

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1021

By: Cooksey

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5  
6 AS INTRODUCED

7 An Act relating to crimes and punishments; defining  
8 terms; prohibiting certain unlawful acts; providing  
9 penalties; providing affirmative defense;  
10 establishing guidelines for treatment of human  
11 trafficking victims; allowing victims to file certain  
12 action; authorizing court to award damages, fees and  
13 costs; amending 21 O.S. 2001, Section 1738, as  
14 amended by Section 13, Chapter 460, O.S.L. 2002 (21  
15 O.S. Supp. 2005, Section 1738), which relates to  
16 seizure and forfeiture proceedings; authorizing  
17 forfeiture of property for violation of certain  
18 crime; providing for codification; and providing an  
19 effective date.

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

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

29 A. As used in this act:

30 1. "Human trafficking" refers to modern-day slavery that  
31 includes, but is not limited to, extreme exploitation and the denial  
32 of freedom or liberty of an individual;  
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1           2. "Human trafficking for forced labor" includes, but is not  
2 limited to, forced labor in households, agricultural fields,  
3 sweatshops, and any other workplace; and

4           3. "Human trafficking for forced sexual exploitation" includes,  
5 but is not limited to, all forms of forced commercial sexual  
6 activity such as forced sexually explicit performances, forced  
7 prostitution, forced participation in the production of pornography,  
8 forced performance in strip clubs and forced exotic dancing or  
9 display.

10           B. A person commits the crime of human trafficking for forced  
11 labor or forced sexual exploitation if the person recruits, harbors,  
12 transports or obtains a person through the use of force, fraud or  
13 coercion by:

14           1. Threats of serious harm or physical restraint against that  
15 person or another person;

16           2. Destroying, concealing, removing, confiscating, or  
17 possessing any passport, immigration documents, or other government  
18 identification document;

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

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

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

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

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

21 A. Human trafficking victims shall:

- 22 1. Be housed in an appropriate shelter as soon as practicable;
- 23 2. Not be detained in facilities inappropriate to their status
- 24 as crime victims;

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

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

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

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

10 a. taking measures to protect trafficked persons and  
11 their family members from intimidation and threats of  
12 reprisals, and

13 b. ensuring that the names and identifying information of  
14 trafficked persons and their family members are not  
15 disclosed to the public.

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

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

4 Section 1738. A. Any commissioned peace officer of this state  
5 is authorized to seize any vehicle owned by or registered to the  
6 defendant used in the commission of any armed robbery offense  
7 defined in Section 801 of this title, or any vehicle owned by or  
8 registered to the defendant when such vehicle is used to facilitate  
9 the intentional discharge of any kind of firearm in violation of  
10 Section 652 of this title, or any vehicle, airplane, vessel,  
11 vehicles or parts of vehicles whose numbers have been removed,  
12 altered or obliterated so as to prevent determination of the true  
13 identity or ownership of said property and parts of vehicles which  
14 probable cause indicates are stolen but whose true ownership cannot  
15 be determined, or any vehicle owned by or registered to the  
16 defendant used in violation of the Trademark Anti-Counterfeiting  
17 Act, or any equipment owned by or registered to the defendant which  
18 is used in the attempt or commission of any act of burglary in the  
19 first or second degree, motor vehicle theft, unauthorized use of a  
20 vehicle, obliteration of distinguishing numbers on vehicles or  
21 criminal possession of vehicles with altered, removed or obliterated  
22 numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of  
23 this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma  
24 Statutes, or any equipment owned by or registered to the defendant

1 used in violation of the Trademark Anti-Counterfeiting Act, or any  
2 vehicle, airplane, vessel or equipment owned by or registered to the  
3 defendant used in the commission of any arson offense defined in  
4 Section 1401, 1402, 1403, 1404 or 1405 of this title. Said property  
5 may be held as evidence until a forfeiture has been declared or a  
6 release ordered. Forfeiture actions under this section may be  
7 brought by the district attorney in the proper county of venue as  
8 petitioner; provided, in the event the district attorney elects not  
9 to file such action, or fails to file such action within ninety (90)  
10 days of the date of the seizure of such equipment, the property  
11 shall be returned to the owner.

12 B. In addition to the property described in subsection A of  
13 this section, the following property is also subject to forfeiture  
14 pursuant to this section:

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

17 2. The proceeds gained from the commission of theft of  
18 livestock;

19 3. Personal property acquired with proceeds gained from the  
20 commission of theft of livestock;

21 4. All conveyances, including aircraft, vehicles or vessels,  
22 and horses or dogs which are used to transport or in any manner to  
23 facilitate the transportation for the purpose of the commission of  
24 theft of livestock;

1           5. Any items having a counterfeit mark and all property that is  
2 owned by or registered to the defendant that is employed or used in  
3 connection with any violation of the Trademark Anti-Counterfeiting  
4 Act;

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

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

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

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

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

22          D. Notice shall be given according to one of the following  
23 methods:

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1        1. Upon each owner or party in interest whose right, title, or  
2 interest is of record in the Oklahoma Tax Commission or with the  
3 county clerk for filings under the Uniform Commercial Code, served  
4 in the manner of service of process in civil cases prescribed by  
5 Section 2004 of Title 12 of the Oklahoma Statutes;

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

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

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

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

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

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1 H. At the hearing the petitioner shall prove by clear and  
2 convincing evidence that property was used in the attempt or  
3 commission of an act specified in subsection A of this section or is  
4 property described in subsection B of this section with knowledge by  
5 the owner of the property.

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

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

20 K. If the amount due to such person is less than the value of  
21 the property, or if no bona fide claim is established, the property  
22 may be forfeited to the state and may be sold pursuant to judgment  
23 of the court, as on sale upon execution, and as provided in Section  
24 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.

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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  
24 attorney, then the one-third (1/3) which would have been designated

1 to that office shall be distributed to the petitioner. Monies  
2 distributed to the jail maintenance fund shall be used to pay costs  
3 for the storage of such property if such property is ordered  
4 released to a bona fide or innocent owner, lien holder, mortgagee,  
5 or vendor and if such funds are available in said fund.

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

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

21 R. No vehicle, airplane, or vessel used by a person as a common  
22 carrier in the transaction of business as a common carrier shall be  
23 forfeited pursuant to the provisions of this section unless it shall  
24 be proven that the owner or other person in charge of such

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

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

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

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17 51-1-5030 GRS 12/28/06

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