

MEMORANDUM

Force, Fraud, and Coercion

I. Introduction

In the State of Texas, under the Texas Penal Code, Title 5, offenses against the person, section 20A.02, speaks specifically on crimes that would pertain to the trafficking of persons. Section 20A.01 goes into specifics on whether the victim may be underage or a "child," being a person younger than 18 years of age. Under provision (2) also defines forced labor or services as labor that is obtained through the use of "force, fraud, or coercion."

Section 20A.02, Trafficking of Persons, states that a person commits an offense if the person knowingly: (1) traffics another person with the intent that the trafficked person engage in forced labor or services and (2) receives benefits from participating in a venture that involves an activity described by subdivision. These services or labor are obtained through the use of force, fraud, or coercion. When comparing the trafficking laws between adults and children, the main difference is that child sex trafficking does not require force, fraud, or coercion.

Under Texas Bill S.B. No. 2148, it is stated that the Board of Pardons and Paroles, alongside Governor Greg Abbott, shall appoint a panel of experts to

review applications for clemency for persons who have been convicted of an offense **while under duress or coercion** as a result of being the victim of an offense under Chapter 20A in the Texas Penal code or an offense punishable under section 22.01(b)(2), penal code.

II. Elements of Human Trafficking

Forced labor or services by means of:

- **Force;**
- **Fraud;**
- **Coercion**

For involuntary/voluntary sexual acts, involuntary servitude, peonage, debt bondage, slavery.

A. Force:

There are many methods of manipulation human traffickers use to ensure that victims will remain under their control. While force on its face can mean physical force, there are many other forms of force as it ties into human trafficking. This includes but is not limited to denied pay, kidnapping, torture, assault, the inducement of drug addictions, brands or tattoos, confinement, sexual assault, and the denial of food and water.

B. Fraud:

Methods that criminals use in order to engage victims in human trafficking scenarios include but are not limited to denied pay, misrepresentation of the type of work that they are going to employ them in. Common scenarios that constitute fraud are forced labor or illegal acts that are just masked as legitimate employment opportunities to reel in victims initially.

C. Coercion

With the use of either expressed or implied threats of violence, reprisal, punishment (physical or mental), along with other intimidating behaviors that place the victim in fear of imminent danger of or any consequence. Through coercion, these criminals can compel their victims to act against their own free will or consent. Texas case law often uses the terms "coercion" and "acting under duress" interchangeably. In general, three elements are used to determine whether coercion existed, whether there was an immediate threat made of serious bodily harm or danger, whether the victim had a reasonable fear that the other party would commit the threat, and the victim had no reasonable opportunity to escape and had no other choice but to commit the illegal act that was required of them. Examples of coercion include threats of harm to reputation or blackmail, threats of any kind harm to the victim or

family members of the victim, and even abuse of the law with threats of repercussion for prior illegal acts.

In *Waggoner v. State*, the appellant argued that he could not have trafficked, coerced, forced, or threatened the victim to engage in prostitution because he ‘never made her get in the car, never threatened her, never hit her, never grabbed her, and never hurt her.’ However, in this scenario, the victim involved was younger than 17 years old. Under Texas Penal Code § 43.05. Compelling prostitution. (a) a person commits an offense if the person knowingly: (1) causes another by force, threat, coercion, or fraud to commit prostitution; or causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time of the offense. Since the victim was under 17 years of age, the State was not limited to proving that the appellant compelled the victim to commit prostitution by force, threat, or fraud, but to only prove that the appellant caused the victim to act. Here, since the appellant engaged by providing the opportunity, contact, meeting point, condoms, and a cell phone, he fulfilled the necessary element of "any means" by acting in furtherance of compelling prostitution. If the victim were of age, the State would have fulfilled the necessary element of coercion to charge him with compelling prostitution. The victim stated that she entered the appellant’s vehicle out of fear and only

agreed to be a part of the appellant's scheme because she was afraid of being hurt because of the menacing and threatening nature appellant used while looking at her and touched her.

Thus, through fraud, force, or coercion, offenders abuse victims by making them work forced labor such as prostitution. Though these elements are left to interpretation and can highlight grey areas in the justice system, the argument can be made by analyzing an underlying crime such as compelling prostitution, sexual assault, extortion, and not limited to these crimes, that these elements will often time be fulfilled.

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