

**Attorney General’s Labor Trafficking Task Force**  
**Policy Improvements for 2023 Session**

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## Improve Criminal Law

- **Clarifying that Trafficking includes forcing a person to begin engaging *and continue to engage* in services**
  - Under current law, a person subjects another person to involuntary servitude if they force the other person to engage in services, using a variety of types of force (physical and non-physical).
  - We want to make it clear that this includes circumstances where (a) someone is forced to begin engaging in services, and also (b) someone may not have been forced to begin engaging in services but are subsequently forced to continue engaging in services.
- **Broaden the Scope of Debt Bondage:**
  - To improve Oregon law, Oregon’s trafficking definitions could incorporate the term “debt bondage” into its involuntary servitude and related trafficking laws, and then use that term to replace the phrase “threatening to collect an unlawful debt” in Second Degree Involuntary Servitude. *See* [ORS 163.263\(1\)\(d\)](#) (stating in relevant part that a person can commit the crime of involuntary servitude by “[t]hreatening to collect an unlawful debt”).
  - The use of the term “debt bondage” in both the ULC and California trafficking statutes (ULC Section 2(3); California Penal Code [Section 236.1\(h\)\(1\)](#)), appear to account for the wider variety of ways by which a trafficker can financially exploit a victim as compared to Oregon’s description of trafficking acts related to debts, because the term does not require that the debt be unlawful or that the trafficker make a “threat” related to the debt.
    - First, Oregon’s existing description demands that the debt be “unlawful,” while the term “debt bondage” as defined in the ULC also encompasses lawful debts. *See* ULC Section 2(3)(A)-(B) (stating that debt bondage involves *any* debt that is “real” or “purported”).
    - Further, unlike Oregon’s existing language choice referencing acts involving debts, the ULC’s “debt bondage” definition does not require the presence of a “threat.” *See* ULC Section 2(3)(A)-(B) (stating that debt bondage involves any debt used to prompt a victim to provide commercial sexual activity or undercompensated labor).
- **Broaden Crimes of Involuntary Servitude:**
  - To improve Oregon’s Involuntary Servitude law, Oregon could add several additional acts that can constitute the crime of Involuntary Servitude:
    - **Relating to substance use:** Oregon’s statute could add that involuntary servitude can be committed when an individual forces a

victim to perform services by controlling the victim's access to controlled substances.

- ULC Section 2(2)(D) states that coercion [a component of “Forced Labor”] includes “controlling or threatening to control an individual’s access to a controlled substance as defined in [insert the appropriate state code sections defining controlled substances]”
  - California Penal Code [Section 236.1\(h\)\(1\)](#): states that coercion [a component of “Forced Labor or Services”] includes “providing and facilitating the possession of a controlled substance to a person with the intent to impair the person’s judgment.”
- **Relating to fraud:** Oregon’s involuntary servitude offense does not reference acts of fraud, and Oregon’s trafficking offense encompasses fraudulent acts in limited circumstances – when a commercial sex act is involved. See [ORS 163.266\(1\)\(b\)](#). Conversely, the ULC and California trafficking laws both encompass fraudulent acts, even in the absence of a commercial sex act.
- ULC Section 2(2) states that coercion [a component of “Forced Labor”] includes “the commission of civil or criminal fraud”
  - California Penal Code [Section 236.1\(h\)\(5\)](#): states that “Forced Labor or Services” includes “labor or services ... obtained or maintained through ... fraud”
- **Broadening examples of withholding the necessities of life:** Involuntary Servitude in the Second Degree may occur when a person is forced to engage in services by instilling in the other person a fear that the actor will withhold from the other person the necessities of life. The statute includes a non-exhaustive list of examples, including lodging, food and clothing.
- The task force recommended adding medical care as another example, to provide more guidance to the court about another way that this can occur.
  - The task force also recommended clarifying that withholding the necessities of life from a person’s children is also a way that trafficking occurs.
- **Consideration of age, relationship and disability:** California’s False Imprisonment and Human Trafficking statute is qualified by Penal Code Section 236.1(i), which states that in addition to the enumerated

aspects of the definitions of “coercion” and “deprivation of the personal liberty of another” under California law, the totality of the circumstances of a given trafficking situation must also be considered when determining whether “coercion” and “deprivation of the personal liberty of another” is present. California law notes that these circumstances may include the age of the victim, the relationship between the victim and purported trafficker, whether a victim is disabled, and any other relevant circumstances that may indicate that a trafficker has subjected the victim to an exploitative situation.

- Conversely, Oregon law does not currently have a “totality of the circumstances” provision in its Involuntary Servitude statutes. A lack of this direction to the fact-finder makes it unclear whether these considerations could be taken into account when determining the presence of “force” under these statutes. Adding this language would ensure that these considerations could be made, potentially broadening the scope of “force” and the sweep of our statute.
- **Consideration of immigration status:** Similar to the items above, traffickers may use a person’s lack of immigration documentation and/or citizenship to coerce victims. Task force members identified this as an item to add to the court’s consideration of whether coercion is present.
- **Enhance Penalties for Trafficking Crimes Involving Child Victims**
  - To improve Oregon law, Oregon could impose higher penalties on traffickers when the trafficking victim is a minor. These enhanced penalties could apply to ORS 163.263 (Second Degree Involuntary Servitude) and ORS 163.264 (First Degree Involuntary Servitude).
  - The ULC uniformly imposes higher criminal penalties for trafficking acts involving minors. *See* ULC Section 3(c).
  - Currently, Oregon’s trafficking laws only impose higher criminal penalties for child victims under Trafficking in Persons for the child sex trafficking provision of the statute. [ORS 163.266\(1\)\(c\)](#). Trafficking in Persons does not impose a higher penalty under the labor trafficking provision found at (1)(a). Neither of the Involuntary Servitude statutes impose a higher penalty for child victims.
  - For each of these crimes, we do not want to bump up the crime classification, but instead want to add a sentencing enhancement.

- **Align Trafficking in Persons Culpable Mental States**

- Under current Oregon law, a person who commits the crime of Trafficking in Persons by engaging in sex trafficking may be held criminally liable if they *know or recklessly disregard the fact* that the person they have trafficked will be coerced into a commercial sex act or is under 18 and will be used in a commercial sex act; while a person who engages in labor trafficking must *know* that the person they have trafficked will be subjected to involuntary servitude.
- This distinction does not make sense, as both labor trafficking and sex trafficking cause severe harm to their victims, and current law is insufficient to hold those responsible for labor trafficking responsible.
- After discussing this issue, the task force recommends adding the “reckless disregard” culpable mental state to the labor trafficking provision of the crime of Trafficking in Persons.

### **Expand Victim Protections**

- **Affirmative Defenses**

- To improve Oregon law, Oregon law could create an affirmative victim defense like the ULC and California have implemented. *See* ULC Section 16; California Penal Code [Section 236.23](#). The affirmative victim defense appears to provide broader victim protection and account for labor trafficking power-dynamics more than Oregon’s affirmative “duress” defense ([ORS 163.269](#)), which is the only affirmative defense currently available to victims under Oregon’s trafficking laws.
- Unlike under Oregon’s affirmative “duress” defense, to assert the affirmative victim defense, a victim does not need to show that their trafficker used physical force or threatened use of physical force. There are other ways that a victim may be trafficked, and the affirmative victim defense takes this into account.
- Unlike under Oregon’s affirmative “duress” defense, a victim does not lose the ability to assert an affirmative victim defense if their trafficker can prove that the victim “intentionally” or “recklessly” placed themselves in a trafficking-vulnerable circumstance. This caveat under Oregon’s existing affirmative defense law does not appear to consider the power imbalances that underly labor trafficking, that may make it seem in certain circumstances that a victim “intentionally” or “recklessly” subjected themselves to a trafficking act.
- Note that we are limiting this affirmative defense to non-person crimes, to ensure that it is clear that the defense does not apply to crimes that cause

physical or sexual harm to another person or place another person in physical or sexual danger.

- **Past Sexual Behavior of Victims**

- To improve Oregon’s trafficking laws, Oregon could extend its rape-shield laws, which prevent a victim’s past sexual behavior from being introduced during a prosecution absent limited circumstances, to all Oregon trafficking prosecutions, including labor trafficking prosecutions.
- Currently, Oregon’s rape-shield laws do not extend to trafficking of persons prosecutions arising out of involuntary servitude; they only apply to its trafficking of persons subsections implicating a commercial sex act.
- The ULC, on the other hand, states that a “victims past sexual behavior,” “reputation,” or other “opinion evidence” is inadmissible unless in accordance with a state’s rape-shield statute for all types of trafficking prosecutions, including labor trafficking prosecutions.

### **Improve Civil Actions Available for Victims**

- Oregon, the ULC, and California all allow victims to bring civil actions against their traffickers. However, the ULC and California appear to provide victims with more protection in several respects that, to improve Oregon law, Oregon could also implement.

- **Lengthen Statute of Limitations**

- The ULC and California both implement longer statutes of limitations: the ULC’s statute of limitations is ten years and California’s statute of limitations is seven or ten years depending on the age of the victim, while Oregon’s statute of limitations is only six years.
- Given the myriad of reasons a trafficking victim may delay bringing a civil action (trauma, fear of retribution or immigration consequences, etc.), to improve Oregon law, we could similarly extend the Oregon statute of limitations.

- **Change Date when Statute of Limitations Begins to Run**

- The ULC and California statutes of limitations both don’t begin to run until 1) the human trafficking has *ceased* or 2) a specified number of years after a child victim has attained the age of majority. *See* ULC Section 18(c); California [Civil Code 52.5](#)(c). Conversely, the Oregon statute of limitations begins to run, in all instances, when the human trafficking is deemed to have *commenced*. *See* [ORS 30.867\(4\)](#) (stating that a victim must commence an action within six years of “the conduct giving rise to the claim”).

- In practical effect, Oregon's statute of limitations expects that victims have the capacity to bring lawsuits against their traffickers while they are still being trafficked, and appears to confine a significant portion of a victim's opportunity to seek civil relief to a period during which victims have no freedom or capacity to actually bring a lawsuit.

### **Labor Trafficking Awareness and Prevention**

- **Police Officer Basic Training**

- DPSST added training on human trafficking to the basic police course for new police officers in 2020 as an identified emerging policing and community need during a curriculum revision process.
- In order to ensure that this curriculum continues to be included into the future, we are codifying this practice.

- **Training for State Agency Employees**

- Numerous state agencies have frontline workers who engage with potential human trafficking victims (for both sex and labor trafficking), yet there is currently no statewide training available. DOJ convened the following agencies to discuss agency needs related to trafficking, and the consensus was that it would be incredibly helpful to develop and make training available:
  - Oregon Department of Agriculture
  - Oregon Liquor Control Commission
  - Department of Consumer and Business Services and its Oregon Occupational Safety and Health Division
  - Bureau of Labor and Industries
  - Criminal Justice Commission
- Department of Human Services was unable to attend the meeting, but their employees may also benefit from this type of training
- The group also identified several other state agencies whose employees may benefit from this type of training
  - Oregon Employment Department
  - Oregon Department of Environmental Quality
  - Oregon Housing and Community Services
  - Oregon State Police

- DOJ recently received grant funding which can be used to develop this type of training.

### **Mandatory Reporting**

- **Mandatory Reporting of Human Trafficking by Alcohol Licensees**

- In 2021, the Oregon legislature passed [SB 515](#), which requires employees of alcohol licensed locations to report to OLCC and law enforcement when they have a reasonable belief that *sex trafficking* is occurring at the licensed premises. In 2022, the Oregon legislature passed [HB 4074](#) which requires employees of marijuana licensed establishments to report to OLCC and law enforcement when they have a reasonable belief that *sex trafficking or other human trafficking* is occurring at the licensed premises.
- As discussed by the task force, we could fairly simply and easily increase the potential for labor trafficking reports to occur if we align the mandatory trafficking reporting requirements for all OLCC licensees. This would also allow OLCC to utilize unified messaging and education for all of its licensees.

### **Immigration-Related Policy Improvements**

- **Extension of U-Visa Reporting by CJC**

- Reporting on U-Visa certification to the CJC, and the CJC's annual reporting on the data it receives under [SB 962](#) (2019) expires on January 2, 2023.
- Stakeholders participating in our Labor Trafficking Task Force and another victim advocacy immigration work group that DOJ's CVSSD facilitates have found the reporting to be incredibly helpful and would like it to continue.
- *This policy proposal is not included in the task force bill. Instead, Senator Taylor sponsored [SB 597](#) which will extend this program.*