



SOUTH DAKOTA

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. S.D. Codified Laws § 22-49-1 (2020) – Human Trafficking

i. Summary

Persons commit the crime of human trafficking if they “recruit, harbor, transport, provide, receive, purchase, or obtain, by any means, another person knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude” or if they “benefit financially or by receiving anything of value from participation in a venture that has engaged in [such] acts” S.D. Codified Laws § 22-49-1. If the victim is under eighteen years of age, the crime of human trafficking need not involve force, fraud, or coercion. S.D. Codified Laws § 22-49-1.

A person commits the crime of human trafficking in the first degree if that person commits the crime of human trafficking, “and the act:

- (1) Involves committing or attempting to commit kidnapping;
- (2) Involves a victim under the age of 18 years;
- (3) Involves prostitution or procurement for prostitution; or
- (4) Results in the death of a victim.”

S.D. Codified Laws § 22-49-2. Consent by a minor, minor’s parent, guardian, or custodian, or mistake as to the minor’s age are not a defense to a charge of violating Section 22-49-2.

An individual commits the crime of human trafficking in the second degree:

if that person:

- (1) Recruits, harbors, transports, provides, receives, purchases, or obtains, by any means, another person knowing that force, fraud, or coercion ... will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude; or
- (2) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in this section.

S.D. Codified Laws § 22-49-3.

“Coercion” for the purpose of South Dakota’s human trafficking law includes:

- (1) The use of a plan, statement, or pattern of behavior, with the intent of causing a person to believe that failure to perform an act will result in the use of physical force

or violence against the person or will result in the person’s restraint, isolation, confinement, or abduction;

- (2) Inducing a person to provide commercial sexual activity as payment toward or in satisfaction of a real or purported debt; and
- (3) The use of a person’s physical or mental impairment, if that impairment has a substantial adverse effect on the person’s cognitive or volitional function.

S.D. Codified Laws § 22-49-1.

ii. Sentencing

Human trafficking in the first degree is a Class 2 felony, punishable by up to 25 years of imprisonment and a fine of USD 50,000. S.D. Codified Laws §§ 22-49-2, 22-6-1. An attempt to commit human trafficking in the first degree against a victim who is a minor is punishable in the same manner as the completed violation. S.D. Codified Laws § 22-49-2.

Human trafficking in the second degree is a Class 4 felony punishable by up to 10 years of imprisonment and a fine of USD 20,000. S.D. Codified Laws §§ 22-49-3, 22-6-1.

The court also shall order a defendant found guilty of a felony to make restitution to any victim in accordance with S.D. Codified Laws §§ 23A-28, 22-6-1.

iii. Statute of Limitations

The statute of limitations for a human trafficking prosecution is seven years. S.D. Codified Laws § 23A-42-2.

b. S.D. Codified Laws § 22-49-4 (2016) – Hiring a Person Forced to Engage in Sexual Activity

i. Summary

It is illegal “for a person to hire or attempt to hire another person for a fee to engage in sexual activity, as defined in [Section] 22-23-1.1, if the person knew or should have known the person was being forced to engage in the activity through human trafficking.” S.D. Codified Laws § 22-49-4.

ii. Sentencing

The crime of hiring persons for prostitution in human trafficking is a Class 6 felony punishable by up to two years of imprisonment, a fine of USD 4,000, or both. S.D. Codified Laws §§ 22-49-4, 22-6-1.

The court also shall order a defendant found guilty of a felony to make restitution to any victim in accordance with S.D. Codified Laws § 23A-28.

Additionally, a habitual offender enhancement may apply. S.D. Codified Laws §§ 22-7, *et seq.*

iii. Statute of Limitations

The statute of limitations is seven years. S.D. Codified Laws § 23A-42-2.

c. S.D. Codified Laws § 22-23-1.2 (2019) – Affirmative Defense

An affirmative defense is available if the defendant was a victim of human trafficking or if:

the defendant committed the act only under compulsion by another person who, by implicit or explicit threat, created a reasonable apprehension in the mind of the defendant that if the defendant did not commit the act, the person would inflict bodily harm upon the defendant.

S.D. Codified Laws § 22-23-1.2.

d. S.D. Codified Laws § 22-24A-15 (2016) – Property Subject to Forfeiture

A person convicted of first or second degree human trafficking must forfeit to the state the person’s interest in certain property, including vehicles used to facilitate the crime, funds or things of value used to carry out the crime, and assets derived from the unlawful activity. S.D. Codified Laws § 22-24A-15.

e. S.D. Codified Laws § 23A-49-6 (2016) – Victim Immunity Against Forfeiture

A victim of human trafficking is immune from forfeiture.

f. S.D. Codified Laws § 26-7A-115.1 (2020) – Expungement of Delinquency Record

A victim of human trafficking may petition the court directly or through a parent, guardian, or guardian ad litem for expungement of a delinquency record that resulted from being a victim of human trafficking or sexual exploitation.

g. S.D. Codified Laws § 23A-28B-25 (2018) –Trafficking Victims’ Exemption for Crime Victims’ Compensation Program

Victims of human trafficking are exempt from the rule prohibiting compensation under the Crime Victims’ Compensation Program if the victim was engaged in conduct that substantially contributed to the infliction of the victim’s injury or death, or engaged in conduct that the victim should reasonably have foreseen could lead to the injury or death.

2. Online Child Sexual Exploitation and Child Pornography Offenses

S.D. Codified Laws § 22-22-24.3 (2006) – Sexual Exploitation of a Minor

S.D. Codified Laws § 22-24A-1 (2016) – Sale of Child Pornography

S.D. Codified Laws § 22-24A-3 (2006) – Possessing, Manufacturing or Distributing Child Pornography

S.D. Codified Laws § 22-24A-16 (2005) – Required Reporting of Child Pornography for Internet Service Providers

S.D. Codified Laws § 22-24A-17 (2005) – Required Reporting of Child Pornography for Film Processors

S.D. Codified Laws § 22-24A-18 (2005) – Required Reporting of Child Pornography for Computer Repair Technicians

3. S.D. Codified Laws § 22-24B-2 (2016) – Sex Offender Registry

A person convicted of a sex crime is required to register as a sex offender. S.D. Codified Laws § 22-24B-2.

Sex crimes include human trafficking under S.D. Codified Laws § 22-24-1; felony sexual contact with a minor under 16 if committed by an adult under S.D. Codified Laws § 22-22-7; possessing, manufacturing, or distributing child pornography under S.D. Codified Laws § 22-24A-3; sale of child pornography under S.D. Codified Laws § 22-24A-1; sexual exploitation of a minor under S.D. Codified Laws § 22-22-24.3; kidnapping if the victim is a minor under S.D. Codified Laws § 22-19-1; promotion of prostitution of a minor under S.D. Codified Laws § 22-23-2(2); and solicitation of a minor under S.D. Codified Laws § 22-24A-5.

B. Civil Liability Statutes

1. S.D. Codified Laws § 22-24A-8 (2014); S.D. Codified Laws § 20-9-46 (2014) – Civil Lawsuits

a. Summary

“Any person, except a minor, who knowingly participates in any conduct proscribed by §§ ... 22-24A-1 to 22-24A-20 [child pornography and], 22-49-1 to 22-49-3 [human trafficking], ... is liable for civil damages.” S.D. Codified Laws § 22-24A-7. The child, parent, legal guardian, or sibling of the victim, medical facility, insurer, governmental entity, employer, or other entity that expended money to provide services on behalf of the child, or any person injured as a result of willful, reckless or negligent actions can bring a lawsuit for damages. S.D. Codified Laws § 22-24A-8. A civil lawsuit can be brought against any person, except a minor, who knowingly participated in the production or chain of distribution of child pornography. S.D. Codified Laws § 22-24A-9. A victim of human trafficking under the South Dakota human trafficking law or any federal human trafficking law also may bring a civil lawsuit for wrongful human trafficking. S.D. Codified Laws § 20-9-46.

b. Damages and Other Relief

Recoverable damages for a lawsuit under Section 22-24A-8 include economic damages, noneconomic damages, exemplary damages, attorney’s fees, and disbursements. S.D. Codified Laws § 22-24A-10.

c. Statute of Limitations

A lawsuit for damages under S.D. Codified Laws §§ 22-49-1 to 22-49-3 (human trafficking) must be commenced within six years of the time the plaintiff knew, or had reason to know, of any injury. S.D. Codified Laws § 22-24A-13. The statute of limitations is tolled while any plaintiff is a minor. S.D. Codified Laws § 22-24A-13.

C. Additional Statutes Specific to Human Trafficking

1. S.D. Codified Laws §§ 60-11 *et seq.* (2011) – Wages, Hours, and Conditions of Employment

An employee owed unpaid wages by an employer must first file a claim with the South Dakota Department of Labor and Regulation. A claim is sufficient if it is made in writing and states the facts that form the basis of the complaint, including the amount owed, name and address of the employer, and period of time worked. S.D. Admin. R. 47:04:01:01. The Department has the authority to investigate and adjudicate the claim. S.D. Codified Laws §§ 60-11-17, 60-11-19. Alternatively, an employee with a valid claim as determined by the Department may bring a lawsuit in court. A prevailing employee may be awarded costs and attorney’s fees if the employer removed the lawsuit from small claims court to a magistrate court or circuit court. S.D. Codified Laws § 60-11-24.

More information is available at:

https://sdeforms.na2.documents.adobe.com/public/esignWidget?wid=CBFCIBAA3AAABLbLqZhDx5XPntI4bqyPSnHjIXN72LVBgXi2XCNDt1aUcK83cRQNKuy0FR5XSKJuMhnRbFL8*.

D. Significant Cases

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

E. Academic Research/Papers

Brendan V. Johnson & Thad A. Titze, *Sex Trafficking in South Dakota and the Impact of United States v. Jungers*, 64 S.D. L. REV. 334 (2019).

Lara Roetzel et al., *Beyond the Cages: Sex Trafficking in South Dakota*, 64 S.D. L. REV. 346 (2019).

F. Resources

National Human Trafficking Hotline (South Dakota):

<https://humantraffickinghotline.org/state/south-dakota>

Shared Hope International, South Dakota Report Card (2019):

http://sharedhope.org/PICframe9/reportcards/PIC_RC_2019_SD.pdf

Shared Hope International, South Dakota Analysis and Recommendations (2019):

http://sharedhope.org/PICframe9/analysis/PIC_AR_2019_SD.pdf

South Dakota Department of Public Safety Human Trafficking Information:

<https://dps.sd.gov/victims-services/victims-assistance-program/human-trafficking>

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

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

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