

1 **SENATE FLOOR VERSION**

February 15, 2017

2 **AS AMENDED**

3 SENATE BILL NO. 32

By: Thompson

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5
6 **[crimes and punishment - human trafficking -
penalties for prohibited acts - effective date]**
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8

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

10 SECTION 1. AMENDATORY 21 O.S. 2011, Section 748, as last
11 amended by Section 2, Chapter 231, O.S.L. 2014 (21 O.S. Supp. 2016,
12 Section 748), is amended to read as follows:

13 Section 748. A. As used in ~~Sections 748~~ this section and
14 Section 748.2 of this title:

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

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

19 b. any act, scheme, plan, or pattern intended to cause a
20 person to believe that performing, or failing to
21 perform, an act would result in serious physical,
22 financial, or emotional harm or distress to or
23 physical restraint against any person,
24

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

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

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

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

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

19 5. "Human trafficking for labor" means:

20 a. recruiting, enticing, harboring, maintaining,
21 transporting, providing or obtaining, by any means,
22 another person through deception, force, fraud, threat
23 or coercion or for purposes of engaging the person in
24 labor, or

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

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

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

10 b. recruiting, enticing, harboring, maintaining,
11 transporting, providing, purchasing or obtaining, by
12 any means, a minor for purposes of engaging the minor
13 in a commercial sex act, or

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

17 7. "Legal process" means the criminal law, the civil law, or
18 the regulatory system of the federal government, any state,
19 territory, district, commonwealth, or trust territory therein, and
20 any foreign government or subdivision thereof and includes legal
21 civil actions, criminal actions, and regulatory petitions or
22 applications;

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

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

3 B. It shall be unlawful to knowingly engage in human
4 trafficking.

5 C. Any person violating the provisions of this section shall,
6 upon conviction, be guilty of a felony punishable by imprisonment in
7 the custody of the Department of Corrections for a term of not less
8 than five (5) years or for life, or by a fine of not more than One
9 Hundred Thousand Dollars (\$100,000.00), or by both such fine and
10 imprisonment. Any person violating the provisions of this section
11 where the victim of the offense is under eighteen (18) years of age
12 at the time of the offense shall, upon conviction, be guilty of a
13 felony punishable by imprisonment in the custody of the Department
14 of Corrections for a term of not less than fifteen (15) years or for
15 life, or by a fine of not more than Two Hundred Fifty Thousand
16 Dollars (\$250,000.00), or by both such fine and imprisonment. The
17 court shall also order the defendant to pay restitution to the
18 victim as provided in Section 991f of Title 22 of the Oklahoma
19 Statutes. If the person is convicted of human trafficking, the
20 person shall serve eighty-five percent (85%) of the sentence before
21 being eligible for parole consideration or before application of any
22 earned credits. The terms of imprisonment specified in this
23 subsection shall not be subject to statutory provisions for
24 suspension, deferral or probation, or state correctional institution

1 earned credits accruing from and after November 1, 1989, except for
2 the achievement earned credits authorized by subsection H of Section
3 138 of Title 57 of the Oklahoma Statutes. To qualify for such
4 achievement earned credits, such inmates must also be in compliance
5 with the standards for Class level 2 behavior, as defined in
6 subsection D of Section 138 of Title 57 of the Oklahoma Statutes.
7 Such person shall not be eligible for parole consideration prior to
8 serving eighty-five percent (85%) of the sentence imposed and such
9 person shall not be eligible for earned credits or any other type of
10 credits which have the effect of reducing the length of the sentence
11 to less than eighty-five percent (85%) of the sentence imposed.

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

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

17 SECTION 2. AMENDATORY 63 O.S. 2011, Section 2-401, as
18 amended by Section 4, Chapter 206, O.S.L. 2012 (63 O.S. Supp. 2016,
19 Section 2-401), is amended to read as follows:

20 Section 2-401. A. Except as authorized by the Uniform
21 Controlled Dangerous Substances Act, it shall be unlawful for any
22 person:

23 1. To distribute, dispense, transport with intent to distribute
24 or dispense, possess with intent to manufacture, distribute, or

1 dispense, a controlled dangerous substance or to solicit the use of
2 or use the services of a person less than eighteen (18) years of age
3 to cultivate, distribute or dispense a controlled dangerous
4 substance;

5 2. To create, distribute, transport with intent to distribute
6 or dispense, or possess with intent to distribute, a counterfeit
7 controlled dangerous substance; or

8 3. To distribute any imitation controlled substance as defined
9 by Section 2-101 of this title, except when authorized by the Food
10 and Drug Administration of the United States Department of Health
11 and Human Services.

12 B. Any person who violates the provisions of this section with
13 respect to:

14 1. A substance classified in Schedule I or II which is a
15 narcotic drug, lysergic acid diethylamide (LSD), gamma
16 butyrolactone, gamma hydroxyvalerate, gamma valerolactone, 1,4
17 butanediol, or gamma-hydroxybutyric acid as defined in Sections 2-
18 204 and 2-208 of this title, upon conviction, shall be guilty of a
19 felony and shall be sentenced to a term of imprisonment for not less
20 than five (5) years nor more than life and a fine of not more than
21 One Hundred Thousand Dollars (\$100,000.00), which shall be in
22 addition to other punishment provided by law and shall not be
23 imposed in lieu of other punishment. Any sentence to the custody of
24 the Department of Corrections shall not be subject to statutory

1 provisions for suspended sentences, deferred sentences, or probation
2 except when the conviction is for a first offense;

3 2. Any other controlled dangerous substance classified in
4 Schedule I, II, III, or IV, upon conviction, shall be guilty of a
5 felony and shall be sentenced to a term of imprisonment for not less
6 than two (2) years nor more than life and a fine of not more than
7 Twenty Thousand Dollars (\$20,000.00), which shall be in addition to
8 other punishment provided by law and shall not be imposed in lieu of
9 other punishment. Any sentence to the custody of the Department of
10 Corrections shall not be subject to statutory provisions for
11 suspended sentences, deferred sentences, or probation except when
12 the conviction is for a first offense;

13 3. A substance classified in Schedule V, upon conviction, shall
14 be guilty of a felony and shall be sentenced to a term of
15 imprisonment for not more than five (5) years and a fine of not more
16 than One Thousand Dollars (\$1,000.00), which shall be in addition to
17 other punishment provided by law and shall not be imposed in lieu of
18 other punishment; or

19 4. An imitation controlled substance as defined by Section 2-
20 101 of this title, upon conviction, shall be guilty of a misdemeanor
21 and shall be sentenced to a term of imprisonment in the county jail
22 for a period of not more than one (1) year and a fine of not more
23 than One Thousand Dollars (\$1,000.00). A person convicted of a
24 second violation of the provisions of this paragraph shall be guilty

1 of a felony and shall be sentenced to a term of imprisonment for not
2 more than five (5) years and a fine of not more than Five Thousand
3 Dollars (\$5,000.00), which shall be in addition to other punishment
4 provided by law and shall not be imposed in lieu of other
5 punishment.

6 C. 1. Except when authorized by the Food and Drug
7 Administration of the United States Department of Health and Human
8 Services, it shall be unlawful for any person to manufacture,
9 cultivate, distribute, or possess with intent to distribute a
10 synthetic controlled substance.

11 2. Any person convicted of violating the provisions of this
12 paragraph is guilty of a felony and shall be punished by
13 imprisonment for a term not to exceed life and a fine of not more
14 than Twenty-five Thousand Dollars (\$25,000.00), which shall be in
15 addition to other punishment provided by law and shall not be
16 imposed in lieu of other punishment.

17 3. A second or subsequent conviction for the violation of the
18 provisions of this paragraph is a felony punishable as a habitual
19 offender pursuant to Section 51.1 of Title 21 of the Oklahoma
20 Statutes.

21 4. In addition, the violator shall be fined an amount not more
22 than One Hundred Thousand Dollars (\$100,000.00), which shall be in
23 addition to other punishment provided by law and shall not be
24 imposed in lieu of other punishment.

1 D. 1. Any person convicted of a second or subsequent felony
2 violation of the provisions of this section, except for paragraph 4
3 of subsection B of this section, shall be punished as a habitual
4 offender pursuant to Section 51.1 of Title 21 of the Oklahoma
5 Statutes.

6 2. In addition, the violator shall be fined twice the fine
7 otherwise authorized, which shall be in addition to other punishment
8 provided by law and shall not be imposed in lieu of other
9 punishment.

10 3. Convictions for second or subsequent violations of the
11 provisions of this section shall not be subject to statutory
12 provisions for suspended sentences, deferred sentences, or
13 probation.

14 E. Any person who is at least eighteen (18) years of age and
15 who violates the provisions of this section by using or soliciting
16 the use of services of a person less than eighteen (18) years of age
17 to distribute, dispense, transport with intent to distribute or
18 dispense or cultivate a controlled dangerous substance or by
19 distributing a controlled dangerous substance to a person under
20 eighteen (18) years of age, is punishable by twice the fine and by
21 twice the imprisonment otherwise authorized.

22 F. Any person who violates any provision of this section by
23 transporting with intent to distribute or dispense, distributing or
24 possessing with intent to distribute a controlled dangerous

1 substance to a person, or violation of subsection G of this section,
2 in or on, or within two thousand (2,000) feet of the real property
3 comprising a public or private elementary or secondary school,
4 public vocational school, public or private college or university,
5 or other institution of higher education, recreation center or
6 public park, including state parks and recreation areas, public
7 housing project, or child care facility as defined by Section 402 of
8 Title 10 of the Oklahoma Statutes, shall be punished by:

9 1. For a first offense, a term of imprisonment, or by the
10 imposition of a fine or by both, not exceeding twice that authorized
11 by the appropriate provision of this section ~~and shall serve a~~
12 ~~minimum of fifty percent (50%) of the sentence received prior to~~
13 ~~becoming eligible for state correctional institution earned credits~~
14 ~~toward the completion of the sentence.~~ Such person shall not be
15 eligible for parole consideration prior to serving fifty percent
16 (50%) of the sentence imposed and such person shall not be eligible
17 for earned credits or any other type of credits which have the
18 effect of reducing the length of the sentence to less than fifty
19 percent (50%) of the sentence imposed; or

20 2. For a second or subsequent offense, a term of imprisonment
21 as provided for a habitual offender pursuant to Section 51.1 of
22 Title 21 of the Oklahoma Statutes. ~~In addition, the violator shall~~
23 ~~serve eighty five percent (85%) of the sentence received prior to~~
24 ~~becoming eligible for state correctional institution earned credits~~

1 ~~toward the completion of the sentence or eligibility for parole~~ Such
2 person shall not be eligible for parole consideration prior to
3 servng eighty-five percent (85%) of the sentence imposed and such
4 person shall not be eligible for earned credits or any other type of
5 credits which have the effect of reducing the length of the sentence
6 to less than eighty-five percent (85%) of the sentence imposed.

7 G. 1. Except as authorized by the Uniform Controlled Dangerous
8 Substances Act, it shall be unlawful for any person to manufacture
9 or attempt to manufacture any controlled dangerous substance or
10 possess any substance listed in Section 2-322 of this title or any
11 substance containing any detectable amount of pseudoephedrine or its
12 salts, optical isomers or salts of optical isomers, iodine or its
13 salts, optical isomers or salts of optical isomers, hydriodic acid,
14 sodium metal, lithium metal, anhydrous ammonia, phosphorus, or
15 organic solvents with the intent to use that substance to
16 manufacture a controlled dangerous substance.

17 2. Any person violating the provisions of this subsection with
18 respect to the unlawful manufacturing or attempting to unlawfully
19 manufacture any controlled dangerous substance, or possessing any
20 substance listed in this subsection or Section 2-322 of this title,
21 upon conviction, is guilty of a felony and shall be punished by
22 imprisonment for not less than seven (7) years nor more than life
23 and by a fine of not less than Fifty Thousand Dollars (\$50,000.00),
24 which shall be in addition to other punishment provided by law and

1 shall not be imposed in lieu of other punishment. The possession of
2 any amount of anhydrous ammonia in an unauthorized container shall
3 be prima facie evidence of intent to use such substance to
4 manufacture a controlled dangerous substance.

5 3. Any person violating the provisions of this subsection with
6 respect to the unlawful manufacturing or attempting to unlawfully
7 manufacture any controlled dangerous substance in the following
8 amounts:

9 a. one (1) kilogram or more of a mixture or substance
10 containing a detectable amount of heroin,

11 b. five (5) kilograms or more of a mixture or substance
12 containing a detectable amount of:

13 (1) coca leaves, except coca leaves and extracts of
14 coca leaves from which cocaine, ecgonine, and
15 derivatives of ecgonine or their salts have been
16 removed,

17 (2) cocaine, its salts, optical and geometric
18 isomers, and salts of isomers,

19 (3) ecgonine, its derivatives, their salts, isomers,
20 and salts of isomers, or

21 (4) any compound, mixture, or preparation which
22 contains any quantity of any of the substances
23 referred to in divisions (1) through (3) of this
24 subparagraph,

- 1 c. fifty (50) grams or more of a mixture or substance
2 described in division (2) of subparagraph b of this
3 paragraph which contains cocaine base,
- 4 d. one hundred (100) grams or more of phencyclidine (PCP)
5 or 1 kilogram or more of a mixture or substance
6 containing a detectable amount of phencyclidine (PCP),
- 7 e. ten (10) grams or more of a mixture or substance
8 containing a detectable amount of lysergic acid
9 diethylamide (LSD),
- 10 f. four hundred (400) grams or more of a mixture or
11 substance containing a detectable amount of N-phenyl-
12 N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100
13 grams or more of a mixture or substance containing a
14 detectable amount of any analogue of N-phenyl-N-[1-(2-
15 phenylethyl)-4-piperidinyl] propanamide,
- 16 g. one thousand (1,000) kilograms or more of a mixture or
17 substance containing a detectable amount of marihuana
18 or one thousand (1000) or more marihuana plants
19 regardless of weight, or
- 20 h. fifty (50) grams or more of methamphetamine, its
21 salts, isomers, and salts of its isomers or 500 grams
22 or more of a mixture or substance containing a
23 detectable amount of methamphetamine, its salts,
24 isomers, or salts of its isomers,

1 upon conviction, is guilty of aggravated manufacturing a controlled
2 dangerous substance punishable by imprisonment for not less than
3 twenty (20) years nor more than life and by a fine of not less than
4 Fifty Thousand Dollars (\$50,000.00), which shall be in addition to
5 other punishment provided by law and shall not be imposed in lieu of
6 other punishment. ~~Any person convicted of a violation of the~~
7 ~~provisions of this paragraph shall be required to serve a minimum of~~
8 ~~eighty-five percent (85%) of the sentence received prior to becoming~~
9 ~~eligible for state correctional earned credits towards the~~
10 ~~completion of the sentence or eligible for parole~~ Such person shall
11 not be eligible for parole consideration prior to serving eighty-
12 five percent (85%) of the sentence imposed and such person shall not
13 be eligible for earned credits or any other type of credits which
14 have the effect of reducing the length of the sentence to less than
15 eighty-five percent (85%) of the sentence imposed.

16 4. Any sentence to the custody of the Department of Corrections
17 for any violation of paragraph 3 of this subsection shall not be
18 subject to statutory provisions for suspended sentences, deferred
19 sentences, or probation. A person convicted of a second or
20 subsequent violation of the provisions of paragraph 3 of this
21 subsection shall be punished as a habitual offender pursuant to
22 Section 51.1 of Title 21 of the Oklahoma Statutes ~~and shall be~~
23 ~~required to serve a minimum of eighty-five percent (85%) of the~~
24 ~~sentence received prior to becoming eligible for state correctional~~

1 ~~earned credits or eligibility for parole.~~ Such person shall not be
2 eligible for parole consideration prior to serving eighty-five
3 percent (85%) of the sentence imposed and such person shall not be
4 eligible for earned credits or any other type of credits which have
5 the effect of reducing the length of the sentence to less than
6 eighty-five percent (85%) of the sentence imposed.

7 5. Any person who has been convicted of manufacturing or
8 attempting to manufacture methamphetamine pursuant to the provisions
9 of this subsection and who, after such conviction, purchases or
10 attempts to purchase, receive or otherwise acquire any product,
11 mixture, or preparation containing any detectable quantity of base
12 pseudoephedrine or ephedrine shall, upon conviction, be guilty of a
13 felony punishable by imprisonment in the custody of the Department
14 of Corrections for a term in the range of twice the minimum term
15 provided for in paragraph 2 of this subsection.

16 H. Any person convicted of any offense described in the Uniform
17 Controlled Dangerous Substances Act may, in addition to the fine
18 imposed, be assessed an amount not to exceed ten percent (10%) of
19 the fine imposed. Such assessment shall be paid into a revolving
20 fund for enforcement of controlled dangerous substances created
21 pursuant to Section 2-506 of this title.

22 I. Any person convicted of any offense described in this
23 section shall, in addition to any fine imposed, pay a special
24 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be

1 deposited into the Trauma Care Assistance Revolving Fund created in
2 Section 1-2522 of this title.

3 J. For purposes of this section, "public housing project" means
4 any dwelling or accommodations operated as a state or federally
5 subsidized multifamily housing project by any housing authority,
6 nonprofit corporation or municipal developer or housing projects
7 created pursuant to the Oklahoma Housing Authorities Act.

8 K. When a person is found guilty of a violation of the
9 provisions of this section, the court shall order, in addition to
10 any other penalty, the defendant to pay a one-hundred-dollar
11 assessment to be deposited in the Drug Abuse Education and Treatment
12 Revolving Fund created in Section 2-503.2 of this title, upon
13 collection.

14 SECTION 3. This act shall become effective November 1, 2017.

15 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
16 February 15, 2017 - DO PASS AS AMENDED

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