

Montana 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 Two (yellow)

Total Points: 5

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 6 Posting of a Hotline; and 10 Vacating Convictions.

Categories Still Needed: 3(a) Asset Forfeiture; 3(b) Investigative Tools; 4(a) Training for Law Enforcement; 4(b) Human Trafficking Task Force; 7 Safe Harbor for Minors; 8 Victim Assistance; and 9 Civil Remedy.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

§ 45-5-305. Subjecting another to involuntary servitude -- definitions.

(1) A person commits the offense of subjecting another to involuntary servitude if the person purposely or knowingly obtains or maintains the forced labor or services of another person by any of the following actions or by threatening any of the following actions:

- (a) causing physical harm to any person;
- (b) damaging or destroying the property of any person;
- (c) physically restraining another person;
- (d) abusing the law or legal process;
- (e) 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;
- (f) blackmail; or
- (g) causing financial harm to any person or using financial control over any person.

(2)

- (a) Except as provided in subsection (2)(b), a person convicted of the offense of subjecting another to involuntary servitude shall be imprisoned in the state prison for a term of not more than 10 years, fined an amount not to exceed \$50,000, or both.
- (b) A person convicted of the offense of subjecting another to involuntary servitude, if the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide, shall be punished by life imprisonment or by imprisonment in the



state prison for a term of not more than 100 years and may be fined not more than \$50,000.

- (3) As used in this part, unless the context requires otherwise, the following definitions apply:
- (a) “Blackmail” means an unlawful demand of money, property, or services under threat to accuse another person of a crime or to expose any secret tending to subject a person to hatred, contempt, or ridicule.
 - (b) “Commercial sexual activity” means any sex act or simulated sex act, including sexually explicit performances, for which anything of value is given, promised to, or received directly or indirectly by any person.
 - (c) “Financial harm” includes employment contracts that violate 28-2-903, taking, receiving, reserving, or charging a rate of interest greater than is allowed by 31-1-107, and defrauding creditors as defined in 45-6-315.
 - (d) “Forced labor or services” means labor or services that are performed or provided by another person and are obtained or maintained through violation of subsection (1).
 - (e) “Labor” means work of economic or financial value.
 - (f) “Maintain” means to secure continued performance of labor or services, regardless of any initial agreement on the part of the victim to perform that type of service.
 - (g) “Obtain” means to secure the performance of labor or services.
 - (h) “Services” means acts committed at the direction of, at the request of, under the supervision of, or for the benefit of another, including commercial sexual activity.
 - (i) “Sexually explicit performances” means live, public, private, photographed, recorded, or videotaped acts or simulated acts intended to sexually arouse, satisfy the sexual desires of, or appeal to the prurient interests of any person.

§ 45-5-306. Trafficking of persons for involuntary servitude.

- (1) A person commits the offense of trafficking of persons for involuntary servitude if the person purposely or knowingly:
- (a) recruits, entices, harbors, transports, provides, or obtains by any means another person, intending or knowing that the person will be subjected to involuntary servitude as described in 45-5-305; or
 - (b) benefits financially by receiving anything of value from participation in a venture that has engaged in the offense of subjecting another to involuntary servitude as described in 45-5-305.
- (2)
- (a) Except as provided in subsection (2)(b), a person convicted of the offense of trafficking of persons for involuntary servitude shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed \$100,000, or both.
 - (b) A person convicted of the offense of trafficking of persons for involuntary servitude, if the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide, shall be punished by life imprisonment or by imprisonment in the state prison for a term of not more than 100 years and may be fined not more than \$100,000.

Category 2: Labor Trafficking Statute

Yes. See § 45-5-306.

Category 3(a): Asset Forfeiture

None.



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

§ 45-5-310. Sexual servitude of child.

(1) A person commits the offense of sexual servitude of a child if the person purposely or knowingly:

- (a) recruits, entices, solicits, isolates, harbors, transports, provides, obtains, or maintains through any means a child for the performance of commercial sexual activity; or
- (b) benefits, financially or by receiving anything of value, from participation in a venture that has engaged in the offense of sexual servitude of a child.

(2)

(a) A person convicted of the offense of sexual servitude of a child, whether or not the person is aware of the child's age:

- (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (2)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the person is not eligible for parole.
- (ii) may be fined an amount not to exceed \$50,000; and
- (iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the person is released after the mandatory minimum period of imprisonment, the person is subject to supervision by the department of corrections for the remainder of the person's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010."

Category 6: Posting of a Human Trafficking Hotline

§ 44-4-1501. Human trafficking hotline -- creation of poster -- rulemaking.

(1)

(a) The department of justice shall create a poster that provides information regarding the national human trafficking resource center hotline. The poster must be at least 8 1/2 inches by 11 inches in size, must include, if available, a quick response code that is provided by the national human trafficking resource center for access by mobile devices, and must include the following statement:



"If you or someone you know is being forced to engage in any activity and cannot leave--whether it is commercial sex, housework, farm work, or any other activity--call the National Human Trafficking Resource Center Hotline at 1-888-373-7888 to access help and services. Victims of human trafficking are protected under U.S. and Montana law. The toll-free hotline is:

- Available 24 hours a day, 7 days a week;
- Toll-free;
- Operated by a nonprofit, nongovernmental organization;
- Anonymous and confidential;
- Accessible in 170 languages; and
- Able to provide help, referral to services, training, and general information."

b) The statement provided in subsection (1)(a) must appear on each poster in English, Spanish, and any other language that is required for voting materials under the federal Voting Rights Act, 42 U.S.C. 1973aa-1a.

(2)

(a) The department of justice shall provide a copy of the poster to persons and entities that the department of justice determines by rule should receive the poster.

(b) The department shall make a copy of the poster available for print on its website.

(3) The department of justice shall request that any person or entity receiving a copy of the poster display the poster in a location that is accessible to employees and members of the public.

§ 60-2-244. Human trafficking hotline -- posted notice required at rest areas.

The department of transportation shall display at each rest area within the limits of the right-of-way of interstate highways and other state highways a poster created by the department of justice pursuant to 44-4-1501 that provides information regarding the national human trafficking resource center hotline.

Category 7: Safe Harbor

None.

Category 8: Victim Assistance

None.

Category 9: Civil Remedy

None.

Category 10: Vacating Convictions

§ 46-18-608. Motion to vacate prostitution conviction -- trafficking victims.

(1) On the motion of a person, a court may vacate a person's conviction of the offense of prostitution under 45-5-601 if the court finds that the person's participation in the offense was a result of having been a victim of trafficking for commercial sexual activity under 45-5-306 or of sex trafficking under the federal Trafficking Victims Protection Act, 22 U.S.C. 7103 through 7112.

(2) The motion must:



- (a) be made within a reasonable time after the person ceased to be involved in trafficking for commercial sexual activity or sought services for trafficking victims, subject to reasonable concerns for the safety of the person, family members of the person, or other victims of trafficking who could be jeopardized by filing a motion under this section; and
 - (b) state why the facts giving rise to the motion were not presented to the court during the prosecution of the person.
- (3) Official documentation from a local government or a state or federal agency of the person's status as a victim of trafficking for commercial sexual activity creates a rebuttable presumption that the person's participation in the offense of prostitution was a result of having been a victim of trafficking for commercial sexual activity.
- (4) If a court vacates a conviction of prostitution under this section, the court shall:
- (a) send a copy of the order vacating the conviction to the prosecutor and the department of justice accompanied by a form prepared by the department of justice and containing identifying information about the person; and
 - (b) inform the person whose conviction has been vacated under this section that the person may be eligible for certain state and federal programs and services and provide the person with information for contacting appropriate state and federal victim services organizations. After the conviction is vacated, all records and data relating to the conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may be obtained only by district court order upon good cause shown.

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