

ENROLLED ACT NO. 78, HOUSE OF REPRESENTATIVES

SIXTY-SECOND LEGISLATURE OF THE STATE OF WYOMING
2013 GENERAL SESSION

AN ACT relating to crimes and offenses; defining criminal offenses related to human trafficking as specified; providing penalties; providing for restitution; providing an affirmative defense to prosecution of human trafficking victims as specified; providing for services to victims of human trafficking; making conforming amendments; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 6-2-701 through 6-2-710 are created to read:

ARTICLE 7
HUMAN TRAFFICKING

6-2-701. Definitions.

(a) As used in this article:

(i) "Benefit" means anything of value;

(ii) "Coercion" means any one (1) or more of the following:

(A) The use or threat of force, abduction, serious harm to or physical restraint against any individual;

(B) The use of a scheme, plan, pattern or fraudulent statement with intent to cause an individual to believe that failure to perform an act will result in serious harm to or physical restraint against any individual;

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(C) The abuse or threatened abuse of the law or legal process;

(D) The abuse of a position of power or taking advantage of a position of vulnerability;

(E) Providing a controlled substance to an individual for the purpose of controlling the person's behavior;

(F) Interfering with lawful custody of or access to an individual's children;

(G) The destruction of, taking of or the threat to destroy or take an individual's identification document;

(H) The use of an individual's personal services as security payment or satisfaction for a real or purported debt if:

(I) The reasonable value of the services is not applied toward the liquidation of the debt;

(II) The length of the services is not limited and their nature is not defined;

(III) The principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred; or

(IV) The individual is prevented from acquiring accurate and timely information about the disposition of the debt.

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(iii) "Commercial sex act" means any sexual act for which anything of value is given to, promised or received by a person in exchange for the sexual act;

(iv) "Deception" means:

(A) A person's creation or confirmation of an individual's impression of material fact or event which is false and which the person knows or has reason to believe is false, including:

(I) The nature of labor or services to be provided;

(II) The fundamental conditions of labor; or

(III) The extent to which the individual will be free to leave the individual's place of residence or workplace; and

(B) The promise of a benefit to or performance of a service to an individual which the person does not intend to be delivered or performed.

(v) "Financial harm" means a detrimental position in relation to wealth, property or other monetary benefits that occurs as a result of another person's illegal act including, but not limited to, blackmail, promoting of prostitution or illegal employment contracts;

(vi) "Forced services" means services performed or provided by a person that are obtained or maintained by another person who:

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(A) Causes or threatens to cause serious harm to any person;

(B) Physically restrains or threatens to physically restrain another person;

(C) Abuses or threatens to abuse the law or legal process;

(D) Knowingly destroys, conceals, removes or confiscates any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;

(E) Engages in blackmail; or

(F) Causes or threatens to cause financial harm to any person.

(vii) "Identification document" includes a passport, driver's license, immigration document, travel document and any other government issued identification document;

(viii) "Labor" means work of economic or financial value;

(ix) "Minor" means any natural person younger than eighteen (18) years of age;

(x) "Pecuniary damage" means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, including damages for wrongful death. It does not include punitive damages and damages for pain, suffering, mental anguish and loss of consortium;

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(xi) "Person" means an individual, partnership, corporation, joint stock company or any other association or entity, public or private;

(xii) "Restitution" means full or partial payment of pecuniary damage to a victim;

(xiii) "Serious harm" means physical or nonphysical harm or property damage, including, but not limited to, bodily injury as defined in W.S. 6-1-104(a)(i), economic loss as defined in W.S. 1-40-102(a)(v), personal injury as defined in W.S. 1-40-102(a)(vii) or reputational harm sufficient to compel a reasonable person of the same background and in the same circumstance of the victim, to perform or to continue performing labor, a service or a commercial sex act in order to avoid incurring that harm;

(xiv) "Services" means activities resulting from a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity is "services" in this article. Nothing in this definition may be construed to legitimize or legalize prostitution;

(xv) "Victim" means the person alleged to have been subjected to human trafficking;

(xvi) "This act" means W.S. 6-2-701 through 6-2-710.

6-2-702. Human trafficking in the first degree; penalty.

(a) A person is guilty of human trafficking in the first degree when the person intentionally or knowingly

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recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains or entices an individual for the purpose of:

(i) Forced labor or servitude in violation of W.S. 6-2-704;

(ii) Sexual servitude in violation of W.S. 6-2-705; or

(iii) Sexual servitude of a minor in violation of W.S. 6-2-706.

(b) Human trafficking in the first degree is a felony punishable by imprisonment for not less than five (5) nor more than fifty (50) years unless the victim is a minor in which case it is a felony punishable by imprisonment for not less than twenty-five (25) nor more than fifty (50) years and a fine of not more than ten thousand dollars (\$10,000.00), or both.

6-2-703. Human trafficking in the second degree; penalty.

(a) A person is guilty of human trafficking in the second degree when the person recklessly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains or entices an individual for the purpose of:

(i) Forced labor or servitude in violation of W.S. 6-2-704;

(ii) Sexual servitude in violation of W.S. 6-2-705;

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(iii) Sexual servitude of a minor in violation of
W.S. 6-2-706.

(b) Human trafficking in the second degree is a felony punishable by imprisonment for not less than two (2) nor more than twenty (20) years and a fine of not more than ten thousand dollars (\$10,000.00), or both.

6-2-704. Forced labor or servitude; penalty.

(a) A person is guilty of forced labor or servitude when the person intentionally, knowingly or recklessly uses coercion, deception or fraud to compel an individual to provide forced services.

(b) Intentionally, knowingly or recklessly compelling forced labor or servitude is a felony punishable by imprisonment for not more than fifteen (15) years and a fine of not more than ten thousand dollars (\$10,000.00), or both.

6-2-705. Sexual servitude of adult.

(a) A person is guilty of sexual servitude of an adult when the person intentionally, knowingly or recklessly uses coercion, deception or fraud to compel an individual eighteen (18) years of age or older to engage in commercial sexual services.

(b) Intentionally, knowingly or recklessly compelling the sexual servitude of an adult is a felony punishable by imprisonment for not more than three (3) years and a fine of not more than three thousand dollars (\$3,000.00), or both.

6-2-706. Sexual servitude of a minor.

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(a) A person is guilty of sexual servitude of a minor when the person intentionally, knowingly or recklessly offers, obtains, procures or provides an individual less than eighteen (18) years of age to engage in commercial sexual services.

(b) Intentionally, knowingly or recklessly compelling the sexual servitude of a minor is a felony punishable by imprisonment for not more than five (5) years and a fine of not more than five thousand dollars (\$5,000.00), or both.

(c) It is not a defense in a prosecution under this section that the individual consented to engage in commercial sexual services or that the defendant reasonably believed the individual was at least eighteen (18) years of age.

6-2-707. Patronizing a victim of sexual servitude.

(a) A person is guilty of patronizing a victim of sexual servitude when the person pays, agrees to pay or offers to pay anything of value so that the person or another may engage in sexual activity with an individual when the person knows that the individual is a victim of sexual servitude in violation of W.S. 6-2-705 or 6-2-706.

(b) Patronizing a victim of sexual servitude is a felony punishable by a fine of not more than five thousand dollars (\$5,000.00), imprisonment for not more than three (3) years, or both.

6-2-708. Victim defenses; vacating convictions.

(a) A victim of human trafficking is not criminally liable for any commercial sex act or other criminal acts committed as a direct result of, or incident to, being a

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victim of human trafficking in violation of W.S. 6-2-702 through 6-2-707.

(b) A victim of human trafficking who is a minor shall be deemed a child in need of supervision in accordance with the Children in Need of Supervision Act or a neglected child in accordance with the Child Protection Act.

(c) At any time after the entry of a conviction, the court in which it was entered may vacate the conviction if the defendant's participation in the offense is found to have been the result of having been a victim. Official documentation of the defendant's status as a victim at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim, but shall not be required for granting a motion under this section.

6-2-709. Victims' rights; services.

(a) As soon as possible after the initial encounter with a person who reasonably appears to a law enforcement agency, district or county and prosecuting attorneys' office to be a victim of human trafficking, the agency or office shall:

(i) Notify the victim services division within the office of the attorney general that the person may be eligible for services under this article; and

(ii) Make a preliminary assessment of whether the victim or possible victim of human trafficking appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in the Trafficking Victims Protection Act, 22 U.S.C. section 7105, or appears

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to be otherwise eligible for any federal, state or local benefits and services. If it is determined that the victim appears to meet such criteria, the agency or office shall report the finding to the victim and shall refer the victim to services available, including legal service providers. If the possible victim is a minor or is a vulnerable adult, the agency or office shall also notify the department of family services.

(b) The attorney general, a district or county and prosecuting attorney or any law enforcement official shall certify in writing to the United States Department of Justice or other federal agency, such as the United States Department of Homeland Security, that an investigation or prosecution under this article has begun and the individual who is a likely victim of a crime described in this article is willing to cooperate or is cooperating with the investigation to enable the individual, if eligible under federal law, to qualify for an appropriate special immigrant visa and to access available federal benefits. Cooperation with law enforcement shall not be required of victims of a crime described in this article who are minors. This certification shall be made available to the victim and the victim's designated legal representative.

(c) Victims of human trafficking under W.S. 6-2-702 through 6-2-706 shall be informed of the rights enumerated in this section, the victim's right to informed consent and the victim's rights as a victim of crime. The victim shall also be informed of available housing, educational, medical, legal and advocacy services.

(d) Victims of human trafficking are entitled to restitution and forms of compensation under the Crime Victims Compensation Act.

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(e) In a prosecution for an offense under this article, police and prosecuting agencies shall keep the identity of the victim and the victim's family confidential. The prosecutor shall take reasonable steps to protect the victim and the victim's family from being revictimized.

6-2-710. Restitution.

(a) In addition to any other punishment prescribed by law, upon conviction for felony under this article, the court shall order a defendant to pay mandatory restitution to each victim as determined under W.S. 7-9-103 and 7-9-114.

(b) If the victim of human trafficking to whom restitution has been ordered dies before restitution is paid, any restitution ordered shall be paid to the victim's heir or legal representative provided that the heir or legal representative has not benefited in any way from the trafficking.

(c) The return of the victim of human trafficking to the victim's home country or other absence of the victim from the jurisdiction shall not limit the victim's right to receive restitution pursuant to this section.

Section 2. W.S. 6-4-101, 6-4-102, 6-4-103(a)(intro) and 7-19-301(a)(iv) by creating a new subparagraph (J) and (viii) are amended to read:

6-4-101. Prostitution; penalties.

Except as provided in W.S. 6-2-701 through 6-2-710, a person who knowingly or intentionally performs or permits, or offers or agrees to perform or permit an act of sexual intrusion, as defined by W.S. 6-2-301(a)(vii), for money or

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other property commits prostitution which is a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.

6-4-102. Soliciting an act of prostitution; penalties.

Except as provided in W.S. 6-2-701 through 6-2-710, a person is guilty of soliciting an act of prostitution if, with the intent that an act of sexual intrusion as defined by W.S. 6-2-301(a)(vii) be committed, that person knowingly or intentionally pays, or offers or agrees to pay money or other property to another person under circumstances strongly corroborative of the intention that an act of prostitution be committed. Soliciting an act of prostitution is a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.

6-4-103. Promoting prostitution; penalties.

(a) Except as provided in W.S. 6-2-701 through 6-2-710, a person commits a felony if he:

7-19-301. Definitions.

(a) Unless otherwise provided, for the purposes of this act:

(iv) "Criminal offense against a minor" means the offenses specified in this paragraph in which the victim is less than eighteen (18) years of age. "Criminal offense against a minor" includes an offense committed in another jurisdiction, including a federal court or courts martial, which, if committed in this state, would

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constitute a "criminal offense against a minor" as defined in this paragraph. "Criminal offense against a minor" includes:

(J) Human trafficking under W.S. 6-2-702 or 6-2-703 or sexual servitude under W.S. 6-2-705 or 6-2-706.

(viii) "Offender" means a person convicted of a criminal offense specified in W.S. 7-19-302(g) through (j), 6-2-702, 6-2-703, 6-2-705 or 6-2-706 or convicted of a criminal offense from Wyoming or any other jurisdiction containing the same or similar elements, or arising out of the same or similar facts or circumstances, as a criminal offense specified in W.S. 7-19-302(g) through (j), 6-2-702, 6-2-703, 6-2-705 or 6-2-706;

Section 3.

(a) The division of victim services shall continue to provide training regarding provisions of this act to be used for presentation to law enforcement agencies, the law enforcement academy, prosecutors, public defenders, judges and others involved in the juvenile and criminal justice systems. The training may include:

(i) State and federal laws on human trafficking;

(ii) Methods used to identify United States citizen and foreign national victims of human trafficking;

(iii) Methods of prosecuting human traffickers;
and

(iv) Methods of protecting the rights of victims of human trafficking, including collaboration with nongovernmental and other social service agencies in the

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course of investigating and prosecuting human trafficking cases.

Section 4. This act is effective July 1, 2013.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk