

Act 105: The Most Robust Civil Remedy Against Sex Traffickers

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Human trafficking is a troubling area of public interest that has gained wide media attention during the past several years. Increased public awareness has brought desperately needed changes for victims and survivors of commercial sexual exploitation through legislative and policy reform, stiffer criminal penalties, and increased social services.

In September 2014, the Pennsylvania Legislature enacted Act 105, which includes a provision for civil causes of action, 18 Pa.C.S.A. Section 3051. Section 3051 establishes three civil causes of action for victims of human trafficking to sue both people and organizations for monetary damages. The first cause of action allows for suit against anyone who recruits, profits from, or maintains the victim in any sex trade act. This cause of action would extend liability to providers of goods and services that knowingly profit from the sex trade, such as motels and strip clubs. The second cause of action permits a victim to bring suit against anyone who abuses or causes bodily harm to them, which would typically be either a pimp or a physically abusive sex buyer, the "john." Finally, the third cause of action permits a victim to bring suit against anyone who knowingly advertises or publishes advertisements for purposes of recruitment into sex trade activity.

For a civil attorney, the main issue in counseling a victim of human trafficking with regard to pursuing this newly established cause of action is whether any potential defendant would actually have the resources to satisfy a judgment. For example, a pimp is unlikely, or less likely than others, to have a financial foundation that would allow for easy recovery of damages. While strip clubs and motels may have deeper coffers than a pimp who exploits women and girls on street corners, these institutions may be able to hide behind the closed doors of their hourly-rated rooms to deny knowledge of the victimization and thus avoid liability. The third cause of action, which targets defendants who knowingly advertise or publish advertisements for the purpose of recruitment into the sex trade industry, provides a potentially powerful tool to recover civil damages against defendants such as Backpage.com, a classified advertising website similar to Craigslist that contains ads for "adult entertainment" with explicit sexual listings.

However, websites such as Backpage.com thus far have been shielded from liability for advertisements that facilitate sex trafficking, due to Section 230 of the Communications Decency Act of 1996 (CDA), which provides that "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." In lawsuits against its parent company, the Village Voice, Backpage.com has successfully argued that it cannot be sued for advertisements on its platform, since doing so would effectively treat Backpage.com as if it were the publisher of the content, in violation of Section 230 of the CDA. In other words, since Backpage.com does not create the ads, but simply provides the platform upon which to display the ads, it claims to be immune (by operation of Section 230 of the CDA) from any lawsuit that would treat it as the publisher of the content.

Recently, however, the justices of the Washington state Supreme Court disagreed with Backpage.com's interpretation of Section 230 of the CDA. In a 6-3 decision, the court allowed a suit filed by seventh- and ninth-grade juveniles who had been sold as prostitutes on Backpage.com to proceed. The justices ruled that if Backpage.com designed its posting rules to induce sex trafficking, it would not be immune from suit, since Section 230 does not shelter websites that help to develop illegal content. The plaintiffs argued that Backpage.com actually provides sex traffickers with instructions on how to write an ad that works to sell sex. Justice Steven Gonzalez, writing for the majority, said, "The plaintiffs before us have been the repeated victims of horrific acts committed in the shadows of the law ... they brought this suit in part to bring light to some of those shadows: to show how children are bought and sold for sexual services online."

Section 3051 of Pennsylvania's Act 105 exists as a weapon waiting to be used in the Pennsylvania courts. While prosecutors are gaining traction in and around Pennsylvania in holding pimps criminally responsible for the commercial sexual exploitation of children and young adults, civil litigators are lagging behind in their efforts to achieve liability for the same clients. In light of the Washington Supreme Court's recent decision to pierce through the unwarranted veil of the CDA, civil suits for these young victims may finally flourish in Pennsylvania—a state that has made great strides in promoting justice for the victims of sex trafficking.

It is important to note that while Pennsylvania and the rest of the country are moving closer to getting civil justice for trafficking victims, the road is a long and treacherous one for the individual plaintiff. Civil discovery can be extensive and invasive for those survivors who could potentially be re-traumatized in the process. It is imperative for civil litigators to remember the person behind the plaintiff's title and proceed with caution and compassion.

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