

Chapter 14. Human Trafficking Statute

9.1401 SHORT TITLE

This Statute may be cited as the “Human Trafficking Statute”.

(Source: WOS 2018-011, August 15, 2018, Section I)

9.1402 PURPOSE

The purpose of this Statute is to set forth the Tribe’s jurisdiction and sovereign right to exercise its power to deem certain acts as criminal and prohibit Human Trafficking.

(Source: WOS 2018-011, August 15, 2018, Section II)

9.1403 DEFINITIONS

- A.** “Adult” means any person over eighteen (18) years of age for purposes of criminal jurisdiction.
- B.** “Business entity” means a person other than an individual.
- C.** “Coercion”, for the purposes of this Statute, means any of the following:
 - 1.** the use or threat of force against, abduction of, serious harm to, or physical restraint of an individual;
 - 2.** the use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of an individual;
 - 3.** the abuse or threatened abuse of law or legal process;
 - 4.** controlling or threatening to control an individual’s access to a controlled substance. “Controlled substance” is defined and described in the Uniform Controlled Substances Act, 21 U.S.C. Section 812, as updated, and any controlled substance defined

in that Act that is mixed with or contains any of the following unless use and/or possess is defined or reclassified by federal or Tribal law;

5. the destruction of, taking of, or the threat to destroy or take an individual's identification document or other property;
6. use of debt bondage;
7. the use of an individual's physical or mental impairment, where such impairment has substantial adverse effects on the individual's cognitive or volitional functions;
8. threat of loss of reputation by threatening exposure of sexually explicit image or images; or
9. the commission of civil or criminal fraud.

D. "Commercial sexual activity" means sexual activity for which anything of value is given to, promised to, or received by a person.

E. "Debt bondage" means inducing an individual to provide:

1. commercial sexual activity in payment toward or satisfaction of a real or purported debt; or
2. labor or services in payment toward or satisfaction of a real or purported debt if:
 - a. the reasonable value of the labor or services is not applied toward the liquidation of the debt; or
 - b. the length of the labor or services is not limited and the nature of the labor or services is not defined.

F. "Identification document" means a passport, driver's license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.

- G.** “Indian” means a person who is a citizen of a federally recognized Indian Tribe.
- H.** “Indian Tribe” means any federally recognized Tribe.
- I.** “Labor or services” means activity having economic value.
- J.** “Minor” or “Juvenile” means an individual who has not attained the age of eighteen (18) years.
- K.** “Person” means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation, government or governmental subdivision, agency, or instrumentality.
- L.** “Non-Indian” means any person who is not a citizen of a federally recognized Indian Tribe.
- M.** “Public corporation” means an entity that is:
1. owned by a government, or a governmental subdivision, agency, or instrumentality; or
 2. created to perform a governmental function or to operate under the control of a government or governmental subdivision, agency, or instrumentality.
- N.** “Serious harm” means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.
- O.** “Sexual activity” or “Sexual act” means:
1. contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
 2. contact between the mouth and the penis, the mouth and the vulva, or the

mouth and the anus;

3. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

4. the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

P. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Q. “Territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means “areas referenced in Public Law 103-324, 25 U.S.C. Section 1300k-2(b)(2)(A) as the boundaries *of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat. 621.*” Little Traverse Bay Bands Constitution, Article V(A)(1)(a).

R. “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

S. “Tribal Citizen” means a person who is an enrolled citizen of the Little Traverse Bay Bands of Odawa Indians.

T. “Tribe” means the Little Traverse Bay Bands of Odawa Indians or LTBB.

U. “Victim” means an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this Statute been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

V. “Youth in transition” or “YIT” means a youth who has been placed in a supervised foster care placement after his/her 14th birthday, and meets all other criteria, is eligible for YIT-funded goods and services until his/her twenty-first (21st) birthday.

(Source: WOS 2018-011, August 15, 2018, Section III)

9.1404 CRIMINAL JURISDICTION

- A.** Criminal jurisdiction of the Tribe extends to adult LTBB citizens and adult citizens of Federally Recognized Tribes, however, upon motion of the Tribal Prosecutor the Judge has the discretion to try a minor as an adult.
- B.** The Indian Civil Rights Act (ICRA), 25 U.S.C. Section 1302, was enacted by Congress in 1968. The Tribe's jurisdiction is limited to punishments that may impose up to a one (1) year jail term and a fine up to \$5,000.00.
- C.** TLOA, PL 111-211, was enacted by Congress in 2013. The Tribe's jurisdiction is extended to punishments that may impose up three (3) years imprisonment and a fine up to \$15,000.00, up the enactment of a Tribal Council Resolution.
- D.** Minor Immunity. An individual who was a minor at the time of the offense is not criminally liable or subject to a juvenile delinquency proceeding for committing acts of sexual servitude or commercial sexual activity and other non-violent offenses committed as a direct result of being a victim of human trafficking such as forgery, possession of stolen property, shoplifting, or uttering worthless checks and shall be presumed to be a child in need of services under Child Welfare Statutes. The immunities granted does not apply in a prosecution for patronizing a victim of sexual servitude.

(Source: WOS 2018-011, August 15, 2018, Section IV)

9.1405 TRAFFICKING AN INDIVIDUAL

- A.** A person commits trafficking an individual if the person knowingly facilitates, directs, arranges, recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:
- 1.** forced labor in violation of Section VI; or
 - 2.** sexual servitude in violation of Section VII.

B. Trafficking of an individual is a crime that is punishable up to the Tribe's maximum jurisdiction and is a felony.

(Source: WOS 2018-011, August 15, 2018, Section V)

9.1406 FORCED LABOR

A person commits forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except where such conduct is permissible under federal law or Tribal law.

(Source: WOS 2018-011, August 15, 2018, Section VI)

9.1407 SEXUAL SERVITUDE

A. A person commits sexual servitude if the person knowingly:

- 1.** maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or
- 2.** uses coercion or deception to compel an adult to engage in commercial sexual activity.

B. It is not a defense in a prosecution under subsection A.1 that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(Source: WOS 2018-011, August 15, 2018, Section VII)

9.1408 PATRONIZING A VICTIM OF SEXUAL SERVITUDE

A. A person commits patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.

B. A person commits patronizing a minor if:

1. with the intent that an individual engages in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or

2. the person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.

C. Patronizing a victim of sexual servitude is a crime that is punishable up to the Tribe's maximum jurisdiction and is a felony.

(Source: WOS 2018-011, August 15, 2018, Section VIII)

9.1409 BUSINESS ENTITY LIABILITY

A. A business entity may be prosecuted for an offense under this Statute if:

1. the entity knowingly engages in conduct that constitutes human trafficking; or

2. an employee or nonemployee agent of the entity engages in conduct that constitutes human trafficking and the commission of the offense was part of a pattern of illegal activity under this Statute for the benefit of the entity, which the entity knew was occurring and failed to take effective action to stop.

B. The court may consider the severity of a business entity's offense under this Statute and order penalties in addition to those otherwise provided for the offense, including:

1. a fine of the maximum amount allowed under the Tribe's jurisdiction;

2. disgorgement of profit from illegal activity in violation of this Statute; and

3. debarment from Tribal government or enterprise contracts.

(Source: WOS 2018-011, August 15, 2018, Section IX)

9.1410 AGGRAVATING CIRCUMSTANCE

An aggravating circumstance during the commission of an offense of trafficking an individual, forced labor, or sexual servitude of this Statute occurs when the defendant recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, youth in transition, a ward of the court, foster children, or the homeless. If the trier of fact finds that an aggravating circumstance occurred, the defendant may be punished up to the Tribe's maximum jurisdiction and is a felony.

(Source: WOS 2018-011, August 15, 2018, Section X)

9.1411 RESTITUTION

A. The court may order a person convicted of an offense of trafficking an individual, forced labor, or sexual servitude of this Statute to pay restitution to the victim even if the victim is unavailable to accept payment of restitution. Such restitution may be directed to tribal victim programs that help human trafficking victims

B. The court may also allow for a separate civil cause of action for the following:

- 1.** Non-monetary loss of pain and suffering;
- 2.** reasonable attorney's fees and costs; and
- 3.** an amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:
 - a.** the gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity;
 - b.** the amount the defendant contracted to pay the victim; or
 - c.** the value of the victim's labor or services or sexual activity, calculated under the minimum wage and overtime provisions of the WOS 2008-011 Fair

Employment Statute, as amended, even if the provisions do not apply to the victim's labor or services or sexual activity.

C. Damages awarded to the victim under a civil cause of action must be offset by any restitution paid to the victim pursuant to section A.

(Source: WOS 2018-011, August 15, 2018, Section XI)

9.1412 STATUTE OF LIMITATIONS

A. There is no statute of limitations on criminal prosecution for an offense under this Statute.

B. Any civil cause of action must be commenced not later than ten (10) years after the later of the date on which the victim:

1. was freed from the human trafficking situation; or
2. attained 18 years of age.

(Source: WOS 2018-011, August 15, 2018, Section XII)

9.1413 VICTIM'S PROTECTIONS

A. In an investigation of or a prosecution for an offense under this Statute, Law Enforcement officers and Prosecutor shall keep the identity and pictures or images of the victim and the victim's family confidential, except to the extent that disclosure is necessary for the purpose of investigation or prosecution; is required by law or court order; or is necessary to ensure provision of services and benefits for the victim and the victim's family.

B. In order to convict a person of any offense defined in this Statute it shall not be necessary that the testimony of the alleged victim be corroborated.

C. Evidence of the victim's past sexual behavior including but not limited to: the victim's marital history, divorce history, or general reputation for promiscuity, non-chastity, or sexual

mores contrary to tribal community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as follows:

1. The perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.
2. The Tribal Court shall hold a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court.
3. Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the Prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the court may require a hearing concerning such evidence.

D. If the victim is a minor, the Tribal shall provide victim services to the minor if such services are available.

E. Any other rights as provided by the Tribe's Victim's Rights Statute.

(Source: WOS 2018-011, August 15, 2018, Section XIII)

9.1414 SEVERABILITY

If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(Source: WOS 2018-011, August 15, 2018, Section XIV)

9.1415 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval

whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2018-011, August 15, 2018, Section XV)

9.1416 OTHER RELATED STATUTES

See Crimes Statute; Sex Offense Statute; Sex Offender Registration and Notification Statute; Felony Defined Statute; Domestic Violence Statute; Victim's Rights Statute; Personal Protection Orders and No Contact Orders and Violations of Protective Order; or as may be amended.

(Source: WOS 2018-011, August 15, 2018, Section XVI)