

# Trafficking People and Involuntary Servitude

A legislative staff analysis about Arizona SB 1372, which became law in 2005, declares:

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“According to the United Nations Office on Drugs and Crime (UNODC), people smuggling and people trafficking are similar in some respects, but there are several important differences. Those who are smuggled have consented to be smuggled. Trafficking victims, according to the UNODC, “have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.” Another major difference, according to the UNODC, “is that smuggling ends with the arrival of the migrants at their destination, whereas trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers.”

The United States Department of State estimates last year 600,000 to 800,000 persons were trafficked across transnational borders and 14,500 to 17,500 persons were trafficked into the United States. Additionally, the estimated total number of persons trafficked both transnationally and intra-country is between 2 and 4 million. Approximately 80 percent of trafficked persons consist of women and girls, and 70 percent of them are trafficked for sexual exploitation. According to a White House Press Release, human trafficking is one of the largest and fastest-growing sources of money for organized crime. Sex tourism, which occurs when a person visits another country to engage in a commercial sex act, is an estimated billion-dollar a year business.

According to the Protection Project, a human rights research institute, between 1990 and 2000, at least 38 separate instances of trafficking were documented in the United States, involving at least 5,500 women. U.S. law enforcement has documented girls being trafficked for sexual exploitation in Chicago, Los Angeles, Maryland, Georgia, California, New Jersey and Florida. Between 2001 and March 2004, at least 150 traffickers were charged, of which 79 included sex trafficking allegations. Convictions or guilty pleas resulted in 77 cases, and 59 of those defendants were found guilty of sex trafficking charges.

There are at least 10,000 forced laborers working in the United States, with operations concentrated in California, Florida, New York and Texas, and with some activity in Arizona, according to a Human Rights Center study.

The United States Senate passed a bipartisan Senate Resolution (S.Res. 414) (2004) urging all states to adopt anti-human trafficking legislation similar to the Department of Justice’s Model State Anti-Trafficking Criminal Statute, released this summer.”

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This draft Act, which is based upon Illinois law, creates the offenses of involuntary servitude, sexual servitude of a minor, and trafficking of people for forced labor and services. The Act also mandates restitution for committing such offenses. The law provides that the state Attorney General, in cooperation with the state office of the courts, state's attorneys, circuit court officials, the state department of human services, and the department of public aid shall ensure that victims of trafficking or involuntary servitude are referred to appropriate social services, federal and State public benefits programs, victim protection services and immigration assistance services, where applicable. The bill provides that state's attorneys shall refer an immigrant victim to the state attorney general for certification that the individual is a victim of trafficking or involuntary servitude so that the individual can qualify for a special immigrant visa and can have access to available federal benefits. The bill also directs the Attorney General, within 6 months

after the effective date of this Act, to determine and issue a report on how existing social services, public aid programs and victim protecting laws and rules respond to the needs of victims of trafficking and involuntary servitude.

Submitted as:

Illinois

HB1469 / Public Act 094-0009

Status: Enacted into law in 2005.

### **Suggested State Legislation**

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as “An Act to Address Trafficking  
2 People and Involuntary Servitude.”

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4           Section 2. [*Definitions.*] As used in this Act:

5           (1) “Intimidation” has the meaning prescribed in [insert citation].

6           (2) “Commercial sexual activity” means any sex act on account of which anything of  
7 value is given, promised to, or received by any person.

8           (3) “Financial harm” includes intimidation that brings about financial loss, criminal usury,  
9 or employment contracts that violate [insert citation].

10          (4) “Forced labor or services” means labor or services that are performed or provided by  
11 another person and are obtained or maintained through:

12           (A) any scheme, plan, or pattern intending to cause or threatening to cause serious  
13 harm to any person;

14           (B) an actor's physically restraining or threatening to physically restrain another  
15 person;

16           (C) an actor's abusing or threatening to abuse the law or legal process;

17           (D) an actor's knowingly destroying, concealing, removing, confiscating, or  
18 possessing any actual or purported passport or other immigration document, or any other actual  
19 or purported government identification document, of another person;

20           (E) an actor's blackmail; or

21           (F) an actor's causing or threatening to cause financial harm to or exerting  
22 financial control over any person.

23          (5) “Labor” means work of economic or financial value.

24          (6) “Maintain” means, in relation to labor or services, to secure continued performance  
25 thereof, regardless of any initial agreement on the part of the victim to perform such type of  
26 service.

27          (7) “Obtain” means, in relation to labor or services, to secure performance thereof.

28          (8) “Services” means a relationship between a person and the actor in which the person  
29 performs activities under the supervision of or for the benefit of the actor. Commercial sexual  
30 activity and sexually-explicit performances are forms of “services” under this Section. Nothing  
31 in this provision should be construed to legitimize or legalize prostitution.

32          (9) “Sexually-explicit performance” means a live, recorded, broadcast (including over the  
33 Internet) or public act or show intended to arouse or satisfy the sexual desires or appeal to the  
34 prurient interests of patrons.

35          (10) “Trafficking victim” means a person subjected to the practices set forth in Section 3  
36 of this Act.

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Section 3. [*Criminal Provisions.*]

(a) Involuntary servitude. Whoever knowingly subjects, attempts to subject, or engages in a conspiracy to subject another person to forced labor or services shall be punished as follows, subject to subsection (d)

(1) by causing or threatening to cause physical harm to any person, is guilty of a [Class X felony];

(2) by physically restraining or threatening to physically restrain another person, is guilty of a [Class 1 felony];

(3) by abusing or threatening to abuse the law or legal process, is guilty of a [Class 2 felony];

(4) by knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person, is guilty of a [Class 3 felony];

(5) by using intimidation, or using or threatening to cause financial harm to or by exerting financial control over any person, is guilty of a [Class 4 felony].

(b) Involuntary servitude of a minor. Whoever knowingly recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, provide, or obtain by any means, another person under [18 years of age], knowing that the minor will engage in commercial sexual activity, a sexually-explicit performance, or the production of pornography, or causes or attempts to cause a minor to engage in commercial sexual activity, a sexually-explicit performance, or the production of pornography, shall be punished as follows, subject to the provisions of subsection (d):

(1) In cases involving a minor between the ages of [17 and 18 years], not involving overt force or threat, the defendant is guilty of a [Class 1 felony].

(2) In cases in which the minor had not attained the age of [17 years], not involving overt force or threat, the defendant is guilty of a [Class X felony].

(3) In cases in which the violation involved overt force or threat, the defendant is guilty of a [Class X felony].

(c) Trafficking of persons for forced labor or services. Whoever knowingly:

(1) 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, intending or knowing that the person will be subjected to forced labor or services; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraphs (a) or (b) of this Section, subject to the provisions of subsection (d), is guilty of a [Class 1 felony].

(d) Sentencing enhancements.

(1) Statutory maximum; sexual assault and extreme violence. If the violation of this Act involves kidnapping or an attempt to kidnap, aggravated criminal sexual assault or the attempt to commit aggravated criminal sexual assault, or an attempt to commit first degree murder, the defendant is guilty of a [Class X felony].

(2) Sentencing considerations within statutory maximums.

(A) Bodily injury. If, pursuant to a violation of this Act, a victim suffered bodily injury, the defendant may be sentenced to an extended term sentence under [insert citation]. The sentencing court must take into account the time in which the victim was held in servitude, with increased penalties for cases in which the victim was held for between [180 days and one year], and increased penalties for cases in which the victim was held for more than [one year].

85 (B) Number of victims. In determining sentences within statutory  
86 maximums, the sentencing court should take into account the number of victims, and may  
87 provide for substantially-increased sentences in cases involving more than [10 victims].

88 (e) Restitution. Restitution is mandatory under this Act. In addition to any other amount  
89 of loss identified, the court shall order restitution including the greater of the gross income or  
90 value to the defendant of the victim's labor or services or the value of the victim's labor as  
91 guaranteed under the Minimum Wage Law and overtime provisions of the Fair Labor Standards  
92 Act (FLSA) or the Minimum Wage Law, whichever is greater.

93 (f) Trafficking victim services. Subject to the availability of funds, the [Department of  
94 Human Services] may provide or fund emergency services and assistance to people who are  
95 victims of one or more offenses defined in this Act.

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97 Section 4. [*Forfeitures.*]

98 (a) A person who commits the offense of involuntary servitude, involuntary servitude of a  
99 minor, or trafficking of people for forced labor or services under this Act shall forfeit to this state  
100 any profits or proceeds and any interest or property he or she has acquired or maintained in  
101 violation of this Act that the sentencing court determines, after a forfeiture hearing, to have been  
102 acquired or maintained as a result of maintaining a person in involuntary servitude or  
103 participating in trafficking in persons for forced labor or services.

104 (b) The court shall, upon petition by the [Attorney General] or [State's Attorney] at any  
105 time following sentencing, conduct a hearing to determine whether any property or property  
106 interest is subject to forfeiture under this Section. At the forfeiture hearing the people shall have  
107 the burden of establishing, by a preponderance of the evidence, that property or property interests  
108 are subject to forfeiture under this Section.

109 (c) In any action brought by the people of this state under this Section, wherein any  
110 restraining order, injunction, or prohibition or any other action in connection with any property  
111 or interest subject to forfeiture under this Section is sought, the [circuit court] presiding over the  
112 trial of the person or persons charged with involuntary servitude, involuntary servitude of a  
113 minor, or trafficking in persons for forced labor or services shall first determine whether there is  
114 probable cause to believe that the person or persons so charged have committed the offense of  
115 involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor  
116 or services and whether the property or interest is subject to forfeiture pursuant to this Section. In  
117 order to make such a determination, prior to entering any such order, [the court] shall conduct a  
118 hearing without a jury, wherein the People shall establish that there is probable cause that the  
119 person or persons so charged have committed the offense of involuntary servitude, involuntary  
120 servitude of a minor, or trafficking in persons for forced labor or services and probable cause that  
121 any property or interest may be subject to forfeiture pursuant to this Section. The hearing may be  
122 conducted simultaneously with a preliminary hearing, if the prosecution is commenced by  
123 information or complaint, or by motion of the People, at any stage in the proceedings. [The  
124 court] may accept a finding of probable cause at a preliminary hearing following the filing of an  
125 information charging the offense of involuntary servitude, involuntary servitude of a minor, or  
126 trafficking in persons for forced labor or services or the return of an indictment by a grand jury  
127 charging the offense of involuntary servitude, involuntary servitude of a minor, or trafficking in  
128 persons for forced labor or services as sufficient evidence of probable cause as provided in item  
129 of this subsection. Upon such a finding, the [circuit court] shall enter such restraining order,  
130 injunction or prohibition, or shall take such other action in connection with any such property or  
131 other interest subject to forfeiture, as is necessary to ensure that such property is not removed  
132 from the jurisdiction of [the court], concealed, destroyed, or otherwise disposed of by the owner  
133 of that property or interest prior to a forfeiture hearing under this Section. The [Attorney General

134 or State's Attorney] shall file a certified copy of the restraining order, injunction, or other  
135 prohibition with the recorder of deeds or registrar of titles of each county where any such  
136 property of the defendant may be located. No such injunction, restraining order, or other  
137 prohibition shall affect the rights of any bona fide purchaser, mortgagee, judgment creditor, or  
138 other lien holder arising prior to the date of such filing. [The court] may, at any time, upon  
139 verified petition by the defendant or an innocent owner or innocent bona fide third party lien  
140 holder who neither had knowledge of, nor consented to, the illegal act or omission, conduct a  
141 hearing to release all or portions of any such property or interest that [the court] previously  
142 determined to be subject to forfeiture or subject to any restraining order, injunction, or  
143 prohibition or other action. [The court] may release such property to the defendant or innocent  
144 owner or innocent bona fide third party lien holder who neither had knowledge of, nor consented  
145 to, the illegal act or omission for good cause shown and within the sound discretion of [the  
146 court].

147 (d) Upon conviction of a person of involuntary servitude, involuntary servitude of a  
148 minor, or trafficking in persons for forced labor or services, [the court] shall authorize the  
149 [Attorney General] to seize all property or other interest declared forfeited under this Section  
150 upon such terms and conditions as [the court] shall deem proper.

151 (e) All monies forfeited and the sale proceeds of all other property forfeited and seized  
152 under this Section shall be distributed as follows:

153 (1) [one-half] shall be divided equally among all state agencies and units of local  
154 government whose officers or employees conducted the investigation that resulted in the  
155 forfeiture; and

156 (2) [one-half] shall be deposited into a [Violent Crime Victims Assistance Fund]  
157 and targeted to services for victims of the offenses of involuntary servitude, involuntary  
158 servitude of a minor, and trafficking of persons for forced labor or services.

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160 Section 5. [*Certification.*] The [Attorney General, State's Attorneys], or any law  
161 enforcement official shall certify in writing to the United States Department of Justice or other  
162 federal agency, such as the United States Department of Homeland Security, that an  
163 investigation or prosecution under this Act has begun and the individual who is a likely victim of  
164 a crime described in this Act is willing to cooperate or is cooperating with the investigation to  
165 enable the individual, if eligible under federal law, to qualify for an appropriate special  
166 immigrant visa and to access available federal benefits. Cooperation with law enforcement shall  
167 not be required of victims of a crime described in this Act who are under [18 years of age]. This  
168 certification shall be made available to the victim and his or her designated legal representative.

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170 Section 6. [*Severability.*] [Insert severability clause.]

171  
172 Section 7. [*Repealer.*] [Insert repealer clause.]

173  
174 Section 8. [*Effective Date.*] [Insert effective date.]