

South Dakota 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 Three (orange)

Total Points: 4

Credited Categories: 1 Sex Trafficking and 2 Labor Trafficking; 3(a) Asset Forfeiture; 9 Civil Remedy.

Categories Still Needed: 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; 8 Victim assistance; and 10 Vacating Convictions.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

§ 22-49-1. Human trafficking prohibited

No person may recruit, harbor, transport, provide, or obtain, by any means, another person knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude. Nor may any person benefit financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in this section. Any violation of this section constitutes the crime of human trafficking.

§ 22-49-2. First degree human trafficking--Felony

If the acts or the venture set forth in § 22-49-1:

- (1) Involve committing or attempting to commit kidnapping;
- (2) Involve a victim under the age of sixteen years;
- (3) Involve prostitution or procurement for prostitution; or
- (4) Result in the death of a victim;

any person guilty has committed human trafficking in the first degree, which is a Class 2 felony.

§ 22-49-3. Second degree human trafficking--Felony

A person is guilty of human trafficking in the second degree if that person:

- (1) Recruits, harbors, transports, provides, or obtains, by any means, another person knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude; or



(2) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in this section.
Human trafficking in the second degree is a Class 4 felony.

Category 2: Labor Trafficking Statute

Yes. See § 22-49-1.

Category 3(a): Asset Forfeiture

SB 25 (2014)

§ 22-24A-15. Forfeiture of Certain Property Interests

Any person who is convicted of an offense under Sections 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, shall forfeit to the state the person's interest in the following and no property right exists in them:

- (1) Any photograph, film, videotape, book, digital media or visual depiction that has been manufactured, distributed, purchased, possessed, acquired, or received in violation of Sections 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
- (2) Any material, product, and equipment of any kind that is used or intended for use in manufacturing, processing, publishing, selling, possessing, or distributing any visual depiction proscribed by Sections 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
- (3) Any property that is used, or intended for use, as a container for property described in subdivisions (1) and (2) of this section, including any computers and digital media;
- (4) Any conveyances including aircraft, vehicles, or vessels, that transport, possess, or conceal, or that is used, or intended for use, to transport, or in any manner facilitate any activity proscribed under Sections 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
- (5) Any book, record, and research, including microfilm, tape, and data that is used, or intended for use, in violation of Sections 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
- (6) Any funds or other things of value used for the purposes of unlawfully carrying out any activity proscribed by Sections 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
- (7) Any asset, interest, profit, income, and proceed acquired or derived from the unlawful activity proscribed by Sections 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive.

Any property described in subdivision (1) of this section shall be deemed contraband and shall be summarily forfeited to the state. Any other property seized and forfeited shall be used to reimburse the actual costs of the criminal investigation and prosecution. Any amount over and above the amount necessary to reimburse for the investigation and prosecution shall be used to satisfy any civil judgments received by victims. All remaining proceeds from the sale of any forfeited property shall be paid into the South Dakota internet crimes against children fund.

Category 3(b): Investigative Tools

None.



Category 4(a): Training for Law Enforcement

None.

Category 4(b): Human Trafficking Task Force

None.

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

None.

Category 6: Posting of a Human Trafficking Hotline

None.

Category 7: Safe Harbor

None.

Category 8: Victim Assistance

None.

Category 9: Civil Remedy

§ 20-9-46. Wrongful human trafficking.

A victim of human trafficking pursuant to chapter 22-49, or any federal human trafficking offense, may bring a civil cause of action for wrongful human trafficking.

Category 10: Vacating Convictions

None.

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