



MONTANA

Legal System	Constitution	Bill of Rights	Form of Government
Common Law Statutory Law	Written	Yes	Republic

A. Criminal Statutes

1. Human Trafficking and Related Offenses

a. Mont. Code Ann. § 45-5-702 (2019) – Trafficking of Persons

i. Summary

Montana statutes define the phrase “human trafficking” as “the commission of an offense under 45-5-702 [trafficking of persons], 45-5-703 [involuntary servitude], 45-5-704 [sexual servitude], or 45-5-705 [patronizing a victim of sexual servitude].” Mont. Code Ann. § 45-5-701(5).

In Montana, a “person commits the offense of trafficking of persons if the person purposely or knowingly:

- (a) 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
- (b) benefits, financially or by receiving anything of value, from facilitating any conduct described in subsection (1)(a) or from participation in a venture that has subjected another person to involuntary servitude or sexual servitude.”

Mont. Code Ann. § 45-5-702(1).

ii. Sentencing

A person convicted of trafficking of persons shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed USD 50,000, or both. Mont. Code Ann. § 45-5-702(2)(a). If the victim was a child, the potential prison term increases to not more than 50 years, and the potential fine increases to an amount not to exceed USD 100,000. Mont. Code Ann. § 45-5-702(2)(b).

Additionally, if aggravating factors make the violation aggravated kidnapping, aggravated sexual intercourse without consent, or deliberate homicide, the convicted person shall be imprisoned in the state prison for a term of not more than 25 years, fined an amount not to exceed USD 75,000, or both. Mont. Code Ann. § 45-5-702(2)(c).

A defendant shall also be ordered to pay restitution to the victim. Mont. Code Ann. §§ 46-18-201(5), 46-18-241(1).

iii. Statute of Limitations

A prosecution for trafficking in persons under Montana law must be commenced within five years after it is committed. Mont. Code Ann. § 45-1-205(2)(a).

b. Mont. Code Ann. § 45-5-703 (2015) – Involuntary Servitude**i. Summary**

The offense of involuntary servitude is committed “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 or state law.” Mont. Code Ann. § 45-5-703(1).

ii. Sentencing

A person convicted of committing involuntary servitude shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed USD 50,000, or both. Mont. Code Ann. § 45-5-703(2)(a).

The punishment is increased to a prison term of not more than 50 years and a fine of not more than USD 100,000, if “the violation involves aggravated kidnapping, sexual intercourse without consent, or deliberate homicide” or if “the victim was a child.” Mont. Code Ann. § 45-5-703(2)(b).

A defendant shall also be ordered to pay restitution to the victim. Mont. Code Ann. §§ 46-18-201(5), 46-18-241(1).

iii. Statute of Limitations

A prosecution for involuntary servitude under Montana law must be commenced within five years after it is committed. Mont. Code Ann. § 45-1-205(2)(a).

c. Mont. Code Ann. § 45-5-704 (2019) – Sexual Servitude**i. Summary**

The offense of sexual servitude is committed if a person purposely or knowingly: “(a) uses fraud, coercion, or deception to compel an adult to engage in commercial sexual activity [subsection (1)(a)]; or (b) 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 [subsection (1)(b)].” Mont. Code Ann. § 45-5-704(1). It is no defense that the child consented to engage in the sexual activity or that the defendant believed the child was an adult. Mont. Code Ann. § 45-5-704(2).

ii. Sentencing

A conviction for an offense under subsection (1)(a) shall result in imprisonment in the state prison for a term of not more than 15 years, a fine not to exceed USD 50,000, or both. Mont. Code Ann. § 45-5-704(3)(a). For conviction of an offense under subsection (1)(b), the defendant shall be imprisoned in the state prison for a term of not more than 25 years and fined an amount not to exceed USD 75,000. Mont. Code Ann. § 45-5-704(3)(b).

A defendant shall also be ordered to pay restitution to the victim. Mont. Code Ann. §§ 46-18-201(5), 46-18-241(1).

iii. Statute of Limitations

A prosecution for sexual servitude may be commenced at any time if the victim was less than 18 years of age at the time that the offense occurred. Mont. Code Ann. § 45-1-205(1)(c). Otherwise, the prosecution must be commenced within five years after it is committed. Mont. Code Ann. § 45-1-205(2)(a).

d. Mont. Code Ann. § 45-5-705 (2019) – Patronizing Victim of Sexual Servitude**i. Summary**

The offense of patronizing a victim of sexual servitude is committed “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: (a) that involves sexual contact that is direct and not through clothing with another person who the person knows or reasonably should have known is a victim of sexual servitude; or (b) with a child.” Mont. Code Ann. § 45-5-705(1).

ii. Sentencing

A person convicted of patronizing a victim of sexual servitude shall be imprisoned in the state prison for a term of not more than 15 years, fined an amount not to exceed USD 50,000, or both. Mont. Code Ann. § 45-5-705(2)(a).

If the individual patronized was a child, whether or not the convicted person believed the child was an adult, the potential term of imprisonment increases to not more than 25 years, and the potential fine increases to an amount not to exceed USD 75,000. Mont. Code Ann. § 45-5-705(2)(b).

A defendant shall also be ordered to pay restitution to the victim. Mont. Code Ann. §§ 46-18-201(5), 46-18-241(1).

iii. Statute of Limitations

A prosecution for patronizing a victim of sexual servitude may be commenced at any time if the victim was less than 18 years of age at the time that the offense occurred. Mont. Code Ann. § 45-1-205(1)(c). Otherwise, the prosecution must be commenced within five years after it is committed. Mont. Code Ann. § 45-1-205(2)(a).

e. Mont. Code Ann. § 45-5-706 (2015) – Aggravating Circumstance

In connection with the commission of any offense under each of the statutes listed above, an aggravating circumstance “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.” Mont. Code Ann. § 45-5-706(1). If the trier of fact finds that an aggravating circumstance occurred, the defendant is subject to an additional imprisonment term of up to five years, which must run consecutively to the sentence for the underlying offense. Mont. Code Ann. § 45-5-706(2).

f. Mont. Code Ann. § 45-5-707 (2015) – Property Subject to Forfeiture; Human Trafficking

Under Montana law, property is subject to criminal forfeiture if it is used or intended for use in violation of section 45-5-702 (trafficking of persons), section 45-5-703 (involuntary servitude), section 45-5-704 (sexual servitude), or section 45-5-705 (patronizing a victim of sexual servitude). Mont. Code Ann. § 45-5-707(1)(b). A person who knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture for these reasons commits the offense of use or possession of property subject to criminal forfeiture for human trafficking. Mont. Code Ann. § 45-5-707(1)(a).

A person convicted of the offense of use or possession of property subject to criminal forfeiture shall be imprisoned in the state prison for a term not to exceed 10 years. Mont. Code Ann. § 45-5-707(1)(a).

g. Mont. Code Ann. § 45-5-708 (2015) – Past Sexual Behavior of Victim

In a prosecution for section 45-5-702 (trafficking of persons), section 45-5-703 (involuntary servitude), section 45-5-704 (sexual servitude), or section 45-5-705 (patronizing a victim of sexual servitude), as well as in a lawsuit

by a human trafficking victim, evidence concerning a specific instance of the victim’s past sexual behavior, reputation, or opinion evidence of the victim’s past sexual behavior is not admissible unless offered in accordance with section 45-5-11, which contains provisions generally applicable to sexual crimes, or to prove a pattern of human trafficking. Mont. Code Ann. § 45-5-708.

h. Mont. Code Ann. § 45-5-710 (2015) – Affirmative Defense to Prostitution and Nonviolent Offenses

A person charged with prostitution, promoting prostitution, or another nonviolent offense committed as a direct result of human trafficking may assert as an affirmative defense that the person is a victim of human trafficking. Mont. Code Ann. § 45-5-710; *see also* Mont. Code Ann. § 4-5-709 (child not liable for prostitution and other nonviolent offenses if committed as a direct result of being a victim of human trafficking).

i. Mont. Code Ann. § 45-2-211 (2019) – Consent Ineffective as Defense

Consent is not a defense to offenses including section 45-5-502 (sexual assault), section 45-5-503 (sexual intercourse without consent), section 45-5-508 (aggravated sexual intercourse without consent), section 45-5-601 (prostitution, patronizing a prostitute), section 45-5-602 (promoting prostitution), and section 45-5-603 (aggravated promotion of prostitution) if given by a person whom the offender knew or reasonably should have known was a victim of human trafficking. Mont. Code Ann. § 45-2-211(2).

j. Mont. Code Ann. § 45-5-601 (2019) – Enhanced Maximum Sentence for Prostitution; Patronizing a Prostitute

A person commits the offense of patronizing a prostitute if the person commits certain acts specified in Montana Code § 45-5-601(1). The maximum sentence for patronizing a prostitute is usually, for the first offense, a fine not to exceed USD 1,000 and a term of imprisonment not to exceed one year. Mont. Code Ann. § 45-5-602(2). For additional offenses, a person may be sentenced to prison for a term not to exceed five years and fined up to USD 10,000. Mont. Code Ann. § 45-5-602(2). If the person patronized was a minor and the patron was at least 18, the patron may be fined an amount not to exceed USD 50,000 and shall be imprisoned for up to 100 years, regardless of whether the patron knew the person was a minor. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under section 45-5-602(3)(a) except as provided in section 46-18-222. During the first 25 years of imprisonment, the offender is not eligible for parole. The offender also shall be ordered to enroll in and successfully complete the educational, cognitive, and behavioral phases of a sexual offender treatment program provided or approved by the Montana Department of Corrections. Mont. Code Ann. § 45-5-602(3)(a). If the person patronized was a victim of human trafficking that caused the person to be in the situation where the offense occurred, and the patron offender was at least 18 years old and should have known the person patronized was a victim of human trafficking, the maximum sentence is 20 years of imprisonment and a fine of up to USD 50,000.

k. Mont. Code Ann. § 45-5-602 (2019) – Enhanced Maximum Sentence for Promoting Prostitution

A person commits the offense of promoting prostitution if the person commits certain acts specified in Montana Code § 45-5-602(1). The maximum sentence for promoting prostitution is usually 10 years of imprisonment and a fine of up to USD 50,000. Mont. Code Ann. § 45-5-602(2). But if the person engaging in prostitution was a victim of human trafficking that caused the person to be in the situation where the offense occurred, and the offender was at least 18 years old and should have known the person was a victim of human trafficking, the maximum sentence is 20 years of imprisonment and a fine of up to USD 50,000. Mont. Code Ann. § 45-5-602(4).

2. Online Child Sexual Exploitation and Child Pornography Offenses

Mont. Code Ann. § 45-5-625 – Sexual Abuse of Children

3. Mont. Code Ann. § 46-23-504 (2015) – Sexual or Violent Offenders Required to Register

Except as provided in section 41-5-1513 (which concerns delinquent youth), a sexual or violent offender must “register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department.” Mont. Code Ann. § 46-23-504(1)(a).

A “sexual offense” includes “any violation of or attempt, solicitation, or conspiracy to commit a violation of” section 45-5-625 (sexual abuse of children), section 45-5-704 (sexual servitude), and section 45-5-705 (patronizing a victim of sexual servitude), along with other related offenses. Mont. Code Ann. § 46-23-502(9)(a).

B. Civil Liability Statutes

1. Mont. Code Ann. § 27-1-755 (2015) – Civil Lawsuit for Human Trafficking Victims

a. Summary

A victim of human trafficking may bring a civil lawsuit against a person who commits an offense against the victim in violation of section 45-5-702 (trafficking of persons), section 45-5-703 (involuntary servitude), section 45-5-704 (sexual servitude), or section 45-5-705 (patronizing a victim of sexual servitude) for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. Mont. Code Ann. § 27-1-755(1).

The statute does not preclude any other remedy that may be available to the victim under federal or state law. Mont. Code Ann. § 27-1-755(4).

b. Damages and Other Relief

In addition to compensatory damages, punitive damages, injunctive relief, and any other appropriate relief, the court shall award the prevailing plaintiff reasonable attorney’s fees and costs. Mont. Code Ann. § 27-1-755(2).

c. Statute of Limitations

A lawsuit must be commenced not later than 10 years after the later of: (a) the date on which the victim no longer was subject to human trafficking; or (b) the date on which the victim reached 18 years of age. Mont. Code Ann. § 27-1-755(3).

2. Mont. Code Ann. § 27-2-216 (2019) – Tort Lawsuits; Childhood Sexual Abuse

a. Summary

A tort claim may be brought against an individual who committed, through intentional conduct, childhood sexual abuse. Mont. Code Ann. § 27-2-216(1).

b. Damages and Other Relief

A plaintiff may recover damages for injury suffered as a result of childhood sexual abuse. Mont. Code Ann. § 27-2-216(1).

c. Statute of Limitations

With limited exceptions, such a lawsuit must be commenced: (a) before the victim of childhood sexual abuse that allegedly caused the victim’s injury reaches 27 years of age; or (b) not later than three years after the plaintiff discovers or reasonably should have discovered that childhood sexual abuse caused the victim’s injury. Mont. Code Ann. § 27-2-216(1).

C. Additional Statutes Specific to Human Trafficking

1. Mont. Code Ann. § 20-7-1316 (2017) – Child Sex Trafficking Prevention

The office of public instruction is encouraged to undertake activities to educate Montanans about and prevent child sex trafficking.

2. Mont. Code Ann. § 39-3-201 *et seq.* (2011) – Payment of Wages

An employee may bring a civil lawsuit to recover unpaid wages. Mont. Code Ann. § 39-3-207. The court may award a successful employee attorney's fees and costs. Mont. Code Ann. § 39-3-214. A noncompliant employer may be charged with a misdemeanor and face additional penalties. Mont. Code Ann. § 39-3-206.

More information is available at: <http://erd.dli.mt.gov/labor-standards/wage-and-hour-payment-act/filing-a-wage-claim>.

3. Mont. Code Ann. § 41-3-102 (2019) – Child Abuse and Neglect

Montana's definition of "child abuse and neglect" includes any form of child sex trafficking or human trafficking.

4. Mont. Code Ann. § 44-4-1501 (2013) – Human Trafficking Hotline; Creation of Poster; Rulemaking

The Montana Department of Justice shall create and distribute, for posting to entities the Department determines by rule should receive it, an informational poster regarding the National Human Trafficking Resource Center hotline.

5. Mont. Code Ann. § 60-2-244 (2013) – Human Trafficking Hotline; Posted Notice Required at Rest Areas

The Department of Transportation must display an informational poster (created by Mont. Code Ann. § 44-4-1501) at each highway rest area.

6. Mont. Code Ann. § 44-4-1502 (2015) – Eligibility for Benefit or Service

A victim of human trafficking, regardless of immigration status, is eligible for a benefit or service available through the state. Law enforcement must notify the appropriate state agency of potential benefit eligibility as soon as practicable after encountering a person who reasonably appears to be a victim of human trafficking.

7. Mont. Code Ann. § 44-4-1503 (2015) – Law Enforcement Protocol on Request for T or U Visa

Montana law enforcement shall complete a Form I-914B or Form I-918B on request for a person reasonably believed to be "a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the person to qualify for a nonimmigrant T or U visa."

8. Mont. Code Ann. § 44-4-1504 (2015) – Human Trafficking Education Account

A human trafficking education account exists in the state special revenue fund for the purposes of preventing and detecting human trafficking.

9. Mont. Code Ann. § 46-18-608 (2015) – Motion to Vacate Conviction; Human Trafficking Victims

A court may vacate a conviction of prostitution, promoting prostitution, or another nonviolent offense if the court finds that the convicted person's participation in the offense was a "direct result" of having been a victim of human trafficking.

D. Significant Cases

No significant cases regarding Montana’s human trafficking statutes were found.

E. Academic Research/Papers

No academic research or papers were found regarding Montana’s human trafficking statutes.

F. Resources

Montana Department of Justice:

<https://dojmt.gov/agooffice/human-trafficking>

National Human Trafficking Hotline (Montana):

<https://humantraffickinghotline.org/state/montana>

Shared Hope International, Montana Report Card (2019):

http://sharedhope.org/PICframe9/reportcards/PIC_RC_2019_MT.pdf

Shared Hope International, Montana Analysis and Recommendations (2019):

http://sharedhope.org/PICframe9/analysis/PIC_AR_2019_MT.pdf

U.S. Department of Health & Human Services, *Montana: Efforts to Combat Human Trafficking* (2017):

https://www.acf.hhs.gov/sites/default/files/documents/otip/montana_profile_efforts_to_combat_human_trafficking.pdf

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