

HOUSE BILL NO. 112

INTRODUCED BY J. ETCHART

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HUMAN TRAFFICKING AND PROSTITUTION LAWS; PROVIDING FOR THE CRIMES OF SEX TRAFFICKING, LABOR TRAFFICKING, AGGRAVATED SEX TRAFFICKING, AND CHILD SEX TRAFFICKING; AMENDING SECTIONS 20-7-1321, 27-1-755, 27-2-216, 40-4-219, 41-3-102, 44-5-311, 45-1-205, 45-2-211, 45-5-601, 45-5-701, 45-5-702, 45-5-703, 45-5-705, 45-5-706, 45-5-707, 45-5-708, 45-5-709, 45-5-710, 45-8-405, 46-16-226, 46-18-104, 46-18-111, 46-18-201, 46-18-203, 46-18-205, 46-18-207, 46-18-219, 46-18-222, 46-18-231, 46-18-608, 46-23-502, 46-23-1011, AND 61-8-818, MCA; AND REPEALING SECTIONS 45-5-602, 45-5-603, 45-5-604, AND 45-5-704, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 20-7-1321, MCA, is amended to read:

"20-7-1321. Employment assistance for current or former school employees, contractors, and volunteers engaged in sexual misconduct prohibited. (1) Except as provided in subsection (2), a person who is an officer, trustee, employee, agent, or contractor of a school, school district, county superintendent of schools, or the state superintendent of public instruction and who knows or has probable cause to believe that a current or former school employee, contractor, or agent has committed or has attempted, solicited, or conspired to commit an act with a child or enrolled student that constitutes a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-508, 45-5-601, ~~45-5-602, 45-5-603, 45-5-625, 45-5-702, 45-5-704, or 45-5-705, 45-5-706, or~~ [section 19] may not assist that school employee, contractor, or agent in obtaining new employment apart from the routine transmission of administrative and personnel files.

(2) Subsection (1) does not apply if:

(a) the information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged violation;

(ii) the length of the labor or services is not limited and the nature of the labor or services is not defined.

(5) "Human trafficking" means the commission of an offense under 45-5-702, 45-5-703, ~~45-5-704,~~ or 45-5-705, 45-5-706, or [section 19].

(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) "Prostitution" has the meaning provided in 45-5-601.

~~(8)(9)~~ "Serious harm" means physical or nonphysical harm, including psychological, economic, or reputational harm to a person that would compel a reasonable person 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.

~~(9)(10)~~ "Sexual activity" means any sex act or simulated sex act intended to arouse or gratify the sexual desire of any person. The term includes a sexually explicit performance.

(11) "Sexual contact" has the meaning provided in 45-2-101.

~~(40)(12)~~ "Sexually explicit performance" means a live, public, private, photographed, recorded, or videotaped act or simulated act intended to arouse or gratify the sexual desire of any person."

Section 11. Section 45-5-702, MCA, is amended to read:

"45-5-702. ~~Trafficking of persons~~ Sex trafficking. (1) A person commits the offense of sex trafficking ~~of persons~~ if the person purposely or knowingly:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution, or prostitution business, ~~or business promoting commercial sexual activity;~~

(b) procures an individual for a house of prostitution ~~or prostitution business~~ or procures a place in a house of prostitution ~~or prostitution business~~ for an individual;

(c) encourages, induces, or otherwise purposely causes another person to become or remain a prostitute;

(d) solicits clients for another person who is a prostitute;

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Drafter: Rachel Weiss, 406-444-5367

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(e) procures a prostitute for a patron;

(f) transports an individual into or within this state with the purpose to promote that individual's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate that use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means;

(a)(h) recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that the person will be subjected to involuntary servitude or sexual servitude ~~commercial sexual activity prostitution~~; or

(b)(i) benefits, financially or by receiving anything of value, from facilitating any conduct described in subsection-subsections (1)(a) through (1)(h) or from participation in a venture that has subjected another person to involuntary servitude or sexual servitude.

(2) (a) ~~Except as provided in subsections (2)(b) and (2)(c), a~~ A ~~person convicted of the offense of sex trafficking of persons shall be imprisoned in the state prison for a term of not more than 15 years less than 2 years or more than 20 years, fined an amount not to exceed \$50,000, or both.~~

~~(b) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 50 years, fined an amount not to exceed \$100,000, or both, if the victim was a child.~~

~~(c) A person convicted of the offense of trafficking of persons shall be imprisoned in the state prison for a term of not more than 25 years, fined an amount not to exceed \$75,000, or both, if the violation involves aggravated kidnapping, aggravated sexual intercourse without consent, or deliberate homicide."~~

Section 12. Section 45-5-703, MCA, is amended to read:

"45-5-703. Involuntary servitude Labor trafficking. (1) A person commits the offense of involuntary servitude labor trafficking if the person purposely or knowingly uses coercion to compel another person to provide labor or services, unless the conduct is otherwise permissible under federal or state law.

(2) (a) Except as provided in subsection (2)(b) (3), a person convicted of the offense of involuntary servitude labor trafficking shall be imprisoned in the state prison for a term of not more than 15 years, fined an

1 amount not to exceed \$50,000, or both.

2 ~~(b) A person convicted of the offense of involuntary servitude shall be imprisoned in the state prison~~
3 ~~for a term of not more than 50 years and may be fined not more than \$100,000 if:~~

4 ~~(i) the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate~~
5 ~~homicide; or~~

6 ~~(ii) the victim was a child.~~

7 (3) If the victim is less than 18 years of age, the offender shall be imprisoned in the state prison for
8 a term of not less than 4 years or more than 50 years, fined an amount not to exceed \$100,000, or both."

9

10 **Section 13.** Section 45-5-705, MCA, is amended to read:

11 **"45-5-705. Patronizing victim of sexual servitude sex trafficking.** (1) A person commits the
12 offense of patronizing a victim of ~~sexual servitude~~ sex trafficking if the person purposely or knowingly gives,
13 agrees to give, or offers to give anything of value so that a person may engage in commercial sexual activity;

14 ~~(a) —~~ that involves sexual contact that is direct and not through clothing with another person who the
15 person knows or reasonably should have known is a victim of ~~sexual servitude~~ sex trafficking; ~~or~~

16 ~~(b) — with a child.~~

17 (2) ~~(a)~~ Except as provided in subsection ~~(2)(b)~~ (3), a person convicted of the offense of patronizing
18 a victim of ~~sexual servitude~~ sex trafficking shall:

19 ~~(i)(a)~~ for the first offense, be imprisoned in the state prison for a term of not more than 15 years,
20 fined an amount not to exceed \$50,000, or both; ~~or~~

21 ~~(ii)(b)~~ for a second or subsequent offense, be imprisoned in the state prison for a term of not less
22 than 2 years or more than 15 years, fined an amount not to exceed \$50,000, or both.

23 ~~(b)(3)~~ (a) If the individual patronized was a child and the patron was 18 years of age or older, a
24 person convicted of the offense of patronizing a victim of ~~sexual servitude~~ sex trafficking, whether or not the
25 person believed the child was an adult, ~~shall:~~

26 (i) for the first offense, shall be imprisoned in the state prison for a term of ~~not more than 25~~ 100
27 years, and fined an amount not to exceed \$75,000; or The court may not suspend execution or defer
28 imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (3)(a)(i) except as

provided in 48-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) _____ for a second or subsequent offense, be imprisoned in the state prison for a term of not less than 5 years or more than 25 years, fined an amount not to exceed \$75,000, or both.

(ii) _____ shall be fined an amount not to exceed \$50,000; and

(iii) _____ must be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) _____ If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(3)(4) It is not a defense in a prosecution under this section:

(a) _____ that a child consented to engage in commercial sexual activity; or

(b) _____ that the defendant believed that the child was an adult. Absolute liability, as provided in 45-2-104, is imposed."

Section 14. Section 45-5-706, MCA, is amended to read:

"45-5-706. Aggravating circumstance Aggravated sex trafficking. (1) A person commits the offense of aggravated sex trafficking if, during the commission of the offense of sex trafficking, the person purposely or knowingly:

(a) _____ uses fraud, coercion, or deception to control an adult to engage in commercial sexual activity prostitution; or

(b) _____ An aggravating circumstance during the commission of an offense under 45-5-702, 45-5-703, 45-5-704, or 45-5-705 occurs when the defendant recruited, enticed, or obtained recruits, entices, or obtains the victim of the offense from a shelter that serves runaway youth, foster children, homeless persons, or persons subjected to human trafficking victims, or victims of domestic violence, or sexual assault violence.

(2) _____ If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under 45-5-702, 45-5-703, 45-5-704, or 45-5-705, the defendant may be imprisoned for up to 5 years in addition to the period of imprisonment prescribed for the offense. An additional sentence prescribed by this

section must run consecutively to the sentence provided for the underlying offense. A person convicted of the offense of aggravated sex trafficking shall be imprisoned in the state prison for a term of not less than 5 years or more than 40 years, fined an amount not to exceed \$50,000, or both. The exceptions provided in 46-18-222(5) and (6) do not apply."

Section 15. Section 45-5-707, MCA, is amended to read:

"45-5-707. Property subject to forfeiture -- human trafficking. (1) (a) A person commits the offense of use or possession of property subject to criminal forfeiture for human trafficking if the person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture under this section. A person convicted of the offense of use or possession of property subject to criminal forfeiture shall be imprisoned in the state prison for a term not to exceed 10 years.

(b) Property is subject to criminal forfeiture under this section if it is used or intended for use in violation of 45-5-702, 45-5-703, ~~45-5-704, or 45-5-705~~, 45-5-706, or [section 19].

(c) The following property is subject to criminal forfeiture under this section:

- (i) money, raw materials, products, equipment, and other property of any kind;
- (ii) property used or intended for use as a container for property enumerated in subsection (1)(c)(i);
- (iii) except as provided in subsection (2), a conveyance, including an aircraft, vehicle, or vessel;
- (iv) books, records, research products and materials, formulas, microfilm, tapes, and data;
- (v) anything of value furnished or intended to be furnished in exchange for the provision of labor or services or commercial sexual activity and all proceeds traceable to the exchange;
- (vi) negotiable instruments, securities, and weapons; and
- (vii) personal property constituting or derived from proceeds obtained directly or indirectly from the provision of labor or services or commercial sexual activity.

(2) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person in charge of the conveyance knowingly used the conveyance or knowingly consented to its use for the purposes described in subsection (1)(b).

(3) Criminal forfeiture under this section of property that is encumbered by a bona fide security

1 interest is subject to that interest if the secured party did not use or consent to the use of the property for the
2 purposes described in subsection (1)(b).

3 (4) Property subject to criminal forfeiture under this section may be seized under the following
4 circumstances:

5 (a) A peace officer who has probable cause to make an arrest for a violation as described in
6 subsection (1)(b) may seize a conveyance obtained with the proceeds of the violation or used to facilitate the
7 violation and shall immediately deliver the conveyance to the peace officer's law enforcement agency to be held
8 as evidence until a criminal forfeiture is declared or release ordered.

9 (b) Property subject to criminal forfeiture under this section may be seized by a peace officer under
10 a search warrant issued by a court having jurisdiction over the property.

11 (c) Seizure without a warrant may be made if:

12 (i) the seizure is incident to an arrest or a search under a search warrant issued for another
13 purpose;

14 (ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or
15 a criminal forfeiture proceeding under the provisions of Title 44, chapter 12, or this section;

16 (iii) a peace officer has probable cause to believe that the property is directly or indirectly
17 dangerous to health or safety; or

18 (iv) a peace officer has probable cause to believe that the property was used or is intended to be
19 used under the circumstances described in subsection (1)(b).

20 (5) A forfeiture proceeding under subsection (1) must be commenced within 45 days of the seizure
21 of the property involved.

22 (6) The procedure for forfeiture proceedings in Title 44, chapter 12, part 2, applies to property
23 seized pursuant to this section.

24 (7) Upon conviction, the property subject to criminal forfeiture is forfeited to the state and proceeds
25 from the sale of property seized under this section must be distributed to the holders of security interests who
26 have presented proper proof of their claims up to the amount of their interests in the property. The remainder, if
27 any, must be deposited in the crime victims compensation account provided for in 53-9-113."

28

Section 16. Section 45-5-708, MCA, is amended to read:

"45-5-708. Past sexual behavior of victim. In a prosecution for an offense under 45-5-702, 45-5-703, ~~45-5-704, or 45-5-705~~, 45-5-706, or [section 19] or a civil action under 27-1-755, evidence concerning a specific instance of the victim's past sexual behavior or reputation or opinion evidence of the victim's past sexual behavior is inadmissible unless the evidence is admitted in accordance with 45-5-511(2) or offered by the prosecution to prove a pattern of human trafficking by the defendant."

Section 17. Section 45-5-709, MCA, is amended to read:

"45-5-709. Immunity of child -- sex therapy participants. (1) A person is not criminally liable or subject to proceedings under Title 41, chapter 5, for prostitution, ~~promoting prostitution, sex trafficking or prior similar laws in effect at the time the act occurred~~, or other nonviolent offenses if the person was a child at the time of the offense and committed the offense as a direct result of being a victim of human trafficking.

(2) A person who has engaged in commercial sexual activity is not criminally liable or subject to proceedings under Title 41, chapter 5, for prostitution if the person was a child at the time of the offense.

(3) A child who under subsection (1) or (2) is not subject to criminal liability or proceedings under Title 41, chapter 5, is presumed to be a youth in need of care under Title 41, chapter 3, and is entitled to specialized services and care, which may include access to protective shelter, food, clothing, medical care, counseling, and crisis intervention services, if appropriate.

(4) Subsections (1) through (3) do not apply in a prosecution under 45-5-601 or a proceeding under Title 41, chapter 5, for patronizing a prostitute.

(5) It is not a violation of this part for a person with an impaired physical ability, physical dysfunction, recent injury, or other disability to engage in sex therapy with a partner surrogate who is working under the supervision of a social worker, professional counselor, or licensed clinical professional counselor licensed under Title 37, chapter 22 or 23."

Section 18. Section 45-5-710, MCA, is amended to read:

"45-5-710. Affirmative defense. A person charged with prostitution, ~~promoting prostitution, sex trafficking or prior similar laws in effect at the time the act occurred~~, or another nonviolent offense committed as

1 a direct result of being a victim of human trafficking may assert an affirmative defense that the person is a
2 victim of human trafficking."

3
4 **NEW SECTION. Section 19. Child sex trafficking.** (1) A person commits the offense of child sex
5 trafficking by purposely or knowingly ~~committing the offense of sex trafficking:~~

- 6 (a) committing the offense of sex trafficking with a child; or
7 (b) recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating,
8 maintaining, enticing, or using a child for the purposes of commercial sexual activity.

9 (2) (a) A person convicted of the offense of child sex trafficking shall be imprisoned in the state
10 prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of
11 a sentence of imprisonment imposed under this subsection (2)(a) except as provided in 46-18-222(1) through
12 (4). During the first 25 years of imprisonment, the offender is not eligible for parole. The exceptions provided in
13 46-18-222(5) and (6) do not apply.

14 (b) In addition to the sentence of imprisonment imposed under subsection (2)(a), the offender:
15 (i) may be fined an amount not to exceed \$50,000; and
16 (ii) if released after the mandatory minimum period of imprisonment, is subject to supervision by
17 the department of corrections for the remainder of the offender's life and shall participate in the program for
18 continuous, satellite-based monitoring provided for in 46-23-1010.

19 (3) It is not a defense in a prosecution under this section:
20 (a) that a child consented to engage in commercial sexual activity; or
21 (b) that the defendant believed the child was an adult. Absolute liability, as provided in 45-2-104, is
22 imposed.

23
24 **NEW SECTION. Section 20. Evidence in cases of sex trafficking, aggravated sex trafficking, or**
25 **child sex trafficking.** (1) In a case that involves a question of whether a place is a house of prostitution,
26 evidence of the following, in addition to all other admissible evidence, is admissible:

- 27 (a) the general reputation of the place;
28 (b) the reputations of the place's residents and the nonresidents who frequent the place; and