

SENATE BILL NO. 2107

Introduced by

Judiciary Committee

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

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

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

9 1. As used in this section:

- 10 a. "A crime against a child" means a violation of chapter 12.1-16, section
11 12.1-17-01.1 if the victim is under the age of twelve, 12.1-17-02, 12.1-17-04,
12 subdivision a of subsection 6 of section 12.1-17-07.1, section 12.1-18-01,
13 12.1-18-02, 12.1-18-05, chapter 12.1-29, or subdivision a of subsection 1 or
14 subsection 2 of section 14-09-22, ~~labor trafficking in violation of chapter~~
15 ~~12.1-40~~ subsection 3 of section 12.1-41-02, subsection 3 of section 12.1-41-03, or
16 an equivalent offense from another court in the United States, a tribal court, or
17 court of another country, in which the victim is a minor or is otherwise of the age
18 required for the act to be a crime or an attempt or conspiracy to commit these
19 offenses.
- 20 b. "Department" means the department of corrections and rehabilitation.
- 21 c. "Mental abnormality" means a congenital or acquired condition of an individual
22 that affects the emotional or volitional capacity of the individual in a manner that
23 predisposes that individual to the commission of criminal sexual acts to a degree
24 that makes the individual a menace to the health and safety of other individuals.

- 1 d. "Predatory" means an act directed at a stranger or at an individual with whom a
2 relationship has been established or promoted for the primary purpose of
3 victimization.
- 4 e. "Sexual offender" means a person who has pled guilty to or been found guilty,
5 including juvenile delinquent adjudications, of a violation of section 12.1-20-03,
6 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,
7 12.1-20-07 except for subdivision a, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2,
8 chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, ~~sex trafficking in~~
9 ~~violation of chapter 12.1-40~~ subdivision b of section 12.1-41-02, section
10 12.1-41-04, 12.1-41-05, or 12.1-41-06, or an equivalent offense from another
11 court in the United States, a tribal court, or court of another country, or an attempt
12 or conspiracy to commit these offenses.
- 13 f. "Sexually dangerous individual" means an individual who meets the definition
14 specified in section 25-03.3-01.
- 15 g. "Temporarily domiciled" means staying or being physically present in this state for
16 more than thirty days in a calendar year or at a location for longer than ten
17 consecutive days, attending school for longer than ten days, or maintaining
18 employment in the jurisdiction for longer than ten days, regardless of the state of
19 the residence.

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

22 **12.1-41-01. Definitions.**

23 In this chapter:

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

- 1 d. Controlling or threatening to control an individual's access to a controlled
2 substance as defined in section 19-03.1-01;
3 e. The destruction or taking of or the threatened destruction or taking of an
4 individual's identification document or other property;
5 f. The use of debt bondage;
6 g. The use of an individual's physical or mental impairment when the impairment
7 has a substantial adverse effect on the individual's cognitive or volitional function;
8 or
9 h. The commission of civil or criminal fraud.
10 3. "Commercial sexual activity" means sexual activity for which anything of value is given
11 to, promised to, or received, by a person.
12 4. "Debt bondage" means inducing an individual to provide:
13 a. Commercial sexual activity in payment toward or satisfaction of a real or
14 purported debt; or
15 b. Labor or services in payment toward or satisfaction of a real or purported debt if:
16 (1) The reasonable value of the labor or services is not applied toward the
17 liquidation of the debt; or
18 (2) The length of the labor or services is not limited and the nature of the labor
19 or services is not defined.
20 5. "Human trafficking" means the commission of an offense created by sections
21 12.1-41-02 through 12.1-41-06.
22 6. "Identification document" means a passport, driver's license, immigration document,
23 travel document, or other government-issued identification document, including a
24 document issued by a foreign government.
25 7. "Labor or services" means activity having economic value.
26 8. "Minor" means an individual less than eighteen years of age.
27 9. "Serious harm" means harm, whether physical or nonphysical, including psychological,
28 economic, or reputational, to an individual which would compel a reasonable individual
29 of the same background and in the same circumstances to perform or continue to
30 perform labor or services or sexual activity to avoid incurring the harm.

- 1 10. "Sexual activity" means "sexual act" as defined in section 12.1-20-02. The term
2 includes a sexually explicit performance.
- 3 11. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
4 United States Virgin Islands, or any territory or insular possession subject to the
5 jurisdiction of the United States. The term includes an Indian tribe or band recognized
6 by federal law or formally acknowledged by a state.
- 7 12. "Victim" means an individual who is subjected to human trafficking or to conduct that
8 would have constituted human trafficking had this chapter been in effect when the
9 conduct occurred, regardless of whether a perpetrator is identified, apprehended,
10 prosecuted, or convicted.

11 **12.1-41-02. Trafficking an individual.**

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

19 **12.1-41-03. Forced labor.**

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

25 **12.1-41-04. Sexual servitude.**

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

1 2. It is not a defense in a prosecution under subdivision a of subsection 1 that the minor
2 consented to engage in commercial sexual activity or that the defendant believed the
3 minor was an adult.

4 3. Sexual servitude under subdivision a of subsection 1 is a class A felony.

5 4. Sexual servitude under subdivision b of subsection 1 is a class B felony.

6 **12.1-41-05. Patronizing a victim of sexual servitude.**

7 1. A person commits the offense of patronizing a victim of sexual servitude if the person
8 knowingly gives, agrees to give, or offers to give anything of value so that an individual
9 may engage in commercial sexual activity with another individual and the person
10 knows that the other individual is a victim of sexual servitude.

11 2. Patronizing a victim of sexual servitude who is an adult is a class C felony.

12 3. Patronizing a victim of sexual servitude who is a minor is a class B felony.

13 **12.1-41-06. Patronizing a minor for commercial sexual activity.**

14 1. A person commits the offense of patronizing a minor for commercial sexual activity if:

15 a. With the intent that an individual engage in commercial sexual activity with a
16 minor, the person gives, agrees to give, or offers to give anything of value to a
17 minor or another person so that the individual may engage in commercial sexual
18 activity with a minor; or

19 b. The person gives, agrees to give, or offers to give anything of value to a minor or
20 another person so that an individual may engage in commercial sexual activity
21 with a minor.

22 2. Patronizing a minor for commercial sexual activity under subdivision a of subsection 1
23 is a class A felony.

24 3. Patronizing a minor for commercial sexual activity under subdivision b of subsection 1
25 is a class B felony.

26 **12.1-41-07. Business entity liability.**

27 1. A person that is a business entity may be prosecuted for an offense under sections
28 12.1-41-02 through 12.1-41-06 only if:

29 a. The entity knowingly engages in conduct that constitutes human trafficking; or

30 b. An employee or nonemployee agent of the entity engages in conduct that
31 constitutes human trafficking and the conduct is part of a pattern of activity in

1 violation of this chapter for the benefit of the entity, which the entity knew was
2 occurring and failed to take effective action to stop.

3 2. When a person that is a business entity is prosecuted for an offense under sections
4 12.1-41-02 through 12.1-41-06, the court may consider the severity of the entity's
5 conduct and order penalties in addition to those otherwise provided for the offense,
6 including:

- 7 a. A fine of not more than one million dollars per offense;
8 b. Disgorgement of profit from activity in violation of this chapter; and
9 c. Debarment from state and local government contracts.

10 **12.1-41-08. Aggravating circumstance.**

11 1. An aggravating circumstance during the commission of an offense under section
12 12.1-41-02, 12.1-41-03, or 12.1-41-04 occurs when the defendant recruited, enticed,
13 or obtained the victim of the offense from a shelter that serves individuals subjected to
14 human trafficking, domestic violence, or sexual assault, runaway youth, foster
15 children, or the homeless.

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

20 **12.1-41-09. Restitution.**

21 1. The court shall order a person convicted of an offense under section 12.1-41-02,
22 12.1-41-03, or 12.1-41-04 to pay restitution to the victim of the offense for:

- 23 a. Expenses incurred or reasonably certain to be incurred by the victim as a result
24 of the offense, including reasonable attorney's fees and costs; and
25 b. An amount equal to the greatest of the following, with no reduction for expenses
26 the defendant incurred to maintain the victim:

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

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

30 (3) The value of the victim's labor or services or sexual activity, calculated
31 under the minimum wage and overtime provisions of the Fair Labor

1 Standards Act, 29 U.S.C. 201 et seq. or section 34-06-22, whichever is
2 higher, even if the provisions do not apply to the victim's labor or services or
3 sexual activity.

4 2. The court shall order restitution under subsection 1 even if the victim is unavailable to
5 accept payment of restitution.

6 3. If the victim does not claim restitution ordered under subsection 1 for five years after
7 entry of the order, the restitution must be paid to the crime victims restitution and gift
8 fund under section 54-23.4-05.

9 **12.1-41-10. Victim confidentiality.**

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

13 1. Necessary for the purpose of investigation or prosecution;

14 2. Required by law or court order; or

15 3. Necessary to ensure provision of services or benefits for the victim or the victim's
16 family.

17 **12.1-41-11. Past sexual behavior of victim.**

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

22 1. Admitted in accordance with the North Dakota Rules of Evidence; or

23 2. Offered by the prosecution to prove a pattern of human trafficking by the defendant.

24 **12.1-41-12. Immunity of minor.**

25 1. If the individual was a minor at the time of the offense and committed the offense as a
26 direct result of being a victim, the individual is not criminally liable or subject to a
27 juvenile delinquency proceeding under chapter 27-20 for:

28 a. Prostitution under section 12.1-29-03;

29 b. Forgery under section 12.1-24-01;

30 c. Theft offenses under chapter 12.1-23; and

31 d. Insufficient funds or credit offenses under section 6-08-16.

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

4 3. A minor who under subsection 1 or 2 is not subject to criminal liability or a juvenile
5 delinquency proceeding is presumed to be a child in need of services under chapter
6 50-25.1.

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

9 **12.1-41-13. Affirmative defense of victim.**

10 An individual charged with prostitution or an offense listed in subsection 1 of section
11 12.1-41-12 which was committed as a direct result of being a victim may assert an affirmative
12 defense that the individual is a victim.

13 **12.1-41-14. Motion to vacate and expunge conviction.**

14 1. An individual convicted of prostitution or an offense listed in subsection 1 of section
15 12.1-41-12 which was committed as a direct result of being a victim may apply by
16 motion to the court to vacate the conviction and expunge the record of conviction. The
17 court may grant the motion on a finding that the individual's participation in the offense
18 was a direct result of being a victim.

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

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

26 **12.1-41-15. Civil action.**

27 1. A victim may bring a civil action against a person that commits an offense against the
28 victim under section 12.1-41-02, 12.1-41-03, or 12.1-41-04 for compensatory
29 damages, exemplary or punitive damages, injunctive relief, and any other appropriate
30 relief.

- 1 2. If a victim prevails in an action under this section, the court shall award the victim
2 reasonable attorney's fees and costs.
- 3 3. An action under this section must be commenced not later than ten years after the
4 later of the date on which the victim:
- 5 a. No longer was subject to human trafficking; or
6 b. Attained eighteen years of age.
- 7 4. Damages awarded to a victim under this section for an item must be offset by any
8 restitution paid to the victim pursuant to 12.1-41-09 for the same item.
- 9 5. This section does not preclude any other remedy available to a victim under federal
10 law or law of this state other than this chapter.

11 **12.1-41-16. Display of public-awareness sign - Penalty for failure to display.**

- 12 1. The department of transportation shall display in every transportation station, rest
13 area, and welcome center in the state which is open to the public a public-awareness
14 sign that contains any state or local human trafficking resource information and the
15 National Human Trafficking Resource Center hotline information.
- 16 2. An employer shall display the public-awareness sign described in subsection 1 in a
17 place that is clearly conspicuous and visible to employees and the public at each of
18 the following locations in this state at which the employer has employees:
- 19 a. A hospital; or
20 b. An emergency services provider.
- 21 3. The department of labor and human rights shall create and provide the public
22 awareness sign described in subsection 1. The department of labor and human rights
23 shall impose a fine of three hundred dollars per violation on an employer that
24 knowingly fails to comply with subsection 2. The fine is the exclusive remedy for failure
25 to comply.

26 **12.1-41-17. Eligibility for benefit or service.**

- 27 1. A victim is eligible for a benefit or service available through the state, including
28 compensation under chapter 54-23.4, regardless of immigration status.
- 29 2. A minor who has engaged in commercial sexual activity is eligible for a benefit or
30 service available through the state, regardless of immigration status.

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

6 **12.1-41-18. Law enforcement protocol.**

7 1. On request from an individual whom a law enforcement officer reasonably believes is
8 a victim who is or has been subjected to a severe form of trafficking or criminal offense
9 required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C.
10 1101(a)(15)(T) or 8 U.S.C. 1101(a)(15)(U), or for continued presence under 22 U.S.C.
11 7105(c)(3), the law enforcement officer, as soon as practicable after receiving the
12 request, shall complete, sign, and give to the individual the form I-914B or form I-918B
13 provided by the United States citizenship and immigration services on its internet
14 website and ask a federal law enforcement officer to request continued presence.
15 2. If the law enforcement agency determines that an individual does not meet the
16 requirements for the law enforcement agency to comply with subsection 1, the law
17 enforcement agency shall inform the individual of the reason and that the individual
18 may make another request under subsection 1 and submit additional evidence
19 satisfying the requirements.

20 **12.1-41-19. Grant to or contract with service provider.**

21 1. The department of corrections and rehabilitation may make a grant to or contract with
22 a unit of state or local government, tribal government, or nongovernmental victims
23 service organization to develop or expand service programs for victims.
24 2. A recipient of a grant or contract under subsection 1 shall report annually to
25 department of corrections and rehabilitation the number and demographic information
26 of all victims receiving services under the grant or contract.

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