65, 221.30, 221.50, 221.55, 230.00, 230.04, 230.05, 230.06, 230.08, 230.11, 230.12, 230.13, 230.19, 230.20, 235.05, 235.06, 235.07, 235.21, 240.06, 245.00, 260.10, subdivision two of section 260.20 and sections 260.25, 265.02, 265.03, 265.08, 265.09, 265.10, 265.12, 265.35 of the penal law or an attempt to commit any of the aforesaid offenses under section 110.00 of the penal law, or any similar offenses committed under a former section of the penal law, or any offenses committed under a former section of the penal law which would constitute violations of the aforesaid sections of the penal law, or any offenses committed outside this state which would constitute violations of the aforesaid sections of the penal law.

**Section 35.** Section 2324-a of the public health law, as amended by chapter 260 of the laws of 1978, is amended to read as follows:

§ 2324-a. Presumptive evidence. For the purposes of this title, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.04, 230.05, 230.06, 230.08, 230.11, 230.12, 230.13, 230.20, 230.25 [or], 230.30 OR 230.32 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution.

**Section 36.** Subdivision 2 of section 715 of the real property actions and proceedings law, as added by chapter 494 of the laws of 1976, is amended to read as follows:

2. For purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.04, 230.05, 230.06, 230.08, 230.11, 230.12, 230.13, 230.20, 230.25, 230.30, 230.32 or 230.40 of the penal law arising out of conduct engaged in at the same real property consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of conduct constituting use of the premises for purposes of prostitution.

**Section 37.** Subdivision 3 of section 231 of the real property law, as amended by chapter 203 of the laws of 1980, is amended to read as follows:

3. For the purposes of this section, two or more convictions of any person or persons had, within a period of one year, for any of the offenses described in section 230.00, 230.04, 230.05, 230.06, 230.08, 230.11, 230.12, 230.13, 230.20, 230.25, 230.30, 230.32 or 230.40 of the penal law arising out of conduct engaged in at the same premises consisting of a dwelling as that term is defined in subdivision four of section four of the multiple dwelling law shall be presumptive evidence of unlawful use of such premises and of the owners knowledge of the same.

**Section 38.** This act shall take effect on the ninetieth day after it shall have become a law.

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# Optional Protocol and Concluding Observations

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UNITED  
NATIONS

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## General Assembly

Distr.  
GENERAL

A/RES/54/263\*  
16 March 2001

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Fifty-fourth session  
Agenda item 116 (a)

### RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[without reference to a Main Committee (A/54/L.84)]

**54/263. Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography**

*The General Assembly,*

*Recalling* all its previous resolutions on the rights of the child, in particular its resolution 54/149 of 17 December 1999, in which it strongly supported the work of the open-ended inter-sessional working groups and urged them to finalize their work before the tenth anniversary of the entry into force of the Convention on the Rights of the Child,<sup>1</sup>

*Expressing its appreciation* to the Commission on Human Rights for having finalized the texts of the two optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography,

*Conscious* of the tenth anniversaries, in the year 2000, of the World Summit for Children and the entry into force of the Convention on the Rights of the Child and of the symbolic and practical importance of the adoption of the two optional protocols to the Convention on the Rights of the Child before the special session of the General Assembly for the follow-up to the World Summit for Children, to be convened in 2001,

*Adhering* to the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

*Reaffirming its commitment* to strive for the promotion and protection of the rights of the child in all avenues of life,

*Recognizing* that the adoption and implementation of the two optional protocols will make a substantial contribution to the promotion and protection of the rights of the child,

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\* Reissued for technical reasons.

1. *Adopts and opens for signature, ratification and accession* the two optional protocols to the Convention on the Rights of the Child<sup>1</sup> on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, the texts of which are annexed to the present resolution;
2. *Invites* all States that have signed, ratified or acceded to the Convention on the Rights of the Child to sign and ratify or accede to the annexed optional protocols as soon as possible in order to facilitate their early entry into force;
3. *Decides* that the two optional protocols to the Convention on the Rights of the Child will be opened for signature at the special session of the General Assembly, entitled *AWomen 2000: gender equality, development and peace for the twenty-first century*, to be convened from 5 to 9 June 2000 in New York, and thereafter at United Nations Headquarters, at the special session of the General Assembly, entitled *AWorld Summit for Social Development and beyond: achieving social development for all in a globalizing world*, to be convened from 26 to 30 June 2000 in Geneva, and at the Millennium Summit of the United Nations, to be convened from 6 to 8 September 2000 in New York;
4. *Requests* the Secretary-General to include information on the status of the two optional protocols in his report to the General Assembly on the status of the Convention on the Rights of the Child.

*97th plenary meeting  
25 May 2000*

## ANNEX II

### **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**

*The States Parties to the present Protocol,*

*Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child<sup>1</sup> and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,*

*Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,*

*Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,*

*Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,*

*Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited,*

*Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, in particular, its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,*

*Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctional families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children,*

*Believing that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and also believing in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,*

*Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on the Protection of Children and Cooperation with Respect to Inter-Country Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,*

*Encouraged* by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

*Recognizing* the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography<sup>3</sup> and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm from 27 to 31 August 1996,<sup>4</sup> and the other relevant decisions and recommendations of pertinent international bodies,

*Taking due account* of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

*Have agreed* as follows:

*Article 1*

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

*Article 2*

For the purpose of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

*Article 3*

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) The offering, delivering or accepting, by whatever means, a child for the purpose of:

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<sup>3</sup> *Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22), chap. II, sect. A, resolution 1992/74, annex.*

<sup>4</sup> A/51/385, annex.



- a. Sexual exploitation of the child;
  - b. Transfer of organs of the child for profit;
  - c. Engagement of the child in forced labour;
- (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
- (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.
3. Each State Party shall make these offences punishable by appropriate penalties that take into account their grave nature.
4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.
5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

#### *Article 4*

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.
2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:
  - (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
  - (b) When the victim is a national of that State.
3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.
4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

#### *Article 5*

*/...*

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in those treaties.
2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.
3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.
5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and if the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

*Article 6*

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

*Article 7*

States Parties shall, subject to the provisions of their national law:

- (a) Take measures to provide for the seizure and confiscation, as appropriate, of:
  - (i) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;
  - (ii) Proceeds derived from such offences;
- (b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a) (i);
- (c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

*Article 8*

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

#### *Article 9*

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall

encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.
5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

*Article 10*

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.
2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.
3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.
4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

*Article 11*

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

*Article 12*

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.
2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

*Article 13*

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

*Article 14*

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

*Article 15*

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

*Article 16*

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

*Article 17*

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.



**Convention on the  
Rights of the Child**

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COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-eighth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 12, PARAGRAH 1, OF THE OPTIONAL PROTOCOL TO  
THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF  
CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

**Concluding observations: United States of America**

1. The Committee considered the initial report of the United States of America (CRC/C/OPSC/USA/1) at its 1320th meeting (see CRC/C/SR.1320), held on 22 May 2008, and adopted at its 1342nd meeting, held on 6 June 2008, the following concluding observations.

**Introduction**

2. The Committee welcomes the submission of the State party's initial report, though not written in compliance with the Committee's reporting guidelines, as well as the replies to the list of issues, which give substantive information on the legislative, administrative, judicial and other measures adopted for the implementation of the Optional Protocol. The Committee also welcomes the open and constructive dialogue held with a high-level and multi-sectoral delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations adopted on the same day on the State party's initial report under the Optional Protocol to the Convention on the involvement of children in armed conflict (CRC/C/OPAC/USA/CO/1).

## I. General

### Positive aspects

4. The Committee welcomes the wide range of activities of international assistance and cooperation, including technical cooperation, training, raising awareness and assistance to victims provided by the Trafficking in Persons (TIP) Office, with the aim of monitoring and combating trafficking in persons.

5. The Committee welcomes the Innocence Lost Initiative aimed at combating child prostitution in the country, through a partnership between the Criminal Division of the Department of Justice, the Federal Bureau of Investigation, and the National Center for Missing and Exploited Children.

6. The Committee further welcomes the passing of numerous pieces of legislation which demonstrates the State party's commitment in the fight against the commercial sexual exploitation of children, including:

(a) The Trafficking Victims Protection Act 2000 and its re-authorizations in 2003 and 2005, which strengthened state programmes to prosecute those responsible for child prostitution and enhanced assistance to victims of trafficking in the United States and in other countries;

(b) The PROTECT Act of 2003, which expanded extra-territorial jurisdiction to prosecute State party's citizens committing sex crimes against children abroad;

(c) The Adam Walsh Child Protection and Safety Act, passed in 2006, which increased penalties for child sex offenders and eliminated statutes of limitations for criminal offences against children.

7. The Committee also welcomes the ratification by the State party of:

(a) ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 12 February 1999;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 23 December 2002;

(c) The Hague Convention No. 33 of 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption, on 12 December 2007.

## II. Data

### Data collection

8. The Committee notes the State party's commitment and efforts to gather data and conduct studies on commercial sexual exploitation of children, but is concerned that there is insufficient information available on sale of children, child prostitution



and child pornography in the State party, due mainly to the lack of a functional data collection system on the issues covered by the Protocol. Furthermore, the Committee notes that the definition of trafficking is based on the Federal Victims of Trafficking and Violence Protection Act of 2000, which broadly interprets that contained in the Palermo Protocol on Trafficking supplementing the United Nations Convention on Transnational Organized Crime. In this respect, the Committee is concerned that defining a wide range of criminal activities against children as trafficking, without differentiating between them, may cause difficulties in the collection of disaggregated data and analytical information on the activities covered by the Protocol as well as in the identification of victims and of appropriate strategies to prevent and combat these crimes at national and international level.

9. **The Committee recommends that the State party consider developing and implementing a comprehensive and systematic mechanism of data collection, analysis and monitoring on all the issues covered by the Protocol. The data should be disaggregated, inter alia, by the nature of the offence and by age, sex, ethnicity, socio-economic status and geographical location. The coverage of data collection and studies should include all of mainland United States as well as the insular areas and other dependent areas over which the United States exercises sovereignty. The Committee also recommends that the State party consider using, in the development of programmes and activities in all the areas covered by the Optional Protocol, the definitions used therein or contained in other international standards to which the State party has adhered.**

### **III. General measures of implementation**

#### **National Plan of Action**

10. The Committee notes that, while several plans and programmes have been adopted and implemented to combat trafficking, notably cross-border trafficking, an overall strategy for the implementation of the Optional Protocol and the elimination of sale of children, child prostitution and child pornography is lacking.

11. **The Committee recommends that the State party develop a National Plan of Action aimed at addressing comprehensively all the issues covered by the Optional Protocol and provide adequate human and financial resources for its implementation.**

#### **Coordination of the implementation of the Optional Protocol**

12. The Committee notes that there are several governmental departments or agencies with responsibilities for the implementation of the Optional Protocol such as the Department of Justice, the Department of State and the Department of Health and Human Services, but is concerned at the insufficient level of coordination among them and between federal, state and local authorities. The Committee also notes with concern that coordination is often insufficient between government agencies and non-governmental organizations working in the areas covered by the Optional Protocol.

**13. The Committee recommends that the State party strengthen coordination among the different agencies and governmental departments working in the areas covered by the Optional Protocol, both at federal and state levels. The State party is also encouraged to strengthen the coordination with non-governmental organizations in the implementation and evaluation of the Optional Protocol.**

**Dissemination and training**

14. The Committee notes that the State party has generally high-quality training resources and facilities and it welcomes the training delivered by the National Center for Missing and Exploited Children to judges, prosecutors and law enforcement officials on investigation and prevention of child sexual exploitation. However, it is concerned that there is no systematic dissemination of and training on the Optional Protocol either at federal and state level and that the Optional Protocol and the problems surrounding the issues covered thereto are not very well known.

**15. The Committee recommends that the State party:**

**(a) Continue and strengthen systematic education and training on the provisions of the Optional Protocol for all relevant professional groups, including law enforcement personnel, judges, lawyers, social and health-care workers, immigration and customs officers, religious and community leaders, civil society organizations, and organizations accredited for adoption;**

**(b) Strengthen measures to disseminate the provisions of the Optional Protocol among its population, especially children and parents, by using school curricula and appropriate material specifically for children;**

**(c) Promote, in cooperation with civil society and the media - in line with article 9, paragraph 2, of the Optional Protocol - awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of all the offences referred to in the Optional Protocol, including by translating into appropriate languages and by encouraging the participation of the community and, in particular, children and child victims of both sexes, in accessing such information, education and training programmes.**

**Allocation of resources**

16. The Committee notes that a significant amount of financial resources is allocated to the prevention of human trafficking, but is concerned that only a small proportion of it is specifically allocated to child victims of trafficking and to victims of other offences covered by the Optional Protocol.

**17. The Committee recommends that the State party:**

**(a) Provide more information in the next report on the budget allocations for the implementation of the Optional Protocol, in particular those addressed to services for child victims of the offences covered by the Protocol;**

**(b) Provide the necessary human and financial resources for the development and implementation of projects and plans, especially at local level, aimed at the prevention of the offences, protection and rehabilitation of child victims and prosecution of the perpetrators of all the offences covered by the Protocol;**

**(c) Adopt a human rights approach to its budgeting with particular focus on children.**

#### **National human rights institutions**

18. While the Committee recognizes the difficulty in creating an independent agency at the federal level to monitor the implementation of the Optional Protocol, because most of the laws and services required are a state responsibility, the Committee is concerned that there is no agency such as an Ombudsman at the federal or state level to monitor the implementation of the Optional Protocol.

**19. The Committee recommends that the federal and state governments consider the creation of human rights institutions in accordance with the Paris Principles to monitor and promote the Optional Protocol. These institutions should be provided with the necessary human and financial resources to carry out their mandates.**

#### **IV. Prevention of the sale of children, child prostitution and child pornography**

20. The Committee notes the State party's initiatives aimed at preventing child abuse and neglect, but is concerned that a focus on sale of children, child prostitution and child pornography is still lacking. It is also concerned that preventive efforts are mostly limited to specific areas of the country and do not cover sufficiently large groups of vulnerable children in the State party, such as children living in poverty, migrant children, indigenous children and children living in difficult family situations, who are particularly vulnerable to all the offences covered by the Optional Protocol.

**21. The Committee is of the view that the elimination of the sale of children, child prostitution and child pornography would be facilitated by adopting a holistic approach, addressing the contributing factors thereto, and recommends that the State party strengthen its efforts to address the root causes, such as poverty and marginalization, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism. Particular attention in the preventive efforts should be given to protect children throughout the State party who are especially vulnerable to such practices.**

22. The Committee is concerned at the paucity of programmes focusing on reducing the demand for sexual services involving the exploitation of children, including awareness-raising campaigns.

**23. The Committee recommends that demand for sexual services involving the exploitation of children be addressed through both prevention and prosecution measures. Preventive measures should include, among others, public awareness campaigns aimed at the individuals and groups creating demand for sexual exploitation of children.**

#### **Child prostitution**

24. The Committee notes the State party's efforts in addressing child prostitution, with programmes focused on a victim-centred approach. However, the Committee is concerned at the information that prostitution of children is a widespread and increasing phenomenon in the State party. It is also concerned at the information that enforcement of child prostitution laws is quite low at the state level and that the resources allocated for protection programmes, training and education are not sufficient.

**25. The Committee recommends that the State party continue to combat child prostitution, both involving foreign children trafficked into the country and "internal" child prostitution. To this end, the Committee recommends, inter alia, that the State party monitor enforcement and implementation of child prostitution laws at the state level and consider increasing human and financial resources for protection programmes, including awareness campaigns and training.**

#### **Child pornography**

26. The Committee appreciates the State party's efforts in combating child pornography both internally and as a worldwide phenomenon, including the numerous investigations and prosecutions in this respect, but is concerned that the State party is one of the world's largest producers, distributors and consumers of child pornography and that the incidence of cyber-crimes involving children, facilitated by the emergence of new technologies, is on the rise.

**27. The Committee recommends that the State party**

- (a) Improve enforcement of the existing legislative framework on child pornography;**
- (b) Intensify its efforts to take the necessary measures to address the rapidly changing nature of technology;**
- (c) Strengthen its measures to identify and assist child victims of child pornography;**
- (d) Continue to strengthen international cooperation to prevent and punish child pornography.**

#### **Sex tourism**

28. The Committee welcomes the launch in 2004 of the "Code of Conduct to Protect Children from Sexual Exploitation in Travel and Tourism" as well as that the adoption of the PROTECT Act of 2003 has resulted in more than 50 indictments and 29 convictions of State party's nationals involved in child sex tourism abroad. It also

appreciates the funding of deterrence and public information campaigns abroad in countries such as Cambodia, Costa Rica, Brazil, Belize, and Mexico, targeted at United States child sex tourists. However, the Committee is concerned at the information that the State party remains among the main source countries for child sex tourism.

**29. The Committee recommends that the State party continue to strengthen its measures to combat sex tourism, including by raising awareness to tackle attitudes, such as the idea that is acceptable to abuse and exploit children living in poverty in foreign countries. The Committee also recommends that the State party take further measures to prevent sex tourism, in particular by promoting responsible tourism through awareness campaigns specifically directed at tourists and cooperating closely with travel operators, media, NGOs and civil society organizations to combat all forms of commercial sexual exploitation of children in travel and tourism.**

#### **Illegal adoption**

30. The Committee welcomes the recent ratification of the Hague Convention on Inter-Country Adoption and notes that the Department of State has been identified as the Central Authority. In this respect, the Committee is concerned about the fact that for-profit persons may be approved to perform Central Authority functions, though they must comply with the requirements and qualifications indicated in article 22, paragraphs 2 (a) and (b), of the Hague Convention, including integrity, professional competence and accountability. The Committee is also concerned at the information that, according to the current regulations, the payment of prenatal and other expenses to birth mothers abroad would still be possible.

**31. In order to strengthen the safeguards against sale of children for adoption purposes, the Committee recommends that the State party:**

- (a) Adequately and effectively implement the Hague Convention on Inter-Country Adoption in order to curb the instances of sale for adoption purposes;**
- (b) Ensure that not only the accredited agencies, but also the approved persons, pursue only non-profit objectives;**
- (c) Expressly prohibit all forms of possible active solicitation for children, including the payment of pre-natal and other expenses;**
- (d) Intensify its efforts to prevent and punish all the cases of sale of children, notably those occurring via the Internet, irrespective of the purpose of the sale;**
- (e) Seek to ensure that the principle of best interests of the child and the safeguards guaranteed in the Hague Convention are equally respected in case of adoption from countries not parties to the Hague Convention;**
- (f) Effectively apply the principle of subsidiarity as enshrined in Section 303 (a)(1)(B) of the Intercountry Adoption Act of 2000, in order to**

**ensure that American children are primarily adopted in the United States.**

## **V. Prohibition and related matters**

### **Existing criminal or penal laws and regulations**

32. The Committee welcomes the fact that the State party has generally developed adequate legislation at the federal level concerning child pornography, the transporting of children between states for unlawful sexual purposes and child trafficking. However, the Committee is concerned that some inconsistencies between the legislation at state and at federal levels may result in certain lacunae in the definition and prohibition of all offences covered by the Protocol. In this respect, the Committee is concerned, inter alia, that:

- (a) There is no federal law defining or prohibiting child prostitution per se;
- (b) While activities related to child pornography are a felony at federal level, they may be only a misdemeanor in some states;
- (c) Attempts to commit, or all forms of participation in, the offences covered by the Optional Protocol are not always punished under federal and state legislation.

33. **The Committee recommends that, since criminal law is mainly the responsibility of each State, the State party ensure that all the offences covered by the Optional Protocol are defined and prohibited in accordance with articles 2 and 3 of the Optional Protocol throughout the country. The Committee further recommends that the State Party:**

- (a) **Define and prohibit child prostitution in accordance with articles 2 and 3 of the Optional Protocol both at federal and state levels;**
- (b) **Make all the offences under the Optional Protocol punishable by appropriate penalties that take into account their grave nature, both at federal and state levels;**
- (c) **Ensure that attempt to commit any of the offences covered by the Optional Protocol as well as complicity or participation therein are punished in conformity with article 3, paragraph 2, of the Optional Protocol.**

34. **The Committee further recommends that the United States of America proceed to become a State party to the Convention on the Rights of the Child in order to further strengthen the framework for the protection of children's rights.**

### **Jurisdiction and extradition**

35. The Committee, while welcoming the possibility for the State party to establish extraterritorial jurisdiction for sex tourism and child pornography offences committed outside the United States, is concerned that the State party's extraterritorial jurisdiction based on the nationality of the offender, while provided by some federal laws, such as 18 U.S.C., paragraphs 1585 and 1587, does not reach all offences covered by the Optional Protocol. The Committee also notes that federal law does not generally provide for the assertion of extraterritorial jurisdiction where the victim is a State party's national.

36. The Committee, in order to strengthen the framework for prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism, recommends that the State party establish its jurisdiction in all cases listed under article 4. Furthermore, the Committee recommends that the State party be able to prosecute an alleged offender present in its territory who has committed one of the offences covered by the Optional Protocol abroad – if it does not extradite him or her to another State party - even if the country where the offence was committed is not a Party to the Optional Protocol or does not criminalize these acts in its legislation.

### **VI. Protection of the rights of child victims**

#### **Measures adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol**

37. The Committee welcomes the measures taken for the protection of child victims of the offences covered by the Optional Protocol in the criminal justice system, including the access to support persons, alternatives for live in-court testimony when it is determined that a child should not testify, the use in many states of closed-circuit television (CCTV) testimony of children, child interview specialists and developmentally appropriate questioning. However, the Committee is concerned at the information that there are instances where child victims, especially those who are victims of trafficking within the United States and those used in prostitution, may be penalized or criminalized, since state laws have not yet uniformly exempted children, notably those involved in prostitution, from arrest and prosecution.

38. The Committee recommends that the State party:

(a) Ensure that all persons below the age of 18 victims of any of the offences under the Optional Protocol are as such neither criminalized nor penalized at federal or state level. To this end the Committee recommends that the State party ensure that the upper age for protection for child victims is set at 18 years throughout the country;

(b) Take all necessary measures to ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the Optional Protocol, the best interests of the child shall be a primary consideration;

(c) In the light of article 8, paragraph 1, of the Optional Protocol, ensure the protection of all victims and witnesses below the age of 18 at all stages of the criminal justice process, both at federal and at state levels. The State party should be also guided in this respect by the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (see Economic and Social Council resolution 2005/20).

#### **Recovery and reintegration of victims**

39. The Committee notes with appreciation that, with the Trafficking Victims Protection Act, in the United States, non-citizens who are victims of severe forms of trafficking - which include a person under 18 years of age induced to perform a commercial sex act - are allowed to remain in the country and are eligible to receive certain kinds of public assistance to the same extent as refugees. However, the Committee is concerned that while there are certain services available for child victims of trafficking from other countries, children victim of internal commercial sexual exploitation often lack the adequate services, including transitional shelters, necessary for their physical and psychological recovery and social reintegration. The Committee is further concerned at the information that in some cases foreign victims of trafficking for sexual exploitation may face deportation as unidentified trafficked victims.

40. The Committee recommends that the State party:

(a) Ensure that adequate services are available for all child victims of the offences covered by the Optional Protocol, boys and girls, including for their full social reintegration and their full physical and psychological recovery, in accordance with article 9, paragraph 3, of the Optional Protocol;

(b) Ensure that foreign children victims of the offences covered by the Protocol are not deported but rather granted the necessary services aimed at their physical and psychological recovery. When return in the country of origin is considered to be the best option in the interests of the child, an adequate assessment concerning the situation in the countries of origin, including - if possible - the family environment, should be undertaken;

(c) take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the Protocol, in accordance with article 8 (4) of the Optional Protocol;

(d) Ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol.



## **VII. International assistance and cooperation**

41. The Committee welcomes that the State party has substantially contributed to combating human trafficking internationally. It also welcomes the information provided during the dialogue concerning the cooperation between the state of New Mexico and the Mexican state of Chihuahua, which establishes a good practice in the fight against trafficking.

42. The Committee recommends that the State party continue to strengthen international cooperation by multilateral, regional and bilateral arrangements, giving due attention to the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism, in accordance with the Optional Protocol. These arrangements should always be in the best interest of the child and respect international human rights standards.

43. The Committee encourages the State party to continue its cooperation with United Nations agencies and programmes, including interregional programmes, and non-governmental organizations, in the development, implementation and evaluation of measures aimed at an adequate application of the Optional Protocol.

44. The Committee also encourages the State party to promote the strengthening of international cooperation in order to address the root causes, such as poverty, underdevelopment and weak institutional capacity, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

## **VIII. Follow-up and dissemination**

### **(a) Follow-up**

45. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to relevant government departments and agencies, the Congress, the Senate and to state authorities, for appropriate consideration and further action.

### **(b) Dissemination**

46. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, youth groups, professional groups, and children in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

**IX. Next report**

**47. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its next report, due on 23 January 2010.**

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