

1 THE STATE SENATE
2 Wednesday, March 21, 2007

3 ENGROSSED

4 House Bill No. 1021

5 As Amended

6 ENGROSSED HOUSE BILL NO. 1021 - By: COOKSEY, BLACKWELL, SMITHSON,
7 INMAN, SHANNON, KIESEL, PITTMAN, SEARS, KERN, TERRILL, HAMILTON,
8 KEY, SULLIVAN and DENNEY of the House and CRAIN of the Senate.

9 [crimes and punishments - human trafficking victims -
10 seizure and forfeiture proceedings - codification -
11 effective date]

12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 748 of Title 21, unless there is
15 created a duplication in numbering, reads as follows:

16 A. As used in this act:

17 1. "Human trafficking" refers to modern-day slavery that
18 includes, but is not limited to, extreme exploitation and the denial
19 of freedom or liberty of an individual;

20 2. "Human trafficking for forced labor" includes, but is not
21 limited to, forced labor in households, agricultural fields,
22 sweatshops, and any other workplace; and

23 3. "Human trafficking for forced sexual exploitation" includes,
24 but is not limited to, all forms of forced commercial sexual
25 activity such as forced sexually explicit performances, forced

1 prostitution, forced participation in the production of pornography,
2 forced performance in strip clubs and forced exotic dancing or
3 display.

4 B. A person commits the crime of human trafficking for forced
5 labor or forced sexual exploitation if the person recruits, harbors,
6 transports or obtains a person through the use of force, fraud or
7 coercion by:

8 1. Threats of serious harm or physical restraint against that
9 person or another person;

10 2. Destroying, concealing, removing, confiscating, or
11 possessing any passport, immigration documents, or other government
12 identification document;

13 3. Abuse or threatened abuse of the law or legal process; or

14 4. Means of any scheme, plan or pattern intended to cause the
15 person to believe that the person or another person would suffer
16 serious harm or physical restraint or if the person benefits,
17 financially or by receiving anything of value, from participation in
18 a venture that has engaged in an act of human trafficking.

19 C. Any person violating the provisions of this section shall,
20 upon conviction, be guilty of a felony punishable by imprisonment in
21 the custody of the Department of Corrections for not less than five
22 (5) years, or by a fine of not more than Ten Thousand Dollars
23 (\$10,000.00), or by both such fine and imprisonment. Any person

1 violating the provisions of this section where the victim of the
2 offense is under fourteen (14) years of age at the time of the
3 offense shall, upon conviction, be guilty of a felony punishable by
4 imprisonment in the custody of the Department of Corrections for not
5 less than ten (10) years, or by a fine of not more than Twenty
6 Thousand Dollars (\$20,000.00), or by both such fine and
7 imprisonment. The court shall also order the defendant to pay
8 restitution to the victim as provided in Section 991f of Title 22 of
9 the Oklahoma Statutes.

10 D. It is an affirmative defense to prosecution for a criminal
11 offense that, during the time of the alleged commission of the
12 offense, the defendant was a victim of human trafficking.

13 SECTION 2. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 748.2 of Title 21, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Human trafficking victims shall:

17 1. Be housed in an appropriate shelter as soon as practicable;

18 2. Not be detained in facilities inappropriate to their status
19 as crime victims;

20 3. Not be jailed, fined, or otherwise penalized due to having
21 been trafficked;

22 4. Receive prompt medical care, mental health care, food, and
23 other assistance, as necessary;

1 5. Have access to legal assistance, information about their
2 rights, and translation services, as necessary; and

3 6. Be provided protection if the safety of the victim is at
4 risk or if there is a danger of additional harm by recapture of the
5 victim by a trafficker, including:

6 a. taking measures to protect trafficked persons and
7 their family members from intimidation and threats of
8 reprisals, and

9 b. ensuring that the names and identifying information of
10 trafficked persons and their family members are not
11 disclosed to the public.

12 B. Any person who is a victim of human trafficking may file a
13 civil action against the alleged perpetrator or perpetrators in
14 state court. The court may award actual damages, punitive damages,
15 reasonable attorney fees, and other costs reasonably incurred. Any
16 civil action filed pursuant to this subsection shall be stayed
17 during the pendency of any criminal action arising out of the same
18 occurrence in which the claimant is the victim.

19 SECTION 3. AMENDATORY 21 O.S. 2001, Section 1738, as
20 amended by Section 13, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2006,
21 Section 1738), is amended to read as follows:

22 Section 1738. A. Any commissioned peace officer of this state
23 is authorized to seize any vehicle owned by or registered to the

1 defendant used in the commission of any armed robbery offense
2 defined in Section 801 of this title, or any vehicle owned by or
3 registered to the defendant when such vehicle is used to facilitate
4 the intentional discharge of any kind of firearm in violation of
5 Section 652 of this title, or any vehicle, airplane, vessel,
6 vehicles or parts of vehicles whose numbers have been removed,
7 altered or obliterated so as to prevent determination of the true
8 identity or ownership of said property and parts of vehicles which
9 probable cause indicates are stolen but whose true ownership cannot
10 be determined, or any vehicle owned by or registered to the
11 defendant used in violation of the Trademark Anti-Counterfeiting
12 Act, or any equipment owned by or registered to the defendant which
13 is used in the attempt or commission of any act of burglary in the
14 first or second degree, motor vehicle theft, unauthorized use of a
15 vehicle, obliteration of distinguishing numbers on vehicles or
16 criminal possession of vehicles with altered, removed or obliterated
17 numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of
18 this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma
19 Statutes, or any equipment owned by or registered to the defendant
20 used in violation of the Trademark Anti-Counterfeiting Act, or any
21 vehicle, airplane, vessel or equipment owned by or registered to the
22 defendant used in the commission of any arson offense defined in
23 Section 1401, 1402, 1403, 1404 or 1405 of this title. Said property

1 may be held as evidence until a forfeiture has been declared or a
2 release ordered. Forfeiture actions under this section may be
3 brought by the district attorney in the proper county of venue as
4 petitioner; provided, in the event the district attorney elects not
5 to file such action, or fails to file such action within ninety (90)
6 days of the date of the seizure of such equipment, the property
7 shall be returned to the owner.

8 B. In addition to the property described in subsection A of
9 this section, the following property is also subject to forfeiture
10 pursuant to this section:

11 1. Property used in the commission of theft of livestock or in
12 any manner to facilitate the theft of livestock;

13 2. The proceeds gained from the commission of theft of
14 livestock;

15 3. Personal property acquired with proceeds gained from the
16 commission of theft of livestock;

17 4. All conveyances, including aircraft, vehicles or vessels,
18 and horses or dogs which are used to transport or in any manner to
19 facilitate the transportation for the purpose of the commission of
20 theft of livestock;

21 5. Any items having a counterfeit mark and all property that is
22 owned by or registered to the defendant that is employed or used in

1 connection with any violation of the Trademark Anti-Counterfeiting
2 Act;

3 6. Any weapon possessed, used or available for use in any
4 manner during the commission of a felony within the State of
5 Oklahoma, or any firearm that is possessed by a convicted felon;

6 7. Any police scanner used in violation of Section 1214 of this
7 title; ~~and~~

8 8. Any computer and its components and peripherals, including
9 but not limited to the central processing unit, monitor, keyboard,
10 printers, scanners, software, and hardware, when it is used in the
11 commission of any crime in this state; and

12 9. All conveyances, including aircraft, vehicles or vessels,
13 monies, coins and currency, or other instrumentality used in any
14 manner or part, to commit any violation of the provisions set forth
15 in Section 1 of this act.

16 C. Notice of seizure and intended forfeiture proceeding shall
17 be filed in the office of the clerk of the district court for the
18 county wherein such property is seized and shall be given all owners
19 and parties in interest.

20 D. Notice shall be given according to one of the following
21 methods:

22 1. Upon each owner or party in interest whose right, title, or
23 interest is of record in the Oklahoma Tax Commission or with the

1 county clerk for filings under the Uniform Commercial Code, served
2 in the manner of service of process in civil cases prescribed by
3 Section 2004 of Title 12 of the Oklahoma Statutes;

4 2. Upon each owner or party in interest whose name and address
5 is known, served in the manner of service of process in civil cases
6 prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

7 3. Upon all other owners, whose addresses are unknown, but who
8 are believed to have an interest in the property by one publication
9 in a newspaper of general circulation in the county where the
10 seizure was made.

11 E. Within sixty (60) days after the mailing or publication of
12 the notice, the owner of the property and any other party in
13 interest or claimant may file a verified answer and claim to the
14 property described in the notice of seizure and of the intended
15 forfeiture proceeding.

16 F. If at the end of sixty (60) days after the notice has been
17 mailed or published there is no verified answer on file, the court
18 shall hear evidence upon the fact of the unlawful use and may order
19 the property forfeited to the state, if such fact is proven.

20 G. If a verified answer is filed, the forfeiture proceeding
21 shall be set for hearing.

22 H. At the hearing the petitioner shall prove by clear and
23 convincing evidence that property was used in the attempt or

1 commission of an act specified in subsection A of this section or is
2 property described in subsection B of this section with knowledge by
3 the owner of the property.

4 I. The claimant of any right, title, or interest in the
5 property may prove the lien, mortgage, or conditional sales contract
6 to be bona fide and that the right, title, or interest created by
7 the document was created without any knowledge or reason to believe
8 that the property was being, or was to be, used for the purpose
9 charged.

10 J. In the event of such proof, the court may order the property
11 released to the bona fide or innocent owner, lien holder, mortgagee,
12 or vendor if the amount due such person is equal to, or in excess
13 of, the value of the property as of the date of the seizure, it
14 being the intention of this section to forfeit only the right,
15 title, or interest of the purchaser, except for items bearing a
16 counterfeit mark or used exclusively to manufacture a counterfeit
17 mark.

18 K. If the amount due to such person is less than the value of
19 the property, or if no bona fide claim is established, the property
20 may be forfeited to the state and may be sold pursuant to judgment
21 of the court, as on sale upon execution, and as provided in Section
22 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise

1 provided for by law and for property bearing a counterfeit mark
2 which shall be destroyed.

3 L. Property taken or detained pursuant to this section shall
4 not be repleviable, but shall be deemed to be in the custody of the
5 petitioner or in the custody of the law enforcement agency as
6 provided in the Trademark Anti-Counterfeiting Act. Except for
7 property required to be destroyed pursuant to the Trademark Anti-
8 Counterfeiting Act, the petitioner shall release said property to
9 the owner of the property if it is determined that the owner had no
10 knowledge of the illegal use of the property or if there is
11 insufficient evidence to sustain the burden of showing illegal use
12 of such property. If the owner of the property stipulates to the
13 forfeiture and waives the hearing, the petitioner may determine if
14 the value of the property is equal to or less than the outstanding
15 lien. If such lien exceeds the value of the property, the property
16 may be released to the lien holder. Property which has not been
17 released by the petitioner shall be subject to the orders and
18 decrees of the court or the official having jurisdiction thereof.

19 M. The petitioner, or the law enforcement agency holding
20 property pursuant to the Trademark Anti-Counterfeiting Act, shall
21 not be held civilly liable for having custody of the seized property
22 or proceeding with a forfeiture action as provided for in this
23 section.

1 N. Attorney fees shall not be assessed against the state or the
2 petitioner for any actions or proceeding pursuant to Section 1701 et
3 seq. of this title.

4 O. The proceeds of the sale of any property shall be
5 distributed as follows, in the order indicated:

6 1. To the bona fide or innocent purchaser, conditional sales
7 vendor, or mortgagee of the property, if any, up to the amount of
8 such person's interest in the property, when the court declaring the
9 forfeiture orders a distribution to such person;

10 2. To the payment of the actual reasonable expenses of
11 preserving the property;

12 3. To the victim of the crime to compensate said victim for any
13 loss incurred as a result of the act for which such property was
14 forfeited; and

15 4. The balance to a revolving fund in the office of the county
16 treasurer of the county wherein the property was seized, to be
17 distributed as follows: one-third (1/3) to the investigating law
18 enforcement agency; one-third (1/3) of said fund to be used and
19 maintained as a revolving fund by the district attorney for the
20 victim-witness fund, a reward fund or the evidence fund; and one-
21 third (1/3) to go to the jail maintenance fund, with a yearly
22 accounting to the board of county commissioners in whose county the
23 fund is established. If the petitioner is not the district

1 attorney, then the one-third (1/3) which would have been designated
2 to that office shall be distributed to the petitioner. Monies
3 distributed to the jail maintenance fund shall be used to pay costs
4 for the storage of such property if such property is ordered
5 released to a bona fide or innocent owner, lien holder, mortgagee,
6 or vendor and if such funds are available in said fund.

7 P. Monies distributed into the revolving fund in the office of
8 the county treasurer from forfeitures initiated under this section
9 by the district attorney shall be limited to One Hundred Thousand
10 Dollars (\$100,000.00) at any one time in counties with population in
11 excess of three hundred thousand (300,000) and Twenty-five Thousand
12 Dollars (\$25,000.00) at any one time in counties with population
13 less than three hundred thousand (300,000). Any amount in excess of
14 these figures shall be placed in the general fund of the county.

15 Q. If the court finds that the property was not used in the
16 attempt or commission of an act specified in subsection A of this
17 section and was not property subject to forfeiture pursuant to
18 subsection B of this section and is not property bearing a
19 counterfeit mark, the court shall order the property released to the
20 owner as the right, title, or interest appears on record in the Tax
21 Commission as of the seizure.

22 R. No vehicle, airplane, or vessel used by a person as a common
23 carrier in the transaction of business as a common carrier shall be

1 forfeited pursuant to the provisions of this section unless it shall
2 be proven that the owner or other person in charge of such
3 conveyance was a consenting party or privy to the attempt or
4 commission of an act specified in subsection A or B of this section.
5 No property shall be forfeited pursuant to the provisions of this
6 section by reason of any act or omission established by the owner
7 thereof to have been committed or omitted without the knowledge or
8 consent of such owner, and by any person other than such owner while
9 such property was unlawfully in the possession of a person other
10 than the owner in violation of the criminal laws of the United
11 States or of any state.

12 S. Whenever any property is forfeited pursuant to this section,
13 the district court having jurisdiction of the proceeding may order
14 that the forfeited property may be retained for its official use by
15 the state, county, or municipal law enforcement agency which seized
16 the property.

17 SECTION 4. This act shall become effective November 1, 2007.

18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-20-07 - DO
19 PASS, As Amended.