



# ARKANSAS

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. Ark. Code Ann. § 5-18-103 (2019), amended by 2021 Ark. Sess. Laws Ch. 2 § 2 (May 3, 2021) – Trafficking of Persons

##### i. Summary

(a) A person commits the offense of trafficking of persons if he or she knowingly:

- (1) Recruits, harbors, transports, obtains, entices, solicits, isolates, provides, or maintains a person knowing that the person will be subjected to involuntary servitude;
- (2) Benefits financially or benefits by receiving anything of value from participation in a venture under subdivision (a)(1) of this section;
- (3) Subjects a person to involuntary servitude;
- (4) Recruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a minor for commercial sexual activity;
- (5) Sells or offers to sell travel services that he or she knows include an activity prohibited under subdivisions (a)(1)–(4) of this section;
- (6) Recruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a pregnant woman for the purpose of causing the pregnant woman to place her unborn child for adoption by:
  - (A) The use of or threatened use of physical force;
  - (B) The physical restraint or threat of physical restraint of a person;
  - (C) Serious physical injury or threat of serious physical injury to a person;
  - (D) Abuse or threatened abuse of law or legal process;
  - (E) Any scheme, plan, or pattern that has a purpose to cause the pregnant woman to believe that, if the pregnant woman does not place the unborn child for adoption, a person would suffer serious physical injury or physical restraint; or
  - (F) Means of serious harm or threats of serious harm to a person; or

- (7) Benefits financially or benefits by receiving anything of value from participating in an act described under subdivision (a)(6) of this section.

Ark. Code Ann. § 5-18-103(a).

Arkansas defines “involuntary servitude” as “the inducement or compulsion of a person to engage in labor, services, or commercial sexual activity” by various means. Ark. Code Ann. § 5-18-102(7). “Commercial sexual activity” means “a sexual act or sexually explicit performance for which anything of value is given, promised, or received, directly or indirectly, by a person.” Ark. Code Ann. § 5-18-102(1).

In a prosecution for trafficking in persons pursuant to subdivision (a)(4) of Ark. Code. Ann. § 5-18-103, it is not a defense that the defendant did not know the victim’s age or mistakenly believed a victim was not a minor. Ark. Code Ann. § 5-18-103(b).

**ii. Sentencing**

Trafficking of persons is generally a Class A felony for which a court shall sentence a convicted person to imprisonment for six to 30 years. Ark. Code Ann. §§ 5-18-103(c)(2), 5-4-401(a)(2).

If the victim was a minor at the time of the offense, trafficking of persons is a Class Y felony. Ark. Code Ann. § 5-18-103(c)(2). A person convicted of a Class Y felony shall be sentenced to imprisonment for 10 to 40 years, or life. Ark. Code Ann. § 5-4-401(a)(1).

“In addition to any other sentence authorized by this section [trafficking and related offenses], a convicted ... defendant who offers to pay, agrees to pay, or pays a fee to engage in sexual activity shall be ordered ... to pay a [USD] 250 fine, to be deposited in the Safe Harbor Fund for Sexually Exploited Children.” Ark. Code Ann. § 5-18-103(d). A fine of USD 100 shall be assessed if the trafficking offense was committed against or in the presence of a minor child. The fine goes to the Arkansas Children’s Advocacy Center Fund. Ark. Code Ann. § 5-4-703(a)(9).

A court also may order a defendant to pay a fine and restitution to the victim. Ark. Code Ann. § 5-4-205.

**iii. Statute of Limitations**

Prosecution for a Class A felony or Class Y felony must commence within six years after commission of the offense. Ark. Code Ann. § 5-1-109(b)(1)(A).

The limitations period does not run during any time when the accused is continually absent from the state or has no reasonably ascertainable place of abode or work within the state, but these circumstances will not extend the limitations period by more than three years. Ark. Code Ann. § 5-1-109(g)(1).

**b. Ark. Code Ann. § 5-5-201 (2017) – Forfeiture**

With limited exceptions, a court may order a convicted defendant to forfeit any vehicle used in the trafficking offense. Ark. Code Ann. § 5-5-201(a)(5). Law enforcement officers may seize vehicles without a court order when they have probable cause to believe the vehicles were used for the trafficking offense. Ark. Code Ann. § 5-5-202(b)(2)(E).

**c. Ark. Code Ann. § 5-18-104 (2013) – Patronizing a Victim of Human Trafficking**

**i. Summary**

A person commits the offense of patronizing a victim of human trafficking if they knowingly engage in commercial sexual activity with victims of human trafficking. Ark. Code Ann. § 5-18-104(a).

## ii. Sentencing

Patronizing a victim of human trafficking is a Class B felony for which a court shall sentence a convicted person to imprisonment for five to 20 years. Ark. Code Ann. §§ 5-18-104(b)(1), 5-4-401(a)(3).

If the victim was a minor at the time of the offense, patronizing a victim of human trafficking is a Class A felony. Ark. Code Ann. § 5-18-104(b)(2). A person convicted of a Class A felony shall be sentenced to imprisonment for six to 30 years. Ark. Code Ann. § 5-4-401(a)(2).

A fine of USD 100 shall be assessed if the offense of patronizing a trafficking victim was committed against or in the presence of a minor child. The fine goes to the Arkansas Children’s Advocacy Center Fund. Ark. Code Ann. § 5-4-703(a)(9).

A court also may order a defendant to pay a fine and restitution to the victim. Ark. Code Ann. § 5-4-205.

## iii. Statute of Limitations

Prosecution for a Class B felony must commence within three years after commission of the offense. Ark. Code Ann. § 5-1-109(b)(2)(A).

The limitations period does not run during any time when the accused is continually absent from the state or has no reasonably ascertainable place of abode or work within the state, but these circumstances will not extend the limitations period by more than three years. Ark. Code Ann. § 5-1-109(g)(1).

### d. Ark. Code Ann. § 5-18-105 (2013) – Enhanced Liability of an Organization

In addition to any other statutorily authorized sentence or fine, an organization convicted of an Arkansas state human trafficking offense is subject to: (1) suspension or revocation of a license, permit, or approval granted by a government agency; (2) a court order to dissolve or reorganize; and (3) other relief as is equitable. Ark. Code Ann. § 5-18-105.

### e. Ark. Code Ann. § 5-70-102 (2019) – Immunity for Prostitution Offense

A person does not commit the offense of prostitution if at the time of the person’s commission of or arrest for prostitution, the person was a victim of trafficking of persons under Arkansas Code § 5-18-103. Ark. Code Ann. § 5-70-102(c).

If a law enforcement agency is investigating an alleged prostitution offense committed by a minor, it “shall make every effort to determine whether the minor, at the time of the offense, was a victim of trafficking of persons” and shall notify the prosecuting attorney accordingly. Ark. Code Ann. § 5-70-102(d).

### f. Ark. Code Ann. § 5-2-210 (2021) – Affirmative Defense

A trafficking victim who engaged in the offense as a result of being trafficked has an affirmative defense to a prosecution for:

- (1) forgery under Ark. Code Ann. § 5-37-201;
- (2) defrauding a prospective adoptive parent under Ark. Code Ann. § 5-37-216;
- (3) prostitution under Ark. Code Ann. §§ 5-70-101 *et seq.*;
- (4) obscene performance at a live public show under § 5-68-305; or
- (5) a controlled substance offense under §§ 5-64-401 *et seq.* that is not a Class Y felony.

**g. Ark. Code Ann. § 5-70-103 (2017) – Affirmative Defense to Sexual Solicitation**

Arkansas’s sexual solicitation statute provides “an affirmative defense to prosecution [if] the person engaged in an act of sexual solicitation as a result of being a victim of trafficking of persons.” Ark. Code Ann. § 5-70-103.

**2. Online Child Sexual Exploitation and Child Pornography Offenses**

Ark. Code Ann. § 5-27-03 – Engaging Children in Sexually Explicit Conduct for Use in Visual or Print Medium

Ark. Code Ann. § 5-27-303 – Sexually Explicit Conduct, Children

Ark. Code Ann. § 5-27-304 – Pandering or Possessing Visual or Print Medium Depicting Sexually Explicit Conduct Involving a Child

Ark. Code Ann. § 5-27-402 – Employing Children; Sexual Performances

Ark. Code Ann. § 5-27-403 – Promoting Child Sexual Performances

Ark. Code Ann. § 5-27-404 – Affirmative Defenses

Ark. Code Ann. § 5-27-602 – Distributing, Possessing, or Viewing Matter Depicting Sexually Explicit Conduct Involving Child

Ark. Code Ann. § 5-27-603 – Computer Child Pornography

Ark. Code Ann. § 5-27-604 – Failure to Report Computer Child Pornography

Ark. Code Ann. § 5-27-605 – Computer Exploitation of a Child

Ark. Code Ann. § 5-27-607 – Determination of Age of Child

Ark. Code Ann. § 5-27-608 – Applicability of this Subchapter to Interactive Computer Service and Electronic Mail Service Providers

Ark. Code Ann. § 5-27-609 – Possession of Sexually Explicit Digital Material

**3. Ark. Code Ann. § 12-12-901 (1997) – Sex Offender Registry**

With limited exceptions, a person convicted of a “sex offense” must register as a sex offender. Ark. Code Ann. § 12-12-905(a)(1). A “sex offense” for registration purposes includes the offenses of trafficking of persons; patronizing a victim of human trafficking; engaging children in sexually explicit conduct for use in visual or print medium; pandering or possessing visual or print medium depicting sexually explicit conduct involving a child; producing, directing, or promoting a sexual performance by a child; distributing, possessing, or viewing matter depicting sexually explicit conduct involving computer child pornography; and computer exploitation of a child. Ark. Code Ann. § 12-12-903.

**B. Civil Liability Statutes**

**1. Ark. Code Ann. § 16-118-109 (2013) – Civil Lawsuit for Victims of Human Trafficking**

**a. Summary**

A victim of human trafficking can bring a lawsuit for damages and other relief. Ark. Code Ann. § 16-118-109.

### **b. Damages and Other Relief**

The court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief. Ark. Code Ann. § 16-118-109(c). When the defendant's acts are "willful and malicious," the court may award three times the amount of actual damages. Ark. Code Ann. § 16-118-109(e). A prevailing plaintiff is also awarded attorney's fees and costs. Ark. Code Ann. § 16-118-109(d).

### **c. Statute of Limitations**

The statute of limitations period for a civil lawsuit "will not begin to run until the plaintiff discovers that the human trafficking incident occurred and that the defendant caused, was responsible for, or profited from the human trafficking incident." Ark. Code Ann. § 16-118-109(f)(1). The limitations period does not begin until a minor reaches 18 years old. Ark. Code Ann. § 16-118-109(f)(2). The statute of limitations also is tolled during the time of any threats, fraud, or duress against the plaintiff. Ark. Code Ann. § 16-118-109(f)(4).

## **C. Additional Statutes Specific to Human Trafficking**

### **1. Ark. Code Ann. § 11-4-218 (2019) – Minimum Wage Law, Employee's Remedies**

An employee who is paid less than minimum wage may seek the full amount of wages owed. An employer may also be liable for reasonable attorney's fees and civil penalties. Alternatively, the employee may file a complaint with the Arkansas Division of Labor.

More information can be found at: <http://labor.publishpath.com/wage-claims>.

### **2. Ark. Code Ann. § 9-27-303 (2019) – Child Abuse and Trafficking**

The definition of "abuse" in Arkansas's child protection statutes includes a parent or caregiver "[r]ecruiting, harboring, transporting, or obtaining a child for labor or services, through force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."

### **3. Ark. Code Ann. §§ 12-19-101, 12-19-103 (2019) – State Task Force for the Prevention of Human Trafficking**

The Arkansas Attorney General may establish a task force to address human trafficking and assist victims of human trafficking with applying for federal and state benefits.

### **4. Ark. Code Ann. § 12-19-102 (2019) – Posting National Human Trafficking Resource Center Hotline Information**

Certain commercial establishments must post information about the National Human Trafficking Resource Center hotline: a hotel, motel, or other establishment that has been cited as a public nuisance for prostitution; a strip club or other sexually oriented business; a private club that has a liquor permit for on-premises consumption and does not hold itself out to be a food service establishment; an airport; a train station that serves passengers; a bus station; and a privately owned and operated facility that provides food, fuel, shower or other sanitary facilities, and overnight parking.

### **5. Ark. Code Ann. § 16-90-1412 (2015) – Sealing Convictions for Victims of Human Trafficking**

A prostitution conviction may be sealed and the victim's name redacted from records when the conviction was obtained "as a result of the person's having been a victim of human trafficking."

**6. Ark. Code Ann. § 19-5-1252 (2013) – Safe Harbor Fund for Sexually Exploited Children**

Arkansas has created a fund for services and treatment for sexually exploited children, including those who have been trafficked.

**7. Ark. Code Ann. § 19-5-1261 (2017) – Human Trafficking Victim Support Fund**

Arkansas has created a fund for grants to organizations that assist human trafficking victims, supported in part by impoundment fees from motor vehicles used in prostitution.

**D. Significant Cases**

**1. *Lee v. State*, 574 S.W.3d 211 (Ark. Ct. App. 2019).**

A jury found the defendant guilty of trafficking of persons in violation of Arkansas Code § 5-18-103(a)(4). Testimony by the victim, K.L., the defendant’s minor granddaughter, was corroborated by C.G., the victim’s friend. K.L. testified that the defendant set up multiple sexual encounters between K.L. and adult men in exchange for methamphetamines beginning when K.L. was 12 years old. C.G. testified that while she had not explicitly seen or known of a specific exchange for drugs, she was present when 16-year-old K.L. and an adult man were in the bedroom alone. The defendant appealed her conviction, arguing that the evidence was circumstantial and not sufficient for a finding of guilt beyond a reasonable doubt.

The appellate court concluded there was sufficient evidence that the defendant knowingly provided K.L. to an adult in exchange for methamphetamines and found the corroborated testimony of a minor was sufficient to sustain the conviction for trafficking of persons.

**E. Academic Research/Papers**

Mary Ward, Note, *Criminal Law—Human Trafficking—Arkansas’s Human Trafficking Laws: Steps in the Right Direction or a False Sense of Accomplishment?*, 37 U. ARK. LITTLE ROCK L. REV. 133 (2014).

**F. Resources**

Arkansas Attorney General:

<https://www.arkansasag.gov/public-safety/resources/>

Arkansas Attorney General’s State Task Force for the Prevention of Human Trafficking, *Report of the Arkansas Task Force for the Prevention of Human Trafficking* (Aug. 2014):

<https://ncjtc-static.fvtc.edu/Resources/RS00002771.pdf>

National Human Trafficking Hotline (Arkansas):

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

Shared Hope International, Arkansas Report Card (2019):

[http://sharedhope.org/PICframe9/reportcards/PIC\\_RC\\_2019\\_AR.pdf](http://sharedhope.org/PICframe9/reportcards/PIC_RC_2019_AR.pdf)

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

[http://sharedhope.org/PICframe9/analysis/PIC\\_AR\\_2019\\_AR.pdf](http://sharedhope.org/PICframe9/analysis/PIC_AR_2019_AR.pdf)

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

[https://www.acf.hhs.gov/sites/default/files/documents/otip/arkansas\\_profile\\_efforts\\_to\\_combat\\_human\\_trafficking.pdf](https://www.acf.hhs.gov/sites/default/files/documents/otip/arkansas_profile_efforts_to_combat_human_trafficking.pdf)

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