

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

March 29, 2022

ENGROSSED HOUSE
BILL NO. 4224

By: Boatman, Virgin, Munson,
McDugle, Phillips and Pae
of the House

and

Daniels of the Senate

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

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

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

- 1 b. any act, scheme, plan, or pattern intended to cause a
2 person to believe that performing, or failing to
3 perform, an act would result in serious physical,
4 financial, or emotional harm or distress to or
5 physical restraint against any person,
- 6 c. the abuse or threatened abuse of the law or legal
7 process,
- 8 d. knowingly destroying, concealing, removing,
9 confiscating or possessing any actual or purported
10 passport, labor or immigration document, or other
11 government identification document, including but not
12 limited to a driver license or birth certificate, of
13 another person,
- 14 e. facilitating or controlling a person's access to any
15 addictive or controlled substance other than for legal
16 medical purposes,
- 17 f. blackmail,
- 18 g. demanding or claiming money, goods, or any other thing
19 of value from or on behalf of a prostituted person
20 where such demand or claim arises from or is directly
21 related to the act of prostitution,
- 22 h. determining, dictating or setting the times at which
23 another person will be available to engage in an act
24 of prostitution with a third party,

1 i. determining, dictating or setting the places at which
2 another person will be available for solicitation of,
3 or to engage in, an act of prostitution with a third
4 party, or

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

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

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

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

23 5. "Human trafficking for labor" means:
24

1 a. recruiting, enticing, harboring, maintaining,
2 transporting, providing or obtaining, by any means,
3 another person through deception, force, fraud, threat
4 or coercion or for purposes of engaging the person in
5 labor, or

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

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

10 a. recruiting, enticing, harboring, maintaining,
11 transporting, providing or obtaining, by any means,
12 another person through deception, force, fraud, threat
13 or coercion for purposes of engaging the person in a
14 commercial sex act,

15 b. recruiting, enticing, harboring, maintaining,
16 transporting, providing, purchasing or obtaining, by
17 any means, a minor for purposes of engaging the minor
18 in a commercial sex act, or

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

22 7. "Legal process" means the criminal law, the civil law, or
23 the regulatory system of the federal government, any state,
24 territory, district, commonwealth, or trust territory therein, and

1 any foreign government or subdivision thereof and includes legal
2 civil actions, criminal actions, and regulatory petitions or
3 applications;

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

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

8 B. It shall be unlawful to knowingly engage in human
9 trafficking.

10 C. Any person violating the provisions of this section shall,
11 upon conviction, be guilty of a felony punishable by imprisonment in
12 the custody of the Department of Corrections for a term of not less
13 than five (5) years or for life, or by a fine of not more than One
14 Hundred Thousand Dollars (\$100,000.00), or by both such fine and
15 imprisonment. Any person violating the provisions of this section
16 where the victim of the offense is under eighteen (18) years of age
17 at the time of the offense shall, upon conviction, be guilty of a
18 felony punishable by imprisonment in the custody of the Department
19 of Corrections for a term of not less than fifteen (15) years or for
20 life, or by a fine of not more than Two Hundred Fifty Thousand
21 Dollars (\$250,000.00), or by both such fine and imprisonment. The
22 court shall also order the defendant to pay restitution to the
23 victim as provided in Section 991f of Title 22 of the Oklahoma
24 Statutes. If the person is convicted of human trafficking, the

1 person shall serve eighty-five percent (85%) of the sentence before
2 being eligible for parole consideration or any earned credits. The
3 terms of imprisonment specified in this subsection shall not be
4 subject to statutory provisions for suspension, deferral or
5 probation, or state correctional institution earned credits accruing
6 from and after November 1, 1989, except for the achievement earned
7 credits authorized by subsection H of Section 138 of Title 57 of the
8 Oklahoma Statutes. To qualify for such achievement earned credits,
9 such inmates must also be in compliance with the standards for Class
10 level 2 behavior, as defined in subsection D of Section 138 of Title
11 57 of the Oklahoma Statutes.

12 D. It is an affirmative defense to prosecution for a criminal,
13 youthful offender, or delinquent offense that, during the time of
14 the alleged commission of the offense, the defendant or alleged
15 youthful offender or delinquent was a victim of human trafficking.

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

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

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

23 Section 748.2 A. Human trafficking victims shall:

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

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

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

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

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

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

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

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

18 B. Any person aggrieved by a violation of subsection B of
19 Section 748 of this title may bring a civil action against the
20 person or persons who committed the violation to recover actual and
21 punitive damages and reasonable attorney fees and costs. The civil
22 action brought under this section may be instituted in the district
23 court in this state in the county in which the prospective defendant
24 resides or has committed any act which subjects him or her to

1 liability under this section. A criminal case or prosecution is not
2 a necessary precedent to the civil action. The statute of
3 limitations for the cause of action shall not commence until the
4 latter of the victim's emancipation from the defendant, the victim's
5 twenty-first birthday, or the plaintiff discovers or reasonably
6 should have discovered that he or she was a victim of human
7 trafficking and that the defendant caused, was responsible for or
8 profited from the human trafficking.

9 C. Upon availability of funds, the Attorney General is
10 authorized to establish an emergency hotline number for victims of
11 human trafficking to call in order to request assistance or rescue.
12 The Attorney General is authorized to enter into agreements with the
13 county departments of health to require posting of the rights
14 contained in this section along with the hotline number for
15 publication in locations as directed by the State Department of
16 Health.

17 D. Any peace officer who comes in contact with a human
18 trafficking victim shall inform the victim of the human trafficking
19 emergency hotline number and give notice to the victim of certain
20 rights. The notice shall consist of handing the victim a written
21 statement of the rights provided for in subsection A of this
22 section.

23 E. 1. Any peace officer or employee of a district court,
24 juvenile bureau or Office of Juvenile Affairs who has reasonable

1 suspicion that a minor may be a victim of human trafficking and is
2 in need of immediate protection shall assume protective custody over
3 the minor and immediately notify the Department of Human Services.
4 The minor shall be transferred to the emergency custody of the
5 Department pursuant to the provisions of Section 1-4-201 of Title
6 10A of the Oklahoma Statutes. While in custody of the Department,
7 the minor shall be provided with any necessary emergency social
8 services which include, but shall not be limited to, medical
9 examination or treatment, or a mental health assessment.

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

12 The minor shall remain in the custody of the Department of Human
13 Services until the investigation has been completed, but for no
14 longer than two (2) judicial days, for the show-cause hearing. The
15 Department may release the minor to the custody of a parent or legal
16 guardian if it determines the minor will not be subject to further
17 exploitation. If no such determination is made, the minor shall be
18 subject to the deprived child provisions of the Oklahoma Children's
19 Code and made eligible for appropriate child welfare services.

20 2. The minor shall not be subject to juvenile delinquency
21 proceedings or child-in-need-of-supervision proceedings for
22 prostitution offenses or ~~other nonviolent~~ misdemeanor or nonviolent
23 felony offenses committed as a ~~direct~~ result of being a victim of
24 human trafficking. ~~It shall be an affirmative defense to~~

~~delinquency or criminal prosecution for any misdemeanor or felony offense that the offense was committed during the time of and as the direct result of the minor being the victim of human trafficking.~~

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

Section 1029. A. It shall further be unlawful:

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

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

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

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

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

~~C. In any prosecution of a person sixteen (16) or seventeen (17) years of age for an offense described in subsection A of this section, there shall be a presumption that the actor was coerced~~

1 ~~into committing such offense by another person in violation of the~~
2 ~~No child who is a victim of human trafficking provisions set forth~~
3 ~~in Section 748 of this title shall be subject to juvenile~~
4 ~~delinquency or criminal proceedings for the offenses described in~~
5 ~~subsection A of this section which occurred as a result of the child~~
6 ~~being a victim of human trafficking.~~

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

8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
9 March 29, 2022 - DO PASS
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24