

Arkansas 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: 10.5

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 3(a) Asset Forfeiture; 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 Sex Trafficking of Minors; 6 Posting of a Hotline; 7 Safe Harbor for Minors; 8 Victim Assistance; and 9 Civil Remedy.

Categories Still Needed: 10 Vacating Convictions

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

§5-18-102. Definitions.

(5) “Involuntary servitude” means the inducement or compulsion of a person to engage in labor, services, or commercial sexual activity by means of:

- (A) A scheme, plan, or pattern of behavior with a purpose to cause a person to believe that if he or she does not engage in labor, services, or commercial sexual activity, he or she or another person will suffer serious physical injury or physical restraint;
- (B) Abuse or threatened abuse of the legal process;
- (C) The causing of or the threat to cause serious harm to a person;
- (D) Physically restraining or threatening to physically restrain another person;
- (E) The kidnapping of or threat to kidnap a person;
- (F) The taking of another person's personal property or real property;
- (G) The knowing destruction, concealment, removal, confiscation, or possession of an actual or purported passport, other immigration document, or other actual or purported government identification document of another person;
- (H) Extortion or blackmail;
- (I) Deception or fraud;
- (J) Coercion, duress, or menace;
- (K) Debt bondage;
- (L) Peonage; or



(M) The facilitation or control of a victim's access to an addictive controlled substance;

§5-18-103. Trafficking of persons.

- (a) A person commits the offense of trafficking of persons if he or she knowingly:
 - (1) Recruits, harbors, transports, obtains, entices, solicits, isolates, provides, or maintains a person knowing that the person will be subjected to involuntary servitude;
 - (2) Benefits financially or benefits by receiving anything of value from participation in a venture under subdivision (a)(1) of this section;
 - (3) Subjects a person to involuntary servitude; or
 - (4) Recruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a minor for commercial sexual activity.
- (b) It is not a defense to prosecution under subdivision (a)(4) of this section that the actor:
 - (1) Did not have knowledge of a victim's age; or
 - (2) Mistakenly believed a victim was not a minor.
- (c)(1) Trafficking of persons is a Class A felony.
- (2) Trafficking of persons is a Class Y felony if a victim was a minor at the time of the offense.

Category 2: Labor Trafficking Statute

Yes, See § 5-18-103 (a)(1).

Category 3(a): Asset Forfeiture

§ 5-5-202. Seizure of conveyances.

Upon conviction, any conveyance, including an aircraft, motor vehicle, or vessel is subject to forfeiture under this subchapter if it is used in the commission or attempt of:

- (1) A burglary;
- (2) A robbery;
- (3) A theft;
- (4) An arson; or
- (5) Trafficking of persons.

Category 3(b): Investigative Tools

§5-74-103. Definitions.

As used in this subchapter:

- (1) "Crime of pecuniary gain" means any violation of Arkansas law that results, or was intended to result, in the defendant receiving income, benefit, property, money, or anything of value;
- (2) "Crime of violence" means any violation of Arkansas law if a person purposely or knowingly causes, or threatens to cause, death or physical injury to another person, specifically including rape;
- (3) "Criminal gang, organization, or enterprise" means any group of three (3) or more individuals who commit a continuing series of two (2) or more predicate criminal offenses that are undertaken in concert with each other; and
- (4) "Predicate criminal offense" means any violation of Arkansas law that is a crime of violence or a crime of pecuniary gain.



§5-74-104. Engaging in a continuing criminal gang, organization, or enterprise.

(a) (1) A person commits the offense of engaging in a continuing criminal gang, organization, or enterprise in the first degree if he or she:

(A) Commits or attempts to commit or solicits to commit a felony predicate criminal offense; and

(B) That offense is part of a continuing series of two (2) or more predicate criminal offenses that are undertaken by that person in concert with two (2) or more other persons with respect to whom that person occupies a position of organizer, a supervisory position, or any other position of management.

(2) A person who engages in a continuing criminal gang, organization, or enterprise in the first degree is guilty of a felony two (2) classifications higher than the classification of the highest underlying predicate offense referenced in subdivision (a)(1)(A) of this section.

(b) (1) A person commits the offense of engaging in a continuing criminal gang, organization, or enterprise in the second degree if he or she:

(A) Commits or attempts to commit or solicits to commit a felony predicate criminal offense; and

(B) That offense is part of a continuing series of two (2) or more predicate criminal offenses that are undertaken by that person in concert with two (2) or more other persons, but with respect to whom that person does not occupy the position of organizer, a supervisory position, or any other position of management.

(2) A person who engages in a continuing criminal gang, organization, or enterprise in the second degree is guilty of a felony one (1) classification higher than the classification of the highest underlying predicate offense referenced in subdivision (b)(1)(A) of this section.

(c) A person who engages in a continuing criminal gang, organization, or enterprise when the underlying predicate offense is a Class A felony or a Class Y felony is guilty of a Class Y felony.

(d) Any sentence of imprisonment imposed pursuant to this section is in addition to any sentence imposed for the violation of a predicate criminal offense.

Category 4(a): Training for Law Enforcement

§12-19-101. State Task Force for the Prevention of Human Trafficking.

(d) If the task force is created by the Attorney General, the task force shall:

“(8) Develop curriculum and train law enforcement agencies, prosecutors, public

defenders, judges, and others involved in the criminal and juvenile justice systems on:

(A) Offenses under the Arkansas Human Trafficking Act of 2013, § 5–18–101 et seq.;

(B) Methods used in identifying victims of human trafficking who are United States citizens or 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 special needs of women and minors;
- (F) The necessity of treating victims of human trafficking as crime victims rather than criminals; and
- (G) Methods for promoting the safety of victims of human trafficking.

Category 4(b): Human Trafficking Task Force

§12-19-101. State Task Force for the Prevention of Human Trafficking.

- (a) (1) The Attorney General may establish a State Task Force for the Prevention of Human Trafficking.
- (2) The task force shall address all aspects of human trafficking, including sex trafficking and labor trafficking of both United States citizens and foreign nationals.
- (b) If established, representatives on the task force shall be appointed by the Attorney General and may include representatives from:
 - (1) The office of the Attorney General;
 - (2) The office of the Governor;
 - (3) The Department of Labor;
 - (4) The Department of Health;
 - (5) The Department of Human Services;
 - (6) The Arkansas Association of Chiefs of Police;
 - (7) The Arkansas Sheriffs' Association;
 - (8) The Department of Arkansas State Police;
 - (9) The Arkansas Prosecuting Attorneys Association;
 - (10) Local law enforcement; and
 - (11) Nongovernmental organizations such as:
 - (A) Those specializing in the problems of human trafficking;
 - (B) Those representing diverse communities disproportionately affected by human trafficking;
 - (C) Agencies devoted to child services and runaway services; and
 - (D) Academic researchers dedicated to the subject of human trafficking.
- (c) If the task force is created by the Attorney General, he or she may invite federal agencies that operate in the state to be members of the task force, including without limitation:
 - (1) The Federal Bureau of Investigation;
 - (2) United States Immigration and Customs Enforcement; and
 - (3) The United States Department of Labor.
- (d) If the task force is created by the Attorney General, the task force shall:
 - (1) Develop a state plan;
 - (2) Coordinate the implementation of the state plan;
 - (3) Coordinate the collection and sharing of human trafficking data among government agencies in a manner that ensures that the privacy of victims of human trafficking is protected and that the data collection shall respect the privacy of victims of human trafficking;
 - (4) Coordinate the sharing of information between agencies to detect individuals and



groups engaged in human trafficking;

(5) Explore the establishment of state policies for time limits for the issuance of law enforcement agency endorsements as described in 8 C.F.R. Section 214.11(f)(1), as it existed on January 1, 2013;

(6) Establish policies to enable state government to work with nongovernmental organizations and other elements of the private sector to prevent human trafficking and provide assistance to victims of human trafficking who are United States citizens or foreign nationals;

(7) Evaluate various approaches used by state and local governments to increase public awareness of human trafficking, including trafficking of United States citizens and foreign national victims;

(8) Develop curriculum and train law enforcement agencies, prosecutors, public defenders, judges, and others involved in the criminal and juvenile justice systems on:

(A) Offenses under the Arkansas Human Trafficking Act of 2013, Section 5-18-101 et seq.;

(B) Methods used in identifying victims of human trafficking who are United States citizens or 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 special needs of women and minors;

(F) The necessity of treating victims of human trafficking as crime victims rather than criminals; and

(G) Methods for promoting the safety of victims of human trafficking; and

(9) Submit a report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

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

Yes, See §5-18-103(a)(4).

Category 6: Posting of a Human Trafficking Hotline

§12-19-102. Posting information about the National Human Trafficking Resource Center Hotline.

(a) The following establishments shall post in a conspicuous place near the entrance of the establishment, or where posters and notices of this type customarily are posted, a poster described in subsection (b) of this section measuring at least eight and one-half inches by eleven inches (8 1/2" x 11") in size:

(1) A hotel, motel, or other establishment that has been cited as a public nuisance for prostitution under Section 20-27-401;

(2) A strip club or other sexually oriented business;



- (3) A private club that has a liquor permit for on-premises consumption and does not hold itself out to be a food service establishment;
 - (4) An airport;
 - (5) A train station that serves passengers;
 - (6) A bus station; and
 - (7) A privately owned and operated facility that provides food, fuel, shower or other sanitary facilities, and overnight parking.
- (b)
 - (1) The poster shall read: "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 United States and Arkansas state law. The Hotline is: * Available 24 hours a day, 7 days a week * Toll-free * Operated by a non-profit, non-governmental organization * Anonymous and confidential * Accessible in 170 languages * Able to provide help, referral to services, training, and general information"
 - (2) The poster shall be printed in English, Spanish, and any other language mandated by the Voting Rights Act of 1965, 42 U.S.C. Section 1973, as it existed on January 1, 2013, in the county where the poster will be posted.
- (c) The poster shall be available on the websites of all of the following:
 - (1) The Alcoholic Beverage Control Board where documents associated with obtaining a liquor license or alcoholic beverage license are customarily located;
 - (2) The Department of Labor; and (3) The Arkansas State Highway and Transportation Department.
- (d)
 - (1) To obtain a copy of the poster required to be posted under this section, the owners or operators of an establishment required to post the notice under this section shall:
 - (A) Print the poster from any of the Internet websites in subsection (c) of this section; or
 - (B) Request that the poster be mailed for the cost of printing and first-class postage.
 - (2) The owner or operator shall post the sign in compliance with subsection (a) of this section.
- (e)
 - (1) If the regulatory agency that licenses or permits an establishment under this section finds that the establishment has failed to post the information required under this section, the owner or operator shall receive:
 - (A) For a first violation, a warning; and
 - (B) For a second or subsequent violation, a fine not to exceed five hundred dollars (\$ 500).
 - (2) The violation of or noncompliance with this section, and each day's continuance thereof, shall constitute a separate and distinct violation.
- (f) The civil fines in subsection (e) of this section do not apply to establishments that are owned or operated by the State of Arkansas.

Category 7: Safe Harbor

**Legislative findings.**

The General Assembly finds that:

- (1) The criminal justice system is not the appropriate place for sexually exploited children because it serves to re-traumatize them and to increase their feelings of low self esteem;
- (2) Both federal and international law recognize that sexually exploited children are the victims of crime and should be treated as such;
- (3) Sexually exploited children should, when possible, be diverted into services that address the needs of these children outside of the justice system; and
- (4) Sexually exploited children deserve the protection of child welfare services, including diversion, crisis intervention, counseling, and emergency housing services.

Legislative intent.

- (1) The intent of this act is to protect a child from further victimization after the child is discovered to be a sexually exploited child by ensuring that a child protective response is in place in the state.
- (2) This is to be accomplished by presuming that any child engaged in prostitution or solicitation is a victim of sex trafficking and providing these children with the appropriate care and services when possible.
- (3) In determining the need for and capacity of services that may be provided, the Department of Human Services shall recognize that sexually exploited children have separate and distinct service needs according to gender, and every effort should be made to ensure that these children are not prosecuted or treated as juvenile delinquents, but instead are given the appropriate social services.

Establishment of an interim study.

- (1) The Senate Interim Committee on Children and Youth shall conduct an interim study on the problem of child sex trafficking and the commercial sexual exploitation of children in Arkansas.
- (2) The committee shall:
 - (A) Invite the following entities to participate in the study:
 - (i) Members of the law enforcement community;
 - (ii) Representative of the Arkansas Prosecuting Attorneys Association;
 - (iii) Representatives of the Department of Human Services;
 - (iv) Representatives of the Administrative Office of the Courts; and
 - (v) Victim service providers and advocates; and
 - (B) Make a report by July 1, 2014, to the Senate on the issue of child sex trafficking and the commercial sexual exploitation of children, to include the following:
 - (i) A proposed state plan for providing adequate services for sexually exploited children;
 - (ii) Recommendations for changes in state law, policies and procedures; and
 - (iii) Any appropriations necessary to allow the applicable agencies to better serve and protect this victim population.

§ 5-18-103. Trafficking of Persons.

- (d) In addition to any other sentence authorized by this section, a person who is convicted of violating this section shall be ordered to pay a fine of two hundred fifty dollars (\$250) to be deposited into the Safe Harbor Fund for Sexually Exploited Children.



§ 5-70-102. Prostitution.

(d) In addition to any other sentence authorized by this section, a person who violates this section by offering to pay, agreeing to pay, or paying a fee to engage in sexual activity upon conviction shall be ordered to pay a fine of two hundred fifty dollars (\$250) to be deposited into the Safe Harbor Fund for Sexually Exploited Children.

§ 5-70-103. Sexual solicitation.

(d) In addition to any other sentence authorized by this section, a person who violates this section by offering to pay, agreeing to pay, or paying a fee to engage in sexual activity upon conviction shall be ordered to pay a fine of two hundred fifty dollars (\$250) to be deposited into the Safe Harbor Fund for Sexually Exploited Children.

§ 9-27-323. Diversion -- Conditions -- Agreement -- Completion.

(k)(1) The Department of Human Services shall develop a statewide referral protocol for helping to coordinate the delivery of services to sexually exploited children.

(2) As used in this section, "sexually exploited child" means a person less than eighteen (18) years of age who has been subject to sexual exploitation because the person:

- (A) Is a victim of trafficking of persons under § 5-18-103;
- (B) Is a victim of child sex trafficking under 18 U.S.C. § 1591, as it existed on January 1, 2013; or
- (C) Engages in an act of prostitution under § 5-70-102 or sexual solicitation under § 5-70-103.

§12-18-1201. Definitions.

As used in this subchapter "sexually exploited child" means a person less than eighteen (18) years of age who has been subject to sexual exploitation because the person:

- (1) Is a victim of trafficking of persons under § 5-18-103;
- (2) Is a victim of child sex trafficking under 18 U.S.C. § 1591, as it existed on January 1, 2013; or
- (3) Engages in an act of prostitution under § 5-70-102 or sexual solicitation under § 5-70-103.

§12-18-1202. Training regarding sexually exploited children.

The Arkansas Juvenile Officers Association, Arkansas Law Enforcement Training Academy, or the Prosecutor Coordinators Office may provide training to intake officers, law enforcement, prosecutors, and any other appropriate staff, concerning how to identify a sexually exploited child and how to obtain appropriate services for a sexually exploited child.

§19-5-1252. Safe Harbor Fund for Sexually Exploited Children.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Safe Harbor Fund for Sexually Exploited Children".

(b) The fund shall consist of fines collected under §§ 5-18-103(d), 5-70-102(d), and 5-70-103(d) and any other revenues authorized by law.

(c)

- (1) The fund shall be administered by the Department of Human Services.



- (2) The department shall use the fund to provide:
 - (A) Services and treatment, such as securing residential housing, health services, and social services for sexually exploited children;
 - (B) Grants to service providers working with sexually exploited children; and
 - (C) For the management and operation of the fund.
- (d) As used in this section, "sexually exploited child" means a person less than eighteen (18) years of age who has been subject to sexual exploitation because the person:
 - (1) Is a victim of trafficking of persons under § 5-18-103;
 - (2) Is a victim of child sex trafficking under 18 U.S.C. § 1591, as it existed on January 1, 2013; or
 - (3) Engages in an act of prostitution under § 5-70-102 or sexual solicitation under § 5-70-103.

Category 8: Victim Assistance

§16-90-1116. Development of a state plan to provide assistance to victims of human trafficking.

The Department of Human Services shall develop a state protocol for assisting victims of human trafficking with applying for federal and state benefits and services to which the victims of human trafficking may be entitled.

Category 9: Civil Remedy

§16-118-109. Civil cause of action for victims of human trafficking.

- (a) As used in this section, "victim of human trafficking" means the same as defined in § 5-18-102.
- (b) An individual who is a victim of human trafficking may bring a civil action in any appropriate state court.
- (c) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief.
- (d) A prevailing plaintiff shall also be awarded attorney's fees and costs.
- (e) Three (3) times actual damages shall be awarded on proof of actual damages when a defendant's acts were willful and malicious.
- (f)
 - (1) A statute of limitation period imposed for the filing of a civil action under this section will not begin to run until the plaintiff discovers that the human trafficking incident occurred and that the defendant caused, was responsible for, or profited from the human trafficking incident.
 - (2) If the plaintiff is a minor, the limitation period will not begin until he or she is eighteen (18) years of age.
 - (3) If the plaintiff is under a disability at the time the cause of action accrues so that it is impossible or impracticable for him or her to bring an action, the time of the disability will not be part of the time limited for the commencement of the action.
 - (4) If the plaintiff is subject to threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant, the time period



during which the threats, intimidation, manipulation, or fraud occurred will not be part of the statute of limitations for the commencement of this action.

(5) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute of limitations is due to conduct by the defendant that induced the plaintiff to delay the filing of the action or placed the plaintiff under duress.

Category 10: Vacating Convictions

* Recognition of efforts, but no credit awarded.

16-90-123. Sealing certain convictions.

(a) As used in this section, "victim of human trafficking" means a person who has been subjected to trafficking of persons, § 5-18-103, or any former law of this state, law of another state, or federal law that is substantially similar.

(b) (1) A person convicted of prostitution, § 5-70-102, may file a petition to seal the conviction under this section if it was obtained as a result of the person having been a victim of human trafficking.

(2) A petition under this section may be filed at any time and may be filed for a conviction imposed before, on, or after August 16, 2013.

(3) (A) The court shall hold a hearing on the petition under this section as provided in § 16-90-904 [repealed effective January 1, 2014].

(B) The court may dismiss the petition without a hearing if the court finds that the petition fails to assert a claim for which relief may be granted.

(4) The court shall grant the petition under this section if it finds by a preponderance of the evidence that:

(A) The petitioner was convicted of prostitution, § 5-70-102; and

(B) The conviction was obtained as a result of the petitioner's having been a victim of human trafficking.

(5) If the petition under this section is granted, the court shall:

(A) Issue an order to seal the conviction; and

(B) With respect to the conviction for prostitution, § 5-70-102, redact the petitioner's name from all records and files related to the petitioner's:

(i) Arrest;

(ii) Citation;

(iii) Criminal investigation;

(iv) Criminal charge;

(v) Adjudication of guilt;

(vi) Criminal proceedings; and

(vii) Probation for the offense.

(6) (A) Official documentation by a federal, state, or local government agency verifying that at the time of the conviction for prostitution, § 5-70-102, the petitioner was a victim of human trafficking creates a presumption under this section that the person's prostitution conviction was obtained as a result of having been a victim of human trafficking.



(B) Documentation under this subdivision (b)(6) is not required to grant a petition under this section.

(C) Documentation under this subdivision (b)(6) may include without limitation:

(i) Certified records of federal or state court proceedings that demonstrate that the defendant was a victim of a trafficker charged with a trafficking offense under state law or the Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. § 7101 et seq., as it existed on January 1, 2013; or

(ii) Certified records of "approval notices" or "law enforcement certifications" generated from federal immigration proceedings available to victims of human trafficking.

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