

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

SENATE BILL 242

By: Senators Irvin, Rapert, Elliott
By: Representatives D. Meeks, Leding

For An Act To Be Entitled

AN ACT ESTABLISHING THE HUMAN TRAFFICKING ACT OF
2013; CONCERNING THE OFFENSE OF HUMAN TRAFFICKING;
AND FOR OTHER PURPOSES.

Subtitle

ESTABLISHING THE HUMAN TRAFFICKING ACT OF
2013; CONCERNING THE OFFENSE OF HUMAN
TRAFFICKING.

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

SECTION 1. DO NOT CODIFY. Title.

This act shall be cited as the "Arkansas Human Trafficking Act of
2013".

SECTION 2. Arkansas Code § 5-11-108 is repealed.

~~5-11-108. Trafficking of persons.~~

~~(a) As used in this section:~~

~~(1) "Debt bondage" means the status or condition of a debtor
arising from a pledge by the debtor of his or her personal services or of the
personal services of a person under his or her control as a security for
debt, if:~~

~~(A) The value of the debtor's personal services or of the
personal services of a person under his or her control as reasonably assessed
is not applied toward the liquidation of the debt; or~~

~~(B) The length and nature of the debtor's personal~~



~~services or of the personal services of a person under his or her control are not respectively limited and defined;~~

~~(2) "Involuntary servitude" means a condition of servitude induced by means of:~~

~~(A) Any scheme, plan, or pattern of behavior intended to cause a person to believe that if he or she does not enter into or continue the servitude, he or she or another person will suffer serious physical injury or physical restraint; or~~

~~(B) The abuse or threatened abuse of the legal process;~~

~~(3) "Peonage" means holding a person against his or her will to pay off a debt; and~~

~~(4) "Sexual conduct" means the same as defined in § 5-27-401.~~

~~(b) A person commits the offense of trafficking of persons if he or she:~~

~~(1) Recruits, harbors, transports, or obtains a person for labor or services through the use of force, fraud, or coercion for the purpose of subjecting the person to:~~

~~(A) Involuntary servitude;~~

~~(B) Peonage;~~

~~(C) Debt bondage;~~

~~(D) Slavery;~~

~~(E) Marriage;~~

~~(F) Adoption; or~~

~~(G) Sexual conduct; or~~

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

~~(c) Trafficking of persons is a Class A felony.~~

SECTION 3. Arkansas Code Title 5 is amended to add a new chapter to read as follows:

Chapter 18

The Human Trafficking Act of 2013

5-18-101. Title.

This chapter shall be known as and may be cited as the "Human Trafficking Act of 2013".

5-18-102. Definitions.

As used in this chapter:

(1) "Commercial sexual activity" means a sexual act or sexually explicit performance for which anything of value is given, promised, or received, directly or indirectly, by a person;

(2) "Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of the personal services of a person under his or her control as a security for debt, if:

(A) The value of the debtor's personal services or of the personal services of a person under his or her control as reasonably assessed is not applied toward the liquidation of the debt;

(B) The length and nature of the debtor's personal services or of the personal services of a person under his or her control are not respectively limited and defined; or

(C) The principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred;

(3) "Extortion" means the obtaining of property, labor, a service, credit, a commercial sexually activity, or a sexually explicit performance from another person or of an official act of a public officer through a wrongful use of force or fear or under color of official right;

(4) "Financial harm" means extortion of credit, criminal violation of the usury laws, or employment contracts that violate the statutes of frauds, § 4-59-101;

(5) "Involuntary servitude" means the inducement or compulsion of a person to engage in labor, services, or commercial sexual activity by means of:

(A) A scheme, plan, or pattern of behavior with a purpose to cause a person to believe that if he or she does not engage in labor, services, or commercial sexual activity, he or she or another person will suffer serious physical injury or physical restraint;

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

(C) The causing of or the threat to cause serious harm to

a person;

(D) Physically restraining or threatening to physically restrain another person;

(E) The kidnapping of or threat to kidnap a person;

(F) The taking of another person's personal property or real property;

(G) The knowing destruction, concealment, removal, confiscation, or possession of an actual or purported passport, other immigration document, or other actual or purported government identification document of another person;

(H) Extortion or blackmail;

(I) Deception or fraud;

(J) Coercion, duress, or menace;

(K) Debt bondage;

(L) Peonage; or

(M) The facilitation or control of a victim's access to an addictive controlled substance;

(6) "Labor" means work of economic or financial value;

(7) "Menace" means a possible danger or threat;

(8) "Minor" means a person less than eighteen (18) years of age;

(9) "Organization" means the same as defined in § 5-2-501;

(10) "Peonage" means holding a person against his or her will to pay off a debt;

(11) "Serious harm" means any harm, whether physical or nonphysical, including without limitation 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 as the victim to perform or to continue performing labor or service, a commercial sex act, or a sexually explicit performance in order to avoid incurring that harm;

(12) "Service" means an act committed at the behest of, under the supervision of, or for the benefit of another person;

(13)(A) "Sex act" means any touching of the sexual or other intimate parts of another person for the purpose of gratifying the sexual desire of a person.

(B) "Sex act" includes without limitation the touching of

the person as well as touching by the person, whether directly or through clothing;

(14)(A) "Sexually explicit performance" means an act or show, whether public or private, live, photographed, recorded, or videotaped with a purpose to:

(i) Either:

(a) Appeal to the prurient interest; or

(b) Depict, in a patently offensive way, a sex act; and

(ii) Do so in a way that lacks literary, artistic, political, or scientific value.

(B) "Sexually explicit performance" includes without limitation any performance that depicts a sex act by a minor or that would create criminal liability under § 5-27-303 or § 5-27-304; and

(15) "Victim of human trafficking" means a person who has been subjected to trafficking of persons, § 5-18-103.

5-18-103. Trafficking of persons.

(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; or

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

(b) It is not a defense to prosecution under subdivision (a)(4) of this section that the actor:

(1) Did not have knowledge of a victim's age; or

(2) Mistakenly believed a victim was not a minor.

(c)(1) Trafficking of persons is a Class A felony.

(2) Trafficking of persons is a Class Y felony if a victim was a minor at the time of the offense.

5-18-104. Patronizing a victim of human trafficking.

(a) A person commits the offense of patronizing a victim of human trafficking if he or she knowingly engages in commercial sexual activity with another person knowing that the other person is a victim of human trafficking.

(b)(1) Patronizing a victim of human trafficking is a Class B felony.

(2) Patronizing a victim of human trafficking is a Class A felony if the victim was a minor at the time of the offense.

5-18-105. Enhanced liability of an organization.

In addition to any other statutorily authorized sentence or fine, an organization convicted of an offense under this chapter is subject to any combination of the following:

(1) A suspension or revocation of a license, permit, or prior approval granted to the organization by a state or local government agency;

(2) A court order to dissolve or reorganize; and

(3) Other relief as is equitable.

SECTION 4. Arkansas Code § 5-70-102 is amended to read as follows:

5-70-102. Prostitution.

(a) A person commits prostitution if in return for or in expectation of a fee he or she engages in or agrees or offers to engage in sexual activity with any other person.

(b) Prostitution is a:

(1) Class B misdemeanor for the first offense; and

(2) Class A misdemeanor for ~~second and subsequent offenses~~ a second or subsequent offense under this section.

(c) It is an affirmative defense to prosecution that the person engaged in an act of prostitution as a result of being a victim of trafficking of persons, § 5-18-103.

SECTION 5. Arkansas Code § 5-70-103 is amended to read as follows:

5-70-103. Sexual solicitation.

(a) A person commits the offense of sexual solicitation if he or she:

(1) Offers to pay a fee to a person to engage in sexual activity with him or her or another person; or

(2) Solicits or requests a person to engage in sexual activity with him or her in return for a fee.

(b) Sexual solicitation is a:

(1) Class B misdemeanor for the first offense; and

(2) Class A misdemeanor for ~~the second and subsequent offenses~~ a second or subsequent offense.

(c) It is an affirmative defense to prosecution under this section that the person engaged in an act of sexual solicitation as a result of being a victim of trafficking of persons, § 5-18-103.

SECTION 6. Arkansas Code Title 12 is amended to add a new chapter to read as follows:

Chapter 19

Human Trafficking – Prevention and Law Enforcement

12-19-101. State Task Force for the Prevention of Human Trafficking.

(a)(1) The Attorney General may establish a State Task Force for the Prevention of Human Trafficking.

(2) The task force shall address all aspects of human trafficking, including sex trafficking and labor trafficking of both United States citizens and foreign nationals.

(b) If established, representatives on the task force shall be appointed by the Attorney General and may include representatives from:

(1) The office of the Attorney General;

(2) The office of the Governor;

(3) The Department of Labor;

(4) The Department of Health;

(5) The Department of Human Services;

(6) The Arkansas Association of Chiefs of Police;

(7) The Arkansas Sheriffs' Association;

(8) The Department of Arkansas State Police;

(9) The Arkansas Prosecuting Attorneys Association;

(10) Local law enforcement; and

- (11) Nongovernmental organizations such as:
- (A) Those specializing in the problems of human trafficking;
 - (B) Those representing diverse communities disproportionately affected by human trafficking;
 - (C) Agencies devoted to child services and runaway services; and
 - (D) Academic researchers dedicated to the subject of human trafficking.

(c) If the task force is created by the Attorney General, he or she may invite federal agencies that operate in the state to be members of the task force, including without limitation:

- (1) The Federal Bureau of Investigation;
- (2) United States Immigration and Customs Enforcement; and
- (3) The United States Department of Labor.

(d) If the task force is created by the Attorney General, the task force shall:

- (1) Develop a state plan;
- (2) Coordinate the implementation of the state plan;
- (3) Coordinate the collection and sharing of human trafficking data among government agencies in a manner that ensures that the privacy of victims of human trafficking is protected and that the data collection shall respect the privacy of victims of human trafficking;
- (4) Coordinate the sharing of information between agencies to detect individuals and groups engaged in human trafficking;
- (5) Explore the establishment of state policies for time limits for the issuance of law enforcement agency endorsements as described in 8 C.F.R. § 214.11(f)(1), as it existed on January 1, 2013;
- (6) Establish policies to enable state government to work with nongovernmental organizations and other elements of the private sector to prevent human trafficking and provide assistance to victims of human trafficking who are United States citizens or foreign nationals;
- (7) Evaluate various approaches used by state and local governments to increase public awareness of human trafficking, including trafficking of United States citizens and foreign national victims;
- (8) Develop curriculum and train law enforcement agencies,

prosecutors, public defenders, judges, and others involved in the criminal and juvenile justice systems on:

(A) Offenses under the Arkansas Human Trafficking Act of 2013, § 5-18-101 et seq.;

(B) Methods used in identifying victims of human trafficking who are United States citizens or foreign nationals, including preliminary interview techniques and appropriate questioning methods;

(C) Methods for prosecuting human traffickers;

(D) Methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case;

(E) Methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and special needs of women and minors;

(F) The necessity of treating victims of human trafficking as crime victims rather than criminals; and

(G) Methods for promoting the safety of victims of human trafficking; and

(9) Submit a report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

SECTION 7. Arkansas Code § 16-93-618(a)(1), concerning sentencing for certain Class Y felonies, is amended to read as follows:

(a)(1) Notwithstanding any law allowing the award of meritorious good time or any other law to the contrary, ~~any~~ a person who is found guilty of or pleads guilty or nolo contendere to subdivisions (a)(1)(A)-~~(H)~~(I) of this section shall not be eligible for parole or community ~~punishment~~ correction transfer, except as provided in subdivision (a)(3) or subsection (c) of this section, until the person serves seventy percent (70%) of the term of imprisonment to which the person is sentenced, including a sentence prescribed under § 5-4-501:

(A) Murder in the first degree, § 5-10-102;

(B) Kidnapping, Class Y felony, § 5-11-102;

(C) Aggravated robbery, § 5-12-103;

(D) Rape, § 5-14-103;

(E) Trafficking of persons, Class Y felony, § 5-18-103;
~~(E)(F) Causing a catastrophe, § 5-38-202(a);~~
~~(F)(G) Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401;~~
~~(G)(H) Trafficking methamphetamine, § 5-64-440(b)(1); or~~
~~(H)(I) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, the former § 5-64-403(c)(5).~~

SECTION 8. Arkansas Code Title 16, Chapter 118, is amended to add a section to read as follows:

16-118-109. Civil cause of action for victims of human trafficking.

(a) As used in this section, "victim of human trafficking" means the same as defined in § 5-18-102.

(b) An individual who is a victim of human trafficking may bring a civil action in any appropriate state court.

(c) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief.

(d) A prevailing plaintiff shall also be awarded attorney's fees and costs.

(e) Three (3) times actual damages shall be awarded on proof of actual damages when a defendant's acts were willful and malicious.

(f)(1) A statute of limitation period imposed for the filing of a civil action under this section will not begin to run until the plaintiff discovers that the human trafficking incident occurred and that the defendant caused, was responsible for, or profited from the human trafficking incident.

(2) If the plaintiff is a minor, the limitation period will not begin until he or she is eighteen (18) years of age.

(3) If the plaintiff is under a disability at the time the cause of action accrues so that it is impossible or impracticable for him or her to bring an action, the time of the disability will not be part of the time limited for the commencement of the action.

(4) If the plaintiff is subject to threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant, the time period during which the threats, intimidation, manipulation, or fraud occurred will not be part of the statute of limitations for the commencement of this action.

(5) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute of limitations is due to conduct by the defendant that induced the plaintiff to delay the filing of the action or placed the plaintiff under duress.