

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 4224

By: Boatman of the House

and

Daniels of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to crimes and punishments; amending
12 21 O.S. 2021, Sections 748 and 748.2, which relate to
13 human trafficking; expanding scope of affirmative
14 defense to include certain prosecution; excluding
15 human trafficking victims from certain court
16 proceedings; deleting affirmative defense provision;
17 amending 21 O.S. 2021, Section 1029, which relates to
18 engaging in or soliciting prostitution; removing
19 presumption of coercion; excluding child victims of
20 human trafficking from certain court proceedings; and
21 providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2021, Section 748, is
amended to read as follows:

Section 748. A. As used in Sections 748 and 748.2 of this
title:

1 1. "Coercion" means compelling, forcing or intimidating a
2 person to act by:

3 a. threats of harm or physical restraint against any
4 person,

5 b. any act, scheme, plan, or pattern intended to cause a
6 person to believe that performing, or failing to
7 perform, an act would result in serious physical,
8 financial, or emotional harm or distress to or
9 physical restraint against any person,

10 c. the abuse or threatened abuse of the law or legal
11 process,

12 d. knowingly destroying, concealing, removing,
13 confiscating or possessing any actual or purported
14 passport, labor or immigration document, or other
15 government identification document, including but not
16 limited to a driver license or birth certificate, of
17 another person,

18 e. facilitating or controlling a person's access to any
19 addictive or controlled substance other than for legal
20 medical purposes,

21 f. blackmail,

22 g. demanding or claiming money, goods, or any other thing
23 of value from or on behalf of a prostituted person
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1 where such demand or claim arises from or is directly
2 related to the act of prostitution,

3 h. determining, dictating or setting the times at which
4 another person will be available to engage in an act
5 of prostitution with a third party,

6 i. determining, dictating or setting the places at which
7 another person will be available for solicitation of,
8 or to engage in, an act of prostitution with a third
9 party, or

10 j. determining, dictating or setting the places at which
11 another person will reside for purposes of making such
12 person available to engage in an act of prostitution
13 with a third party;

14 2. "Commercial sex" means any form of commercial sexual
15 activity such as sexually explicit performances, prostitution,
16 participation in the production of pornography, performance in a
17 strip club, or exotic dancing or display;

18 3. "Debt bondage" means the status or condition of a debtor
19 arising from a pledge by the debtor of his or her personal services
20 or of those of a person under his or her control as a security for
21 debt if the value of those services as reasonably assessed is not
22 applied toward the liquidation of the debt or the length and nature
23 of those services are not respectively limited and defined;

1 4. "Human trafficking" means modern-day slavery that includes,
2 but is not limited to, extreme exploitation and the denial of
3 freedom or liberty of an individual for purposes of deriving benefit
4 from that individual's commercial sex act or labor;

5 5. "Human trafficking for labor" means:

6 a. recruiting, enticing, harboring, maintaining,
7 transporting, providing or obtaining, by any means,
8 another person through deception, force, fraud, threat
9 or coercion or for purposes of engaging the person in
10 labor, or

11 b. benefiting, financially or by receiving anything of
12 value, from participation in a venture that has
13 engaged in an act of trafficking for labor;

14 6. "Human trafficking for commercial sex" means:

15 a. recruiting, enticing, harboring, maintaining,
16 transporting, providing or obtaining, by any means,
17 another person through deception, force, fraud, threat
18 or coercion for purposes of engaging the person in a
19 commercial sex act,

20 b. recruiting, enticing, harboring, maintaining,
21 transporting, providing, purchasing or obtaining, by
22 any means, a minor for purposes of engaging the minor
23 in a commercial sex act, or
24

1 c. benefiting, financially or by receiving anything of
2 value, from participating in a venture that has
3 engaged in an act of trafficking for commercial sex;

4 7. "Legal process" means the criminal law, the civil law, or
5 the regulatory system of the federal government, any state,
6 territory, district, commonwealth, or trust territory therein, and
7 any foreign government or subdivision thereof and includes legal
8 civil actions, criminal actions, and regulatory petitions or
9 applications;

10 8. "Minor" means an individual under eighteen (18) years of
11 age; and

12 9. "Victim" means a person against whom a violation of any
13 provision of this section has been committed.

14 B. It shall be unlawful to knowingly engage in human
15 trafficking.

16 C. Any person violating the provisions of this section shall,
17 upon conviction, be guilty of a felony punishable by imprisonment in
18 the custody of the Department of Corrections for a term of not less
19 than five (5) years or for life, or by a fine of not more than One
20 Hundred Thousand Dollars (\$100,000.00), or by both such fine and
21 imprisonment. Any person violating the provisions of this section
22 where the victim of the offense is under eighteen (18) years of age
23 at the time of the offense shall, upon conviction, be guilty of a
24 felony punishable by imprisonment in the custody of the Department

1 of Corrections for a term of not less than fifteen (15) years or for
2 life, or by a fine of not more than Two Hundred Fifty Thousand
3 Dollars (\$250,000.00), or by both such fine and imprisonment. The
4 court shall also order the defendant to pay restitution to the
5 victim as provided in Section 991f of Title 22 of the Oklahoma
6 Statutes. If the person is convicted of human trafficking, the
7 person shall serve eighty-five percent (85%) of the sentence before
8 being eligible for parole consideration or any earned credits. The
9 terms of imprisonment specified in this subsection shall not be
10 subject to statutory provisions for suspension, deferral or
11 probation, or state correctional institution earned credits accruing
12 from and after November 1, 1989, except for the achievement earned
13 credits authorized by subsection H of Section 138 of Title 57 of the
14 Oklahoma Statutes. To qualify for such achievement earned credits,
15 such inmates must also be in compliance with the standards for Class
16 level 2 behavior, as defined in subsection D of Section 138 of Title
17 57 of the Oklahoma Statutes.

18 D. It is an affirmative defense to prosecution for a criminal,
19 youthful offender, or delinquent offense that, during the time of
20 the alleged commission of the offense, the defendant or alleged
21 youthful offender or delinquent was a victim of human trafficking.

22 E. The consent of a victim to the activity prohibited by this
23 section shall not constitute a defense.

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1 F. Lack of knowledge of the age of the victim shall not
2 constitute a defense to the activity prohibited by this section with
3 respect to human trafficking of a minor.

4 SECTION 2. AMENDATORY 21 O.S. 2021, Section 748.2, is
5 amended to read as follows:

6 Section 748.2 A. Human trafficking victims shall:

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

8 2. Not be detained in facilities inappropriate to their status
9 as crime victims;

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

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

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

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

19 a. taking measures to protect trafficked persons and
20 their family members from intimidation and threats of
21 reprisals, and

22 b. ensuring that the names and identifying information of
23 trafficked persons and their family members are not
24 disclosed to the public.

1 B. Any person aggrieved by a violation of subsection B of
2 Section 748 of this title may bring a civil action against the
3 person or persons who committed the violation to recover actual and
4 punitive damages and reasonable attorney fees and costs. The civil
5 action brought under this section may be instituted in the district
6 court in this state in the county in which the prospective defendant
7 resides or has committed any act which subjects him or her to
8 liability under this section. A criminal case or prosecution is not
9 a necessary precedent to the civil action. The statute of
10 limitations for the cause of action shall not commence until the
11 latter of the victim's emancipation from the defendant, the victim's
12 twenty-first birthday, or the plaintiff discovers or reasonably
13 should have discovered that he or she was a victim of human
14 trafficking and that the defendant caused, was responsible for or
15 profited from the human trafficking.

16 C. Upon availability of funds, the Attorney General is
17 authorized to establish an emergency hotline number for victims of
18 human trafficking to call in order to request assistance or rescue.
19 The Attorney General is authorized to enter into agreements with the
20 county departments of health to require posting of the rights
21 contained in this section along with the hotline number for
22 publication in locations as directed by the State Department of
23 Health.

1 D. Any peace officer who comes in contact with a human
2 trafficking victim shall inform the victim of the human trafficking
3 emergency hotline number and give notice to the victim of certain
4 rights. The notice shall consist of handing the victim a written
5 statement of the rights provided for in subsection A of this
6 section.

7 E. 1. Any peace officer or employee of a district court,
8 juvenile bureau or Office of Juvenile Affairs who has reasonable
9 suspicion that a minor may be a victim of human trafficking and is
10 in need of immediate protection shall assume protective custody over
11 the minor and immediately notify the Department of Human Services.
12 The minor shall be transferred to the emergency custody of the
13 Department pursuant to the provisions of Section 1-4-201 of Title
14 10A of the Oklahoma Statutes. While in custody of the Department,
15 the minor shall be provided with any necessary emergency social
16 services which include, but shall not be limited to, medical
17 examination or treatment, or a mental health assessment.

18 Law enforcement and the Department of Human Services shall
19 conduct a joint investigation into the claim.

20 The minor shall remain in the custody of the Department of Human
21 Services until the investigation has been completed, but for no
22 longer than two (2) judicial days, for the show-cause hearing. The
23 Department may release the minor to the custody of a parent or legal
24 guardian if it determines the minor will not be subject to further

1 exploitation. If no such determination is made, the minor shall be
2 subject to the deprived child provisions of the Oklahoma Children's
3 Code and made eligible for appropriate child welfare services.

4 2. The minor shall not be subject to juvenile delinquency
5 proceedings or child-in-need-of-supervision proceedings for
6 prostitution offenses or ~~other nonviolent~~ misdemeanor or nonviolent
7 felony offenses committed as a ~~direct~~ result of being a victim of
8 human trafficking. ~~It shall be an affirmative defense to~~
9 ~~delinquency or criminal prosecution for any misdemeanor or felony~~
10 ~~offense that the offense was committed during the time of and as the~~
11 ~~direct result of the minor being the victim of human trafficking.~~

12 SECTION 3. AMENDATORY 21 O.S. 2021, Section 1029, is
13 amended to read as follows:

14 Section 1029. A. It shall further be unlawful:

15 1. To engage in prostitution, lewdness, or assignation;

16 2. To solicit, induce, entice, or procure another to commit an
17 act of lewdness, assignation, or prostitution, with himself or
18 herself;

19 3. To reside in, enter, or remain in any house, place,
20 building, or other structure, or to enter or remain in any vehicle,
21 trailer, or other conveyance with the intent of committing an act of
22 prostitution, lewdness, or assignation; or

23 4. To aid, abet, or participate in the doing of any of the acts
24 prohibited in paragraph 1, 2 or 3 of this subsection.

1 B. Any prohibited act described in paragraph 1, 2, 3 or 4 of
2 subsection A of this section committed with a person under eighteen
3 (18) years of age shall be deemed child prostitution, as defined in
4 Section 1030 of this title, and shall be punishable as provided in
5 Section 1031 of this title.

6 C. ~~In any prosecution of a person sixteen (16) or seventeen~~
7 ~~(17) years of age for an offense described in subsection A of this~~
8 ~~section, there shall be a presumption that the actor was coerced~~
9 ~~into committing such offense by another person in violation of the~~
10 ~~No child who is a victim of human trafficking provisions set forth~~
11 ~~in Section 748 of this title shall be subject to juvenile~~
12 ~~delinquency or criminal proceedings for the offenses described in~~
13 ~~subsection A of this section which occurred as a result of the child~~
14 ~~being a victim of human trafficking.~~

15 SECTION 4. This act shall become effective November 1, 2022.

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17 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL, dated
18 03/02/2022 - DO PASS, As Amended and Coauthored.