



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5482

Introduced 2/15/2012, by Rep. Richard Morthland

SYNOPSIS AS INTRODUCED:

720 ILCS 5/10-9

Amends the Criminal Code of 1961. Provides that all promises, notes, bills, bonds, covenants, contracts, agreements, judgments, mortgages, or other securities or conveyances made, given, granted, drawn, or entered into between a person who is convicted of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services and a victim of the offense where the whole or any part of the consideration is for any money or thing of value obtained or derived from a violation of these provisions are null and void. Provides that a person who is a victim of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services may initiate a civil action to recover the property obtained by the person who committed the offense. Provides that the victim may initiate a civil action to obtain monetary damages based on the value of the property obtained by the person who committed the offense. Provides that the court or the jury, as the case may be, shall determine the amount of that property. Provides that after that determination, the court shall enter a judgment of triple the amount so determined. Provides that if the victim is a minor, the action may be initiated in the name of the minor by the State's Attorney of the county where the violation occurred.

LRB097 18229 RLC 63453 b

1 AN ACT concerning human trafficking.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by adding
5 Section 10-9 as follows:

6 (720 ILCS 5/10-9)

7 Sec. 10-9. Trafficking in persons, involuntary servitude,
8 and related offenses.

9 (a) Definitions. In this Section:

10 (1) "Intimidation" has the meaning prescribed in
11 Section 12-6.

12 (2) "Commercial sexual activity" means any sex act on
13 account of which anything of value is given, promised to,
14 or received by any person.

15 (3) "Financial harm" includes intimidation that brings
16 about financial loss, criminal usury, or employment
17 contracts that violate the Frauds Act.

18 (4) "Forced labor or services" means labor or services
19 that are performed or provided by another person and are
20 obtained or maintained through:

21 (A) any scheme, plan, or pattern intending to cause
22 or threatening to cause serious harm to any person;

23 (B) an actor's physically restraining or

1 threatening to physically restrain another person;

2 (C) an actor's abusing or threatening to abuse the
3 law or legal process;

4 (D) an actor's knowingly destroying, concealing,
5 removing, confiscating, or possessing any actual or
6 purported passport or other immigration document, or
7 any other actual or purported government
8 identification document, of another person;

9 (E) an actor's blackmail; or

10 (F) an actor's causing or threatening to cause
11 financial harm to or exerting financial control over
12 any person.

13 (5) "Labor" means work of economic or financial value.

14 (6) "Maintain" means, in relation to labor or services,
15 to secure continued performance thereof, regardless of any
16 initial agreement on the part of the victim to perform that
17 type of service.

18 (7) "Obtain" means, in relation to labor or services,
19 to secure performance thereof.

20 (8) "Services" means activities resulting from a
21 relationship between a person and the actor in which the
22 person performs activities under the supervision of or for
23 the benefit of the actor. Commercial sexual activity and
24 sexually-explicit performances are forms of activities
25 that are "services" under this Section. Nothing in this
26 definition may be construed to legitimize or legalize

1 prostitution.

2 (9) "Sexually-explicit performance" means a live,
3 recorded, broadcast (including over the Internet), or
4 public act or show intended to arouse or satisfy the sexual
5 desires or appeal to the prurient interests of patrons.

6 (10) "Trafficking victim" means a person subjected to
7 the practices set forth in subsection (b), (c), or (d).

8 (b) Involuntary servitude. A person commits the offense of
9 involuntary servitude when he or she knowingly subjects,
10 attempts to subject, or engages in a conspiracy to subject
11 another person to forced labor or services and:

12 (1) causes or threatens to cause physical harm to any
13 person;

14 (2) physically restrains or threatens to physically
15 restrain another person;

16 (3) abuses or threatens to abuse the law or legal
17 process;

18 (4) knowingly destroys, conceals, removes,
19 confiscates, or possesses any actual or purported passport
20 or other immigration document, or any other actual or
21 purported government identification document, of another
22 person; or

23 (5) uses intimidation, or uses or threatens to cause
24 financial harm to or exerts financial control over any
25 person.

26 Sentence. Except as otherwise provided in subsection (e) or

1 (f), a violation of subsection (b)(1) is a Class X felony,
2 (b)(2) is a Class 1 felony, (b)(3) is a Class 2 felony, (b)(4)
3 is a Class 3 felony, and (b)(5) is a Class 4 felony.

4 (c) Involuntary sexual servitude of a minor. A person
5 commits the offense of involuntary sexual servitude of a minor
6 when he or she knowingly recruits, entices, harbors,
7 transports, provides, or obtains by any means, or attempts to
8 recruit, entice, harbor, provide, or obtain by any means,
9 another person under 18 years of age, knowing that the minor
10 will engage in commercial sexual activity, a sexually-explicit
11 performance, or the production of pornography, or causes or
12 attempts to cause a minor to engage in one or more of those
13 activities and:

14 (1) there is no overt force or threat and the minor is
15 between the ages of 17 and 18 years;

16 (2) there is no overt force or threat and the minor is
17 under the age of 17 years; or

18 (3) there is overt force or threat.

19 Sentence. Except as otherwise provided in subsection (e) or
20 (f), a violation of subsection (c)(1) is a Class 1 felony,
21 (c)(2) is a Class X felony, and (c)(3) is a Class X felony.

22 (d) Trafficking in persons for forced labor or services. A
23 person commits the offense of trafficking in persons for forced
24 labor or services when he or she knowingly: (1) recruits,
25 entices, harbors, transports, provides, or obtains by any
26 means, or attempts to recruit, entice, harbor, transport,

1 provide, or obtain by any means, another person, intending or
2 knowing that the person will be subjected to forced labor or
3 services; or (2) benefits, financially or by receiving anything
4 of value, from participation in a venture that has engaged in
5 an act of involuntary servitude or involuntary sexual servitude
6 of a minor.

7 Sentence. Except as otherwise provided in subsection (e) or
8 (f), a violation of this subsection is a Class 1 felony.

9 (e) Aggravating factors. A violation of this Section
10 involving kidnapping or an attempt to kidnap, aggravated
11 criminal sexual assault or an attempt to commit aggravated
12 criminal sexual assault, or an attempt to commit first degree
13 murder is a Class X felony.

14 (f) Sentencing considerations.

15 (1) Bodily injury. If, pursuant to a violation of this
16 Section, a victim suffered bodily injury, the defendant may
17 be sentenced to an extended-term sentence under Section
18 5-8-2 of the Unified Code of Corrections. The sentencing
19 court must take into account the time in which the victim
20 was held in servitude, with increased penalties for cases
21 in which the victim was held for between 180 days and one
22 year, and increased penalties for cases in which the victim
23 was held for more than one year.

24 (2) Number of victims. In determining sentences within
25 statutory maximums, the sentencing court should take into
26 account the number of victims, and may provide for

1 substantially increased sentences in cases involving more
2 than 10 victims.

3 (g) Restitution. Restitution is mandatory under this
4 Section. In addition to any other amount of loss identified,
5 the court shall order restitution including the greater of (1)
6 the gross income or value to the defendant of the victim's
7 labor or services or (2) the value of the victim's labor as
8 guaranteed under the Minimum Wage Law and overtime provisions
9 of the Fair Labor Standards Act (FLSA) or the Minimum Wage Law,
10 whichever is greater.

11 (h) Trafficking victim services. Subject to the
12 availability of funds, the Department of Human Services may
13 provide or fund emergency services and assistance to
14 individuals who are victims of one or more offenses defined in
15 this Section.

16 (i) Certification. The Attorney General, a State's
17 Attorney, or any law enforcement official shall certify in
18 writing to the United States Department of Justice or other
19 federal agency, such as the United States Department of
20 Homeland Security, that an investigation or prosecution under
21 this Section has begun and the individual who is a likely
22 victim of a crime described in this Section is willing to
23 cooperate or is cooperating with the investigation to enable
24 the individual, if eligible under federal law, to qualify for
25 an appropriate special immigrant visa and to access available
26 federal benefits. Cooperation with law enforcement shall not be

1 required of victims of a crime described in this Section who
2 are under 18 years of age. This certification shall be made
3 available to the victim and his or her designated legal
4 representative.

5 (j) A person who commits the offense of involuntary
6 servitude, involuntary sexual servitude of a minor, or
7 trafficking in persons for forced labor or services under
8 subsection (b), (c), or (d) of this Section is subject to the
9 property forfeiture provisions set forth in Article 124B of the
10 Code of Criminal Procedure of 1963.

11 (k) (1) All promises, notes, bills, bonds, covenants,
12 contracts, agreements, judgments, mortgages, or other
13 securities or conveyances made, given, granted, drawn, or
14 entered into between a person who is convicted of violating
15 this Section and a victim of an offense described in subsection
16 (b), (c), or (d) of this Section where the whole or any part of
17 the consideration is for any money or thing of value obtained
18 or derived from a violation of subsection (b), (c), or (d) of
19 this Section are null and void.

20 (2) An obligation void under this subsection (k) may be set
21 aside and vacated by a court of competent jurisdiction, upon a
22 complaint filed for that purpose, by the person so granting,
23 giving, entering into, or executing the obligation, or by his
24 or her executors or administrators, or by any creditor, heir,
25 legatee, purchaser, or other person interested in the
26 obligation; or if a judgment, the judgment may be set aside on

1 motion of any person stated in this paragraph (2), on due
2 notice given to the parties interested in the obligation.

3 (3) No assignment of any obligation void under this
4 subsection (k) may in any manner affect the defense of the
5 person giving, granting, drawing, entering into, or executing
6 the obligation, or the remedies of any person interested in the
7 obligation.

8 (4) A person who is a victim of a violation of subsection
9 (b), (c), or (d) of this Section may initiate a civil action to
10 recover the property obtained by the person who violated
11 subsection (b), (c), or (d) of this Section. The victim may
12 initiate a civil action to obtain monetary damages based on the
13 value of the property obtained by the person who violated
14 subsection (b), (c), or (d) of this Section. The court or the
15 jury, as the case may be, shall determine the amount of that
16 property. After that determination, the court shall enter a
17 judgment of triple the amount so determined. If the victim is a
18 minor, the action may be initiated in the name of the minor by
19 the State's Attorney of the county where the violation
20 occurred.

21 (Source: P.A. 96-710, eff. 1-1-10; incorporates 96-712, eff.
22 1-1-10; 96-1000, eff. 7-2-10.)