



## 2020 South Dakota Legislature

# House Bill 1047

*Introduced by: The Committee on Judiciary at the request of the Office of the Governor*

1 **An Act to revise certain provisions regarding human trafficking.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That § 22-49-1 be AMENDED:

4 **22-49-1. Human trafficking prohibited.**

5 No person may recruit, harbor, transport, provide, receive, purchase, or obtain, by  
 6 any means, another person knowing that force, fraud, or coercion will be used to cause  
 7 the person to engage in prostitution, forced labor, or involuntary servitude. No person  
 8 may benefit financially or by receiving anything of value from participation in a venture  
 9 that has engaged in acts set forth in this section. Any violation of this section constitutes  
 10 the crime of human trafficking. If the victim is under eighteen years of age, the crime of  
 11 human trafficking need not involve force, fraud, or coercion.

12 For purposes of this section and § 22-49-3, the term, coercion, may include:

- 13 (1) The use of a plan, statement, or pattern of behavior, with the intent of causing a  
 14 person to believe that failure to perform an act will result in the use of physical  
 15 force or violence against the person or will result in the person's restraint, isolation,  
 16 confinement, or abduction;
- 17 (2) Inducing a person to provide commercial sexual activity as payment toward or in  
 18 satisfaction of a real or purported debt; and
- 19 (3) The use of a person's physical or mental impairment, if that impairment has a  
 20 substantial adverse effect on the person's cognitive or volitional function.

21 **Section 2.** That § 22-49-2 be AMENDED:

22 **22-49-2. First degree human trafficking--Felony--Attempt against minor.**

23 If a person is guilty of human trafficking under § 22-49-1, and the act:

- 24 (1) Involves committing or attempting to commit kidnapping;
- 25 (2) Involves a victim under the age of eighteen years;

- 1 (3) Involves prostitution or procurement for prostitution; or  
 2 (4) Results in the death of a victim;  
 3 the person has committed human trafficking in the first degree. A violation of the  
 4 provisions of this section is a Class 2 felony. Consent to performing any act prescribed in  
 5 § 22-49-1 by a minor or a minor's parent, guardian, or custodian, or any mistake as to  
 6 the minor's age is not a defense to a charge of violating this section.

7 Notwithstanding the provisions of § 22-4-1, any attempt to commit a violation of this  
 8 section against a victim who is a minor is punishable in the same manner as the completed  
 9 violation.

10 **Section 3.** That § 22-49-3 be AMENDED:

11 **22-49-3. Second degree human trafficking--Felony.**

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

- 13 (1) Recruits, harbors, transports, provides, receives, purchases, or obtains, by any  
 14 means, another person knowing that force, fraud, or coercion, as defined in § 22-  
 15 49-1, will be used to cause the person to engage in prostitution, forced labor, or  
 16 involuntary servitude; or  
 17 (2) Benefits financially or by receiving anything of value from participation in a venture  
 18 that has engaged in acts set forth in this section.

19 Human trafficking in the second degree is a Class 4 felony.

20 **Section 4.** That § 26-7A-115.1 be AMENDED:

21 **26-7A-115.1. Victim of human trafficking or sexual exploitation--**  
 22 **Expungement of delinquency record.**

23 ~~A person over the age of eighteen may petition a court~~ victim of human trafficking  
 24 may petition the court directly or through a parent, guardian, or guardian ad litem, for  
 25 the expungement of a delinquency record that resulted from ~~that person~~ being a victim of  
 26 human trafficking, as defined in § 22-49-1, or sexual exploitation, as defined in § 22-22-  
 27 24.3. An expungement under this section vacates the underlying delinquency proceeding.

28 **Section 5.** That § 26-8A-2 be AMENDED:

29 **26-8A-2. Abused or neglected child.**

30 In this chapter and chapter 26-7A, the term, abused or neglected child, means a  
 31 child:

- 1 (1) Whose parent, guardian, or custodian has abandoned the child or has subjected the  
2 child to mistreatment or abuse;
- 3 (2) Who lacks proper parental care through the actions or omissions of the child's  
4 parent, guardian, or custodian;
- 5 (3) Whose environment is injurious to the child's welfare;
- 6 (4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary  
7 subsistence, supervision, education, medical care, or any other care necessary for  
8 the child's health, guidance, or well-being;
- 9 (5) Who is homeless, without proper care, or not domiciled with the child's parent,  
10 guardian, or custodian through no fault of the child's parent, guardian, or custodian;
- 11 (6) Who is threatened with substantial harm;
- 12 (7) Who has sustained emotional harm or mental injury as indicated by an injury to the  
13 child's intellectual or psychological capacity evidenced by an observable and  
14 substantial impairment in the child's ability to function within the child's normal  
15 range of performance and behavior, with due regard to the child's culture;
- 16 (8) Who is subject to sexual abuse, sexual molestation, or sexual exploitation as  
17 defined in § 22-22-24.3, by the child's parent, guardian, custodian, or any other  
18 person responsible for the child's care;
- 19 (9) Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any  
20 controlled drug or substance not lawfully prescribed by a practitioner as authorized  
21 by chapters 22-42 and 34-20B; or
- 22 (10) Whose parent, guardian, or custodian knowingly exposes the child to an  
23 environment that is being used for the manufacture, use, or distribution of  
24 methamphetamines or any other unlawfully manufactured controlled drug or  
25 substance.

26 **Section 6.** That § 23A-28B-1 be AMENDED:

27 **23A-28B-1. Definitions.**

28 Terms used in this chapter mean:

- 29 (1) "Claimant," any person entitled to apply for compensation pursuant to this chapter;
- 30 (2) "Commission," the South Dakota Crime Victims' Compensation Commission as  
31 established by § 23A-28B-3;
- 32 (3) "Crime," conduct that occurs or is attempted in this state, including that arising  
33 from domestic violence, human trafficking, and acts of terrorism, as defined in 18  
34 USC § 2331 as of January 1, 1997, which conduct results in personal injury or death

1 and is punishable as a felony or misdemeanor, or would be so punishable except  
2 that the person engaging in the conduct lacked the capacity to commit the crime  
3 under the laws of this state. ~~However, the~~ The term does not include conduct arising  
4 out of the ownership, maintenance, or use of a motor vehicle, boat, or aircraft  
5 unless the conduct was intended to cause or did recklessly cause personal injury or  
6 death or unless the conduct constitutes a violation of § 32-23-1, 22-16-41, or 22-  
7 18-36;

8 (4) "Department," Department of Public Safety;

9 (5) "Dependent," any spouse, parent, grandparent, stepparent, child, stepchild,  
10 adopted child, grandchild, brother, sister, half brother, half sister, or parent of the  
11 spouse of a deceased victim who was wholly or partially dependent upon the victim's  
12 income at the time of the victim's death, including any child of the victim born after  
13 the victim's death;

14 (6) "Economic loss," medical and hospital expenses, loss of earnings, loss of future  
15 earnings, funeral and burial expenses, homicide scene cleanup expenses, limited  
16 personal property losses, mileage, security devices, and loss of economic benefits  
17 or support to dependents, including home maintenance and child care expenses;

18 (7) "Fund," the crime victims' compensation fund established by § 23A-28B-40;

19 (8) "Law enforcement officer," any person as defined in § 22-1-2;

20 (9) "Medical expense," the cost of all medical and dental services, mental health  
21 counseling, dental and prosthetic devices, eyeglasses or other corrective lenses,  
22 including services rendered in accordance with any method of healing recognized  
23 by the laws of this state or the United States;

24 (10) "Person," any natural person;

25 (11) "Personal injury," actual bodily harm or emotional distress;

26 (12) "Victim," any person who suffers personal injury or death as a direct result of:

27 (a) A crime, including a federal crime occurring in this state;

28 (b) A good faith effort by the person to prevent the commission of a crime; or

29 (c) A good faith effort by the person to apprehend a person suspected of  
30 engaging in a crime;

31 (13) "Homicide scene cleanup expenses," the cost of cleaning the scene of a homicide,  
32 if the scene is a residence or an automobile, including removing, or attempting to  
33 remove, from the crime scene, blood, dirt, stains, or other debris caused by the  
34 crime or the processing of the crime scene. Compensation may be paid for services  
35 provided by persons who are not members of the immediate family of the victim,

- 1 including the victim's spouse, parents, siblings and children, or persons who were  
2 not living with the victim at the time of the crime;
- 3 (14) "~~Personal Property~~ property losses," the replacement value of property, including  
4 clothing and bedding, used for evidentiary purposes;
- 5 (15) "Security devices," the cost to repair or install locks, door eyeholes, security lights,  
6 or other similar security and safety measures necessary to ensure the safety of the  
7 victim.

8 **Section 7.** That § 23A-28-12 be AMENDED:

9 **23A-28-12. Minor victim's medical, psychological or psychiatric treatment or**  
10 **foster care--Sentence requiring payment.**

11 Anyone convicted under ~~§ 26-10-1 or 22-22-7~~, or subdivision 22-22-1(1) or (5),  
12 § 22-22-7, subdivision 22-49-2(2), § 22-22-24.3, or § 26-10-1 shall be required as part  
13 of the sentence imposed by the court to pay all or part of the cost of any necessary  
14 medical, psychological, or psychiatric treatment, or foster care of the minor resulting from  
15 the act or acts for which the defendant is convicted.