

Enrolled Senate Bill 1052

Sponsored by Senators TAYLOR, KNOPP, Representatives MORGAN, MARSH; Senators DEMBROW, FREDERICK, HANSELL, MANNING JR, PATTERSON, PROZANSKI, SMITH DB, SOLLMAN, Representatives ANDERSEN, BOICE, BOWMAN, DEXTER, FAHEY, GAMBA, GRAYBER, HIEB, HOLVEY, KROPF, LEVY B, NATHANSON, PHAM K, WALLAN, WALTERS (at the request of Attorney General Ellen F. Rosenblum)

CHAPTER

AN ACT

Relating to human trafficking; creating new provisions; and amending ORS 30.867, 40.210, 163.261, 163.263, 163.264, 163.266, 163.269, 181A.480 and 471.271.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 163.261 is amended to read:

163.261. As used in **this section and** ORS 163.263 and 163.264[.];

(1) **“Controlled substance” has the meaning given that term in ORS 475.005.**

(2) **“Debt bondage” means the inducement of another person to provide labor or services in payment toward or satisfaction of a real or purported debt if:**

(a) **The reasonable value of the labor or services is not applied toward the repayment of the debt; or**

(b) **The length of the labor or services is unlimited and the nature of the labor or services is not defined.**

(3) **“Services” means activities performed by one person under the supervision or for the benefit of another person.**

SECTION 2. ORS 163.263 is amended to read:

163.263. (1) A person commits the crime of subjecting another person to involuntary servitude in the second degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in **or continue to engage in** services by:

(a) Abusing or threatening to abuse the law or legal process;

(b) Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document or another actual or purported government identification document of a person;

(c) Threatening to report a person to a government agency for the purpose of arrest or deportation;

(d) *[Threatening to collect an unlawful debt; or]* **Subjecting the person to debt bondage;**

(e) Instilling in the other person a fear that the actor will withhold from the other person the necessities of life, including but not limited to lodging, food, **medical care** and clothing[.];

(f) **Controlling or threatening to control the other person’s access to a controlled substance; or**

(g) **Fraud or misrepresentation.**

(2) When determining whether force or attempted force is present in a prosecution under this section, the finder of fact shall consider the totality of the circumstances, including but not limited to the age of the other person, the relationship between the other person and the defendant, the immigration status of the other person and any handicap or disability of the other person.

[2)] (3) Subjecting another person to involuntary servitude in the second degree is a Class C felony.

(4) The Oregon Criminal Justice Commission shall classify subjecting another person to involuntary servitude in the second degree as crime category 8 of the sentencing guidelines grid of the commission when the victim was under 18 years of age at the time of the offense.

SECTION 3. ORS 163.264 is amended to read:

163.264. (1) A person commits the crime of subjecting another person to involuntary servitude in the first degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in **or continue to engage in** services by:

- (a) Causing or threatening to cause the death of or serious physical injury to a person; or
- (b) Physically restraining or threatening to physically restrain a person.

(2) When determining whether force or attempted force is present in a prosecution under this section, the finder of fact shall consider the totality of the circumstances, including but not limited to the age of the other person, the relationship between the other person and the defendant, the immigration status of the other person and any handicap or disability of the other person.

[2)] (3) Subjecting another person to involuntary servitude in the first degree is a Class B felony.

(4) The Oregon Criminal Justice Commission shall classify subjecting another person to involuntary servitude in the first degree as crime category 9 of the sentencing guidelines grid of the commission when the victim was under 18 years of age at the time of the offense.

SECTION 4. ORS 163.266 is amended to read:

163.266. (1) A person commits the crime of trafficking in persons if the person knowingly recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person and:

- (a) The person knows **or recklessly disregards the fact** that the other person will be subjected to involuntary servitude as described in ORS 163.263 or 163.264;
- (b) The person knows or recklessly disregards the fact that force, fraud or coercion will be used to cause the other person to engage in a commercial sex act; or
- (c) The person knows or recklessly disregards the fact that the other person is under 18 years of age and will be used in a commercial sex act.

(2) A person commits the crime of trafficking in persons if the person knowingly benefits financially or receives something of value from participation in a venture that involves an act prohibited by subsection (1) of this section or ORS 163.263 or 163.264.

(3) As used in this section, "commercial sex act" means sexual conduct or sexual contact, as those terms are defined in ORS 167.002, performed in return for a fee or anything of value.

(4) Violation of subsection (1)(a) or (2) of this section is a Class B felony.

(5) Violation of subsection (1)(b) or (c) of this section is a Class A felony.

SECTION 5. ORS 163.269 is amended to read:

163.269. (1) A person who is the victim of a crime described in ORS 163.263, 163.264 or 163.266 may assert the defense of duress, as described in ORS 161.270, if the person is prosecuted for conduct that constitutes services under ORS 163.261, that the person was caused to provide.

(2) In a prosecution for a crime other than a person crime based on conduct that constitutes services under ORS 163.261 that a person was caused to provide, it is an affirmative defense that the person was a human trafficking victim at the time of engaging in the conduct and engaged in the conduct due to being a human trafficking victim.

(3) As used in this section:

(a) **“Human trafficking” means conduct constituting an offense under ORS 163.263, 163.264 or 163.266.**

(b) **“Human trafficking victim” means a person who is subjected to human trafficking regardless of whether the perpetrator of the human trafficking is identified, apprehended, prosecuted or convicted.**

(c) **“Person crime” means a person felony or a person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission.**

SECTION 6. ORS 40.210 is amended to read:

40.210. (1) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS 163.266 [(1)(b) or (c)] (1), 163.355 to 163.427, 163.670 or 167.017, in a prosecution for an attempt to commit one of those crimes or in a proceeding conducted under ORS 163.760 to 163.777, the following evidence is not admissible:

(a) Reputation or opinion evidence of the past sexual behavior of an alleged victim or a corroborating witness; or

(b) Reputation or opinion evidence presented for the purpose of showing that the manner of dress of an alleged victim incited the crime or, in a proceeding under ORS 163.760 to 163.777, incited the sexual abuse, or indicated consent to the sexual acts that are alleged.

(2) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit a crime listed in subsection (1) of this section or in a proceeding conducted under ORS 163.760 to 163.777, evidence of an alleged victim’s past sexual behavior other than reputation or opinion evidence is also not admissible, unless the evidence other than reputation or opinion evidence:

(a) Is admitted in accordance with subsection (4) of this section; and

(b) Is evidence that:

(A) Relates to the motive or bias of the alleged victim;

(B) Is necessary to rebut or explain scientific or medical evidence offered by the state; or

(C) Is otherwise constitutionally required to be admitted.

(3) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit a crime listed in subsection (1) of this section or in a proceeding conducted under ORS 163.760 to 163.777, evidence, other than reputation or opinion evidence, of the manner of dress of the alleged victim or a corroborating witness, presented by a person accused of committing the crime or, in a proceeding conducted under ORS 163.760 to 163.777, by the respondent, is also not admissible, unless the evidence:

(a) Is admitted in accordance with subsection (4) of this section; and

(b) Is evidence that:

(A) Relates to the motive or bias of the alleged victim;

(B) Is necessary to rebut or explain scientific, medical or testimonial evidence offered by the state;

(C) Is necessary to establish the identity of the alleged victim; or

(D) Is otherwise constitutionally required to be admitted.

(4)(a) If the person accused of a crime or an attempt to commit a crime listed in subsection (1) of this section, or the respondent in a proceeding conducted under ORS 163.760 to 163.777, intends to offer evidence under subsection (2) or (3) of this section, the accused or the respondent shall make a written motion to offer the evidence not later than 15 days before the date on which the trial in which the evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which the evidence relates has newly arisen in the case. Any motion made under this paragraph shall be served on all other parties and, in a criminal proceeding, on the alleged victim through the office of the prosecutor.

(b) The motion described in paragraph (a) of this subsection shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in sub-

section (2) or (3) of this section, the court shall order a hearing in camera to determine if the evidence is admissible. At the hearing the parties may call witnesses, including the alleged victim, and offer relevant evidence. Notwithstanding ORS 40.030 (2), if the relevancy of the evidence that the accused or the respondent seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in camera or at a subsequent hearing in camera scheduled for the same purpose, shall accept evidence on the issue of whether the condition of fact is fulfilled and shall determine the issue.

(c) If the court determines on the basis of the hearing described in paragraph (b) of this subsection that the evidence the accused or the respondent seeks to offer is relevant and that the probative value of the evidence outweighs the danger of unfair prejudice, the evidence shall be admissible in the trial to the extent an order made by the court specifies evidence that may be offered and areas with respect to which a witness may be examined or cross-examined.

(d) An order admitting evidence under this subsection in a criminal prosecution may be appealed by the state before trial.

(5) For purposes of this section:

(a) "Alleged victim" includes the petitioner in a proceeding conducted under ORS 163.760 to 163.777.

(b) "In camera" means out of the presence of the public and the jury.

(c) "Past sexual behavior" means sexual behavior other than:

(A) The sexual behavior with respect to which the crime or attempt to commit the crime listed in subsection (1) of this section is alleged; or

(B) In a proceeding conducted under ORS 163.760 to 163.777, the alleged sexual abuse.

(d) "Trial" includes a hearing conducted under ORS 163.760 to 163.777.

SECTION 7. ORS 30.867 is amended to read:

30.867. (1) Irrespective of any criminal prosecution or the result of a criminal prosecution, a person injured by a violation of ORS 163.263, 163.264 or 163.266 may bring a civil action for damages against a person whose actions are unlawful under ORS 163.263, 163.264 or 163.266.

(2) Upon prevailing in an action under this section, the plaintiff may recover:

(a) Both special and general damages, including damages for emotional distress; and

(b) Punitive damages.

(3) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a circuit court.

(4) An action under this section must be commenced within [*six years of the conduct giving rise to the claim*] **10 years after the following, whichever occurs later:**

(a) The date on which the conduct giving rise to the claim ceases; or

(b) If the plaintiff was a minor when the conduct giving rise to the claim occurred, the date on which the plaintiff attains 18 years of age.

SECTION 8. ORS 471.271 is amended to read:

471.271. (1) As used in this section, "law enforcement agency" means:

(a) A city or municipal police department;

(b) A county sheriff's office; or

(c) The Oregon State Police.

(2) An employee of a premises licensed for full on-premises sales or limited on-premises sales who is a permittee shall:

(a) Report to a law enforcement agency and to the Oregon Liquor and Cannabis Commission if the permittee has a reasonable belief that sex trafficking **or other human trafficking** is occurring at the licensed premises; and

(b) Report to the commission if the permittee has a reasonable belief that a minor is employed or contracted as a performer at the licensed premises in a manner that violates commission rules.

(3) A permittee making a report under this section in good faith is immune from any criminal or civil liability for making the report.

(4) The commission may adopt rules to carry out this section.

SECTION 9. ORS 181A.480 is amended to read:

181A.480. (1) **The Board on Public Safety Standards and Training shall include training on recognizing, investigating and reporting cases involving labor trafficking and sex trafficking of children and adults in the minimum training required to obtain basic certification as a police officer under ORS 181A.490.**

(2) The [*Board on Public Safety Standards and Training*] **board** may require that all police officers and certified reserve officers are trained to recognize, investigate and report cases involving labor trafficking and sex trafficking of children and adults at any advanced training program operated or authorized by the Department of Public Safety Standards and Training.

SECTION 10. (1) **No later than January 1, 2025, the Department of Justice shall develop a training program for state agency employees concerning human trafficking awareness and prevention.**

(2) **Beginning January 1, 2025, the training described in subsection (1) of this section shall be completed on an annual basis by those employees of the following agencies who the agency determines are likely to come into contact with potential human trafficking victims, and any other employees each agency determines should attend the training in order to support the work of the agency:**

- (a) **The Department of Justice;**
 - (b) **The State Department of Agriculture;**
 - (c) **The Oregon Liquor and Cannabis Commission;**
 - (d) **The Department of Consumer and Business Services, including the Occupational Safety and Health Division;**
 - (e) **The Bureau of Labor and Industries;**
 - (f) **The Oregon Criminal Justice Commission;**
 - (g) **The Department of Human Services;**
 - (h) **The Employment Department;**
 - (i) **The Department of Environmental Quality;**
 - (j) **The Housing and Community Services Department; and**
 - (k) **The Department of State Police.**
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Passed by Senate April 19, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 31, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State