

Ala. Code 1975, §13A-6-153(a)(1)

Human Trafficking Second Degree
(Benefits Financially)

The defendant is charged with human trafficking in the second degree.

A person commits the crime of human trafficking in the second degree if he/she knowingly benefits, financially or by receiving anything of value, from participation in a venture or engagement for the purpose of sexual servitude or labor servitude.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

1. The defendant benefited, financially or by receiving anything of value, **[Insert benefit]**, from participation in a venture or engagement for the purpose of sexual servitude or labor servitude; **(AND)**
2. The defendant acted knowingly.

[Read as appropriate instructions for Sexual Servitude OR Labor Servitude]:

Sexual Servitude is any sexual conduct for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception from a person. [13A-6-151(8)(a)]

Sexual conduct is any of the following acts: **[Read as appropriate]:**

A. Sexual intercourse. This term shall have its ordinary meaning and occurs upon a penetration, however slight; emission is not required.

OR

B. Sodomy. As defined under Section 13A-6-60. Section 13A-6-60 defines sodomy as any sexual act involving the genitals of one person and the mouth or anus of another person. **OR**

C. Sexual Contact. As defined under Section 13A-6-60. Section 13A-6-60 defines sexual contact as any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party. The term does not require skin to skin contact. **OR**

D. Sexual Torture. As defined under Section 13A-6-65.1. Section 13A-6-65.1 defines as follows: **[See instructions for 13A-6-65.1.] OR**

E. Sexually Explicit Performances. An act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or

viewers, whether public or private, live, photographed, recorded, videotaped, or projected over the Internet. **OR**

F. Commercial Sex Acts. Any sex act on account of which anything of value is given, promised to, or received, directly or indirectly, by any person.

[Read as appropriate]: However, if the sexual conduct is with a minor or with any person who is incapable of consent by reason of being incapacitated, as defined in Section 13A-6-60, no coercion or deception is required. [13A-6-151(8)(b)]

[Read as appropriate]: A minor is a person under the age of 19. [13A-6-151(5)]

[Read as appropriate]: Section 13A-6-60 defines Incapacitated as any of the following:

A. A person who suffers from a mental or developmental disease or disability which renders the person incapable of appraising the nature of his or her conduct. **OR**

B. A person is temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance and the condition was known or should have been reasonably known to the offender. **OR**

C. A person who is unable to give consent or who is unable to communicate an unwillingness to an act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate.

[13A-6-60(2)]

Coercion is any of the following: **[Read as appropriate]:**

A. Causing or threatening to cause physical injury or mental suffering to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person or otherwise causing the person performing or providing labor or services to believe that the person or another person will suffer physical injury, mental suffering, physical restraint, or confinement. **OR**

B. Implementing any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in physical injury, mental suffering, or physical restraint of any person. **OR**

C. Destroying, concealing, removing, confiscating, or withholding from the person or another person, or threatening to destroy, conceal, remove, confiscate, or withhold from the person or another person, the person's or any person's actual or purported government records, immigration documents, identifying information, or person or real property. **OR**

D. Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal prosecution, criminal or immigration

proceedings, hatred, contempt, or ridicule. **OR**

E. Threatening to report the person or another person to immigration officials or to other law enforcement officials or otherwise blackmailing or extorting the person or another person. **OR**

F. Use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person or another person to take some action or refrain from taking some action. **OR**

G. Controlling a person's access to a controlled substance, as the term is defined in Section 20-2-2, Code of Alabama 1975. Section 20-2-2 defines a controlled substance as a drug, substance, or immediate precursor in Schedules I through V of Article 2 of this chapter. **[Determine if the substance is on one of the Schedules and so state to the jury unless it is a fact question] OR**

H. Rape, sodomy, or any other sex offense pursuant to Section 15-20A-5, or attempted or threatened rape, sodomy, or any other sex offense pursuant to Section 15-20A-5 of any person. **[Insert instruction for appropriate rape, sodomy, or other sex offense statute]**

[13A-6-15191)]

[Read as appropriate]:

Physical Injury is impairment of physical condition or substantial pain. [13A-6-151(6)]

[Read as appropriate]:

Mental Suffering is a high degree of mental pain or emotional disturbances, such as distress, anxiety, public humiliation, or psychosomatic physical symptoms. It is more than mere disappointment, anger, resentment, wounded pride, or embarrassment and must be a direct result of the crime of human trafficking.

[13A-6-151(4)]

Deception is any of the following: **[Read as appropriate]:**

- A. Creating or confirming an impression of any existing fact or past event which is false and which the accused knows or believes to be false. **OR**
- B. Exerting financial control over the person or another person by placing the person or another person under the actor's control as a security or payment of a debt, if the value of the services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined or the principal amount of the debt does not reasonably reflect the value of the items or services for which debt

was incurred or by preventing a person from acquiring information pertinent to the disposition of the debt, referenced in this paragraph. **OR**

- C. Promising benefits or the performance of services which the accused does not intend to be delivered. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this article. **OR**
- D. Using any scheme, plan, or pattern, whether overt or subtle, intended to cause any person to believe that, if the person did not perform such labor, services, acts, or performances, the person or another person would suffer physical injury or mental suffering.

[13A-6-151(2)]

OR

Labor servitude is work or service of economic or financial value which is performed or provided by another person and is induced or obtained by coercion or deception. [13A-6-151(3)]

Coercion is any of the following: **[Read as appropriate]:**

A. Causing or threatening to cause physical injury or mental suffering to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person or otherwise causing the person performing or providing labor or services to believe that the person or another person will suffer physical injury, mental suffering, physical restraint, or confinement. **OR**

B. Implementing any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in physical injury, mental suffering, or physical restraint of any person. **OR**

C. Destroying, concealing, removing, confiscating, or withholding from the person or another person, or threatening to destroy, conceal, remove, confiscate, or withhold from the person or another person, the person's or any person's actual or purported government records, immigration documents, identifying information, or person or real property. **OR**

D. Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal prosecution, criminal or immigration proceedings, hatred, contempt, or ridicule. **OR**

E. Threatening to report the person or another person to immigration officials or to other law enforcement officials or otherwise blackmailing or extorting the person or another person. **OR**

F. Use or threatened use of a law or legal process, whether administrative, civil,

or criminal, in any manner for any purpose for which the law was not designed, in order to exert pressure on another

person to cause that person or another person to take some action or refrain from taking some action. **OR**

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H. Rape, sodomy, or any other sex offense pursuant to Section 15-20A-5, or attempted or threatened rape, sodomy, or any other sex offense pursuant to Section 15-20A-5 of any person. **[Insert instruction for appropriate rape, sodomy, or other sex offense statute]**

[13A-6-151(91)]

[Read as appropriate]:

Physical Injury is impairment of physical condition or substantial pain. [13A-6-151(6)]

[Read as appropriate]:

Mental Suffering is a high degree of mental pain or emotional disturbances, such as distress, anxiety, public humiliation, or psychosomatic physical symptoms. It is more than mere disappointment, anger, resentment, wounded pride, or embarrassment and must be a direct result of the crime of human trafficking.

[13A-6-151(4)]

Deception is any of the following: **[Read as appropriate]:**

- A. Creating or confirming an impression of any existing fact or past event which is false and which the accused knows or believes to be false. **OR**
- B. Exerting financial control over the person or another person by placing the person or another person under the actor's control as a security or payment of a debt, if the value of the services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined or the principal amount of the debt does not reasonably reflect the value of the items or services for which debt was incurred or by preventing a person from acquiring information pertinent to the disposition of the debt, referenced in this paragraph. **OR**
- C. Promising benefits or the performance of services which the accused does not intend to be delivered. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this article. **OR**

- D. Using any scheme, plan, or pattern, whether overt or subtle, intended to cause any person to believe that, if the person did not perform such labor, services, acts, or performances, the person or another person would suffer physical injury or mental suffering.

[13A-6-151(2)]

A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of human trafficking in the second degree, then you shall find the defendant guilty of the offense of human trafficking in the second degree.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of human trafficking in the second degree, then you cannot find the defendant guilty of human trafficking in the second degree.

[If lesser-included offenses are included, the Court should instruct on those offenses at this point.]

Use Notes

Evidence of the following facts or conditions shall not constitute a defense in a prosecution for human trafficking in the second degree, nor shall the evidence preclude a finding of a violation:

- (1) A human trafficking victim's sexual history or history of commercial sexual activity.
- (2) A human trafficking victim's connection by blood or marriage to a defendant in the case or to anyone involved in the victim's trafficking.
- (3) Consent of or permission by a victim of human trafficking or anyone else on the victim's behalf to any commercial sex act or sexually explicit performance.
- (4) Age of consent to sex, an act defined by paragraph b. of subdivision (7) of Section 1 [i.e. Section 13A-6-151] of the definition for sexual servitude, legal age of marriage, or other discretionary age.
- (5) Mistake as to the human trafficking victim's age, even if the mistake is reasonable.

If any apply, a charge should be given setting out the prohibited defense or defenses followed by the phrase: "is no defense to a prosecution for this offense."

[13A-6-154]

A corporation, or any other legal entity other than an individual, may be

prosecuted for human trafficking in the second degree for an act or omission only if an agent of the corporation or entity performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation or entity, and the commission of the crime was either authorized, requested, commanded, performed, or within the scope of the person's employment on behalf of the corporation or entity or constituted a pattern of conduct that an agent of the corporation or entity knew or should have known was occurring. [13A-6-153(a)(3)]

[Approved April 26, 2024]