

## Nebraska State Report State Ratings 2014

The Polaris annual state ratings process tracks the presence or absence of 10 categories of state statutes that Polaris believes are critical to a comprehensive anti-trafficking legal framework. It is important to note that these 10 categories are not exhaustive of all the important legislation that helps combat human trafficking in a given state. Moreover, the ratings do not assess the effectiveness or implementation of these laws, nor the anti-trafficking efforts of task forces, law enforcement, prosecutors, judges, service providers, and advocates in the state. The purpose of the annual state ratings process is to document laws on the books, to motivate legislators and policy advocates, and to focus the attention of states on the statutes that still need to be enacted in order to achieve a strong anti-trafficking legal framework.

**Rating:** Tier One (green)

**Total Points:** 9

**Credited Categories:** 1 Sex Trafficking; 2 Labor Trafficking; 3(b) Investigative Tools; 4(a) Training for Law Enforcement; 4(b) Human Trafficking Task Force; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 6 Posting of a Hotline; 7 Safe Harbor for Minors; and 8 Victim Assistance.

**Categories Still Needed:** 3(a) Asset Forfeiture; 9 Civil Remedy; and 10 Vacating Convictions.

**Category By Category Break-Down:**

### Category 1: Sex Trafficking Statute

#### **§ 28-830. Human trafficking; forced labor or services; terms, defined.**

For purposes of sections 28-830 and 28-831, the following definitions apply:

- (1) Actor means a person who solicits, procures, or supervises the services or labor of another person;
- (2) Commercial sexual activity means any sex act on account of which anything of value is given, promised to, or received by any person;
- (3) Debt bondage means inducing another person to provide:
  - (a) Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or
  - (b) Labor or services in payment toward or satisfaction of a real or purported debt if:
    - (i) The reasonable value of the labor or services is not applied toward the liquidation of the debt; or
    - (ii) The length of the labor or services is not limited and the nature of the labor or services is not defined;
- (4) Financial harm means theft by extortion as described by section 28-513;
- (5) Forced labor or services means labor or services that are performed or provided by another person and are obtained or maintained through:
  - (a) Inflicting or threatening to inflict serious personal injury, as defined by section 28-318, on another person;
  - (b) Physically restraining or threatening to physically restrain the other person;
  - (c) Abusing or threatening to abuse the legal process against another person to cause arrest or deportation for violation of federal immigration law;



- (d) Controlling or threatening to control another person's access to a controlled substance listed in Schedule I, II or III of section 28-405;
- (e) Exploiting another person's substantial functional impairment as defined in section 28-368 or substantial mental impairment as defined in section 28-369;
- (f) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or government identification document of the other person; or
- (g) Causing or threatening to cause financial harm to another person, including debt bondage;
- (6) Labor means work of economic or financial value;
- (7) Labor trafficking means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a person eighteen years of age or older intending or knowing that the person will be subjected to forced labor or services;
- (8) Labor trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor intending or knowing that the minor will be subjected to forced labor or services;
- (9) Maintain means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement by the other person to perform such type of service;
- (10) Minor means a person younger than eighteen years of age;
- (11) Obtain means, in relation to labor or services, to secure performance thereof;
- (12) Services means an ongoing relationship between the actor and another person in which the person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity and sexually-explicit performances are forms of services under this section. Nothing in this subdivision shall be construed to legalize prostitution;
- (13) Sex trafficking means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, or obtain by any means a person eighteen years of age or older for the purpose of having such person engage in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a person eighteen years of age or older to engage in commercial sexual activity, sexually explicit performance, or the production of pornography;
- (14) Sex trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography;
- (15) Sexually-explicit performance means a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests; and
- (16) Trafficking victim means a person subjected to any act or acts prohibited by section 28-831.

**§ 28-831. Human trafficking; labor trafficking or sex trafficking; labor trafficking of a minor or sex trafficking of a minor; prohibited acts; penalties.**

- (1) No person shall knowingly engage in labor trafficking or sex trafficking.
- (2) If an actor knowingly engages in labor trafficking or sex trafficking by:
  - (a) Inflicting or threatening to inflict serious personal injury, as defined by section 28-318, on another person, the actor is guilty of a Class III felony;
  - (b) Physically restraining or threatening to physically restrain the other person, the actor is guilty of a Class III felony;



- (c) Abusing or threatening to abuse the legal process against another person to cause arrest or deportation for violation of federal immigration law, the actor is guilty of a Class IV felony;
  - (d) Controlling or threatening to control another person's access to a controlled substance listed in Schedule I, II or III of section 28-405, the actor is guilty of a Class IV felony;
  - (e) Exploiting another person's substantial functional impairment as defined in section 28-368 or substantial mental impairment as defined in section 28-369, the actor is guilty of a Class IV felony;
  - (f) 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 the other person, the actor is guilty of a Class IV felony; or
  - (g) Causing or threatening to cause financial harm to another person, including debt bondage, the actor is guilty of a Class I misdemeanor.
- (3) No person shall engage in labor trafficking of a minor or sex trafficking of a minor. An actor who engages in labor trafficking of a minor or sex trafficking of a minor shall be punished as follows:
- (a) In cases in which the actor uses overt force or the threat of force against the trafficking victim, the actor is guilty of a Class II felony;
  - (b) In cases in which the trafficking victim has not attained the age of fifteen years, the actor is guilty of a Class II felony; or
  - (c) In cases involving a trafficking victim between the ages of fifteen and eighteen years, and the actor does not use overt force or threat of force against the trafficking victim, the actor is guilty of a Class III felony.
- (4) Any person who benefits, financially or by receiving anything of value, from participation in a venture which has, as part of the venture, an act that is in violation of this section, is guilty of a Class IV felony.

### **Category 2: Labor Trafficking Statute**

Yes. See § 28-831.

### **Category 3(a): Asset Forfeiture**

None.

### **Category 3(b): Investigative Tools**

#### **§ 28-1354. Terms, defined**

- (5) Racketeering activity includes the commission of, criminal attempt to commit, conspiracy to commit, aiding and abetting in the commission of, aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of any of the following:
- (a) Offenses against the person which include: Murder in the first degree under section 28-303; murder in the second degree under section 28-304; manslaughter under section 28-305; assault in the first degree under section 28-308; assault in the second degree under section 28-309; assault in the third degree under section 28-310; terroristic threats under section 28-311.01; kidnapping under section 28-313; false imprisonment in the first degree under section 28-314; false imprisonment in the second degree under



section 28-315; sexual assault in the first degree under section 28-319; and robbery under section 28-324;

(b) Offenses relating to controlled substances which include: To unlawfully manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance under subsection (1) of section 28-416; possession of marijuana weighing more than one pound under subsection (12) of section 28-416; possession of money used or intended to be used to facilitate a violation of subsection (1) of section 28-416 prohibited under subsection (17) of section 28-416; any violation of section 28-418; to unlawfully manufacture, distribute, deliver, or possess with intent to distribute or deliver an imitation controlled substance under section 28-445; possession of anhydrous ammonia with the intent to manufacture methamphetamine under section 28-451; and possession of ephedrine, pseudoephedrine, or phenylpropanolamine with the intent to manufacture methamphetamine under section 28-452;

(c) Offenses against property which include: Arson in the first degree under section 28-502; arson in the second degree under section 28-503; arson in the third degree under section 28-504; burglary under section 28-507; theft by unlawful taking or disposition under section 28-511; theft by shoplifting under section 28-511.01; theft by deception under section 28-512; theft by extortion under section 28-513; theft of services under section 28-515; theft by receiving stolen property under section 28-517; criminal mischief under section 28-519; and unlawfully depriving or obtaining property or services using a computer under section 28-1344;

(d) Offenses involving fraud which include: Burning to defraud an insurer under section 28-505; forgery in the first degree under section 28-602; forgery in the second degree under section 28-603; criminal possession of a forged instrument under section 28-604; criminal possession of forgery devices under section 28-605; criminal impersonation under section 28-638; identity theft under section 28-639; identity fraud under section 28-640; false statement or book entry under section 28-612; tampering with a publicly exhibited contest under section 28-614; issuing a false financial statement for purposes of obtaining a financial transaction device under section 28-619; unauthorized use of a financial transaction device under section 28-620; criminal possession of a financial transaction device under section 28-621; unlawful circulation of a financial transaction device in the first degree under section 28-622; unlawful circulation of a financial transaction device in the second degree under section 28-623; criminal possession of a blank financial transaction device under section 28-624; criminal sale of a blank financial transaction device under section 28-625; criminal possession of a forgery device under section 28-626; unlawful manufacture of a financial transaction device under section 28-627; laundering of sales forms under section 28-628; unlawful acquisition of sales form processing services under section 28-629; unlawful factoring of a financial transaction device under section 28-630; and fraudulent insurance acts under section 28-631;

(e) Offenses involving governmental operations which include: Abuse of public records under section 28-911; perjury or subornation of perjury under section 28-915; bribery under section 28-917; bribery of a witness under section 28-918; tampering with a witness or informant or jury tampering under section 28-919; bribery of a juror under section 28-920; assault on an officer in the first degree under section 28-929; assault on an officer in the second degree under section 28-930; assault on an officer in the third degree under section 28-931; and assault on an officer using a motor vehicle under section 28-931.01;

(f) Offenses involving gambling which include: Promoting gambling in the first degree under section 28-1102; possession of gambling records under section 28-1105; gambling



debt collection under section 28-1105.01; and possession of a gambling device under section 28-1107;

(g) Offenses relating to firearms, weapons, and explosives which include: Carrying a concealed weapon under section 28-1202; transportation or possession of machine guns, short rifles, or short shotguns under section 28-1203; unlawful possession of a handgun under section 28-1204; unlawful transfer of a firearm to a juvenile under section 28-1204. 01; using a deadly weapon to commit a felony or possession of a deadly weapon during the commission of a felony under section 28-1205; possession of a deadly weapon by a prohibited person under section 28-1206; possession of a defaced firearm under section 28-1207; defacing a firearm under section 28-1208; unlawful discharge of a firearm under section 28-1212.02; possession, receipt, retention, or disposition of a stolen firearm under section 28-1212. 03; unlawful possession of explosive materials in the first degree under section 28-1215; unlawful possession of explosive materials in the second degree under section 28-1216; unlawful sale of explosives under section 28-1217; use of explosives without a permit under section 28-1218; obtaining an explosives permit through false representations under section 28-1219; possession of a destructive device under section 28-1220; threatening the use of explosives or placing a false bomb under section 28-1221; using explosives to commit a felony under section 28-1222; using explosives to damage or destroy property under section 28-1223; and using explosives to kill or injure any person under section 28-1224;

(h) Any violation of the Securities Act of Nebraska pursuant to section 8-1117;

(i) Any violation of the Nebraska Revenue Act of 1967 pursuant to section 77-2713;

(j) Offenses relating to public health and morals which include: Prostitution under section 28-801; pandering under section 28-802; keeping a place of prostitution under section 28-804; human trafficking or forced labor or services under section 28-831; a violation of section 28-1005; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act; and

(k) A violation of the Computer Crimes Act;

#### **Category 4(a): Training for Law Enforcement**

##### **§ 81-1431. Training regarding issues in human trafficking; task force; duties**

(1) It is the intent of the Legislature that law enforcement agencies, prosecutors, public defenders, judges, juvenile detention center staff, and others involved in the juvenile justice system and the criminal justice system and other relevant officials be provided mandatory training regarding issues in human trafficking. The task force established in section 2 of this act shall work with such agencies, persons, and staff to develop a proper curriculum for the training and to determine how the training should be provided. The determination and accompanying legislative recommendations shall be made by December 1, 2012. Such training shall focus on:

(a) State and federal law regarding human trafficking;

(b) Methods used in identifying victims of human trafficking who are United States citizens and foreign nationals, including preliminary interview techniques and appropriate questioning methods;

(c) Methods for prosecuting human traffickers;

(d) Methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case;

(e) Methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and the special needs of women and minor victims;





- (f) The necessity of treating victims of human trafficking as crime victims rather than as criminals; and
  - (g) Methods for promoting the safety and well-being of all victims of human trafficking.
- (2) The task force shall also seek the input and participation of appropriate nongovernmental organizations and other relevant organizations regarding the provision, preparation, and presentation of the training called for in this section.

#### **Category 4(b): Human Trafficking Task Force**

##### **§ 81-1430. Task force; established; members; terms; duties; quorum; report; Department of Labor; posters.**

- (1) A task force is hereby established within the Nebraska Commission on Law Enforcement and Criminal Justice for the purposes of investigating and studying human trafficking, the methods for advertising human trafficking services, and the victimization of individuals coerced to participate in human trafficking.
- (2) The task force shall examine the extent to which human trafficking is prevalent in this state, the scope of efforts being taken to prevent human trafficking from occurring, and the services available to victims of human trafficking in this state. The task force shall also investigate the limitations upon victims who wish to come forward and seek medical attention; investigate the potential to stop human trafficking; and investigate the potential to promote recovery, to protect families and children who may be profoundly impacted by such abuse, and to save lives.
- (3)
- (a) The Department of Labor shall work with the task force to develop or select informational posters for placement around the state. The posters shall be in English, Spanish, and any other language deemed appropriate by the task force. The posters shall include a toll-free telephone number a person may call for assistance, preferably the National Human Trafficking Resource Center Hotline (888)373-7888.
  - (b) Posters shall be placed in rest stops and strip clubs. The task force shall work with local businesses and nonprofit entities associated with the prevention of human trafficking to voluntarily place additional signs in high schools, postsecondary educational institutions, gas stations, hotels, hospitals, health care clinics, urgent care centers, airports, train stations, bus stations, and other locations around the state deemed appropriate by the task force.
- (4) The task force shall consist of the following members:
- (a) The Attorney General or his or her designee;
  - (b) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice;
  - (c) The Superintendent of Law Enforcement and Public Safety or his or her designee;
  - (d) The Director of Correctional Services or his or her designee;
  - (e) The chief of police or director of public safety of a city of two hundred thousand inhabitants or more;
  - (f) The chief of police or director of public safety of a city of less than two hundred thousand inhabitants;
  - (g) A county sheriff;
  - (h) A county attorney;
  - (i) A county commissioner;
  - (j) A mayor or city manager;
  - (k) A person involved with the control or prevention of juvenile delinquency;
  - (l) A person involved with the control or prevention of child abuse;



- (m) The Commissioner of Education or his or her designee;
  - (n) The director of the Commission on Latino-Americans or his or her designee; and
  - (o) Six members, at least three of whom shall be women, from the public at large.
- (5) The Governor shall appoint the members of the task force listed in subdivisions (4)(e) through (l) and (o) of this section for terms as provided in subsection (6) of this section. The membership of the task force shall represent varying geographic areas and large and small political subdivisions. One member from the public at large shall be a professional representing child welfare, and one member of the public at large shall represent juvenile pretrial diversion programs.
- (6) The members of the task force appointed by the Governor shall serve six-year terms, except that of the members first appointed, four shall serve initial two-year terms, four shall serve initial four-year terms, and six shall serve initial six-year terms from January 1 next succeeding their appointments. Thereafter, all members shall serve six-year terms. A member may be reappointed at the expiration of his or her term. Any vacancy occurring otherwise than by expiration of a term shall be filled for the balance of the unexpired term in the same manner as the original appointment.
- (7) No member shall serve beyond the time when he or she holds the office, employment, or status by reason of which he or she was initially eligible for appointment. Any member of the task force appointed by the Governor may be removed from the task force for cause upon notice and an opportunity to be heard at a public hearing. One of the causes for removal shall be absence from three regularly scheduled meetings of the task force during any six-month period when the member has failed to advise the task force in advance of such meeting that he or she will be absent and stating a reason therefor.
- (8) The chairperson of the task force shall be designated by the Governor to serve at the pleasure of the Governor. The chairperson shall be the chief executive officer of the task force but may delegate such of his or her duties to other members of the task force as may be authorized by the task force.
- (9) Notwithstanding any provision of law, ordinance, or charter provision to the contrary, membership on the task force shall not disqualify any member from holding any other public office or employment or cause the forfeiture thereof.
- (10) The members of the task force shall serve on the task force without compensation, but they shall be entitled to receive reimbursement for any actual expenses incurred as necessary incident to such service as provided in sections 81-1174 to 81-1177.
- (11) Eleven members of the task force shall constitute a quorum for the transaction of any business or the exercise of any power of the task force. The task force shall have the power to act by a majority of the members present at any meeting at which a quorum is in attendance.
- (12) All appointments shall be made not later than thirty days after the effective date of this act. The chairperson shall meet with the task force not later than sixty days after the effective date of this act.
- (13) Not later than one year after the effective date of this act, and every July 1 and December 1 thereafter, the task force shall report to the Clerk of the Legislature the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect by filing the report with the clerk.

**Category 5: No Requirement of Force, Fraud, or Coercion for Sex Trafficking of Minors**

Yes. See § 28-830 and § 28-831.



## **Category 6: Posting of a Human Trafficking Hotline**

### **§ 81-1430. Task force; established; members; terms; duties; quorum; report; Department of Labor; posters.**

(3)(a) The Department of Labor shall work with the task force to develop or select informational posters for placement around the state. The posters shall be in English, Spanish, and any other language deemed appropriate by the task force. The posters shall include a toll-free telephone number a person may call for assistance, preferably the National Human Trafficking Resource Center Hotline (888)373-7888.

(b) Posters shall be placed in rest stops and strip clubs. The task force shall work with local businesses and nonprofit entities associated with the prevention of human trafficking to voluntarily place additional signs in high schools, postsecondary educational institutions, gas stations, hotels, hospitals, health care clinics, urgent care centers, airports, train stations, bus stations, and other locations around the state deemed appropriate by the task force.

## **Category 7: Safe Harbor**

### **§ 28-801. Prostitution; penalty; affirmative defense; immunity from prosecution; law enforcement officer; duties.**

(5) If the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of subsection (1) of this section is a person under eighteen years of age, such person shall be immune from prosecution for a prostitution offense under this section and shall be subject to temporary custody under section 43-248 and further disposition under the Nebraska Juvenile Code. A law enforcement officer who takes a person under eighteen years of age into custody under this section shall immediately report an allegation of a violation of section 28-831 to the Department of Health and Human Services which shall commence an investigation within twenty-four hours under the Child Protection and Family Safety Act.

### **§ 28-707. Child abuse; privileges not available; penalties.**

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

- (a) Placed in a situation that endangers his or her life or physical or mental health;
- (b) Cruelly confined or cruelly punished;
- (c) Deprived of necessary food, clothing, shelter, or care;
- (d) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions;
- (e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01; or
- (f) Placed in a situation to be a trafficking victim as defined in section 28-830.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28-109 or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109 or death.

(5) Child abuse is a Class IIIA felony if the offense is committed negligently and results in serious bodily injury as defined in section 28-109.





(6) Child abuse is a Class III felony if the offense is committed negligently and results in the death of such child.

(7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

(9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28-109, with respect to the safety or health of the minor child.

### **Category 8: Victim Assistance**

#### **§ 81-1430. Task force; established; members; terms; duties; quorum; report; Department of Labor; posters.**

(1) A task force is hereby established within the Nebraska Commission on Law Enforcement and Criminal Justice for the purposes of investigating and studying human trafficking, the methods for advertising human trafficking services, and the victimization of individuals coerced to participate in human trafficking.

(2) The task force shall examine the extent to which human trafficking is prevalent in this state, the scope of efforts being taken to prevent human trafficking from occurring, and the services available to victims of human trafficking in this state. The task force shall utilize information and research available from the Innocence Lost National Initiative. The task force shall research and recommend a model of rehabilitative services for victims of human trafficking that includes input from the areas of law enforcement, social services, the legal profession, the judiciary, mental health, and immigration. The task force shall also investigate the limitations upon victims who wish to come forward and seek medical attention; investigate the potential to stop human trafficking; and investigate the potential to promote recovery, to protect families and children who may be profoundly impacted by such abuse, and to save lives.

### **Category 9: Civil Remedy**

None.

### **Category 10: Vacating Convictions**

None.

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If you would like assistance in enacting laws to fill in the gaps, please contact the Polaris Policy Program at [policy@polarisproject.org](mailto:policy@polarisproject.org).