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Sixty-fourth
Legislative Assembly
of North Dakota

SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2107

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

A BILL for an Act to create and enact chapter 12.1-41 of the North Dakota Century Code, relating to the Uniform Act on Prevention of and Remedies for Human Trafficking; to amend and reenact subsection 1 of section 12.1-32-15 of the North Dakota Century Code, relating to definitions; to repeal chapter 12.1-40 of the North Dakota Century Code, relating to human trafficking; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

1. As used in this section:
   a. "A crime against a child" means a violation of chapter 12.1-16, section 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04, subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01, 12.1-18-02, 12.1-18-05, chapter 12.1-29, or subdivision a of subsection 1 or subsection 2 of section 14-09-22, ~~labor trafficking in violation of chapter 12.1-40~~subsection 3 of section 12.1-41-02, subsection 3 of section 12.1-41-03, or an equivalent offense from another court in the United States, a tribal court, or court of another country, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt or conspiracy to commit these offenses.
   b. "Department" means the department of corrections and rehabilitation.
   c. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.

d. "Predatory" means an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

e. "Sexual offender" means a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-06.1, 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2, chapter 12.1-27.2, ~~or~~ subsection 2 of section 12.1-22-03.1, ~~sex trafficking in violation of chapter 12.1-40~~subdivision b of subsection 1 of section 12.1-41-02, section 12.1-41-04, 12.1-41-05, or 12.1-41-06, or an equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt or conspiracy to commit these offenses.

f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.

g. "Temporarily domiciled" means staying or being physically present in this state for more than thirty days in a calendar year or at a location for longer than ten consecutive days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.

SECTION 2. Chapter 12.1-41 of the North Dakota Century Code is created and enacted as follows:

12.1-41-01. Definitions.

In this chapter:

1. "Adult" means an individual eighteen years of age or older.
2. "Coercion" means:
   a. The use or threat of force against, abduction of, serious harm to, or physical restraint of, an individual;
   b. The use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of, an individual;
   c. The abuse or threatened abuse of law or legal process;

d. Controlling or threatening to control an individual's access to a controlled substance as defined in section 19-03.1-01;

e. The destruction or taking of or the threatened destruction or taking of an individual's identification document or other property;

f. The use of debt bondage;

g. The use of an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function; or

h. The commission of civil or criminal fraud.

3. "Commercial sexual activity" means sexual activity for which anything of value is given to, promised to, or received, by a person.

4. "Debt bondage" means inducing an individual to provide commercial sexual activity in payment toward or satisfaction of a real or purported debt or inducing an individual to provide labor or services in payment toward or satisfaction of a real or purported debt if the reasonable value of the labor or services is not applied toward the liquidation of the debt or if the length of the labor or services is not limited and the nature of the labor or services is not defined. The term does not include an effort by a creditor to collect an enforceable obligation by means that are permitted under state or federal laws.

5. "Human trafficking" means the commission of an offense created by sections 12.1-41-02 through 12.1-41-06.

6. "Identification document" means a passport, driver's license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.

7. "Labor or services" means activity having economic value.

8. "Minor" means an individual less than eighteen years of age.

9. "Serious harm" means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.

10. "Sexual activity" means "sexual act" as defined in section 12.1-20-02. The term includes a sexually explicit performance.

11. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

12. "Victim" means an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this chapter been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

12.1-41-02. Trafficking an individual.

1. A person commits the offense of trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:
   a. Forced labor in violation of section 12.1-41-03; or
   b. Sexual servitude in violation of section 12.1-41-04.
2. Trafficking an individual who is an adult is a class A felony.
3. Trafficking an individual who is a minor is a class AA felony.

12.1-41-03. Forced labor.

1. A person commits the offense of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except when that conduct is permissible under federal law or law of this state other than this chapter.
2. Forced labor of an individual who is an adult is a class A felony.
3. Forced labor of an individual who is a minor is a class AA felony.

12.1-41-04. Sexual servitude.

1. A person commits the offense of sexual servitude if the person knowingly:
   a. Maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or
   b. Uses coercion or deception to compel an adult to engage in commercial sexual activity.

2. It is not a defense in a prosecution under subdivision a of subsection 1 that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.
3. Sexual servitude under subdivision a of subsection 1 is a class AA felony.
4. Sexual servitude under subdivision b of subsection 1 is a class A felony.

12.1-41-05. Patronizing a victim of sexual servitude.

1. A person commits the offense of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.
2. Patronizing a victim of sexual servitude who is an adult is a class B felony.
3. Patronizing a victim of sexual servitude who is a minor is a class A felony.

12.1-41-06. Patronizing a minor for commercial sexual activity.

1. A person commits the offense of patronizing a minor for commercial sexual activity if:
   a. With the intent that an individual engage in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or
   b. The person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.
2. Patronizing a minor for commercial sexual activity under subdivision a of subsection 1 is a class A felony.
3. Patronizing a minor for commercial sexual activity under subdivision b of subsection 1 is a class B felony.

12.1-41-07. Business entity liability.

1. A person that is a business entity may be prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06 as provided by chapter 12.1-03.
2. When a person that is a business entity is prosecuted for an offense under sections 12.1-41-02 through 12.1-41-06, the court may consider the severity of the entity's

conduct and order penalties in addition to those otherwise provided for the offense, including:

a. A fine of not more than one million dollars per offense;

b. Disgorgement of profit from activity in violation of this chapter; and

c. Debarment from state and local government contracts.

12.1-41-08. Aggravating circumstance.

1. An aggravating circumstance during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 occurs when the defendant recruited, enticed, or obtained the victim of the offense from a shelter that serves individuals subjected to human trafficking, domestic violence, or sexual assault, runaway youth, foster children, or the homeless.

2. If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04, the defendant may be imprisoned for up to five years in addition to the period of imprisonment prescribed for the offense.

12.1-41-09. Restitution.

1. The court shall order a person convicted of an offense under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 to pay restitution to the victim of the offense for:

a. Expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney's fees and costs; and

b. An amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:

(1) The gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity;

(2) The amount the defendant contracted to pay the victim; or

(3) The value of the victim's labor or services or sexual activity, calculated under the minimum wage and overtime provisions of the Fair Labor Standards Act, 29 U.S.C. 201 et seq. or section 34-06-22, whichever is higher, even if the provisions do not apply to the victim's labor or services or sexual activity.

2. The court shall order restitution under subsection 1 even if the victim is unavailable to accept payment of restitution.
3. If the victim does not claim restitution ordered under subsection 1 for five years after entry of the order, the restitution must be paid to the crime victims restitution and gift fund under section 54-23.4-05.

12.1-41-10. Victim confidentiality.

In an investigation of or a prosecution for an offense under this chapter, a law enforcement agency and state's attorney shall keep confidential the identity, pictures, and images of the alleged victim and the family of the alleged victim, except to the extent that disclosure is:

1. Necessary for the purpose of investigation or prosecution;
2. Required by law or court order; or
3. Necessary to ensure provision of services or benefits for the victim or the victim's family.

12.1-41-11. Past sexual behavior of victim.

In a prosecution for an offense under this chapter or a civil action under section 12.1-41-15, evidence of a specific instance of the alleged victim's past sexual behavior or reputation or opinion evidence of past sexual behavior of the alleged victim is not admissible unless the evidence is:

1. Admitted in accordance with the North Dakota Rules of Evidence; or
2. Offered by the prosecution to prove a pattern of human trafficking by the defendant.

12.1-41-12. Immunity of minor.

1. If the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim, the individual is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20 for:
   a. Prostitution under section 12.1-29-03;
   b. Misdemeanor forgery under section 12.1-24-01;
   c. Misdemeanor theft offenses under chapter 12.1-23;
   d. Insufficient funds or credit offenses under section 6-08-16;
   e. Manufacture or possession of a controlled or counterfeit substance offenses under section 19-03.1-23; and
   f. Drug ~~and~~ paraphernalia offenses under chapter 19-03.4.

2. It is an affirmative defense to felony forgery, felony theft, and felony drug distribution that the individual was a minor at the time of the offense and committed the offense as a direct result of being a victim as defined by this chapter.

3. An individual who has engaged in commercial sexual activity is not criminally liable or subject to a juvenile delinquency proceeding under chapter 27-20 for prostitution if the individual was a minor at the time of the offense.

4. A minor who under subsection 1 or ~~2~~3 is not subject to criminal liability or a juvenile delinquency proceeding is presumed to be a child in need of services under chapter 50-25.1.

5. This section does not apply in a prosecution or a juvenile delinquency proceeding for patronizing a prostitute.

12.1-41-13. Affirmative defense of victim.

An individual charged with prostitution, felony forgery, felony theft, felony drug distribution, or an offense listed in subsection 1 of section 12.1-41-12 which was committed as a direct result of being a victim may assert an affirmative defense that the individual is a victim.

12.1-41-14. Motion to vacate and expunge conviction.

1. An individual convicted of prostitution or an offense listed in subsection 1 of section 12.1-41-12 which was committed as a direct result of being a victim may apply by motion to the court to vacate the conviction and expunge the record of conviction. The court may grant the motion on a finding that the individual's participation in the offense was a direct result of being a victim.

2. Official determination or documentation is not required to grant a motion by an individual under subsection 1, but an official determination or documentation from a federal, state, local, or tribal agency that the individual was a victim at the time of the offense creates a presumption that the individual's participation was a direct result of being a victim.

3. A motion filed under subsection 1, any hearing conducted on the motion, and any relief granted are governed by chapter 29-32.1.

12.1-41-15. Civil action.

1. A victim may bring a civil action against a person that commits an offense against the victim under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 for compensatory

damages, exemplary or punitive damages, injunctive relief, and any other appropriate relief.

2. If a victim prevails in an action under this section, the court shall award the victim reasonable attorney's fees and costs.

3. An action under this section must be commenced not later than ten years after the later of the date on which the victim:

   a. No longer was subject to human trafficking; or

   b. Attained eighteen years of age.

4. Damages awarded to a victim under this section for an item must be offset by any restitution paid to the victim pursuant to 12.1-41-09 for the same item.

5. This section does not preclude any other remedy available to a victim under federal law or law of this state other than this chapter.

12.1-41-16. Display of public-awareness sign.

The department of transportation shall display in every transportation station, rest area, and welcome center in the state which is open to the public a public-awareness sign that contains any state or local human trafficking resource information and the National Human Trafficking Resource Center hotline information.

12.1-41-17. Eligibility for benefit or service.

1. A victim is eligible for a benefit or service available through the state, including compensation under chapter 54-23.4, regardless of immigration status.

2. A minor who has engaged in commercial sexual activity is eligible for a benefit or service available through the state, regardless of immigration status.

3. As soon as practicable after a first encounter with an individual who reasonably appears to law enforcement to be a victim or a minor who has engaged in commercial sexual activity, the law enforcement agency shall notify the victim services division of the department of corrections and rehabilitation that the individual may be eligible for a benefit or service under the law of this state.

4. For purposes of this section, "a benefit or service available through the state" does not include a benefit or service of a program administered by the department of human services using federal or special funds, if the victim or minor does not meet program

eligibility requirements including an eligibility requirement that is based on immigration status.

12.1-41-18. Law enforcement protocol.

1. On request from an individual whom a law enforcement officer reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. 1101(a)(15)(T) or 8 U.S.C. 1101(a)(15)(U), or for continued presence under 22 U.S.C. 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall complete, sign, and give to the individual the form I-914B or form I-918B provided by the United States citizenship and immigration services on its internet website and ask a federal law enforcement officer to request continued presence.
2. If the law enforcement agency determines that an individual does not meet the requirements for the law enforcement agency to comply with subsection 1, the law enforcement agency shall inform the individual of the reason and that the individual may make another request under subsection 1 and submit additional evidence satisfying the requirements.

12.1-41-19. Grant to or contract with service provider.

1. The attorney general may make a grant to or contract with a unit of state or local government, tribal government, or nongovernmental victims service organization to develop or expand service programs for victims.
2. A recipient of a grant or contract under subsection 1 shall report annually to the attorney general the number and demographic information of all victims receiving services under the grant or contract.

12.1-41-20. Use of public funds for abortions prohibited.

Except as provided by federal law, funds of this state or a political subdivision of this state and federal funds passing through the state treasury or a state agency to provide treatment and support services for victims of human trafficking may ~~not~~ be used to refer for or counsel ~~in favor of abortion~~for family planning services, but may not be used to perform, refer for, or encourage abortion.

SECTION 3. REPEAL. Chapter 12.1-40 of the North Dakota Century Code is repealed.