

State of Arkansas As Engrossed: H3/2/21 H3/9/21 H4/15/21 S4/22/21
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1554

By: Representative Penzo

By: Senator B. Ballinger

For An Act To Be Entitled

AN ACT TO ESTABLISH SAFE HARBOR PROVISIONS FOR
VICTIMS OF HUMAN TRAFFICKING; TO ESTABLISH AN
AFFIRMATIVE DEFENSE; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH SAFE HARBOR PROVISIONS FOR
VICTIMS OF HUMAN TRAFFICKING; AND TO
ESTABLISH AN AFFIRMATIVE DEFENSE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 5, Chapter 2, Subchapter 2, is amended to add an additional section to read as follows:

5-2-210. Human trafficking – Affirmative defense.

(a) As used in this section, "victim of trafficking of persons" means a person who has been subjected to trafficking of persons, § 5-18-103.

(b) It is an affirmative defense to an offense listed under subsection (c) of this section if at the time a person engaged in the conduct charged to constitute the offense the person was:

(1) A victim of trafficking of persons; and

(2) Engaged in the offense as a result of the trafficking of persons.

(c) The affirmative defense under this section may be raised only in a prosecution for one (1) or more of the following offenses:

(1) Forgery, § 5-37-201;

(2) Defrauding a prospective adoptive parent, § 5-37-216;



- (3) A prostitution offense under § 5-70-101 et seq.;
- (4) Obscene performance at a live public show, § 5-68-305; or
- (5) A controlled substance offense under § 5-64-401 et seq. that is not a Class Y felony.

SECTION 2. Arkansas Code § 5-18-102(5)(B), concerning the definition of "involuntary servitude" as used in the Human Trafficking Act of 2013, is amended to read as follows:

- (B) Abuse or threatened abuse of ~~the~~ law or legal process;

SECTION 3. Arkansas Code § 5-18-102, concerning definitions used in the Human Trafficking Act of 2013, is amended to add additional subdivisions to read as follows:

(16) "Abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action; and

(17) "Serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or a service in order to avoid incurring the harm.

SECTION 4. Arkansas Code § 5-18-103(a), concerning the elements of the offense of trafficking of persons, is amended to read as follows:

(a) A person commits the offense of trafficking of persons if he or she knowingly:

- (1) Recruits, harbors, transports, obtains, entices, solicits, isolates, provides, or maintains a person knowing that the person will be subjected to involuntary servitude;

- (2) Benefits financially or benefits by receiving anything of value from participation in a venture under subdivision (a)(1) of this section;

- (3) Subjects a person to involuntary servitude;

(4) Recruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a minor for commercial sexual activity;

(5) Sells or offers to sell travel services that he or she knows include an activity prohibited under subdivisions (a)(1)-(4) of this section;

(6) Recruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a pregnant woman for the purpose of causing the pregnant woman ~~by the use of or threatened use of physical force to place the baby who is not yet born for adoption~~ to place her unborn child for adoption by:

(A) The use of or threatened use of physical force;

(B) The physical restraint or threat of physical restraint of a person;

(C) Serious physical injury or threat of serious physical injury to a person;

(D) Abuse or threatened abuse of law or legal process;

(E) Any scheme, plan, or pattern that has a purpose to cause the pregnant woman to believe that, if the pregnant woman does not place the unborn child for adoption, a person would suffer serious physical injury or physical restraint; or

(F) Means of serious harm or threats of serious harm to a person; or

(7) Benefits financially or benefits by receiving anything of value from participating in an act described under subdivision (a)(6) of this section.

SECTION 5. Arkansas Code § 16-90-1412(c), concerning sealing convictions for victims of human trafficking, is amended to read as follows:

(c) The court shall grant the uniform petition under this section if it finds by a preponderance of the evidence that:

(1) The petitioner was convicted of prostitution, § 5-70-102; and

(2)(A) The conviction was obtained as a result of the petitioner's having been a victim of human trafficking.

(B) A finding concerning the affirmative defense under § 5-2-210 does not affect a finding under subdivision (c)(2)(A) of this section, and the petitioner is not required to have raised the affirmative

defense under § 5-2-210.

/s/Penzo

APPROVED: 5/3/21