

CRIMINAL LAWS ADDRESSING FORCED MARRIAGE IN THE UNITED STATES

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OVERVIEW

A “forced marriage” is one that takes place without the full and free consent of one or both parties, and involves one or more elements of force, fraud, or coercion. There are very few laws and policies in the United States that are specifically designed to help forced marriage victims, leaving individuals facing forced marriages with few resources and options.¹

Although a number of states, as well as the District of Columbia and the U.S. Virgin Islands, have statutes that criminalize forcing someone into marriage in certain circumstances, these laws seem designed for other purposes than to prevent parents from, or to punish parents for, forcing their children into marriage. Some newer state criminal statutes or amendments address forced marriage in the context of human trafficking,² but several state criminal statutes arise in the context of laws against seduction or “defilement.” Some of these laws are more than a century old, and, at least three states have eliminated old criminal statutes specifically addressing forced marriage because prosecutors were not using them.³

To the Tahirih Justice Center’s knowledge, no recent prosecutions have been brought under forced marriage criminal statutes (against a parent or anyone else). Instead, when charges have been brought for a forced marriage, it is because the facts satisfy the elements of another crime, such as rape, abduction, or child endangerment. Prosecutors may, in fact, prefer to bring charges under such other statutes, which do not require proof of the perpetrator’s intent to force someone into a marriage against their will.

In situations where an individual facing forced marriage resides in a jurisdiction that already has a relevant criminal statute, the law (and subsequent penalties) could be an effective tool to prevent the marriage from occurring, help the victim receive assistance, and prosecute perpetrators.

The following 9 states and 2 additional U.S. jurisdictions have criminal statutes specifically on *forced marriage*, against the will of a party:

- California
- Florida
- Indiana
- Maryland
- Mississippi
- Nevada
- Oklahoma
- Virginia
- West Virginia
- District of Columbia
- U.S. Virgin Islands

The following 2 states have criminal statutes on *abduction for marriage* of certain minors, but do not include as an essential element that the marriage was forced or against the will of the minors themselves:

- Massachusetts
- Minnesota

In these states, the statute seems focused on the interference with parents’ rights to the custody and control of their minor children, rather than on protecting a minor’s own right to choose whether, when and whom to marry. Such statutes could conceivably apply to a marriage forced on a minor by someone other than the minor’s parents.

California

BACKGROUND

What is this law's citation?	Cal. Penal Code § 265
When did the law go into effect? And when was it last amended?	1872; 2011
Under what Chapter does this statute appear?	Rape, Abduction, Carnal Abuse of Children, and Seduction

SPECIFIC PROVISIONS

What is the statutory language?	Every person who takes any woman unlawfully, against her will, and by force, menace or duress, compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the state prison.
Who does this law protect?	Women only
What are the penalties for violating the law?	Imprisonment for two or three years.
Could the law be applied to parents who have forced their child to marry?	Unclear. The terms "takes" and "unlawfully" are not defined in the statute. In addition, use of the term "woman" likely means that a minor child is not protected.

Florida

BACKGROUND

What is this law's citation?	Fla. Stat. § 787.06
When did the law go into effect? And when was it last amended?	2004; 2016
Under what Chapter does this statute appear?	Kidnapping; False Imprisonment; Luring or Enticing a Child; Custody Offenses

SPECIFIC PROVISIONS

What is the statutory language?	<p>Any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:</p> <ol style="list-style-type: none">1. For labor or services of any child under the age of 18 commits a felony of the first degree2. Using coercion for labor or services of an adult commits a felony of the first degree <p>Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking, commits a life felony.</p> <p>“Human trafficking” means transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.</p> <p>“Services” means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs.</p>
Who does this law protect?	Any person
What are the penalties for violating the law?	<p>A person guilty of a life felony may be sentenced to life in prison, or at least 25 years in prison, followed by probation for the rest of the offender's natural life.</p> <p>A person guilty of a felony of the first degree may be sentenced to imprisonment not exceeding 30 years.</p>
Could the law be applied to parents who have forced their child to marry?	Yes. Florida law clearly anticipates this possibility, and mandates harsher punishment for parents who traffic their own children.
Additional notes	The application of this statute is limited by the requirement that the perpetrator subject the victim to forced marriage “for the purpose of exploitation,” given that the definition of “human trafficking” requires such a purpose. This element may be difficult to prove in cases involving parents who force a marriage because they believe (or say they believe) the marriage is in their child's best interests.

Indiana

BACKGROUND

What is this law's citation? Ind. Code Ann. § 35-42-3.5-1.1

**When did the law go into effect?
And when was it last amended?** 2006; 2018

Under what Chapter does this statute appear? Human and Sexual Trafficking

SPECIFIC PROVISIONS

What is the statutory language? A person who knowingly or intentionally uses force, threat of force, coercion, or fraud to recruit, entice, harbor, or transport an individual with the intent of causing the individual to:

- (1) marry another person;
- (2) engage in prostitution; or
- (3) participate in sexual conduct;

commits promotion of human sexual trafficking, a Level 4 felony.

Who does this law protect? Any person

What are the penalties for violating the law? A person who commits a Level 4 felony shall be imprisoned for a term between 2 and 12 years. In addition, the person may be fined not more than \$10,000.

In addition, a "victim's assistance fee" of between \$500 and \$5,000 shall be assessed against a person convicted of promotion of human sexual trafficking. See Ind. Code Ann. § 33-37-5-23.

Could the law be applied to parents who have forced their child to marry? Yes.

Additional notes For the purposes of this statute:

"[F]orce," "threat of force," "coercion," or "fraud" means but is not limited to a person:

- (1) causing or threatening to cause physical harm to a human trafficking victim;
 - (2) physically restraining or threatening to physically restrain a human trafficking victim;
 - (3) abusing or threatening to abuse the law or legal process to further the act of human trafficking;
 - (4) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of the human trafficking victim;
 - (5) using blackmail or threatening to cause financial harm for the purpose of exercising financial control over the human trafficking victim; or
 - (6) facilitating or controlling a human trafficking victim's access to a controlled substance. See Ind. Code Ann. § 35-42-3.5-0.5.
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The statute also provides another way that parents who have forced the marriage of a child might be subject to prosecution:

A person who is at least eighteen (18) years of age who knowingly or intentionally sells or transfers custody of a child less than eighteen (18) years of age for the purpose of prostitution, juvenile prostitution, or participating in sexual conduct commits child sexual trafficking, a Level 2 felony, which defines a possible sentence of between 10 and 30 years, with a possible fine not more than \$10,000. See Ind. Code Ann. § 35-42-3.5-1.3.

Indiana civil law also defines a child who is “recruited, harbored, transported, or engaged in” marriage, unless authorized by a court, as a “victim of human or sexual trafficking” for the purposes of determining whether a child is in need of “services,” which means the “care, treatment and rehabilitation” of that the child. See Ind. Code Ann. §§ 31-9-2-133.1, 31-34-1-3.5.¹

¹ Indiana’s civil law allows a 17-year-old to marry without judicial permission after obtaining the consent of both parents (or in the case of divorce, the parent awarded legal custody) or a legally-appointed guardian, which seems to conflict with this provision requiring court authorization. See Ind. Code Ann. §§ 31-11-1-5, 31-11-2.

Maryland

BACKGROUND

What is this law's citation? Md. Code Ann., Crim. Law § 3-1103²

**When did the law go into effect?
And when was it last amended?** 2002; 2019 (effective October 1, 2019)³

Under what Chapter does this statute appear? Other Crimes Against the Person
(subtitle) Human Trafficking

SPECIFIC PROVISIONS

What is the statutory language? A person may not knowingly take or detain another with the intent to use force, threat, coercion, or fraud to compel the other to marry any person.

Who does this law protect? Any person

What are the penalties for violating the law? A person shall be guilty of the felony of forced marriage and subject to:

- imprisonment not exceeding 25 years;
- or a fine not exceeding \$15,000;
- or both.

Could the law be applied to parents who have forced their child to marry? Yes

Additional notes The statute provides for the same penalties to be applied to a person who knowingly “aid[s], abet[s], or conspire[s] with another to violate this subsection” or who “receive[s] a financial benefit or thing of value” in connection to a violation of the subsection.

The statute also provides that a person who violates the section can be “charged, tried, and sentenced in any county in or through which the person transported or attempted to transport the victim.”

² Maryland House Bill 871, effective October 1, 2019, created new § 3-1103 establishing the offense of “forced marriage,” which “is similar to the prohibitions on forced marriage under the current felony human trafficking statute (§ 11-303(b) of the Criminal Law Article).” See MD. GEN. ASSEMB. DEP’T OF LEG. SERVS., FISCAL AND POLICY NOTE, 2019 LEG., 439TH SESS., at 2 (2019), http://mgaleg.maryland.gov/2019RS/fnotes/bil_0001/hb0871.pdf; see also H.B. 871, 2019 LEG., 439TH SESS. (Md. 2019).

³ *Id.*

Mississippi

BACKGROUND

What is this law's citation?	Miss. Code Ann. § 97-3-1
When did the law go into effect? And when was it last amended?	1980; N/A
Under what Chapter does this statute appear?	Abduction for marriage or defilement

SPECIFIC PROVISIONS

What is the statutory language?	Every person who shall take any person over the age of fourteen (14) years unlawfully, against his or her will, and by force, menace, fraud, deceit, stratagem or duress, compel or induce him or her to marry such person or to marry any other person, or to be defiled, and shall be thereof duly convicted, shall be punished by imprisonment in the penitentiary not less than five (5) years and not more than fifteen (15) years.
Who does this law protect?	Any person over the age of 14.
What are the penalties for violating the law?	See statutory language above.
Could the law be applied to parents who have forced their child to marry?	Unclear. The terms "take" and "unlawfully" are not defined. In addition, use of the phrase "persons over the age of 14" means that persons under age 14 are not protected by this statute.

Nevada

BACKGROUND

What is this law's citation?	Nev. Rev. Stat. § 201.300
When did the law go into effect? And when was it last amended?	1913; 2019 (effective October 1, 2019) ⁴
Under what Chapter does this statute appear?	Crimes Against Public Decency and Good Morals – Pandering, Prostitution and Disorderly Houses (subchapter) Pandering and Sex Trafficking

SPECIFIC PROVISIONS

What is the statutory language?	A person is guilty of sex trafficking if the person takes or detains a person with the intent to compel the person by force, violence, threats or duress to marry him or her or any other person.
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Who does this law protect?	Any person
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What are the penalties for violating the law?	Penalties depend on whether the victim was an adult or a child, and the age of the child at the time the offense was committed.
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- If the victim of the sex trafficking is an adult:
 - the person is guilty of a category B felony;
 - shall be punished by 3-10 years' imprisonment in the state prison; and
 - may be fined not more than \$10,000.
- If the victim of the sex trafficking is a child under 14 years old:
 - the person is guilty of a category A felony;
 - shall be punished by imprisonment in the state prison for life with the possibility of parole (eligible only after serving 15 years); and
 - may be fined not more than \$20,000.
- If the victim of the sex trafficking is a child 14-16 years old:
 - the person is guilty of a category A felony;
 - shall be punished by imprisonment for life in the state prison with the possibility of parole (eligible only after serving 10 years); and
 - may be fined not more than \$10,000.
- If the victim of the sex trafficking is a child 16-18 years old:
 - the person is guilty of a category A felony;
 - shall be punished by imprisonment for life in the state prison with the possibility of parole (eligible only after serving 5 years); and
 - may be fined not more than \$10,000.

The court may impose an additional penalty for the primary offense—a fine of up to \$500,000—where physical force or violence or the immediate threat of physical force or violence was used on a child. (Nev. Rev. Stat. § 201.352).

The statute prohibits probation or suspended sentences for anyone convicted of sex trafficking a child (i.e., would prohibit the same for anyone convicted under the forced marriage provision if the victim were a child).

⁴ See A.B. 120, 80TH LEG., REG. SESS. (Nev. 2019) (approved May 25, 2019) (amending § 201.300 to provide “that a person is guilty of sex trafficking if he or she receives anything of value with the specific intent of facilitating any act that constitutes sex trafficking”); see also Nev. Elec. Leg. Info. Sys., *A.B. 120 Overview* (last updated June 20, 2019) (depicting October 1, 2019 effective date), <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6162/Overview>.

Could the law be applied to parents who have forced their child to marry?

Yes

Additional notes

Receiving anything of value with the intent of violating this section is also considered sex trafficking. A related statute also provides that even if any part of such act or acts are committed out of state, the offense can be deemed committed, and the offender tried and punished, in any county in which any overt act to further the offense was committed (Nev. Rev. Stat. § 201.350).

Oklahoma

BACKGROUND

What is this law's citation?	Okla. Stat. Ann. tit. 21, §§ 1117, 1118, and 1119
When did the law go into effect? And when was it last amended?	1910; 1999
Under what Chapter does this statute appear?	Rape, Abduction, Carnal Abuse of Children and Seduction

SPECIFIC PROVISIONS

What is the statutory language?	<p><u>§1117. Compelling woman to marry:</u> Any person who takes any woman against her will, and by force, menace or duress, compels her to marry him or to marry any other person, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not less than ten (10) years.</p> <p><u>§1118. Intent to compel woman to marry:</u> Any person who takes any woman unlawfully against her will, with the intent to compel her by force, menace or duress to marry him, or to marry any other person, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding (10) years.</p> <p><u>§1119. Abduction of person under fifteen:</u> Every person who takes away or induces to leave any person under the age of fifteen (15) years, from a parent, guardian or other person having the legal charge of the person, without the consent of said parent, guardian, or other person having legal charge, for the purpose of marriage . . . shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding five (5) years, or by imprisonment in the county jail not exceeding one (1) year, or by a fine not exceeding One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.</p>
Who does this law protect?	§§1117-1118: Women only; §1119: Anyone under age 15, but only if the parents do not consent to the marriage.
What are the penalties for violating the law?	See statutory language above.
Could the law be applied to parents who have forced their child to marry?	Yes

Virginia

BACKGROUND

What is this law's citation?	Va. Code Ann. § 18.2-355
When did the law go into effect? And when was it last amended?	1975; 2015
Under what Chapter does this statute appear?	Crimes Involving Morals and Decency – Commercial Sex Trafficking, Prostitution, etc. (article) Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking

SPECIFIC PROVISIONS

What is the statutory language?	Any person who takes or detains a person against his or her will with the intent to compel such person, by force, threats, persuasions, menace or duress, to marry him or her or to marry any other person, or to be defiled . . . is guilty of pandering.
Who does this law protect?	Any person
What are the penalties for violating the law?	Violation of this provision constitutes a Class 4 felony, subject to: <ul style="list-style-type: none">• Imprisonment of not less than two years nor more than 10 years; and• a fine of not more than \$100,000.
Could the law be applied to parents who have forced their child to marry?	Yes

West Virginia

BACKGROUND

What is this law's citation? W. Va. Code § 61-2-14

**When did the law go into effect?
And when was it last amended?** 1882; 1984

Under what Chapter does this statute appear? Crimes and Their Punishment – Crimes Against the Person
(subsection) Abduction of person; kidnapping or concealing child

SPECIFIC PROVISIONS

What is the statutory language? Any person who takes away another person, or detains another person against such person's will, with intent to marry or defile the person, or to cause the person to be married or defiled by another person; or takes away a child under the age of sixteen years from any person having lawful charge of such child, for the purpose of prostitution or concubinage, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than three nor more than ten years.

Who does this law protect? Any person

What are the penalties for violating the law? See statutory language above.

Could the law be applied to parents who have forced their child to marry? Yes

District of Columbia

BACKGROUND

What is this law's citation?	D.C. Code Ann. § 22-2705
When did the law go into effect? And when was it last amended?	1910; 2013
Under what Chapter does this statute appear?	Prostitution; Pandering (subsection) Pandering; inducing or compelling an individual to engage in prostitution

SPECIFIC PROVISIONS

What is the statutory language?	It is unlawful for any person, within the District of Columbia to: Take or detain an individual against the individual's will, with intent to compel such individual by force, threats, menace, or duress to marry the abductor or to marry any other person.
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Who does this law protect?	Any person
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What are the penalties for violating the law?	<p>A person shall be guilty of a felony and subject to:</p> <ul style="list-style-type: none">• imprisonment for not more than 5 years;• or a fine of "not more than the amount set forth in [the Criminal Fine Proportionality Amendment Act of 2012]," i.e., not more than \$12,500 for offenses punishable by imprisonment for 5 years or less but more than one year;• or both. <p>If the victim is under 18 years of age, a person shall be guilty of a felony and subject to:</p> <ul style="list-style-type: none">• imprisonment for not more than 20 years;• or a fine of "not more than the amount set forth in [the Criminal Fine Proportionality Amendment Act of 2012]," i.e., not more than \$50,000 for offenses punishable by imprisonment for 20 years or less but more than 15 years;• or both.
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Could the law be applied to parents who have forced their child to marry?	Yes
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U.S. Virgin Islands

BACKGROUND

What is this law's citation?	V.I. Code Ann. tit. 14, § 1301
When did the law go into effect? And when was it last amended?	1921; N/A
Under what Chapter does this statute appear?	Marriage (subsection) Forcible marriage; defilement

SPECIFIC PROVISIONS

What is the statutory language?	Whoever takes any woman unlawfully, against her will, and by force, menace or duress, compels her— (1) to marry him; (2) to marry any other person; or (3) to be defiled— Shall be imprisoned not more than 10 years.
Who does this law protect?	Women only
What are the penalties for violating the law?	See statutory language above.
Could the law be applied to parents who have forced their child to marry?	Unclear. The terms “takes” and “unlawfully” are not defined in the statute. In addition, use of the term “woman” likely means that a minor child is not protected.

STATES WITH CRIMINAL STATUTES ON ABDUCTION OF MINORS FOR MARRIAGE

Massachusetts

BACKGROUND

What is this law's citation?	Mass. Gen. Laws ch. 272, § 1
When did the law go into effect? And when was it last amended?	1852; 1978
Under what Chapter does this statute appear?	Crimes Against Chastity, Morality, Decency and Good Order (subsection) Enticing away person under 16 for marriage

SPECIFIC PROVISIONS

What is the statutory language?	Whoever fraudulently and deceitfully entices or takes away an unmarried person under sixteen from the house of such person's parents or elsewhere, without the consent of the parent or guardian, if any, under whose care and custody such person is living, for the purpose of effecting a clandestine marriage of such person without the consent of such parent or guardian, shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or both.
Who does this law protect?	Persons under the age of 16 (but only if they are taken without the consent of the parents or guardian).
What are the penalties for violating the law?	See statutory language above.
Could the law be applied to parents who have forced their child to marry?	No

Minnesota

BACKGROUND

What is this law's citation?	Minn. Stat. Ann. § 609.265
When did the law go into effect? And when was it last amended?	1963; 1984
Under what Chapter does this statute appear?	Criminal Code – Crimes Against the Person (subsection) Abduction

SPECIFIC PROVISIONS

What is the statutory language?	Whoever, for the purpose of marriage, takes a person under the age of 18 years, without the consent of the parents, guardian, or other person having legal custody of such person is guilty of abduction and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000 or both.
Who does this law protect?	Persons under the age of 18 (but only if they are taken without the consent of the parents, guardian, or other person having legal custody of such person).
What are the penalties for violating the law?	A person who is guilty of abduction may be sentenced to: <ul style="list-style-type: none">• imprisonment for not more than one year;• or payment of a fine of not more than \$3,000;• or both.
Could the law be applied to parents who have forced their child to marry?	No

ENDNOTES

¹ For example, to date, Texas is the only U.S. state that specifically makes forced marriage a basis for a civil protection order, and it is limited to the forced marriage of a child. The Tahirih Justice Center successfully advocated for these protection order reforms alongside marriage-age reforms enacted in 2017. See Tex. Fam. Code §261.001(1)(M) (adding “forcing or coercing a child to enter into a marriage” to the definition of child abuse) and Tex. Fam. Code §71.004(2) (adding forced marriage of a child to the bases for family violence protection orders). In Texas, any adult can petition for a family violence protection order to protect any child. Some other states have protection order statutes for domestic violence or stalking that are expansive enough to encompass a threatened forced marriage, but in many states, minors are not able to petition for civil protection orders on their own behalf. See Lisa V. Martin, “Restraining Forced Marriage,” *Nevada Law Journal*: Vol. 18: Iss. 3, Article 8 (2018). One other state to take a novel civil approach to forced marriage is Tennessee. Legislative amendments enacted in 2018 alongside marriage-age reforms established a new civil cause of action and up to \$250,000 in damages for anyone, who at any age, was forced into a marriage. See Tenn. Code Ann. § 36-3-108. This section also clarified that forced marriages are void and unenforceable.

² In addition to anti-trafficking statutes that specifically address forced marriage, general anti-trafficking statutes could also conceivably apply to certain forced marriage cases, depending on the facts.

³ For example, in 2010, Michigan repealed its criminal statute (former Mich. Comp. Laws §750.11) on “taking a woman and compelling her to marry” following the review and recommendation of the Prosecuting Attorneys Association of Michigan to repeal a number of outdated criminal statutes that were not being prosecuted. The supporting argument before the Michigan Senate Judiciary Committee was that “[t]he actions involved in each of those crimes could be prosecuted as other offenses, perhaps even more easily, so taking them off the books would not mean that the prohibited activities would be legal. For instance, a person could be charged with kidnapping or sexual assault rather than with taking a woman and forcing her to marry, without having the burden of proving the additional elements of compelling the victim to marry or defiling her.” See *Analysis of Repeal of Various Criminal Offenses* (Oct. 18, 2009), www.legislature.mi.gov/documents/2009-2010/billanalysis/Senate/htm/2009-SFA-0760-A.htm. Idaho and Alabama have also abolished laws specifically addressing forced marriage.