

Title IV
CRIMINAL OFFENSES
PART 7
HUMAN TRAFFICKING

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SECTION I: TITLE.

This law may be cited as the “FBIC Law Against Human Trafficking”.

SECTION II: POLICY AND PURPOSE.

- A. It is the policy of the Fort Belknap Indian Community to take any measures necessary to protect the health and safety of members of the Fort Belknap Indian Community and continue the customs and traditions of the Gros Ventre and Assiniboine people of the Fort Belknap Indian Community.

Because human trafficking is a crime that crosses jurisdictions, effective measures against human trafficking requires coordination and cooperation between multi-jurisdictions, government agencies, and non-governmental entities. The Fort Belknap Indian Community Council recognizes the need to coordinate services and information with other jurisdictions.

- B. The purpose of this law is to deter and prevent human trafficking, assist and protect the victims of human trafficking and protect their human rights and prescribe appropriate punishment for traffickers.

SECTION III: DEFINITIONS.

- A. *Child* means an unmarried or unemancipated person under the age of eighteen (18) years.

- B. *Coercion means:*

1. Cause or threatening to cause harm to cause harm
2. Using or threatening to use physical force against any person;
3. Abusing or threatening to abuse the law or a legal system;
4. Threatening to report the immigration status of any person to governmental authorities; or
5. Knowingly destroying, concealing, removing, confiscating, or retaining any actual or purported governmental document of any person

- C. *Commercial sexual activity* means any sexual act or sexually explicit exhibition for which anything of value is given, promised to or received by a person.

- D. *Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor of the debtor’s personal services or those of a person under the debtors control a security for a debt, if

the value of those services as a reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

E. **Forced labor or services** is defined as labor or services that are performed or provided by another individual and are obtained or maintained through any one or more of the following:

1. Threat, either implicit or explicit, scheme, plan, or pattern, or other action intended to cause the victim to believe that if they did not perform or provide the labor or services, that the victim or another individual would suffer bodily harm or physical restraint; that any fact tending or alleged fact tending to cause shame or to subject any person to hatred, contempt, or ridicule would be exposed.
2. Physically restraining or threatening to physically restrain a person;
3. Abuse or threatened abuse of the legal process;
4. Knowingly destroying, concealing, confiscating, removing or possessing any actual or purported passport or other immigration document;
5. Knowingly destroying, concealing, confiscating, removing, or possessing any actual or purported domestic documents such as driver's license, social security card, birth certificate, or legal documents proving identity or citizenship;
6. Use of blackmail.

F. **Human Trafficking** is the illegal recruitment, transportation, transfer harboring or receipt of a person, especially one from another jurisdiction, with the intent to hold the person captive or exploit the person for labor, services or body parts. Human trafficking offenses include forced prostitution, forced marriages, forced labor, sweat-shop labor, slavery, and harvesting organ from unwilling donors.

G. **Labor Trafficking** is the recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person by any means (including electronic/telephonic), for the purpose of debt bondage, forced labor or services, slavery or practices similar to slavery. A person is guilty of labor trafficking if the individual commits or benefits from any one or more of the following;

1. Benefits financially or receives anything of value from knowing participation in the labor trafficking, knowing or having reason to know it is derived from an act of labor trafficking, or;
2. Promotes, recruits, entices, harbors, transports, provides or obtains by any means another person knowing that person may be subjected to labor trafficking; or
3. Attempts or conspires or has the intent to promote, recruit, entice harbor, transport, provide or obtain by any means another person knowing that person may be subjected to labor trafficking.

- H. **Minor** is defined as any persons under the age of 18.
- I. **Prostitution** is defined as the performance for hire, or offering or agreeing to perform for hire, where there is an exchange of anything of value, or an offer to exchange anything of value for any of the following acts:
1. Sexual intercourse; or
 2. Sexual contact.
- J. **Sex Trafficking** as defined by subsection (F), above, and pursuant to 22 U.S.C. Sec. 7102 (8) (10) the term “sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act. Commercial sex act includes any sex act, on account of which anything of value is given to or received by any person.
- K. **Sexual contact** is the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- L. **Sexual intercourse** means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the complainant's body.
- M. **Slavery** is defined as controlling a person through force, fraud or coercion to exploit said person.
- N. **Trafficking** means “the illegal recruitment, transportation, transfer, harboring or receipt of a person, especially one from another jurisdiction, with the intent to hold the person captive or exploit the person for labor, services or body parts.” Such offenses include forcing people into prostitution or marriage, slavery, sweat-shop labor or the harvesting of organs from unwilling donors.
- O. **Victim restitution** means any payment of victim’s documented cost for medical treatment, counseling, substance abuse treatment, or any financial damage caused by the act of human trafficking regardless of the race of the victim.

SECTION IV: TRAFFICKING OF PERSONS; PENALTY.

- A. A person commits the offense of trafficking of persons if the person purposely or knowingly:
1. recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices another person intending or knowing that the person will be subjected to involuntary servitude or sexual servitude; or
 2. benefits, financially or by receiving anything of value, from participation in a venture that has subjected another person to involuntary servitude or sexual servitude.

- B. A person convicted of the offense of trafficking of persons shall be detained in the FBIC Detention Center for a term of one (1) year and may be fined up to \$50,000, or both, unless:
 - 1. The violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide; or
 - 2. The victim was a child.

SECTION V: TRAFFICKING OF CHILDREN; PENALTY.

- A. A person commits the offense of trafficking in children if the person knowingly or purposefully:
 - 1. Accept any compensation, in money, property or other thing of value, at any time, from the person or persons adopting a child, for services of any kind performed or rendered, or purported to be performed or rendered, in connection with such adoption; or
 - 2. Accept any compensation, in money, property or other thing of value, from any other person, in return for placing, assisting to place, or attempting to place a child for adoption or for permanent care in a foster home; or
 - 3. Offer to place, or advertise to place, a child for adoption or for care in a foster home, as an inducement to any woman to enter an institution or home or other place for maternity care or for the delivery of a child.
 - 4. EXCEPTION: This Section does not apply to attorneys or advocates licensed by the FBIC Court receiving reasonable fee for legal services actually rendered in the course of lawful adoption proceedings, apply to any bona fide social worker or government employee receiving his/her normal salary and making such placements as a part of his/her official duties.
- B. A person convicted of the offense of trafficking of children shall be detained in the FBIC Detention Center for a term of one (1) year and may be fined up to \$100,000, or both, if the victim was a child.

SECTION VI: INVOLUNTARY SERVITUDE.

- A. A person commits the offense of involuntary servitude if the person purposely or knowingly uses coercion to compel another person to provide labor or services, unless the conduct is otherwise permissible under federal, tribal or state law.
- B. Except as provided in subsection A, above, a person convicted of the offense of involuntary servitude shall be detained in the FBIC Detention Center for a term of not more than one (1) year, fined an amount up to \$50,000, or both.

SECTION VII: SEXUAL SERVITUDE.

- A. A person commits the offense of sexual servitude if the person purposely or knowingly:
 - 1. uses coercion or deception to compel an adult to engage in commercial sexual activity; or
 - 2. recruits, transports, transfers, harbors, receives, provides, obtains by any means, isolates, entices, maintains, or makes available a child for the purpose of commercial sexual activity.

- B. It is not a defense in a prosecution under this Code that the child consented to engage in commercial sexual activity or that the defendant believed the child was an adult.
- C. A person convicted of the offense of sexual servitude shall be detained in the FBIC Detention Center for a term of not more than one (1) year and fined an amount not to exceed \$50,000.

SECTION VIII: PATRONIZING VICTIMS OF SEXUAL SERVITUDE.

- A. A person commits the offense of patronizing a victim of sexual servitude if the person purposely or knowingly gives, agrees to give, or offers to give anything of value so that a person may engage in commercial sexual activity with:
 - 1. Another person who the person knows is a victim of sexual servitude; or
 - 2. A child.
- B. A person convicted of the offense of patronizing a victim of sexual servitude shall be imprisoned in FBIC Detention Center for a term of one (1) year, fined an amount up to \$50,000 or both.
- C. If the individual patronized was a child, a person convicted of the offense of patronizing a victim of sexual servitude, whether or not the person believed the child was an adult, shall be imprisoned in the FBIC Detention center for a term of not more than one (1) year and fined an amount not to exceed \$100,000.

SECTION IX: PROCUREMENT OR TRADING HUMAN ORGANS; PENALTY.

- A. A person commits the offense of harvesting or trading human organs if the person knowingly or purposely takes or trades human organs, tissues or other body parts, including the forced taking or the removal of a human organ from another.
- B. The individual found in violation of this subsection shall be sentenced to one (1) year and fined up to \$50,000 and in accordance with Title IV Part 1. Section IV Crimes Federal Court Has Concurrent Jurisdiction of the Fort Belknap Indian Community Law and Order Code.

SECTION X: AGGRAVATED CIRCUMSTANCES.

- A. An aggravating circumstance during the commission of an offense occurs when the defendant recruited, enticed, or obtained the victim of the offense from a shelter that serves runaway youth, foster children, homeless persons, or persons subjected to human trafficking, domestic violence, or sexual assault.
- B. If the trier of fact finds that an aggravating circumstance occurred during the commission of an offense under this Code, the defendant may be imprisoned for up to one (1) year in addition to the period of imprisonment prescribed for the offense. An additional sentence prescribed by this section is deemed a separate offense and must run consecutively to the sentence provided for the underlying offense.

SECTION XI: PENALTIES AND SENTENCING.

A. Upon conviction of any offense under this Code, the sentences imposed shall run consecutively.

B. The Court may also additionally sentence the defendant to any one or more of the following:

- Probation, up to five (5) years in duration;
- Loss of firearm privileges;
- Substance abuse treatment;
- No Contact Order;
- Loss of business license;
- Payment to a Child Advocacy Center;
- Victim restitution;
- Loss of hunting/fishing privileges;
- Required Sex Offender registry;
- Expulsion or Exclusion

SECTION XII: AFFIRMATIVE DEFENSE.

A person charged with prostitution, promoting prostitution, or another nonviolent offense committed as a direct result of being a victim of human trafficking may assert an affirmative defense that the person is a victim of human trafficking.

SECTION XIII: IMMUNITY OF CHILD.

- A. A person is not criminally liable or subject to proceedings for prostitution, promoting prostitution, or other nonviolent offenses if the person was a child at the time of the offense and committed the offense as a direct result of being a victim of human trafficking.
- B. A person who has engaged in commercial sexual activity is not criminally liable or subject to proceedings for prostitution or promoting prostitution if the person was a child at the time of the offense.
- C. A child who under subsection (A) or (B) is not subject to criminal liability or proceedings under is presumed to be a child in need of care under Title V of the FBIC Law and Order Code.

SECTION XIV: PAST SEXUAL BEHAVIOR OF VICTIM.

In a prosecution for an offense under this Code, evidence concerning a specific instance of the victim's past sexual behavior or reputation or opinion evidence of the victim's past sexual behavior is inadmissible unless the evidence is admitted in accordance with Title III, Part 10, Sec. 1.3 of the FBIC Law and Order Code, or offered by the prosecution to prove a pattern of human trafficking by the defendant.

SECTION XV: FORFEITURE OF ASSETS AIDING IN OR DERIVED FROM A HUMAN TRAFFICKING CRIME.

- A. Any person convicted of a violation of this Code shall forfeit to the Fort Belknap Indian Community irrespective of any provision of any law from any other jurisdictions:

1. Any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as a result of such violation; and
 2. Any of the person's property used, intended to be used, in any manner or part, to commit, or to facilitate the commission of such violation.
- B. The Court, in imposing a sentence on such person, shall order, in addition to any other sentence imposed pursuant to this Code, that the person forfeit to the Fort Belknap Indian Community any property described in Subsection A, above.
- C. A forfeiture proceeding under Section B, above, must be commenced within forty-five (45) days of the seizure of the property involved.
- D. The procedure for forfeiture proceedings in Titles III and IV of the FBIC Code shall apply to property seized pursuant to this Section.
- E. Upon conviction, the property subject to criminal forfeiture is forfeited to the FBIC and proceeds from the sale of property seized under this section must be distributed to the holders of security interests who have presented proper proof of their claims up to the amount of their interests in the property. The remainder, if any, must be deposited in the FBIC general fund or other account specified by the FBIC Council.

**SECTION XVI: USE OR POSSESSION OF PROPERTY SUBJECT TO FORFEITURE;
PENALTY.**

- A. A person commits the offense of use or possession of property subject to criminal forfeiture for human trafficking if the person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture under the above section.
- B. A person convicted of the offense of use or possession of property subject to criminal forfeiture shall be detained in the FBIC Detention Center for a term not to exceed one (1) year and fined up to \$50,000.
- C. The following property is subject to criminal forfeiture under this Section:
1. Money, raw materials, products, equipment, and other property of any kind;
 2. Property used or intended for use as a container for property enumerated in Section XV, above;
 3. Property used as a conveyance, including an aircraft, vehicle, or vessel;
 4. Books, records, research products and materials, formulas, microfilm, tapes, and data;
 5. Anything of value furnished or intended to be furnished in exchange for the provision of labor or services or commercial sexual activity and all proceeds traceable to the exchange;

6. Negotiable instruments, securities, and weapons; and
 7. Personal property constituting or derived from proceeds obtained directly or indirectly from the provision of labor or services or commercial sexual activity.
- D. A conveyance is not subject to criminal forfeiture under this section unless the owner or other person in charge of the conveyance knowingly used the conveyance or knowingly consented to its use for the purposes described in this Section.
- E. Criminal forfeiture under this Section of property that is encumbered by a bona fide security interest is subject to that interest if the secured party did not use or consent to the use of the property for the purposes described in this Section.
- F. Property subject to criminal forfeiture under this section may be seized under the following circumstances:
1. A police officer who has probable cause to make an arrest for a violation as described in this Code may seize a conveyance obtained with the proceeds of the violation or used to facilitate the violation and shall immediately deliver the conveyance to the FB Law Enforcement Department to be held as evidence until a criminal forfeiture is declared or release ordered.
 2. Property subject to criminal forfeiture under this section may be seized by a peace officer under a search warrant issued by a court having jurisdiction over the property.
 3. Seizure without a warrant may be made if:
 - (a.) the seizure is incident to an arrest or a search under a search warrant issued for another purpose;
 - (b.) the property was the subject of a prior judgment in favor of the FBIC in a criminal proceeding or a criminal forfeiture proceeding under the provisions of Title III, Part 2, Section 2.3 or Title IV, Part VI, Section 3.2 of the FBIC Law and Order Code, or this section;
 - (c.) a law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
 - (d.) a law enforcement officer has probable cause to believe that the property was used or is intended to be used under the circumstances described above.

SECTION XVII: ASSESSMENT AND TREATMENT.

- A. Upon the defendant's guilty plea or conviction of a violation of any offense under this law, the Judge may order an assessment of the defendant by a probation officer or other qualified service provider to ascertain a correct treatment plan for the defendant. If the victim was a minor, the Judge shall order an assessment of the defendant by a probation officer or other qualified service provider to ascertain a correct treatment plan for the defendant.
- B. Upon the recommendation by the probation officer or other qualified assessment personnel, the court may order treatment, including but not limited to, substance abuse counseling, mental health, parenting, anger management, sexual offender treatment, or job training and make this order part of the defendant's probation or release. Failure to complete the term(s) of probation or

release shall constitute probation or release violation and may subject the defendant to incarceration or other sanctions.

- C. Upon the defendant's guilty plea or conviction of a violation of any offense under this law, the Judge may order an assessment of the victim by a qualified service provider. The victim may choose to accept or deny the evaluation. Upon recommendations by a qualified service provider, treatment in the form of, but not limited to, substance abuse counseling, mental health, parenting, anger management, or job training may be ordered by the Court. All expenses incurred will be assessed as victim's restitution and will be the responsibility of the defendant to pay.

SECTION XVIII: VICTIM ACCESS TO EXPUNGEMENT.

- A. A person convicted of a non-violent offense, including prostitution, committed while a victim of, or as a result of being a victim of human trafficking, may apply to the FBIC Court to expunge the applicant's record of conviction for the offense pursuant to Title III, Part 14, Sec. I of the FBIC Law and Order Code. The Court may grant such motion on a finding that the applicant's participation in the offense occurred while the defendant was a victim or as the result of being a victim.
- B. While not necessary, official documentation from a federal, state, local, or tribal government agency indicating that the defendant was a victim at the time of the offense creates a presumption that the defendant's participation in the offense was a direct result of being a victim.

SECTION XIX: EXPULSION AND EXCLUSION.

Any person convicted under this Code shall automatically be subjected to Title XIV, Section I of the of the FBIC Law and Order Code regarding expulsion and exclusion from the Fort Belknap Indian Community.

SECTION XX: PUBLIC AWARENESS SIGN.

Hospitals, emergency-care providers, and transit stations must display a public awareness sign containing information on local services for victims of sex trafficking and the National Human Trafficking Resource Center hotline number. This information must be in a place that is clearly visible to employees and the public.

SECTION XXI: SEVERABILITY.

If any provision of this Code or its application to any person or circumstance is held invalid, the remainder of this Code, or the application of the provision to other persons or circumstances is not affected.

SECTION XXII: NO WAIVER OF SOVEREIGN IMMUNITY.

No Waiver of Immunity. Nothing under this code shall be construed as a waiver of Sovereign immunity for the Fort Belknap Tribes, its departments, agencies, employees, or agents.