

(S. B. 1685)

**(No. 159-2020)**

(Approved December 28, 2020)

**AN ACT**

To amend Article 142 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” repeal current Articles 159 and 160 of the Puerto Rico Penal Code and substitute them for new articles, in order to clearly define and classify human trafficking in its different forms as an offense; and for other related purposes.

**STATEMENT OF MOTIVES**

Article II, Section 12 of the Constitution of Puerto Rico provides that “[n]either slavery nor involuntary servitude shall exist except in the latter case as a punishment for crime after the accused has been duly convicted [...].”<sup>1</sup>

Moreover, one of the principles of Human Rights is that human dignity is inviolable. This has been a long-standing premise embodied in documents such as the Universal Declaration of Human Rights, and the Constitutions of the United States of America and of Puerto Rico. Criminal activity, however, has evolved to the extent that, on occasion, this fundamental tenet is not even acknowledged. Even though all crimes are detrimental to and jeopardize the very dignity of humans and society, there are some crimes whose seriousness transcends the limits of the imaginable. Such is the case of human trafficking.

It is estimated that thousands of people are being exploited on a daily basis for lucrative purposes in what has been touted as modern slavery. Criminal activity

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<sup>1</sup> CONST. PR Art. II, § 12

has reached a point where, in some cases, the person has become a commodity, a consumer good.

Human trafficking is a criminal activity that jeopardizes the most fundamental human rights of its victims. It is a crime against humanity whereby persons, both adult and children, from all genders are deceived to be exploited in different ways, whether for sexual purposes or forced labor, among others. The victims of this crime are usually subjected to patterns of extreme physical and psychological abuse in order to gain control over them. The modalities of this exploitation may entail beggary, domestic slavery, forced marriage, organ removal, forced pregnancy, and debt bondage, among other criminal activities that are denigrate the human dignity.

As a general rule, human trafficking is fueled by an ongoing demand therefor and fields on the victim's position of vulnerability, poverty and gender inequality. We must be aware, however, that any person may become a victim of this crime.

The crime of human trafficking was recognized by the international community over two decades ago. In 2000, the General Assembly of the United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly Resolution 55/25, Annex II). It recognized that, taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons. Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected, said Protocol was adopted, which was signed and ratified by the United States.

In response to such need, the United States Congress enacted in that same year the "Trafficking Victim Protection Act," (TVPA). The TVPA and its subsequent

amendments provide U.S. law enforcement agencies with the tools to accurately combat this crime both at the local and international level. Likewise, the Office to Monitor and Combat Trafficking in Persons was created under this Act, within the United States Department of State and the Interagency Task Force to Monitor and Combat Trafficking. This Office shall publish an annual report in order to provide a comprehensive evaluation of the actions taken by the government and other countries to combat this crime.

Puerto Rico is not exempt from the occurrence of this crime. The Trafficking in Persons report of the United States Department of State reasserts that all forms of trafficking are believed to occur in the U.S. insular areas, including Puerto Rico and the U.S. Virgin Islands.<sup>2</sup> In the Commonwealth of Puerto Rico, one of the most notorious cases was a mother accused by federal authorities of transportation of a minor with the intent that she engage in prostitution and sex trafficking of a child, against her own daughters who were minors, which facts occurred in a hotel of the San Juan tourist zone in Puerto Rico. See, *United States v. Carrasquillo-Peñaloza*, 826 F.3d 590 (1<sup>st</sup> Cir. 2016).

Act No. 146-2012, known as the “Puerto Rico Penal Code,” included the human trafficking as an offense in our code of laws, classifying under Article 160 as follows:

Every person who recruits, transports, transfers, harbors, or receives people by means of force, threat, coercion, kidnapping, fraud, deception, abuse of power, or other position of vulnerability, or the offer, giving or receiving of payments or benefits to achieve the consent of a person having the control over another person for the purpose of engaging in mendicancy or any type of sexual exploitation,

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<sup>2</sup> 2020 Trafficking in Persons Report of the United States Department of State, available at: <https://www.state.gov/reports/2020-trafficking-in-persons-report/>

pornography, forced labor or services, debt bondage, servile marriage, irregular adoption, slavery or any practices similar to slavery, servitude, or the removal of organs for the purpose of exploiting them for profit, even when the victim acquiesced, shall be punished by imprisonment for a fixed term of fifteen (15) years.

When the person who engaged in the act is the parent, legal guardian, or tutor of the minor, such person shall be punished by imprisonment for a fixed term of twenty (20) years.

However, the Trafficking in Persons Report 2015 of the United States stated the following as to our criminal legislation:

All forms of trafficking are believed to occur in the U.S. insular areas. In the Commonwealth of Puerto Rico, during the reporting period, a child sex trafficker was convicted and sentenced to more than 24 years' imprisonment. The Puerto Rico Police Department and DHS investigated this case, and DOJ prosecuted it in federal court. **While three sections of Puerto Rico's penal code address human trafficking and slavery, it has not been updated to reflect modern anti-trafficking laws.**<sup>3</sup>

Hence, our legislation should be modified in order to allow local authorities to effectively prosecute the human trafficking crime in the state courts. In fact, the most recent report on human trafficking issued by the United States Department of State stresses the need for the laws seeking to classify this crime to efficiently enable government entities to properly identify this crime. Specifically, the report explains the following:

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<sup>3</sup> See, Trafficking in Person [sic] Report, July 2015, United States Department of State. p. 357. Available at: <https://2009-2017.state.gov/documents/organization/245365.pdf>.

.... the Palermo Protocol defines human trafficking by its three elements—a trafficker’s **action** taken through the **means** of force, fraud, or coercion for the **purpose** of exploitation. Understanding it as such leaves little room for interpretation based on the incidental attributes of the victim or the trafficker, such as gender, age, nationality, legal status, or occupation, or on other circumstances surrounding the crime, such as movement or connection to organized crime.

Messaging from the highest levels of government should be clear and consistent and preclude overly restrictive interpretations of human trafficking or perceptions of its victims. **Governments should make every effort to ensure that those addressing human trafficking, both in policy and practice, frame the issue correctly to avoid limiting the applicability of anti-trafficking laws and protection efforts.**

For example, governments should prosecute human trafficking crimes as such and not under other criminal provisions—or, worse, civil laws—that may come with weaker or no criminal penalties. Characterizing an offense as less severe, such as penalizing human traffickers for labor violations under employment law instead of charging them for labor trafficking, may mean that traffickers are given penalties substantially lower than those prescribed under anti-trafficking law, limiting their potential deterrent effects.<sup>4</sup>

In view of the foregoing, we see that, Article 160 of the Penal Code as currently drafted is confusing and hinders the identification of the various forms of this crime. It is necessary to punish every person who participates in the trafficking

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<sup>4</sup> (Emphasis supplied). Trafficking in Persons Report, July 2019, United States Department of State, p. 8. Available at: <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

chain, regardless of their involvement, whether they recruited the victim, or benefited financially or otherwise from the exploitation activity carried out. Every person who promotes or benefits from the labor or services of a person knowing that the latter was submitted to some type of exploitation against his will shall be prosecuted for human trafficking. To illustrate, whoever obtains a benefits from deceiving a person through fraudulent job offers knowing that such person shall be subsequently sexually or otherwise exploited is as guilty of engaging in human trafficking as the person who commits the sexual exploitation itself through deceit.

As currently drafted, Article 160 may be confused with other crimes within the Penal Code which essentially include the same elements as human trafficking. See, for instance, Article 159 on involuntary servitude which classifies forced labor through deception, fraud or other means that influence consent. This is human trafficking for purposes of obtaining forced labor or services.

Moreover, the offenses of aggravated pimping, pandering and human trafficking, as provided in Article 142 of the Penal Code, classifies the conduct of promoting prostitution when the victim is a minor or when there is deceit, violence, abuse of authority, or any means of intimidation or coercion. This is also human trafficking for purposes of sexual exploitation. However, Article 142 provides for a lower punishment for human trafficking compared to Article 160, despite the fact that the prohibited conducts are essentially the same. It should be noted that the sexual assault classified in Article 130 of the penal Code provides for punishments of 50 or 25 years. However, human trafficking which entails the victim's sexual assault within the forms of exploitation, only provides for a punishment of 15 or 20 years.

For all of the foregoing, it is necessary for this Legislative Assembly to clarify the act in order to have a statute that allows for the prosecution of this crime without unnecessary hurdles. For such purposes, Article 159 shall classify involuntary

servitude or forced labor, or other purposes as a form of human trafficking. In doing so, the circumstances in which such offense is committed shall be clearer.

Article 160 focuses on sexual exploitation. This measure clearly establishes that every person who recruits, entices, harbors, transports, provides, maintains, or holds another person through deceit or other means in order to exploit such person, as well every person who participates or benefits from such exploitation knowing that the victim was submitted to this pattern against the victim's will is committing such an offense. Human trafficking is a crime that feeds on the existing demand for such type of unlawful services that undermine human dignity. Hence, it is important to punish anyone who participates in or benefits from these services knowing that they involve human trafficking.

Regarding the benefit, we must stress that it may not be necessarily an economic benefit given that, on occasion, there is no strictly financial benefit from the perpetrator, but rather it could be anything of value for him. This also happens with the federal legislation. To illustrate, the offense of sex trafficking, classified in Section 1591 of Title 18 de the United States Code, establishes that any person commits this offense when he engages in the acts described therein and benefits, financially or by receiving anything of value.

In *U.S. v. Cook*, 782 F.3d 983 (C.A.8 (Mo.), 2015), Cook was the aggressor charged with the commission of sex trafficking, as provided in the above federal statute. The accused challenged the interpretation of sex act or the things he received, such as pornographic videos and photographs, as benefits for purposes of determining that he had committed the crime. The circuit court dismissed this claim and stressed that, for purposes of this statute, the benefits were not limited to financial or monetary benefits. Its analysis cited various instances that served as examples of this determination, and given their pertinence, we have included the court's reasoning *in extenso*:

Cook finds it problematic that the district court did not cite case law defining a “thing of value” under section 1591(a)(2) to include sexual acts or photographs. But the statute’s language gives notice of this application, and our court’s case law also gave reason to expect section 1591 may be given this construction. *See, e.g., Petrovic*, 701 F.3d at 858 (holding that, in the context of the interstate extortionate threat statute, the district court did not err in instructing the jury that “things of value” **could include sexual relationships and citing cases where “things of value” included, among other things, sexual favors, the time and attention of a woman, and anticipation of future sexual encounters**); *United States v. Griffin*, 482 F.3d 1008, 1013 (8th Cir.2007) (**receiving and sharing child pornography files through a file-sharing network constitutes receipt of a “thing of value”** for the purposes of a sentencing enhancement); *Knutson*, 619 F.2d at 749–50 (denying Fourteenth Amendment challenge to state's interpretation of “thing of value” to include obtaining sexual gratification, **noting that “[t]he inclusion of the additional phrase ‘thing of value’ was clear notice that a non-monetary demand might come within the definition of the crime denounced”**). “Although these cases differ in procedural postures and involve different statutes than does the present case, we see no reason why a ‘thing of value’ under [section 1591] is more narrow than what the broad term of art encompasses in other contexts.” *Petrovic*, 701 F.3d at 858.

(Emphasis supplied). *U.S. v. Cook*, 782 F.3d 983, 989 (C.A.8 (Mo.), 2015)

In fact, the court added that the term “thing of value” envelops both tangibles and intangibles. *See, U.S. v. Cook*, 782 F.3d 983, 988 (C.A.8 (Mo.), 2015), citing *United States v. Petrovic*, 701 F.3d 849, 858 (8<sup>th</sup> Cir. 2012).



It should also be considered that the type of benefit depends on the form of human trafficking and the scenario within which the crime is committed. Below, we discuss a case that serves as an example of this. In May 2018, a Kansas court granted a million-dollar compensation to a young woman who was a victim of human trafficking by a religious sect that submitted her to forced labor. See, *Ross v. Jenkins*, 325 F.Supp.3d 1141 (D. Kan., 2018). The victim filed a Complaint against Royall Jenkins, The Value Creators, Inc. (f/k/a The United Nation of Islam, Inc.) asserting claims for violations of the Trafficking Victims Protection Reauthorization Act (“TVPRA”) and other federal laws that provide certain civil remedies for victims of human trafficking. One of the statutes evaluated in this case was Section 1589 of Title 18 of the United States Code, which classifies benefiting from obtaining forced labor under the circumstances provided therein as an offense. The language of this statute is equal to that of said Section 1591. When resolving the plaintiff’s claim, the court held that the defendants by receiving something of value—namely plaintiff’s forced labor for no compensation. The victims were not paid any wages for the work they performed in businesses and homes owned by defendants. Moreover, they forced the victims to surrender their food stamps from the federal government. *Ross v. Jenkins*, 325 F.Supp.3d 1141 (D. Kan., 2018).

For such reason, whenever the term “benefit” is used in this Act, the intent shall be to cover any advantage, profit, earnings, or gain without limiting it to a financial or material nature. In doing so, we are consistent with the trends pertaining to this topic where victims are submitted to patterns of exploitation for the purpose of receiving not only financial benefits, but also other types of benefits. Moreover, within this offense we consolidate two forms of aggravated pimping, classified in current Article 142 of the Penal Code, which in themselves constitute human trafficking for the purpose of sexual exploitation. We are referring to instances where the prostitution of a person who has not attained age eighteen (18) is

facilitated or when, to accomplish this, deceit, violence, abuse of power, or any form of intimidation or coercion, whether by force, threat of force, deceit, fraud, coercion, or violence was involved.

With this change in the legislation, we shall strengthen the legal framework to provide the State with the tools to fight against this crime more effectively by allowing it to identify the offense of human trafficking more coherently. In addition, by establishing one offense that specifically classifies the forms of human trafficking specifically for sexual exploitation, and another that specifically classifies human trafficking for other types of exploitation, the State shall be able to obtain statistics about the forms of human trafficking that are most common on the Island. This shall assist in the evaluation of administrative and legislative strategies geared to address situations that are particular to Puerto Rico.

The People of Puerto Rico strongly repudiate the exploitation and commercialization of both the body and persons for any unlawful purposes. Furthermore, it is the intent of this Legislative Assembly that in the cases of human trafficking, the perpetrators are prosecuted and punished in accordance with the crime they committed. This Government shall not stop its efforts to tackle any type of human trafficking and do justice to the victims who suffer the consequences of such a reproachable conduct. This initiative constitutes a concrete action to continue fighting against human trafficking for the wellbeing of human dignity and the dignity of all Puerto Ricans.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Article 142 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby amended to read as follows:

“Article 142.- Aggravated Pimping, Pandering, and Human Trafficking.-  
Every person who commits the offense provided in Article 141 shall be

punished by imprisonment for a fixed term of eight (8) years in the event of any of the following circumstances:

(a) If the actor is an ascendant, a descendent, a spouse, a sibling, a guardian or the person in charge of the education, guardianship, or has the custody of the victim.

(b) If the prostitution or sodomy of more than one person is promoted or enabled.”

Section 2.- Article 159 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby repealed and substituted for a new Article 159, to read as follows:

“Article 159.- Human Trafficking for Involuntary Servitude or Slavery, and Other Types of Exploitation.-

Every person who commits the offense of Human Trafficking shall be punished by imprisonment for a fixed term of twenty (20) years if such person knowingly engages in any of the following acts:

1) Holds any person to a condition of involuntary servitude, forced labor, or any other type of exploitation, or obtains the labor or services of a person by any one of the following means:

a. by means of force, deceit, fraud, physical or emotional coercion, intimidation, harm, or threat of any of the foregoing, against the victim or any other person.

b. by means of abusing of actual or purported power, or taking advantage of the victim’s position of vulnerability.

c. by means of kidnapping, physical restraint, restriction of liberty, restriction of movement or communication, or confiscation or destruction of the victim’s identification documents.

d. By holding the victim, through any of the means described in paragraphs (a), (b), or (c) of this Article, to labor or any type of exploitation as the only alternative to pay off a debt of the victim or another person.

2) Recruits, entices, harbors, transports, provides, maintains, or obtains another person, intending or knowing that the person shall be held in a type of exploitation by any of the means provided in subsection (1) of this Article.

For purposes of this Article, labor, services, or exploitation shall include forced labor or services, servitude, debt bondage, mendicancy, domestic slavery, adoption by means of coercion, slavery and similar practices, or organ removal.

When the person who commits the offense of Human Trafficking established in this Article were the parent, tutor, or legal guardian of the victim, and the latter is a minor, or has a physical or intellectual impairment, such person shall be punished by imprisonment for a fixed term of twenty-five (25) years.”

Section 3.- Article 160 of Act No. 146-2012, as amended, known as the “Puerto Rico Penal Code,” is hereby repealed and substituted for a new Article 160, to read as follows:

“Article 160.- Human Trafficking for Sexual Exploitation.

A person shall be guilty of Human Trafficking for sexual exploitation and punished by imprisonment for a fixed term of forty (40) years, if such person:

1) recruits, entices, harbors, transports, provides, maintains, or retains by means of force, threats of force, fraud, duress, coercion, violence, kidnapping, abuse of power or authority, or of a position of vulnerability of another intending or knowing that the person shall be submitted to a sexual activity.

2) obtains any other type of benefit from a sexual activity, as defined in this article, knowing that it was obtained by means of force, threats of force, deceit, fraud, duress, coercion, violence, kidnapping, abuse of power or authority, or of a position of vulnerability.

3) participates in a sexual activity, as defined in this Article, knowing that it was obtained by any of the means described in this Article.

When the person compelled to engage in or submitted to sexual exploitation has not attained the age of eighteen (18), it shall not be necessary to prove any element of vice of consent over such minor, as a requirement to be found guilty of said offense.

When the Human Trafficking offense established in this Article involves child pornography, incest, or sexual assault; or when the actor is the victim's parent or his ascendant, descendant, spouse, sibling, legal guardian or tutor, person in charge of his education, guardian or custodian, or when the victim is a minor or is mentally or physically impaired, such offense shall be punished by imprisonment for a fixed term of fifty (50) years.

For the purposes of this Article, sexual activity shall be deemed to be prostitution, pornography, servile marriage, exotic dancing, forced pregnancy, and any other type of sexual activity.

Section 4.- Any conduct engaged in prior to the effective date of this Act in violation of the provisions amended and eliminated herein shall be governed by the provisions and/or laws in effect at the time of such conduct.

Section 5.- Severability.

If any clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be void or unconstitutional, the ruling, holding, or judgment to such effect shall not affect, impair, or invalidate the remainder of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, sentence, word, letter, article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act thus held to be null or unconstitutional. If the application to a person or a circumstance of any clause, paragraph, subparagraph, sentence, word, letter,

article, provision, section, subsection, title, chapter, subchapter, heading, or part of this Act were held to be void or unconstitutional, the ruling, holding, or judgment to such effect shall not affect or invalidate the application of the remainder of this Act to such persons or circumstances where it may be validly applied. It is the express and unequivocal will of this Legislative Assembly that the courts enforce the provisions and application thereof to the greatest possible extent, even if it renders ineffective, voids, invalidates, impairs, or holds to be unconstitutional any part thereof, or even if it renders ineffective, invalidates, or holds to be unconstitutional the application thereof to any person or circumstance.

Section 6.- Effectiveness.

This Act shall take effect immediately after its approval.