

2020 South Dakota Legislature

House Bill 1047

AMENDMENT 1047A FOR THE INTRODUCED BILL

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;

- (2) Involves a victim under the age of eighteen years;
- (3) Involves prostitution or procurement for prostitution;
- (4) Involves a victim who is the spouse, child, sibling, uncle, aunt, niece, or nephew of the person, either by blood or legal adoption; or

~~(4)~~(5) Results in the death of a victim;

the person has committed human trafficking in the first degree. A violation of the provisions of this section is a Class 2 felony. Consent to performing any act prescribed in § 22-49-1 by a minor or a minor's parent, guardian, or custodian, or any mistake as to the minor's age is not a defense to a charge of violating this section.

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

Section 3. That § 22-49-3 be AMENDED:

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, receives, purchases, or obtains, by any means, another person knowing that force, fraud, or coercion, as defined in § 22-49-1, 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.

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

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

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

Section 5. That § 26-8A-2 be AMENDED:

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

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

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

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

Terms used in this chapter mean:

- (1) "Claimant," any person entitled to apply for compensation pursuant to this chapter;
- (2) "Commission," the South Dakota Crime Victims' Compensation Commission as established by § 23A-28B-3;

- (3) "Crime," conduct that occurs or is attempted in this state, including that arising from domestic violence, human trafficking, and acts of terrorism, as defined in 18 USC § 2331 as of January 1, 1997, which conduct results in personal injury or death and is punishable as a felony or misdemeanor, or would be so punishable except that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. ~~However, the~~ The term does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, boat, or aircraft unless the conduct was intended to cause or did recklessly cause personal injury or death or unless the conduct constitutes a violation of § 32-23-1, 22-16-41, or 22-18-36;
- (4) "Department," Department of Public Safety;
- (5) "Dependent," any spouse, parent, grandparent, stepparent, child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or parent of the spouse of a deceased victim who was wholly or partially dependent upon the victim's income at the time of the victim's death, including any child of the victim born after the victim's death;
- (6) "Economic loss," medical and hospital expenses, loss of earnings, loss of future earnings, funeral and burial expenses, homicide scene cleanup expenses, limited personal property losses, mileage, security devices, and loss of economic benefits or support to dependents, including home maintenance and child care expenses;
- (7) "Fund," the crime victims' compensation fund established by § 23A-28B-40;
- (8) "Law enforcement officer," any person as defined in § 22-1-2;
- (9) "Medical expense," the cost of all medical and dental services, mental health counseling, dental and prosthetic devices, eyeglasses or other corrective lenses, including services rendered in accordance with any method of healing recognized by the laws of this state or the United States;
- (10) "Person," any natural person;
- (11) "Personal injury," actual bodily harm or emotional distress;
- (12) "Victim," any person who suffers personal injury or death as a direct result of:
- (a) A crime, including a federal crime occurring in this state;
 - (b) A good faith effort by the person to prevent the commission of a crime; or
 - (c) A good faith effort by the person to apprehend a person suspected of engaging in a crime;
- (13) "Homicide scene cleanup expenses," the cost of cleaning the scene of a homicide, if the scene is a residence or an automobile, including removing, or attempting to

remove, from the crime scene, blood, dirt, stains, or other debris caused by the crime or the processing of the crime scene. Compensation may be paid for services provided by persons who are not members of the immediate family of the victim, including the victim's spouse, parents, siblings and children, or persons who were not living with the victim at the time of the crime;

(14) "Personal ~~Property~~ property losses," the replacement value of property, including clothing and bedding, used for evidentiary purposes;

(15) "Security devices," the cost to repair or install locks, door eyeholes, security lights, or other similar security and safety measures necessary to ensure the safety of the victim.

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

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

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