

INFORMATION SHEET REGARDING HB24-1092
Prepared by the Office of the State Public Defender
February 2024

1. This bill is unnecessary because in most circumstances across Colorado, these crimes are charged concurrently with Human Trafficking in violation of CRS 18-3-504.

Since 2017, Colorado has punished Human Trafficking of a Minor, a class 2 felony, with a **mandatory sentence of 8 to 24 years in prison and 18-3-504 specifically contemplates the concurrent prosecution of all these crimes:**

(2)(a) A person commits human trafficking of a minor [under age 18] for sexual servitude if the person:

(I) Knowingly sells, recruits, harbors, **transports**, transfers, isolates, **entices**, provides, **receives**, obtains by any means, maintains, or makes available a minor for the purpose of commercial sexual activity; or

(II) Knowingly advertises, offers to sell, or **sells travel services that facilitate** an activity prohibited pursuant to subsection (2)(a)(I) of this section. ...

(c) In any prosecution under this subsection (2), **it is not a defense that:**

(I) **The minor consented** to being sold, recruited, harbored, transported, transferred, isolated, enticed, provided, received, obtained, or maintained by the defendant for the purpose of engaging in commercial sexual activity;

(II) **The minor consented** to participating in commercial sexual activity;

(III) The **defendant did not know the minor's age** or reasonably believed the minor to be eighteen years of age or older; or

(IV) **The minor or another person represented the minor to be eighteen years of age or older.**

(2.5) It is an affirmative defense to a charge pursuant to subsection (2) of this section if the person being charged can demonstrate by a preponderance of the evidence that, at the time of the offense, he or she was a victim of human trafficking for sexual servitude who was **forced or coerced** into engaging in the human trafficking of minors for sexual servitude pursuant to subsection (2) of this section.

Note: There is no such affirmative defense for the crimes listed in HB1092, it will subject THOSE EXPERIENCING TRAFFICKING WHO ENGAGE IN THESE ACTIVITIES TO MANDATORY PRISON.

(4) Conviction for an offense described in this section **does not preclude conviction for an offense described in article 6 or 7 of this title** based in whole or in part on the same or related conduct, and the court shall not require the prosecution to elect at trial between such offenses

NOTE: Title 7 crimes are the crimes listed in this bill so they can be concurrently charged with Human Trafficking.

2. Crime of conviction and sentence is generally a result of plea bargaining since approximately 95% of cases in Colorado are resolved by plea-bargaining to a crime and sentence that fits what the parties negotiate. It is likely that the 33 probationary sentence cases imposed each year for these cases reflect those with circumstances where mitigation is present such as:

- Teenagers or young adults involved
- Offender was a victim of human trafficking since being a victim is not a defense to these crimes but a mitigator
- Offender was coerced by others through use of drugs
- Potential proof problems or other mitigating factors specific to the case.

3. Mandatory sentences

- Do not deter crime so increasing penalties is not going to increase public safety. The people who are engaging in this conduct typically are unfamiliar with the nuances of complex statutes.
- Force plea bargains and enhance the power of the prosecutor
- Interfere with judicial discretion in crafting the appropriate sentence for the crime

4. Recidivism information provided by proponents is mostly outdated and non-specific to Colorado. Additionally, the high recidivism numbers reported for Colorado are misleading because our Department of Corrections reports "return to prison" as its recidivism rate, which is largely technical parole violations. When new crimes are considered, the recidivism rate is calculated at less than 20% for general parole population. For sex offenders in Colorado, the rate is generally calculated at 4% to 5% and in the 2023 LSA report, there was 1 new felony crime reported by Colorado DOC for a person on sex offender parole. New crimes are most often "other" felony crimes like failure to register or walk away from community corrections.