



WISCONSIN

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

A. Criminal Statutes

1. Human Trafficking and Related Statutes

a. Wis. Stat. Ann. § 940.302 (2014) – Human Trafficking

i. Summary

The crime of human trafficking occurs when two conditions are met.

First, the person knowingly engages in trafficking and the trafficking is either: (1) “for the purposes of labor or services”; or (2) “for the purposes of a commercial sex act.” Wis. Stat. Ann. § 940.302(2)(a)(1).

Second, the trafficking is done by:

- a. Causing or threatening to cause bodily harm to any individual.
- b. Causing or threatening to cause financial harm to any individual.
- c. Restraining or threatening to restrain any individual.
- d. Violating or threatening to violate a law.
- e. Destroying, concealing, removing, confiscating, or possessing, or threatening to destroy, conceal, remove, confiscate, or possess, any actual or purported passport or any other actual or purported official identification document of any individual.
- f. Extortion.
- g. Fraud or deception.
- h. Debt bondage.
- i. Controlling or threatening to control any individual’s access to an addictive controlled substance.
- j. Using any scheme, pattern, or other means to directly or indirectly coerce, threaten, or intimidate any individual.
- k. Using or threatening to use force or violence on any individual.
- L. Causing or threatening to cause any individual to do any act against the individual’s will or without the individual’s consent.

Wis. Stat. Ann. § 940.302(2)(a)(2).

“Trafficking” is defined as “recruiting, enticing, harboring, transporting, providing, or obtaining, or attempting to recruit, entice, harbor, transport, provide, or obtain, an individual.” Wis. Stat. Ann. § 940.302(1)(d).

“Commercial sex act” is defined as a “sexual contact,” a “sexually explicit performance,” or “sexual intercourse ... for which anything of value is given to, promised, or received, directly or indirectly, by any person.” Wis. Stat. Ann. § 940.302(1)(a).

A person who benefits in any manner from a violation of the human trafficking statute is also guilty of a Class D felony “if the person knows or reasonably should have known that the benefits come from or are derived from an act or scheme described in” the human trafficking criminal statute. Wis. Stat. Ann. § 940.302(b).

ii. Sentencing

Human trafficking is a Class D felony. Wis. Stat. Ann. § 940.302(2)(a). Class D felonies are punishable by a fine not to exceed USD 100,000, imprisonment not to exceed 25 years, or both. Wis. Stat. Ann. § 939.50(3)(d).

A person who “knowingly receives compensation from the earnings of debt bondage, a prostitute, or a commercial sex act” is guilty of a Class F felony. Wis. Stat. Ann. § 940.302(2)(c). Class F felonies are punishable by a fine not to exceed USD 25,000, imprisonment not to exceed 12 years and six months, or both. Wis. Stat. Ann. § 939.50(3)(f).

A court shall order full or partial restitution unless there is substantial reason not to do so. Wis. Stat. Ann. § 973.20(1r). If the crime of human trafficking results in bodily injury or damage to or destruction of property, the general restitution statute specifies what a restitution order may require, including the value of any property damaged or destroyed, the cost of necessary medical treatment and care, lost income, and more. Wis. Stat. Ann. § 973.20(2am), (3). The court may also require the violator to pay an amount not to exceed USD 10,000 for professional services relating to psychiatric and psychological care and treatment. Wis. Stat. Ann. § 973.20(4m). If the crime of human trafficking does not result in bodily injury or property damage, the defendant may nonetheless be required to pay restitution, including the costs of necessary transportation, housing, child care for the victim, relocation expenses, and other amounts as well as the greater of (1) the gross income gained by the defendant due to the victim’s services, or (2) the value of the victim’s services as provided under the state minimum wage. Wis. Stat. Ann. § 973.20 (4o), (5).

iii. Statute of Limitations

A prosecution for a felony must be commenced within six years after commission of the offense. Wis. Stat. Ann. § 939.74(1).

b. Wis. Stat. Ann. § 948.051 (2017) – Trafficking of a Child

i. Summary

A person who “knowingly recruits, entices, provides, obtains, harbors, transports, patronizes, or solicits or knowingly attempts to recruit, entice, provide, obtain, harbor, transport, patronize, or solicit any child for the purpose of commercial sex acts” is guilty of a Class C felony. Wis. Stat. Ann. § 948.051(1).

A person who knowingly benefits from a violation of the statute is also guilty of a Class C felony. Wis. Stat. Ann. § 948.051(2).

ii. Sentencing

Class C felonies are punishable by a fine not to exceed USD 100,000, imprisonment not to exceed 40 years, or both. Wis. Stat. Ann. § 939.50(3)(c).

A court shall order full or partial restitution unless there is substantial reason not to do so. Wis. Stat. Ann. § 973.20(1r). If the crime of trafficking of a child results in bodily injury or damage to or destruction of property, the general restitution statute specifies what a restitution order may require, including the value of the property damaged or destroyed, the cost of necessary medical treatment and care, lost income, and more. Wis. Stat. Ann. § 973.20(2am), (3). The court may also require the violator to pay an amount not to exceed USD 10,000 for professional services relating to psychiatric and psychological care and treatment. Wis. Stat. Ann. § 973.20(4m). If the crime of trafficking a child does not result in bodily injury or property damage, the defendant may nonetheless be required to pay restitution, including the costs of necessary transportation, housing, child care for the victim, relocation expenses, and other amounts as well as the greater of (1) the gross income gained by the defendant due to the victim’s services, or (2) the value of the victim’s services as provided under the state minimum wage. Wis. Stat. Ann. § 973.20(4o), (5).

iii. Statute of Limitations

A prosecution for a violation of Wis. Stat. Ann. § 948.051 shall be commenced before the victim reaches the age of 45 years. Wis. Stat. Ann. § 939.74(2)(c).

c. Wis. Stat. Ann. § 939.46 (2018) – Affirmative Defense

A victim of a violation of Wis. Stat. Ann. § 940.302(2) (human trafficking) or Wis. Stat. Ann. § 948.051 (trafficking of a child) “has an affirmative defense for any offense committed as a direct result of the violation” without regard to whether anyone was prosecuted or convicted for the violation. Wis. Stat. Ann. § 939.46(1m).

d. Wis. Stat. Ann. § 946.80 *et seq.* (2014) – Racketeering Activity and Continuing Criminal Enterprise

Wisconsin’s racketeering statute includes trafficking in persons and trafficking of a child within its predicate acts. Wis. Stat. Ann. § 946.82(4).

e. Wis. Stat. Ann. § 973.015 (2016) – Vacatur or Expungement

A court may vacate a conviction for prostitution or expunge the conviction from a person’s record upon motion at any time if, among other conditions, the person violated the prostitution statute as a result of being a victim of trafficking for the purposes of a commercial sex act. Wis. Stat. Ann. § 973.015(2m).

2. Online Child Sexual Exploitation and Child Pornography Offenses

Wis. Stat. Ann. § 948.05 (2019) – Sexual Exploitation of a Child

Wis. Stat. Ann. § 948.07 (2014) – Child Enticement

Wis. Stat. Ann. § 948.075 (2008) – Use of a Computer to Facilitate a Child Sex Crime

Wis. Stat. Ann. § 948.12 (2012) – Possession of Child Pornography

3. Wis. Stat. Ann. § 301.45 (2018) – Sex Offender Registry

An individual who is convicted for a sex offense must comply with registration and reporting requirements. Wis. Stat. Ann. § 301.45(1g). “Sex offense” includes “a violation, or the solicitation, conspiracy, or attempt to commit a violation of” the offenses of trafficking of a child, sexual exploitation of a child, child enticement, possession of child pornography, and human trafficking if the trafficking is for the purposes of a commercial sex act. Wis. Stat. Ann. § 301.45(1d).

B. Civil Liability Statutes

1. Wis. Stat. Ann. § 940.302 (2014) – Civil Lawsuit for Human Trafficking

a. Summary

A person who “incurs an injury or death as a result of a violation of” Wis. Stat. Ann. § 940.302(2) (human trafficking) may bring a civil lawsuit against the person who committed the violation. Wis. Stat. Ann. § 940.302(3).

b. Damages and Other Relief

In addition to actual damages, the court may award punitive damages to the injured party, not to exceed three times the amount of actual damages incurred, and reasonable attorney fees. Wis. Stat. Ann. § 940.302(3).

c. Statute of Limitations

A civil lawsuit for human trafficking must be brought within three years from the time the claim accrues. Wis. Stat. Ann. §893.57.

2. Wis. Stat. Ann. § 948.051 (2017) – Civil Lawsuit for Trafficking of a Child

a. Summary

A person who “incurs an injury or death as a result of a violation of” Wis. Stat. Ann. § 948.051(1) or (2) (trafficking of a child) may bring a civil lawsuit against the person who committed the violation. Wis. Stat. Ann. § 948.051(3).

b. Damages and Other Relief

In such a lawsuit, in addition to actual damages, the court may award punitive damages to the injured party, not to exceed three times the amount of actual damages incurred, and reasonable attorney’s fees. Wis. Stat. Ann. § 948.051(3).

c. Statute of Limitations

A civil lawsuit for trafficking of a child must be brought within three years from the time the claim accrues. Wis. Stat. Ann. §893.57. The limitations period is tolled until two years after the date on which the minor victim is 18 years old. Wis. Stat. Ann. § 893.16.

C. Additional Statutes Specific to Human Trafficking

1. Wis. Stat. Ann. §§ 109.01 *et seq.* (2016) – Wage Payments, Claims, and Collections

An aggrieved employee may bring a civil lawsuit to recover unpaid wages. Wis. Stat. Ann. § 109.03(5). A prevailing employee may recover a reasonable sum for expenses. Wis. Stat. Ann. § 109.03(6). A noncompliant employer may be subject to additional civil and criminal penalties, including up to an additional 100% of the wages due, and a fine of USD 500, 90 days in prison, or both. Wis. Stat. Ann. § 109.11.

More information is available at: <https://dwd.wisconsin.gov/er/laborstandards/wageclaim.htm>.

2. Wis. Stat. Ann. § 48.02 (2019) – Trafficking Classified as Child Abuse

Trafficking of a child is classified as child “abuse” for the purpose of child protection intervention and services. Wis. Stat. Ann. § 48.02(1)(cm).

3. Wis. Stat. Ann. § 48.417 (2016) – Termination of Parental Rights

An agency or district attorney may petition to terminate parental rights if a court finds that the parent has committed a violation of section 948.051 (trafficking of a child) or section 940.302 (human trafficking) and the violation resulted in great bodily harm or substantial bodily harm to the child or another child of the parent. Wis. Stat. Ann. § 48.417(1)(d).

4. Wis. Stat. Ann. §§ 50.378 (2016), 950.045 (2016) – Right to a Victim Advocate

A victim of human trafficking, or the victim's parent, guardian, or legal custodian if the victim is a child, has the right to have a victim advocate at law enforcement interviews, prosecution interviews, Department of Corrections proceedings, court proceedings, and post-conviction proceedings. Wis. Stat. Ann. § 950.045.

A hospital that provides emergency services to a victim of human trafficking shall, at the request of the victim, permit a victim advocate to accompany the victim to any examination or consultation that is performed at the hospital as a result of the violation, if the presence of the advocate does not interfere with medical care. Wis. Stat. Ann. § 50.378(2)(a).

5. Wis. Stat. Ann. § 165.505 (2018) – Attorney General Subpoenas

The attorney general may issue subpoenas to hotels or providers of an electronic communication service or remote computing service to compel production of certain items if the information likely to be obtained is relevant to an ongoing investigation of a human trafficking crime or an Internet crime against a child.

6. Wis. Stat. Ann. § 165.71 (2015) – Human Trafficking Resource Center Hotline Poster

The Wisconsin Department of Justice shall design or obtain a poster that provides information regarding a human trafficking resource center hotline and its phone number. The Department shall encourage its display at: gas stations with signs visible from an interstate or state highway that offer amenities to commercial vehicles; hotels; adult entertainment establishments; salons at which hair or nail services are provided; places at which employers engage some employees to perform agricultural labor; hospitals or other medical centers; places at which athletic or sporting events occur; establishments that operate as massage parlors or spas, alternative health clinics, or similar entities; expositions conducted by a county or agricultural society; courthouses; rest areas; and public and private transit stations.

7. Wis. Stat. Ann. §§ 165.68 (2018), 66.0504 (2018) – Address Confidentiality Program

Human trafficking victims are eligible to make their actual address confidential and receive an assigned address that the victim may use for all purposes.

8. Wis. Stat. Ann. § 178.09031 (2016) – Trafficking as Grounds for Revocation of Partnership Qualification

The statement of qualification for a limited liability partnership may be revoked if the partnership is involved in human trafficking or trafficking of a child.

9. Wis. Stat. Ann. § 181.1420 (2008) – Trafficking as Grounds for Administrative Dissolution of Corporation

A corporation which violates either Wis. Stat. Ann. § 940.302 (human trafficking) or Wis. Stat. Ann. § 948.051 (trafficking of a child) may be administratively dissolved under Wis. Stat. Ann. § 181.1421.

10. Wis. Stat. Ann. § 250.04 (2008) – Department of Health Services Victim Assistance

The Department of Health Services may provide or fund emergency services or assistance to victims of human trafficking or trafficking of children.

11. Wis. Stat. Ann. § 343.12 (2016) – School Bus Operators and Trafficking Convictions

The department may not issue or renew a school bus endorsement to an operator’s license if, within the time period specified by the department and not less than five years immediately preceding the date of application, the applicant has been convicted of human trafficking or trafficking of a minor.

12. Wis. Stat. Ann. §§ 343.71 (2019), 38.04 (2019) – Commercial Driver Instruction and Trafficking

A driver education course providing instruction in the operation of commercial motor vehicles must provide instruction in the recognition and prevention of human trafficking.

13. Wis. Stat. Ann. § 440.982 (2017) – Midwife Licensure and Trafficking

A person may not receive a license to practice as a midwife if that person has been convicted of human trafficking or trafficking of a child.

14. Wis. Stat. Ann. § 905.045 (2018) – Domestic Violence or Sexual Assault Advocate-Victim Privilege

A victim of human trafficking:

has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated among the victim, a victim advocate who is acting in the scope of his or her duties as a victim advocate, and persons who are participating in providing counseling, assistance, or support services under the direction of a victim advocate, if the communication was made or the information was obtained or disseminated for the purpose of providing counseling, assistance, or support services to the victim.

15. Wis. Stat. Ann. §§ 949.001 *et seq.* (2016) – Crime Victim Compensation

The Department of Justice may order the payment of an award to a victim for personal injury or death that results from a commission or the attempt to commit human trafficking or trafficking of a child. Wis. Stat. Ann. § 949.03. The department may make awards for medical treatment, with up to USD 3,000 dollars for mental health treatment, work loss of a victim, reasonable and necessary housing accessibility adaption in the result of a disability not to exceed USD 5,000, and more, payable from the person who committed the crime, public funds, or third parties liable for the offender’s acts. Wis. Stat. Ann. § 949.06.

The application for the award must be made within one year of the injury, and the crime from which the injury resulted must have been reported to the police within five days of its occurrence. Wis. Stat. Ann. § 949.08.

16. Wis. Stat. Ann. § 973.075 (2015) – Forfeiture of Property Derived from Crime and Certain Vehicles

“All property, real or personal, including money, used in the course of, intended for use in the course of, or directly or indirectly derived from or realized through the commission of any crime” and all vehicles used in the commission of a violation of section 940.302 (human trafficking) or section 948.051 (trafficking of a child) are subject to seizure and forfeiture.

D. Significant Cases

1. *State v. Kizer*, No. 2020AP192-CR, 2021 WL 2212719 (Wis. Ct. App. June 2, 2021)

The Wisconsin Court of Appeals held that the affirmative defense under Wis. Stat. Ann. § 939.46 can be a complete defense to a first-degree murder charge. The court concluded the affirmative defense applied to any offense committed as a direct result of the violation of sections 940.302(2) or 948.051 and was not limited to those

enumerated in the human trafficking statutes. The court reasoned a crime could be a direct result of human trafficking if:

there is “some evidence” to support such a finding based on whether the victim’s offense arises relatively immediately from the trafficking violation of which the victim is a victim, is motivated primarily by the trafficking violation, is a logical and reasonably foreseeable consequence of that violation, and is not in significant part caused by events, circumstances or considerations other than that violation.

E. Academic Research/Papers

Melynda H. Barnhart, *Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation*, 16 WM. & MARY J. WOMEN & L. 83 (2009).

Rachel Monaco-Wilcox & Daria Mueller, *Under the Radar: Human Trafficking in Wisconsin*, 90 WIS. LAW. 14 (Oct. 2017) (last updated on Jan. 14, 2020).

Lisa Holl Chang, Comment, *Reaching Safe Harbor: A Path for Sex-Trafficking Victims in Wisconsin*, 2013 WIS. L. REV. 1489 (2013).

Kelsey Mullins, Comment, *A Path to Protection: Collateral Crime Vacatur for Wisconsin’s Victims of Human Trafficking*, 2019 WIS. L. REV. 1551 (2019).

Jessica E. Ozalp, Comment, *Halting Modern Slavery in the Midwest: The Potential of Wisconsin Act 116 to Improve the State and Federal Response to Human Trafficking*, 2009 WIS. L. REV. 1391 (2009).

F. Resources

National Human Trafficking Hotline (Wisconsin):

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

Shared Hope International, Wisconsin Report Card (2019):

https://sharedhope.org/PICframe9/reportcards/PIC_RC_2019_WI.pdf

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

https://sharedhope.org/PICframe9/analysis/PIC_AR_2019_WI.pdf

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

https://nhhtac.acf.hhs.gov/sites/default/files/2019-06/wisconsin_profile_efforts_to_combat_human_trafficking.pdf

Wisconsin Department of Children and Families, Wisconsin Anti-Human Trafficking Task Force

<https://dcf.wisconsin.gov/aht/taskforce>

Wisconsin Department of Justice, Human Trafficking:

<https://www.doj.state.wi.us/ocvs/human-trafficking>

Wisconsin Department of Justice, Office of the Attorney General, *Human Trafficking: A Guide for Criminal Justice Professionals* (2020 update):

<https://www.doj.state.wi.us/sites/default/files/ocvs/human%20trafficking/DOJ%20HT%20Guide%20for%20Criminal%20Justice%20Professionals%20Jan%202020.pdf>

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