

Wisconsin 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: 7

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 3(a) Asset Forfeiture; 3(b) Investigative Tools; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; and 9 Civil Remedy; and 10 Vacating Convictions.

Categories Still Needed: 4(a) Training for Law Enforcement; 4(b) Human Trafficking Task Force; 6 Posting of a Hotline; 7 Safe Harbor for Minors; and 8 Victim Assistance.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

§ 940.302. Human trafficking

(1) In this section:

(a) “Commercial sex act” means sexual contact for which anything of value is given to, promised, or received, directly or indirectly, by any person.

(b) “Debt bondage” means the condition of a debtor arising from the debtor's pledge of services as a security for debt if the reasonable value of those services is not applied toward repaying the debt or if the length and nature of the services are not defined.

(c) “Services” means activities performed by one individual at the request, under the supervision, or for the benefit of another person.

(d) “Trafficking” means recruiting, enticing, harboring, transporting, providing, or obtaining, or attempting to recruit, entice, harbor, transport, provide, or obtain, an individual without consent of the individual.

(2) (a) Except as provided in s. 948.051, whoever knowingly engages in trafficking is guilty of a Class D felony if all of the following apply:

1. One of the following applies:

a. The trafficking is for the purposes of labor or services.

b. The trafficking is for the purposes of a commercial sex act.

2. The trafficking is done by any of the following:

a. Causing or threatening to cause bodily harm to any individual.



- b. Causing or threatening to cause financial harm to any individual.
- c. Restraining or threatening to restrain any individual.
- d. Violating or threatening to violate a law.
- e. Destroying, concealing, removing, confiscating, or possessing, or threatening to destroy, conceal, remove, confiscate, or possess, any actual or purported passport or any other actual or purported official identification document of any individual.
- f. Extortion.
- g. Fraud or deception.
- h. Debt bondage.
- i. Controlling any individual's access to an addictive controlled substance.
- j. Using any scheme or pattern to cause an individual to believe that any individual would suffer bodily harm, financial harm, restraint, or other harm.

(b) Whoever benefits in any manner from a violation of par. (a) is guilty of a Class D felony if the person knows that the benefits come from an act described in par. (a).

(3) Any person who incurs an injury or death as a result of a violation of sub. (2) may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney fees.

Category 2: Labor Trafficking Statute

Yes. See § 940.302 Human trafficking.

Category 3(a): Asset Forfeiture

(1) The following are subject to seizure and forfeiture under ss. 973.075 to 973.077:

(a) All property, real or personal, including money, used in the course of, intended for use in the course of, or directly or indirectly derived from or realized through the commission of any crime.

(b) 1m. Except as provided in subd. 2m., all vehicles, as defined in s. 939.22 (44), which are used in any of the following ways:

- a. To transport any property or weapon used or to be used or received in the commission of any felony.
- b. In the commission of a crime under s. 946.70.
- c. In the commission of a crime in violation of s. 940.302, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.09, 948.10, 948.12, or 948.14.
- d. In the commission of a crime relating to a submerged cultural resource in violation of s. 44.47.
- e. To cause more than \$2,500 worth of criminal damage to cemetery property in violation of s. 943.01 (2) (d) or 943.012.
- f. In the commission of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or 940.32.
- g. In the commission of a crime under s. 943.75 (2) or (2m).
- h. In the commission of a crime under s. 948.07.



2m.

a. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under ss. 973.075 to 973.077 unless it appears that the owner or other person in charge of the vehicle had knowledge of or consented to the commission of the crime.

b. No vehicle is subject to forfeiture under ss. 973.075 to 973.077 by reason of any act or omission established by the owner of the vehicle to have been committed or omitted without his or her knowledge or consent.

c. If forfeiture of a vehicle encumbered by a bona fide perfected security interest occurs, the holder of the security interest shall be paid from the proceeds of the forfeiture if the security interest was perfected prior to the date of the commission of the crime which forms the basis for the forfeiture and he or she neither had knowledge of nor consented to the act or omission.

(bg) Any property used or to be used in the commission of a crime under s. 943.74, 943.75 (2) or (2m), or 948.07, but if the property is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(bm) Any property used in the commission of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or 940.32, but if the property is encumbered by a bonafide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(c) All remote sensing equipment, navigational devices, survey equipment and scuba gear and any other equipment or device used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47.

(d) A tank vessel that violates s. 299.62 (2) that is owned by a person who, within 5 years before the commission of the current violation, was previously convicted of violating s. 299.62 (2), but if the tank vessel is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(e) Any recording, as defined in s. 943.206 (5), created, advertised, offered for sale or rent, sold, rented, transported or possessed in violation of ss. 943.207 to 943.209 or s. 943.49 and any electronic, mechanical or other device for making a recording or for manufacturing, reproducing, packaging or assembling a recording that was used to facilitate a violation of ss. 943.207 to 943.209 or s. 943.49, regardless of the knowledge or intent of the person from whom the recording or device is seized. If a device subject to forfeiture under this paragraph is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission



of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(2) A law enforcement officer may seize property subject to this section upon process issued by any court of record having jurisdiction over the property. Except for vehicles used in the commission of a crime in violation of s. 940.302, 944.30 (1m), 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.09, 948.10, 948.12, or 948.14, seizure without process may be made under any of the following circumstances:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under any administrative or special inspection warrant.

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state.

(c) The officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(d) The officer has probable cause to believe that the property was derived from or realized through a crime, or was used in a crime under s. 948.07, or that the property is a vehicle which was used to transport any property or weapon used or to be used or received in the commission of any felony, which was used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47, which was used in the commission of a crime under s. 948.07, or which was used to cause more than \$2,500 worth of criminal damage to cemetery property in violation of s. 943.01 (2) (d) or 943.012.

Category 3(b): Investigative Tools

§946.82. Definitions

In ss. 946.80 to 946.88:

(1) “Commission of a crime” means being concerned in the commission of a crime under s. 939.05.

(2) “Enterprise” means any sole proprietorship, partnership, limited liability company, corporation, business trust, union organized under the laws of this state or other legal entity or any union not organized under the laws of this state, association or group of individuals associated in fact although not a legal entity. “Enterprise” includes illicit and licit enterprises and governmental and other entities.

(3) “Pattern of racketeering activity” means engaging in at least 3 incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, provided at least one of the incidents occurred after April 27, 1982 and that the last of the incidents occurred within 7 years after the first incident of racketeering activity. Acts occurring at the same time and place which may form the basis for crimes punishable under more than one statutory provision may count for only one incident of racketeering activity.

(4) “Racketeering activity” means any activity specified in 18 USC 1961 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission of any of the felonies specified in: chs. 945 and 961, subch. V of ch. 551, and ss. 49.49, 134.05, 139.44(1), 180.0129, 181.0129, 185.825, 201.09(2), 215.12, 221.0625, 221.0636, 221.0637, 221.1004, 553.41(3) and (4), 553.52(2), 940.01, 940.19(4) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.302(2), 940.305, 940.31, 941.20(2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01(2), (2d), or (2g), 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10,



943.20(3)(bf) to (e), 943.201, 943.203, 943.23(1g), (2) and (3), 943.24(2), 943.27, 943.28, 943.30, 943.32, 943.34(1)(bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41(8)(b) and (c), 943.50(4)(bf), (bm), and (c) and (4m), 943.60, 943.70, 943.76, 943.81, 943.82, 943.83, 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21(5)(c) and (e), 944.32, 944.33(2), 944.34, 945.03(1m), 945.04(1m), 945.05(1), 945.08, 946.10, 946.11, 946.12, 946.13, 946.31, 946.32(1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76, 946.79, 947.015, 948.05, 948.051, 948.08, 948.12, and 948.30.

§968.28 Application for court order to intercept communications.

The attorney general together with the district attorney of any county may approve a request of an investigative or law enforcement officer to apply to the chief judge of the judicial administrative district for the county where the interception is to take place for an order authorizing or approving the interception of wire, electronic or oral communications. The chief judge may under s. 968.30 grant an order authorizing or approving the interception of wire, electronic or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense for which the application is made. The authorization shall be permitted only if the interception may provide or has provided evidence of the commission of the offense of homicide, felony murder, kidnapping, commercial gambling, bribery, extortion, dealing in controlled substances or controlled substance analogs, a computer crime that is a felony under s. 943.70, sexual exploitation of a child under s. 948.05, trafficking of a child under s. 948.051, child enticement under s. 948.07, use of a computer to facilitate a child sex crime under s. 948.075, or soliciting a child for prostitution under s. 948.08, or any conspiracy to commit any of the foregoing offenses.

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

§ 948.051. Trafficking of a child

(1) Whoever knowingly recruits, entices, provides, obtains, or harbors, or knowingly attempts to recruit, entice, provide, obtain, or harbor, any child for the purpose of commercial sex acts, as defined in s. 940.302(1)(a), or sexually explicit performance is guilty of a Class C felony.

(2) Whoever benefits in any manner from a violation of sub. (1) is guilty of a Class C felony if the person knows that the benefits come from an act described in sub. (1).

(3) Any person who incurs an injury or death as a result of a violation of sub. (1) or (2) may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney fees.



Category 6: Posting of a Human Trafficking Hotline

None.

Category 7: Safe Harbor

None.

Category 8: Victim Assistance

None.

Category 9: Civil Remedy

§ 940.302. Human trafficking

(3) Any person who incurs an injury or death as a result of a violation of sub. (2) may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney fees.

§ 948.051. Trafficking of a child

(3) Any person who incurs an injury or death as a result of a violation of sub. (1) or (2) may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney fees.

Category 10: Vacating Convictions

973.015. Special Disposition.

(2m) At any time after a person has been convicted, adjudicated delinquent, or found not guilty by reason of mental disease or defect for a violation of s. 944.30, a court may, upon the motion of the person, vacate the conviction, adjudication, or finding, or may order that the record of the violation of s. 944.30 be expunged, if all of the following apply:

- (a) The person was a victim of trafficking for the purposes of a commercial sex act, as defined in s. 940.302 (1) (a), under s. 940.302 or 948.051 or under 22 USC 7101 to 7112.
- (b) The person committed the violation of s. 944.30 as a result of being a victim of trafficking for the purposes of a commercial sex act.
- (c) The person submitted a motion that complies with s. 971.30, that contains a statement of facts and, if applicable, the reason the person did not previously raise an affirmative defense under s. 939.46 or allege that the violation was committed as a result of being a victim of trafficking for the purposes of a commercial sex act, and that may include any of the following:
 - 1. Certified records of federal or state court proceedings.
 - 2. Certified records of approval notices, law enforcement certifications, or similar documents generated from federal immigration proceedings.
 - 3. Official documentation from a federal, state, or local government agency.



4. Other relevant and probative evidence of sufficient credibility in support of the motion.

(d) The person made the motion with due diligence subject to reasonable concern for the safety of himself or herself, family members, or other victims of trafficking for the purposes of a commercial sex act or subject to other reasons consistent with the safety of persons.

(e) A copy of the motion has been served on the office of the district attorney that prosecuted the case that resulted in the conviction, adjudication, or finding except that failure to serve a copy does not deprive the court of jurisdiction and is not grounds for dismissal of the motion.

(f) The court in which the motion was made notified the appropriate district attorney's office of the motion and has given the district attorney's office an opportunity to respond to the motion.

(g) The court determines that the person will benefit and society will not be harmed by a disposition.

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