

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

SENATE BILL 242

5 By: Senators Irvin, Rapert, Elliott
6 By: Representatives D. Meeks, Leding
7

For An Act To Be Entitled

9 AN ACT ESTABLISHING THE HUMAN TRAFFICKING ACT OF
10 2013; CONCERNING THE OFFENSE OF HUMAN TRAFFICKING;
11 AND FOR OTHER PURPOSES.
12
13

Subtitle

15 ESTABLISHING THE HUMAN TRAFFICKING ACT OF
16 2013; CONCERNING THE OFFENSE OF HUMAN
17 TRAFFICKING.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. DO NOT CODIFY. Title.

23 This act shall be cited as the "Arkansas Human Trafficking Act of
24 2013".
25

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 Arkansas Code § 5-11-108 is repealed.

27 ~~5-11-108. Trafficking of persons.~~

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

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

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

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



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

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

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

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

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

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

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

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

18 ~~(A) Involuntary servitude;~~

19 ~~(B) Peonage;~~

20 ~~(C) Debt bondage;~~

21 ~~(D) Slavery;~~

22 ~~(E) Marriage;~~

23 ~~(F) Adoption; or~~

24 ~~(G) Sexual conduct; or~~

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

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

29
30 SECTION 3. Arkansas Code Title 5 is amended to add a new chapter to
31 read as follows:

32
33 Chapter 18

34 The Human Trafficking Act of 2013

35
36 5-18-101. Title.

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

3
4 5-18-102. Definitions.

5 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

1 a person;

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

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

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

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

11 (H) Extortion or blackmail;

12 (I) Deception or fraud;

13 (J) Coercion, duress, or menace;

14 (K) Debt bondage;

15 (L) Peonage; or

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

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

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

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

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

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

24 (11) "Serious harm" means any harm, whether physical or
25 nonphysical, including without limitation psychological, financial, or
26 reputational harm, that is sufficiently serious, under all the surrounding
27 circumstances, to compel a reasonable person of the same background and in
28 the same circumstances as the victim to perform or to continue performing
29 labor or service, a commercial sex act, or a sexually explicit performance in
30 order to avoid incurring that harm;

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

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

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

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

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

6 (i) Either:

7 (a) Appeal to the prurient interest; or

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

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

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

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

17
 18 5-18-103. Trafficking of persons.

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

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

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

27 (3) Subjects a person to involuntary servitude; or

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

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

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

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

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

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

1
2
3 5-18-104. Patronizing a victim of human trafficking.

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

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

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

11
12 5-18-105. Enhanced liability of an organization.

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

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

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

19 (3) Other relief as is equitable.

20
21 SECTION 4. Arkansas Code § 5-70-102 is amended to read as follows:

22 5-70-102. Prostitution.

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

26 (b) Prostitution is a:

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

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

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

33
34 SECTION 5. Arkansas Code § 5-70-103 is amended to read as follows:

35 5-70-103. Sexual solicitation.

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

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

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

5 (b) Sexual solicitation is a:

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

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

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

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

15
16 Chapter 19

17 Human Trafficking – Prevention and Law Enforcement

18
19 12-19-101. State Task Force for the Prevention of Human Trafficking.

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

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

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

27 (1) The office of the Attorney General;

28 (2) The office of the Governor;

29 (3) The Department of Labor;

30 (4) The Department of Health;

31 (5) The Department of Human Services;

32 (6) The Arkansas Association of Chiefs of Police;

33 (7) The Arkansas Sheriffs' Association;

34 (8) The Department of Arkansas State Police;

35 (9) The Arkansas Prosecuting Attorneys Association;

36 (10) Local law enforcement; and

1 (11) Nongovernmental organizations such as:

2 (A) Those specializing in the problems of human
3 trafficking;

4 (B) Those representing diverse communities
5 disproportionally affected by human trafficking;

6 (C) Agencies devoted to child services and runaway
7 services; and

8 (D) Academic researchers dedicated to the subject of human
9 trafficking.

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

13 (1) The Federal Bureau of Investigation;

14 (2) United States Immigration and Customs Enforcement; and

15 (3) The United States Department of Labor.

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

18 (1) Develop a state plan;

19 (2) Coordinate the implementation of the state plan;

20 (3) Coordinate the collection and sharing of human trafficking
21 data among government agencies in a manner that ensures that the privacy of
22 victims of human trafficking is protected and that the data collection shall
23 respect the privacy of victims of human trafficking;

24 (4) Coordinate the sharing of information between agencies to
25 detect individuals and groups engaged in human trafficking;

26 (5) Explore the establishment of state policies for time limits
27 for the issuance of law enforcement agency endorsements as described in 8
28 C.F.R. § 214.11(f)(1), as it existed on January 1, 2013;

29 (6) Establish policies to enable state government to work with
30 nongovernmental organizations and other elements of the private sector to
31 prevent human trafficking and provide assistance to victims of human
32 trafficking who are United States citizens or foreign nationals;

33 (7) Evaluate various approaches used by state and local
34 governments to increase public awareness of human trafficking, including
35 trafficking of United States citizens and foreign national victims;

36 (8) Develop curriculum and train law enforcement agencies,

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

3 (A) Offenses under the Arkansas Human Trafficking Act of
 4 2013, § 5-18-101 et seq.;

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

8 (C) Methods for prosecuting human traffickers;

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

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

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

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

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

22
 23 SECTION 7. Arkansas Code § 16-93-618(a)(1), concerning sentencing for
 24 certain Class Y felonies, is amended to read as follows:

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

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

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

35 (C) Aggravated robbery, § 5-12-103;

36 (D) Rape, § 5-14-103;

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

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

11 16-118-109. Civil cause of action for victims of human trafficking.

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

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

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

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

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

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

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

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

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

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

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36