

Attorney General’s Labor Trafficking Task Force
Policy Improvements for 2023 Session

Improve Criminal Law..... 2

- Broaden the Scope of Debt Bondage:..... 2
- Broaden Crimes of Involuntary Servitude: 2
- Enhance Penalties for Trafficking Crimes Involving Child Victims..... 4
- Align Trafficking in Persons Culpable Mental States 4

Expand Victim Protections 5

- Affirmative Defenses 5
- Past Sexual Behavior of Victims 5

Improve Civil Actions Available for Victims 6

- Lengthen Statute of Limitations..... 6
- Change Date when Statute of Limitations Begins to Run 6

Labor Trafficking Awareness and Prevention 7

- Training for State Agency Employees..... 7

Mandatory Reporting 7

- Mandatory Reporting of Human Trafficking by Alcohol Licensees..... 7

Immigration-Related Policy Improvements..... 8

- Extension of U-Visa Reporting by CJC..... 8

Draft Language for Policy Improvements..... 9

- ORS 163.261: Definitions for ORS 163.263 and 163.264..... 9*
- ORS 163.263: Subjecting another person to involuntary servitude in the second degree..... 9*
- ORS 163.264: Subjecting another person to involuntary servitude in the first degree..... 10*
- ORS 163.266: Trafficking in persons..... 10*
- ORS 163.269: Victim assertion of human trafficking affirmative defense and defense of duress..... 11*
- ORS 161.270: Duress 12*
- ORS 40.210: Rule 412. Sex offense cases..... 12*
- ORS 30.867: Action for violation of criminal laws (involuntary servitude or trafficking in persons) 12*
- ORS 471.271: Requirement to report sex trafficking at licensed premises..... 13*
- New Provision: Human trafficking training for state agencies..... 13*

Improve Criminal Law

- **Broaden the Scope of Debt Bondage:**

- To improve Oregon law, Oregon’s trafficking definitions could incorporate the term “debt bondage” into its involuntary servitude and related trafficking laws, and then use that term to replace the phrase “threatening to collect an unlawful debt” in Second Degree Involuntary Servitude. See [ORS 163.263\(1\)\(d\)](#) (stating in relevant part that a person can commit the crime of involuntary servitude by “[t]hreatening to collect an unlawful debt”).
- The use of the term “debt bondage” in both the ULC and California trafficking statutes (ULC Section 2(3); California Penal Code [Section 236.1\(h\)\(1\)](#)), appear to account for the wider variety of ways by which a trafficker can financially exploit a victim as compared to Oregon’s description of trafficking acts related to debts, because the term does not require that the debt be unlawful or that the trafficker make a “threat” related to the debt.
 - First, Oregon’s existing description demands that the debt be “unlawful,” while the term “debt bondage” as defined in the ULC also encompasses lawful debts. See ULC Section 2(3)(A)-(B) (stating that debt bondage involves *any* debt that is “real” or “purported”).
 - Further, unlike Oregon’s existing language choice referencing acts involving debts, the ULC’s “debt bondage” definition does not require the presence of a “threat.” See ULC Section 2(3)(A)-(B) (stating that debt bondage involves any debt used to prompt a victim to provide commercial sexual activity or undercompensated labor).
- *Language for this proposal is set out in the redline below.*

- **Broaden Crimes of Involuntary Servitude:**

- To improve Oregon’s Involuntary Servitude law, Oregon could add several additional acts that can constitute the crime of Involuntary Servitude:
 - **Relating to substance use:** Oregon’s statute could add that involuntary servitude can be committed when an individual forces a victim to perform services by controlling the victim’s access to controlled substances.
 - ULC Section 2(2)(D) states that coercion [a component of “Forced Labor”] includes “controlling or threatening to control an individual’s access to a controlled substance as defined in [insert the appropriate state code sections defining controlled substances]”

- California Penal Code [Section 236.1\(h\)\(1\)](#): states that coercion [a component of “Forced Labor or Services] includes “providing and facilitating the possession of a controlled substance to a person with the intent to impair the person’s judgment.”
- **Relating to fraud:** Oregon’s involuntary servitude offense does not reference acts of fraud, and Oregon’s trafficking offense encompasses fraudulent acts in limited circumstances – when a commercial sex act is involved. See [ORS 163.266\(1\)\(b\)](#). Conversely, the ULC and California trafficking laws both encompass fraudulent acts, even in the absence of a commercial sex act.
 - ULC Section 2(2) states that coercion [a component of “Forced Labor”] includes “the commission of civil or criminal fraud”
 - California Penal Code [Section 236.1\(h\)\(5\)](#): states that “Forced Labor or Services” includes “labor or services ... obtained or maintained through ... fraud”
- **Broadening examples of withholding the necessities of life:** Involuntary Servitude in the Second Degree may occur when a person is forced to engage in services by instilling in the other person a fear that the actor will withhold from the other person the necessities of life. The statute includes a non-exhaustive list of examples, including lodging, food and clothing.
 - The task force recommended adding medical care as another example, to provide more guidance to the court about another way that this can occur.
 - The task force also recommended clarifying that withholding the necessities of life from a person’s children is also a way that trafficking occurs.
- **Consideration of age, relationship and disability:** California’s False Imprisonment and Human Trafficking statute is qualified by Penal Code Section 236.1(i), which states that in addition to the enumerated aspects of the definitions of “coercion” and “deprivation of the personal liberty of another” under California law, the totality of the circumstances of a given trafficking situation must also be considered when determining whether “coercion” and “deprivation of the personal liberty of another” is present. California law notes that these circumstances may include the age of the victim, the relationship between the victim and purported trafficker, whether a victim is

disabled, and any other relevant circumstances that may indicate that a trafficker has subjected the victim to an exploitative situation.

- Conversely, Oregon law does not currently have a “totality of the circumstances” provision in its Involuntary Servitude statutes. A lack of this direction to the fact-finder makes it unclear whether these considerations could be taken into account when determining the presence of “force” under these statutes. Adding this language would ensure that these considerations could be made, potentially broadening the scope of “force” and the sweep of our statute.
- **Consideration of immigration status:** Similar to the items above, traffickers may use a person’s lack of immigration documentation and/or citizenship to coerce victims. Task force members identified this as an item to add to the court’s consideration of whether coercion is present.
 - *Language for these proposals is set out in the redline below.*
- **Enhance Penalties for Trafficking Crimes Involving Child Victims**
 - To improve Oregon law, Oregon could impose higher penalties on traffickers when the trafficking victim is a minor. These enhanced penalties could apply to ORS 163.263 (Second Degree Involuntary Servitude), ORS 163.264 (First Degree Involuntary Servitude), and ORS 163.266 (Trafficking in Persons).
 - The ULC uniformly imposes higher criminal penalties for trafficking acts involving minors. *See* ULC Section 3(c).
 - Currently, Oregon’s trafficking laws only impose higher criminal penalties for child victims under Trafficking in Persons for the child sex trafficking provision of the statute. [ORS 163.266\(1\)\(c\)](#). Trafficking in Persons does not impose a higher penalty under the labor trafficking provision found at (1)(a). Neither of the Involuntary Servitude statutes impose a higher penalty for child victims.
 - For each of these crimes, we do not want to bump up the crime classification, but instead want to add a sentencing enhancement.
 - *Placeholder for language for these proposals is set out in the redline below.*
- **Align Trafficking in Persons Culpable Mental States**
 - Under current Oregon law, a person who commits the crime of Trafficking in Persons by engaging in sex trafficking may be held criminally liable if they *know or recklessly disregard the fact* that the person they have trafficked will be coerced into a commercial sex act or is under 18 and will be used in a

commercial sex act; while a person who engages in labor trafficking must *know* that the person they have trafficked will be subjected to involuntary servitude.

- This distinction does not make sense, as both labor trafficking and sex trafficking cause severe harm to their victims, and current law is insufficient to hold those responsible for labor trafficking responsible.
- After discussing this issue, the task force recommends adding the “reckless disregard” culpable mental state to the labor trafficking provision of the crime of Trafficking in Persons.
- *Language for this proposal is set out in the redline below.*

Expand Victim Protections

- **Affirmative Defenses**

- To improve Oregon law, Oregon law could create an affirmative victim defense like the ULC and California have implemented. *See* ULC Section 16; California Penal Code [Section 236.23](#). The affirmative victim defense appears to provide broader victim protection and account for labor trafficking power-dynamics more than Oregon’s affirmative “duress” defense ([ORS 163.269](#)), which is the only affirmative defense currently available to victims under Oregon’s trafficking laws.
- Unlike under Oregon’s affirmative “duress” defense, to assert the affirmative victim defense, a victim does not need to show that their trafficker used force or threatened use of force. There are other ways that a victim may be trafficked, and the affirmative victim defense takes this into account.
- Unlike under Oregon’s affirmative duress defense, a victim does not lose the ability to assert an affirmative victim defense if their trafficker can prove that the victim “intentionally” or “recklessly” placed themselves in a trafficking-vulnerable circumstance. This caveat under Oregon’s existing affirmative defense law does not appear to consider the power imbalances that underly labor trafficking, that may make it seem in certain circumstances that a victim “intentionally” or “recklessly” subjected themselves to a trafficking act.
- *Language for this proposal is set out in the redline below.*

- **Past Sexual Behavior of Victims**

- To improve Oregon’s trafficking laws, Oregon could extend its rape-shield laws, which prevent a victim’s past sexual behavior from being introduced during a prosecution absent limited circumstances, to all Oregon trafficking prosecutions, including labor trafficking prosecutions.

- Currently, Oregon’s rape-shield laws do not extend to trafficking of persons prosecutions arising out of involuntary servitude; they only apply to its trafficking of persons subsections implicating a commercial sex act.
- The ULC, on the other hand, states that a “victims past sexual behavior,” “reputation,” or other “opinion evidence” is inadmissible unless in accordance with a state’s rape-shield statute for all types of trafficking prosecutions, including labor trafficking prosecutions.
- *Language for this proposal is set out in the redline below.*

Improve Civil Actions Available for Victims

- Oregon, the ULC, and California all allow victims to bring civil actions against their traffickers. However, the ULC and California appear to provide victims with more protection in several respects that, to improve Oregon law, Oregon could also implement.
- **Lengthen Statute of Limitations**
 - The ULC and California both implement longer statutes of limitations: the ULC’s statute of limitations is ten years and California’s statute of limitations is seven or ten years depending on the age of the victim, while Oregon’s statute of limitations is only six years.
 - Given the myriad of reasons a trafficking victim may delay bringing a civil action (trauma, fear of retribution or immigration consequences, etc.), to improve Oregon law, we could similarly extend the Oregon statute of limitations.
 - *Language for this proposal is set out in the redline below.*
- **Change Date when Statute of Limitations Begins to Run**
 - The ULC and California statutes of limitations both don’t begin to run until 1) the human trafficking has *ceased* or 2) a specified number of years after a child victim has attained the age of majority. *See* ULC Section 18(c); California [Civil Code 52.5](#)(c). Conversely, the Oregon statute of limitations begins to run, in all instances, when the human trafficking is deemed to have *commenced*. *See* [ORS 30.867\(4\)](#) (stating that a victim must commence an action within six years of “the conduct giving rise to the claim”).
 - In practical effect, Oregon’s statute of limitations expects that victims have the capacity to bring lawsuits against their traffickers while they are still being trafficked, and appears to confine a significant portion of a victim’s opportunity to seek civil relief to a period during which victims have no freedom or capacity to actually bring a lawsuit.

- *Language for this proposal is set out in the redline below.*

Labor Trafficking Awareness and Prevention

- **Training for State Agency Employees**

- Numerous state agencies have frontline workers who engage with potential human trafficking victims (for both sex and labor trafficking), yet there is currently no statewide training available. DOJ convened the following agencies to discuss agency needs related to trafficking, and the consensus was that it would be incredibly helpful to develop and make training available:
 - Oregon Department of Agriculture
 - Oregon Liquor Control Commission
 - Department of Consumer and Business Services and its Oregon Occupational Safety and Health Division
 - Bureau of Labor and Industries
 - Criminal Justice Commission
- Department of Human Services was unable to attend the meeting, but their employees may also benefit from this type of training
- The group also identified several other state agencies whose employees may benefit from this type of training
 - Oregon Employment Department
 - Oregon Department of Environmental Quality
 - Oregon Housing and Community Services
 - Oregon State Police
- DOJ recently received grant funding which can be used to develop this type of training.
- *Language for this proposal is set out in the redline below.*

Mandatory Reporting

- **Mandatory Reporting of Human Trafficking by Alcohol Licensees**

- In 2021, the Oregon legislature passed [SB 515](#), which requires employees of alcohol licensed locations to report to OLCC and law enforcement when they have a reasonable belief that *sex trafficking* is occurring at the licensed premises. In 2022, the Oregon legislature passed [HB 4074](#) which requires employees of marijuana licensed establishments to report to OLCC and law

enforcement when they have a reasonable belief that *sex trafficking or other human trafficking* is occurring at the licensed premises.

- As discussed by the task force, we could fairly simply and easily increase the potential for labor trafficking reports to occur if we align the mandatory trafficking reporting requirements for all OLCC licensees. This would also allow OLCC to utilize unified messaging and education for all of its licensees.
- *Language for this proposal is set out in the redline below.*

Immigration-Related Policy Improvements

- **Extension of U-Visa Reporting by CJC**
 - Reporting on U-Visa certification to the CJC, and the CJC's annual reporting on the data it receives under [SB 962](#) (2019) expires on January 2, 2023.
 - Stakeholders participating in our Labor Trafficking Task Force and another victim advocacy immigration work group that DOJ's CVSSD facilitates have found the reporting to be incredibly helpful and would like it to continue.
 - *Senator Taylor has requested a bill to extend this program.*

Draft Language for Policy Improvements

ORS 163.261: Definitions for ORS 163.263 and 163.264

(1) As used in ORS 163.263 (Subjecting another person to involuntary servitude in the second degree) and 163.264 (Subjecting another person to involuntary servitude in the first degree),

- a. “debt bondage” means inducing an individual to provide labor or services in payment toward or satisfaction of a real or purported debt if:
 - i. the reasonable value of the labor or services is not applied toward the liquidation of the debt; or
 - ii. the length of the labor or services is not limited and the nature of the labor or services is not defined.
- b. “human trafficking” means the commission of an offense under ORS 163.263, (Subjecting another person to involuntary servitude in the second degree) 163.264 (Subjecting another person to involuntary servitude in the first degree), or ORS 163.266 (Trafficking in persons).
- c. “services” means activities performed by one person under the supervision or for the benefit of another person.
- d. “human trafficking victim” means a person who is subjected to human trafficking regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

ORS 163.263: Subjecting another person to involuntary servitude in the second degree

(1) A person commits the crime of subjecting another person to involuntary servitude in the second degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by:

- (a) Abusing or threatening to abuse the law or legal process;
- (b) Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document or another actual or purported government identification document of a person;
- (c) Threatening to report a person to a government agency for the purpose of arrest or deportation;
- (d) Subjecting the person to debt bondage;
- (e) Instilling in the other person a fear that the actor will withhold from the other person or the other person’s children the necessities of life, including but not limited to lodging, food, medical care and clothing;

(f) Controlling or threatening to control an individual's access to a controlled substance; or

(g) Committing civil or criminal fraud.

(2) The total circumstances, including the age of the victim, the relationship between the victim and the trafficker or the agents of the trafficker, the victim's immigration status, and any handicap or disability of the victim, shall be factors to consider in determining the presence of force as described in this section.

(3) Subjecting another person to involuntary servitude in the second degree is a Class C felony.

[insert language for sentencing enhancement if victim is a child]

ORS 163.264: Subjecting another person to involuntary servitude in the first degree

(1) A person commits the crime of subjecting another person to involuntary servitude in the first degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by:

(a) Causing or threatening to cause the death of or serious physical injury to a person; or

(b) Physically restraining or threatening to physically restrain a person.

(2) The total circumstances, including the age of the victim, the relationship between the victim and the trafficker or the agents of the trafficker, the victim's immigration status, and any handicap or disability of the victim, shall be factors to consider in determining the presence of force as described in this section.

(4) Subjecting another person to involuntary servitude in the first degree is a Class B felony."

[insert language for sentencing enhancement if victim is a child]

ORS 163.266: Trafficking in persons

(1) A person commits the crime of trafficking in persons if the person knowingly recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person and:

(a) The person knows or recklessly disregards the fact that the other person will be subjected to involuntary servitude as described in ORS 163.263 (Subjecting another person

to involuntary servitude in the second degree) or 163.264 (Subjecting another person to involuntary servitude in the first degree);

(b) The person knows or recklessly disregards the fact that force, fraud or coercion will be used to cause the other person to engage in a commercial sex act; or

(c) The person knows or recklessly disregards the fact that the other person is under 18 years of age and will be used in a commercial sex act.

(2) A person commits the crime of trafficking in persons if the person knowingly benefits financially or receives something of value from participation in a venture that involves an act prohibited by subsection (1) of this section or ORS 163.263 (Subjecting another person to involuntary servitude in the second degree) or 163.264 (Subjecting another person to involuntary servitude in the first degree).

(3) As used in this section, “commercial sex act” means sexual conduct or sexual contact, as those terms are defined in ORS 167.002 (Definitions for ORS 167.002 to 167.027), performed in return for a fee or anything of value.

(4) Violation of subsection (1)(a) or (2) of this section is a Class B felony.

(5) Violation of subsection (1)(b) or (c) of this section is a Class A felony.

[insert language for sentencing enhancement for (1)(a) only if victim is a child]

ORS 163.269: Victim assertion of human trafficking affirmative defense and defense of duress

A person who is the victim of a crime described in ORS 163.263 [second-degree involuntary servitude], 163.264 [first-degree involuntary servitude] or 163.266 [Trafficking in Persons] may assert the affirmative defense that the person is a human trafficking victim and the defense of duress, as described in ORS 161.270,¹ if the person is

¹ ORS 161.270 describes duress as follows:

“(1) The commission of acts which would otherwise constitute an offense, other than murder, is not criminal if the actor engaged in the proscribed conduct because the actor was coerced to do so by the use or threatened use of unlawful physical force upon the actor or a third person, which force or threatened force was of such nature or degree to overcome earnest resistance.

(2) Duress is not a defense for one who intentionally or recklessly places oneself in a situation in which it is probable that one will be subjected to duress.

(3) It is not a defense that a spouse acted on the command of the other spouse, unless the spouse acted under such coercion as would establish a defense under subsection (1) of this section.”

prosecuted for conduct that constitutes services under ORS 163.261, that the person was caused to provide.

ORS 161.270: Duress

No changes to this statute, just providing for context

(1) The commission of acts which would otherwise constitute an offense, other than murder, is not criminal if the actor engaged in the proscribed conduct because the actor was coerced to do so by the use or threatened use of unlawful physical force upon the actor or a third person, which force or threatened force was of such nature or degree to overcome earnest resistance.

(2) Duress is not a defense for one who intentionally or recklessly places oneself in a situation in which it is probable that one will be subjected to duress.

(3) It is not a defense that a spouse acted on the command of the other spouse, unless the spouse acted under such coercion as would establish a defense under subsection (1) of this section.

ORS 40.210: Rule 412. Sex offense cases

(1) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS 163.266 (Trafficking in persons) (1)(a) [subjecting a person to involuntary servitude, regardless of whether a commercial sex act was involved], (b) or (c), 163.355 (Rape in the third degree) to 163.427 (Sexual abuse in the first degree), 163.670 (Using child in display of sexually explicit conduct) or 167.017 (Compelling prostitution), in a prosecution for an attempt to commit one of those crimes or in a proceeding conducted under ORS 163.760 (Definitions for ORS 163.760 to 163.777) to 163.777 (Fees or undertaking may not be required), the following evidence is not admissible:

(a) Reputation or opinion evidence of the past sexual behavior of an alleged victim or a corroborating witness; or

(b) Reputation or opinion evidence presented for the purpose of showing that the manner of dress of an alleged victim incited the crime or, in a proceeding under ORS 163.760 (Definitions for ORS 163.760 to 163.777) to 163.777 (Fees or undertaking may not be required), incited the sexual abuse, or indicated consent to the sexual acts that are alleged.

ORS 30.867: Action for violation of criminal laws (involuntary servitude or trafficking in persons)

(1) Irrespective of any criminal prosecution or the result of a criminal prosecution, a person injured by a violation of ORS 163.263, 163.264 or 163.266 may bring a civil action for damages against a person whose actions are unlawful under ORS 163.263, 163.264 or 163.266.

(2) Upon prevailing in an action under this section, the plaintiff may recover:

- (a) Both special and general damages, including damages for emotional distress; and
- (b) Punitive damages.

(3) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a circuit court.

(4) An action under this section must be commenced within ten years after the later of the date on which:

- (a) the conduct giving rise to the claim ceased; or
- (b) if the victim was a minor when the act of human trafficking against the victim occurred, the victim attained the age of majority.

ORS 471.271: Requirement to report sex trafficking at licensed premises

(1) As used in this section, “law enforcement agency” means:

- (a) A city or municipal police department;
- (b) A county sheriff’s office; or
- (c) The Oregon State Police.

(2) An employee of a premises licensed for full on-premises sales or limited on-premises sales who is a permittee shall:

(a) Report to a law enforcement agency and to the Oregon Liquor and Cannabis Commission if the permittee has a reasonable belief that sex trafficking or other human trafficking is occurring at the licensed premises; and

(b) Report to the commission if the permittee has a reasonable belief that a minor is employed or contracted as a performer at the licensed premises in a manner that violates commission rules.

(3) A permittee making a report under this section in good faith is immune from any criminal or civil liability for making the report.

(4) The commission may adopt rules to carry out this section.

New Provision: Human trafficking training for state agencies

By January 1, 2025, DOJ shall develop human trafficking training for state agency employees.

Starting on January 1, 2025, such training shall be completed on an annual basis by those employees of the following agencies who each agency determines are likely to come into contact with potential human trafficking victims and any other employees the each agency determines should attend such training to support the work of the agency:

Oregon Department of Justice

Oregon Department of Agriculture

Oregon Liquor Control Commission

Department of Consumer and Business Services and its Oregon Occupational Safety and Health Division

Bureau of Labor and Industries

Criminal Justice Commission

Department of Human Services

Oregon Employment Department

Oregon Department of Environmental Quality

Oregon Housing and Community Services

Oregon State Police