

1 State of Arkansas As Engrossed: H3/2/21 H3/9/21 H4/15/21

2 93rd General Assembly

A Bill

3 Regular Session, 2021

HOUSE BILL 1554

4

5 By: Representative Penzo

6 By: Senator B. Ballinger

7

8

For An Act To Be Entitled

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

12

13

14

Subtitle

15

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

18

19

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

21

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

24 5-2-210. Human trafficking – Affirmative defense.

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

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

30 (1) A victim of trafficking of persons; and

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

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

35 (1) Forgery, § 5-37-201;

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



- 1 (3) A prostitution offense under § 5-70-101 et seq.;
- 2 (4) Obscene performance at a live public show, § 5-68-305; or
- 3 (5) A controlled substance offense under § 5-64-401 et seq.

4

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

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

9

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

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

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

24

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

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

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

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

35 (3) Subjects a person to involuntary servitude;

36 (4) Recruits, entices, solicits, isolates, harbors, transports,

1 provides, maintains, or obtains a minor for commercial sexual activity;

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

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

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

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

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

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

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

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

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

24
25 SECTION 5. Arkansas Code § 16-90-1412(c), concerning sealing
26 convictions for victims of human trafficking, is amended to read as follows:

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

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

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

33 (B) A finding concerning the affirmative defense under §
34 5-2-210 does not affect a finding under subdivision (c)(2)(A) of this
35 section, and the petitioner is not required to have raised the affirmative
36 defense under § 5-2-210.

1
2
3
4
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

/s/Penzo