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**REPORT ON LEGISLATION BY THE
SEX & LAW COMMITTEE**

**A.506
S.7**

**M. of A. Paulin
Sen. Lanza**

The Trafficking Victims Protection and Justice Act

THIS BILL IS APPROVED WITH RECOMMENDATIONS

This report is respectfully submitted by the Sex and Law Committee (the “Committee”) of the New York City Bar Association. The Association has a long-standing commitment to strengthen human trafficking laws in order to promote the rights of survivors of both labor and sexual servitude. New York passed a strong anti-trafficking law in 2007 that has been viewed as a model for other states. Following the passage of this law, the Association urged that key omissions from the law be considered in future legislation, such as adding an independent private right of action for trafficking victims, protecting victims of sex trafficking from being prosecuted for prostitution, and raising the penalty for labor trafficking.¹ The Association additionally has a specific interest in human trafficking laws as the Immigrant Women and Children Project (a program of the City Bar Justice Center, the pro bono affiliate of the Association) has been representing victims of trafficking for more than a decade.

THE PROPOSED BILL

The Committee has analyzed A.506/S.7 (the “Bill”), also known as the Trafficking Victims Protection and Justice Act. This Bill would amend New York’s current anti-trafficking law by introducing and amending several key criminal penalties. The purpose of this Bill is to increase criminal penalties for trafficking, remove the requirement that prosecutors establish coercion when the victims are minors, create an affirmative defense in prostitution prosecutions where the defendant’s participation was a result of having been a victim of sex trafficking, create a private right of action for trafficking victims, and improve the delivery of services to trafficking victims.²

¹ See Letters to Gov. Eliot Spitzer dated Dec. 21, 2006 at <http://www.nycbar.org/pdf/report/TransitionMemoGovSpitzer.pdf> and June 4, 2007, at http://www.nycbar.org/pdf/report/Trafficking_Bill_passed1.pdf.

² This bill largely tracks legislation proposed as part of the Women’s Equality Act (A.8070, 236th Session (N.Y. 2013)), which the City Bar supported. See June 2013 report of the Sex & Law Committee, 7-8, at <http://www2.nycbar.org/pdf/report/uploads/WomensEqualityBillA8070SexLawReportFINAL6.20.13.pdf>.

This Committee supports the provisions of the Bill that place a greater emphasis on services for trafficking victims. We support the provision that non-law enforcement persons, such as social and legal service providers, are authorized to make referrals to the State Office of Temporary and Disability Assistance for victim services. We also support the provision that creates an affirmative defense in prostitution prosecutions where the defendant's participation was a result of having been a victim of sex trafficking. Trafficking victims are frequently arrested and convicted for crimes their traffickers forced them to commit. We also support the alignment of New York State law with federal legislation on protecting minors under 18 years old as victims of trafficking without the need to prove force, fraud or coercion. Finally, the Committee supports the creation of a private right of action for those who have been subjected to compelled prostitution, sex trafficking, labor trafficking and aggravated labor trafficking, including the right to recover damages and reasonable attorneys' fees.

RECOMMENDED MODIFICATIONS

1. First, we note that the Bill does not include a right to counsel for trafficking victims bringing CPL 440.10(1)(i) motions to vacate prior prostitution convictions from their criminal records. The Association supports a right to counsel in such matters.³ Language establishing a right to counsel in such matters should be considered for inclusion in this Bill because the ability to have a "clean" record is integral to a trafficking victim's chance for a fresh start.⁴
2. The Committee continues to support raising the penalties of labor trafficking from a D to a B felony, as opposed to creating a separate crime of aggravated labor trafficking (a Class C felony) where controlled substances are used as the means of coercion. Preventing and punishing labor trafficking should be an equally compelling goal of this legislation.
3. The Bill expands the application of sex offender registration to new crimes, including aggravated patronizing a minor for prostitution. While expansion of sex offender registration can be an effective tool to target a small and dangerous class of violent sex offenders, the expansion as contemplated by this Bill raises both overbreadth and due process concerns. Further, the Association has concerns that sex offender registration in New York is based on a risk assessment tool that is outdated and biased against young

³ Recommendations to Enhance Criminal Procedure Law §440.10(1)(i), Regarding the Vacatur of Prostitution and Trafficking-Related Convictions for Victims of Sex Trafficking, Criminal Courts Committee and Sex and Law Committee, New York City Bar Association, May 2013, 6-7, at http://www2.nycbar.org/pdf/report/uploads/4_20072482-RecommendationstoLawreVacatingTraffickingVictimsProstitutionConvictions.pdf.

⁴ We note that a separate anti-trafficking bill, A.2953, provides a right to counsel for trafficking victims bringing CPL 440.10 motions to vacate prior prostitution convictions from their criminal records, a measure the City Bar supports. While we are not commenting on support for A.2953 in its entirety, such language establishing a right to counsel in such matters should be considered for inclusion in this legislation.

offenders.⁵ Sex offender registration expansion would also come at a heavy cost to the State, which would then be responsible for monitoring this expanded class of individuals. On balance, we recommend that the provisions expanding the pool of sex offender registrants be tabled until further study can be undertaken.

CONCLUSION

The Sex and Law Committee supports the proposed legislation with the recommended modifications identified above.

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⁵ See Report on Legislation by the Criminal Courts Committee, Criminal Justice Operations Committee, and the Corrections and Community Reentry Committee in support of A.4591/S.3138, New York City Bar Association, April 2013, at <http://www2.nycbar.org/pdf/report/uploads/20072469-SexOffenderRegistrationActReport.pdf>.