

Annex 5B

**SALE, KIDNAPPING, TRAFFICKING FOR
ADOPTION
AND RELATED STATUTES**

CALIFORNIA

CAL PEN CODE § 181 (2009). Infringement of personal liberty or attempt to assume ownership of persons.

Every person who holds, or attempts to hold, any person in involuntary servitude, or assumes, or attempts to assume, rights of ownership over any person, or who sells, or attempts to sell, any person to another, or receives money or anything of value, in consideration of placing any person in the custody, or under the power or control of another, or who buys, or attempts to buy, any person, or pays money, or delivers anything of value, to another, in consideration of having any person placed in his custody, or under his power or control, or who knowingly aids or assists in any manner any one thus offending, is punishable by imprisonment in the state prison for two, three or four years.

COLORADO

C.R.S. 18-3-302 (2009). Second degree kidnapping.

(1) Any person who knowingly seizes and carries any person from one place to another, without his consent and without lawful justification, commits second degree kidnapping.

(2) Any person who takes, entices, or decoys away any child not his own under the age of eighteen years with intent to keep or conceal the child from his parent or guardian or with intent to sell, trade, or barter such child for consideration commits second degree kidnapping.

(3) Second degree kidnapping is a class 2 felony if any of the following circumstances exist:

(a) The person kidnapped is a victim of a sexual offense pursuant to part 4 of this article;
or

(b) The person kidnapped is a victim of a robbery.

(4) (a) Unless it is a class 2 felony under subsection (3) of this section, second degree kidnapping is a class 3 felony if any of the following circumstances exist:

(I) The kidnapping is accomplished with intent to sell, trade, or barter the victim for consideration; or

(II) The kidnapping is accomplished by the use of a deadly weapon or any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon; or

(III) The kidnapping is accomplished by the perpetrator representing verbally or otherwise that he or she is armed with a deadly weapon.

(b) A defendant convicted of second degree kidnapping committed under any of the circumstances set forth in this subsection (4) shall be sentenced by the court in accordance with the provisions of section 18-1.3-406.

(5) Second degree kidnapping is a class 4 felony, except as provided in subsections (3) and (4) of this section.

COLORADO

C.R.S. 18-6-402 (2009). Trafficking in children.

(1) A person commits trafficking in children if he or she:

(a) Sells, exchanges, barter, or leases a child and receives any money or other consideration or thing of value for the child as a result of such transaction; or

(b) Receives a child as a result of a transaction described in paragraph (a) of this subsection (1).

(2) As used in this section, "child" means a person under eighteen years of age.

(3) Trafficking in children is a class 2 felony.

DELAWARE

11 DEL. C. § 1100 (2009). Dealing in children; class E felony.

A person is guilty of dealing in a child if the person intentionally or knowingly trades, barter, buys or negotiates to trade, barter, buy or sell a child under the age of 18; provided, however, that payment of reasonable medical expenses related to the pregnancy and reasonable room and board to the providers of those services in conjunction with placement of a child for adoption in accordance with § 904(a)(2) of Title 13 shall not

constitute a violation of this section.

Dealing in a child is a class E felony.

GEORGIA

O.C.G.A. § 19-8-24 (2009). Unlawful advertisements; unlawful inducements; penalties.

(a) It shall be unlawful for any person, organization, corporation, hospital, or association of any kind whatsoever which has not been established as a child-placing agency by the department to:

(1) Advertise, whether in a periodical, by television, by radio, or by any other public medium or by any private means, including letters, circulars, handbills, and oral statements, that the person, organization, corporation, hospital, or association will adopt children or will arrange for or cause children to be adopted or placed for adoption; or

(2) Directly or indirectly hold out inducements to parents to part with their children.

As used in this subsection, "inducements" shall include any financial assistance, either direct or indirect, from whatever source, except payment or reimbursement of the medical expenses directly related to the mother's pregnancy and hospitalization for the birth of the child and medical care for the child.

(b) It shall be unlawful for any person to sell, offer to sell, or conspire with another to sell or offer to sell a child for money or anything of value, except as otherwise provided in this chapter.

(c) Any person who violates subsection (a) or (b) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine not to exceed \$10,000.00 or imprisonment for not more than ten years, or both, in the discretion of the court.

(d)(1) Paragraph (1) of subsection (a) of this Code section shall not apply to communication by private means, including only written letters or oral statements, by an individual seeking to:

(A) Adopt a child or children; or

(B) Place that individual's child or children for adoption,

whether the communication occurs before or after the birth of such child or children.

(2) Paragraph (1) of subsection (a) of this Code section shall not apply to any communication described in paragraph (1) of this subsection which contains any attorney's name, address, telephone number, or any combination of such information and which requests any attorney named in such communication to be contacted to facilitate the carrying out of the purpose, as described in subparagraph (A) or (B) of paragraph (1) of this subsection, of the individual making such personal communication.

IDAHO

IDAHO CODE § 18-1511 (2009). Sale or barter of child for adoption or other purpose penalized -- Allowed expenses.

Any person or persons who shall sell or barter any child for adoption or for any other purpose, shall be guilty of a felony, and upon conviction shall be punished by imprisonment in the state penitentiary for not more than fourteen (14) years, or by a fine of not more than five thousand dollars (\$ 5,000), or by both such fine and imprisonment.

Provided however, this section shall not prohibit any person, or adoption agency from providing, in addition to legal and medical costs, reasonable maternity and living expenses during the pregnancy and for a period not to exceed six (6) weeks post partum based upon demonstrated financial need.

Any person or agency, seeking to provide financial assistance in excess of five hundred dollars (\$ 500) shall do so after informally submitting to a court of competent jurisdiction, a verified financial plan outlining proposed expenditures. The court may approve or amend such a proposal. Only after court approval shall assistance totaling more than five hundred dollars (\$ 500) become available to the birth parent. A prospective adoptive parent, or another person acting on behalf of a prospective adoptive parent, shall make payments for allowed expenses only to third party vendors, as is reasonably practical. All actual expenditures shall be presented by verified affidavit of counsel or the agency at the time of the adoption finalization.

No financial assistance to a birth parent shall exceed the sum of two thousand dollars (\$ 2,000) unless otherwise authorized by the court. The financial assistance contemplated by this section shall be considered a charitable gift, not subject to recovery under the terms of section 16-1515, Idaho Code.

MARYLAND

MD. CRIMINAL LAW CODE ANN. § 3-603 (2009). Sale of minor.

(a) Prohibited. -- A person may not sell, barter, or trade, or offer to sell, barter, or trade, a minor for money, property, or anything else of value.

(b) Penalty. -- A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$ 10,000 or both for each violation.

(c) Statute of limitations and in banc review. -- A person who violates this section is

subject to § 5-106(b) of the Courts Article.

MISSOURI

§ 568.175 R.S.Mo. (2009). Trafficking in children--elements of crime--penalty.

1. A person, partnership, corporation, agency, association, institution, society or other organization commits the crime of trafficking in children if he or it offers, gives, receives or solicits any money, consideration or other thing of value for the delivery or offer of delivery of a child to another person, partnership, corporation, agency, association, institution, society or other organization for purposes of adoption, or for the execution of a consent to adopt or waiver of consent to future adoption or a consent to termination of parental rights.
2. A crime is not committed under this section if the money, consideration or thing of value or conduct is permitted under chapter 453, RSMo, relating to adoption.
3. The crime of trafficking in children is a class C felony.

OKLAHOMA

21 OKL. ST. § 866 (2009). Elements of offense.

- A. 1. The crime of trafficking in children is defined to consist of any of the following acts or any part thereof:
 - a. the acceptance, solicitation, offer, payment or transfer of any compensation, in money, property or other thing of value, at any time, by any person in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child, except as ordered by the court or except as otherwise provided by Section 7505-3.2 of Title 10 of the Oklahoma Statutes,
 - b. the acceptance or solicitation of any compensation, in money, property or other thing of value, by any person or organization for services performed, rendered or purported to be performed to facilitate or assist in the adoption or foster care placement of a minor child, except by the Department of Human Services, a child-placing agency licensed in Oklahoma pursuant to the Oklahoma Child Care Facilities Licensing Act, or an attorney authorized to practice law in Oklahoma. The provisions of this paragraph shall not prohibit an attorney licensed to practice law in another state or an out-of-state licensed child-placing agency from receiving compensation when working with an attorney licensed in

this state who is, or when working with a child-placing agency licensed in this state which is, providing adoption services or other services necessary for placing a child in an adoptive arrangement,

c. bringing or causing to be brought into this state or sending or causing to be sent outside this state any child for the purpose of placing such child in a foster home or for the adoption thereof and thereafter refusing to comply upon request with the Interstate Compact on the Placement of Children. Provided, however, that this provision shall have no application to the parent or guardian of the child nor to a person bringing said child into this state for the purpose of adopting the child into such person's own family,

d. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for the purpose of an adoption by the birth parent of the child who at the time of the solicitation or receipt had no intent to consent to eventual adoption,

e. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a woman who knows she is not pregnant but who holds herself out to be pregnant and offers to place a child upon birth for adoption,

f. the receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a birth parent who receives, from one or more parties, an aggregate amount of One Thousand Dollars (\$ 1,000.00) or more in total value without first disclosing to each prospective adoptive parent, child-placing agency, or attorney the receipt of these expenses,

g. advertising of services for compensation to assist with or effect the placement of a child for adoption or for care in a foster home by any person or organization except by the Department of Human Services, or a child-placing agency licensed in this state. Nothing in this paragraph shall prohibit an attorney authorized to practice law in Oklahoma from the advertisement of legal services related to the adoption of children, and

h. (1) advertisements for and solicitation of a woman who is pregnant to induce her to place her child upon birth for adoption, except by a child-placing agency licensed in this state or an attorney authorized to practice law in Oklahoma. Nothing in this section shall prohibit a person from advertising to solicit a pregnant woman to consider adoptive placement with the person or to locate a child for an adoptive placement into the person's

own home, provided that such person has received a favorable preplacement home study recommendation in accordance with Section 7505-5.1 of Title 10 of the Oklahoma Statutes, which shall be verified by the signed written statement of the person or agency which performed the home study, and provided that no money or other thing of value is offered as part of such an inducement except as ordered by the court or except as otherwise provided by Section 7505-3.2 of Title 10 of the Oklahoma Statutes.

(2) Any person violating the provisions of this paragraph shall, upon conviction thereof, be guilty of a misdemeanor.

2. a. Except as otherwise provided by this subsection, the violation of any of the subparagraphs in paragraph 1 of this subsection shall constitute a felony and shall be punishable by imprisonment of up to ten (10) years or a fine of up to Ten Thousand Dollars (\$ 10,000.00) per violation or both such fine and imprisonment.

b. Prospective adoptive parents who violate subparagraph a of paragraph 1 of this subsection, upon conviction thereof, shall be guilty of a misdemeanor and may be punished by a fine not to exceed Five Thousand Dollars (\$ 5,000.00) per violation.

B. 1. No person shall knowingly publish for circulation within the borders of the State of Oklahoma an advertisement of any kind in any print, broadcast or electronic medium, including, but not limited to, newspapers, magazines, telephone directories, handbills, radio or television, which violates subparagraph g or h of paragraph 1 of subsection A of this section.

2. Any person violating the provisions of this subsection shall, upon conviction thereof, be guilty of a misdemeanor and shall be punished by a fine not to exceed Five Thousand Dollars (\$ 5,000.00) per violation.

C. The payment or acceptance of costs and expenses listed in Section 7505-3.2 of Title 10 of the Oklahoma Statutes shall not be a violation of this section as long as the petitioner or birth parent has complied with the applicable procedure specified in Section 7505-3.2 of Title 10 of the Oklahoma Statutes and such costs and expenses are approved by the court.

D. Any person knowingly failing to file an affidavit of all adoption costs and expenses before the final decree of adoption as required by Sections 7505-3.2 and 7505-6.2 of Title 10 of the Oklahoma Statutes shall be guilty of a misdemeanor.

OREGON

ORS § 163.537 (2007). Buying or selling a person under 18 years of age.

(1) A person commits the crime of buying or selling a person under 18 years of age if the

person buys, sells, barter, trades or offers to buy or sell the legal or physical custody of a person under 18 years of age.

(2) Subsection (1) of this section does not: (a) Prohibit a person in the process of adopting a child from paying the fees, costs and expenses related to the adoption as allowed in ORS 109.311.

(b) Prohibit a negotiated satisfaction of child support arrearages or other settlement in favor of a parent of a child in exchange for consent of the parent to the adoption of the child by the current spouse of the child's other parent.

(c) Apply to fees for services charged by the Department of Human Services or adoption agencies licensed under ORS 412.001 to 412.161 and 412.991 and ORS chapter 418.

(d) Apply to fees for services in an adoption pursuant to a surrogacy agreement.

(e) Prohibit discussion or settlement of disputed issues between parties in a domestic relations proceeding.

(3) Buying or selling a person under 18 years of age is a Class B felony.

TENNESSEE

TENN. CODE ANN. § 36-1-109 (2009). Illegal payments in connection with placement of child -- Penalty.

(a) It is unlawful for any person, corporation, agency, or other entity other than the department or a licensed child-placing agency or licensed clinical social worker, as defined in § 36-1-102, that is subject to regulation by the department to:

(1) (A) Charge or receive from or on behalf of any person or persons legally adopting or accepting a child for adoption any remuneration, fee, contribution, or thing of value whatsoever for rendering any service described in § 36-1-108 in connection with the placement of such child for adoption or in connection with the placement of such child for foster care or adoption with one other than the child's parent(s) other than that now or hereafter allowed by law;

(B) (i) This section shall not be construed to prohibit the payment by any interested person of reasonable charges or fees for hospital or medical services for the birth of the child, or for medical care and other reasonable birth-related expenses for the mother and/or child incident thereto, for reasonable counseling fees for the parents or prospective adoptive parents and/or child, for reasonable legal services or the reasonable costs of legal proceedings related to the adoption of any child or for reasonable, actual expenses for housing, food, maternity clothing, child's clothing, utilities or transportation for a reasonable period not to exceed ninety (90) days prior to or forty-five (45) days after the

birth or surrender or parental consent to the adoption of the child, unless a court with jurisdiction for the surrender or adoption of a child, based upon detailed affidavits of a birth mother and the prospective adoptive parents and such other evidence as the court may require, specifically approves in a written order, based upon a motion filed by the prospective adoptive parents for that purpose, any expenses specifically allowed in this subdivision (a)(1)(B) for a period prior to or after the periods noted above.

(ii) Such expenses must be incurred directly in connection with the maternity, birth, and/or placement of the child for adoption, or for legal services or for costs of legal proceedings directly related to the adoption of the child, or for counseling for a period of up to one (1) year for the parent who surrenders the child or consents to the adoption of the child;

(iii) The payment for such expenses may only be for expenses or costs actually incurred during the periods permitted in subdivisions (a)(1)(B)(i) and (ii). This shall not be construed to prohibit the actual payment or receipt of payment for such expenses or costs after those periods that were actually incurred during those periods.

(2) Sell or surrender a child to another person for money or anything of value; and it is unlawful for any person to receive such minor child for such payment of money or thing of value; provided, that nothing herein shall be construed as prohibiting any person who is contemplating adopting a child not yet born or surrendered or for whom a parental consent may be given from payment of the expenses set forth in subdivision (a)(1)(B);

(3) Having the rights and duties of a parent or guardian with respect to the care and custody of a minor child, assign or transfer such parental or guardianship rights for the purpose of, incidental to, or otherwise connected with, selling or offering to sell such rights and duties for money or anything of value; or

(4) Assist in the commission of any acts prohibited in subdivision (a)(1), (2), or (3).

(b) A violation of this section is a Class C felony.

(c) Any adoption completed before March 27, 1978, shall not be affected by this section.

UTAH

UTAH CODE ANN. § 76-7-203 (2009). Sale of child -- Felony -- Payment of adoption related expenses.

(1) For purposes of this section:

(a) "Adoption related expenses" means expenses that:

(i) are reasonably related to the adoption of a child;

(ii) are incurred for a reasonable amount; and

(iii) may include expenses:

(A) of the mother or father of the child being adopted, including:

(I) legal expenses;

(II) maternity expenses;

(III) medical expenses;

(IV) hospital expenses;

(V) counseling expenses;

(VI) temporary living expenses during the pregnancy or confinement of the mother; or

(VII) expenses for travel between the mother's or father's home and the location where the child will be born or placed for adoption;

(B) of a directly affected person for:

(I) travel between the directly affected person's home and the location where the child will be born or placed for adoption; or

(II) temporary living expenses during the pregnancy or confinement of the mother; or

(C) other than those included in Subsection (1)(a)(iii)(A) or (B), that are not made for the purpose of inducing the mother, parent, or legal guardian of a child to:

(I) place the child for adoption;

(II) consent to an adoption; or

(III) cooperate in the completion of an adoption.

(b) "Directly affected person" means a person who is:

(i) a parent or guardian of a minor when the minor is the mother or father of the child being adopted;

(ii) a dependant of:

(A) the mother or father of the child being adopted; or

(B) the parent or guardian described in Subsection (1)(b)(i); or

(iii) the spouse of the mother or father of the child being adopted.

(2) Except as provided in Subsection (3), a person is guilty of a third degree felony if the person:

(a) while having custody, care, control, or possession of a child, sells, or disposes of the child, or attempts or offers to sell or dispose of the child, for and in consideration of the payment of money or another thing of value; or

(b) offers, gives, or attempts to give money or another thing of value to a person, with the intent to induce or encourage a person to violate Subsection (2)(a).

(3) A person does not violate this section by paying or receiving payment for adoption related expenses, if:

(a) the expenses are paid as an act of charity; and

(b) the payment is not made for the purpose of inducing the mother, parent, or legal guardian of a child to:

(i) place the child for adoption;

(ii) consent to an adoption; or

(iii) cooperate in the completion of an adoption.

WASHINGTON

REV. CODE WASH. (ARCW) § 9A.64.030 (2009). Child selling -- Child buying.

(1) It is unlawful for any person to sell or purchase a minor child.

(2) A transaction shall not be a purchase or sale under subsection (1) of this section if any of the following exists:

(a) The transaction is between the parents of the minor child; or

(b) The transaction is between a person receiving or to receive the child and an agency recognized under RCW 26.33.020; or

(c) The transaction is between the person receiving or to receive the child and a state

agency or other governmental agency; or

(d) The transaction is pursuant to chapter 26.34 RCW; or

(e) The transaction is pursuant to court order; or

(f) The only consideration paid by the person receiving or to receive the child is intended to pay for the prenatal hospital or medical expenses involved in the birth of the child, or attorneys' fees and court costs involved in effectuating transfer of child custody.

(3) (a) Child selling is a class C felony.

(b) Child buying is a class C felony.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

Sale of Minor/Trafficking for Adoption

1. State Statutes
 - a. Sell or barter for adoption: ID
 - b. Sell or barter (not adoption-specific or provides for adoption exemption): DE, MD, GA, OR, TN, UT, WA
 - c. Sale of a person (not child-specific): CA
 - d. Kidnapping to sell, trade, barter, etc. (not adoption-specific): CO
 - e. Trafficking of child (not sex or labor-specific): CO, MO, OK
 - i. **California:** 181 Infringement of Personal Liberty or Attempt to Assume Ownership
 - ii. **Colorado:** 18-6-402 Trafficking in Children; 18-3-302 Second Degree Kidnapping
 - iii. **Delaware:** 1100 Dealing in Children
 - iv. **Georgia:** 19-8-24 Unlawful Advertisements, Unlawful Inducements, Penalties
 - v. **Idaho:** 18-1511 Sale or Barter of Child for Adoption; 39-1113 Denial, Suspension or Revocation of License; 33-1208 Revocation, Suspension, Denial, Reasonable Conditions on Certificate
 - vi. **Maryland:** 3-603 Sale of Minor
 - vii. **Missouri:** 568.175 Trafficking in Children
 - viii. **Oklahoma:** 866 Trafficking in Children
 - ix. **Oregon:** 163.537 Buying or Selling a Person Under 18
 - x. **Tennessee:** 36-1-109 Illegal Payments in Connection with Placement of Child
 - xi. **Utah:** 76-7-203 Sale of Child
 - xii. **Washington:** 9A.64.030 Child Selling -- Child Buying
2. Case Law
 - a. *State of Utah v. Thomas M. Vigil* 922 P.2d 15 (1996): When unsuspecting potential adoptive parents, relying on the false representation made by the birth parents that they intended to place the child for adoption, paid their medical expenses, maternity expenses, and living expenses, the trial court did not err in concluding that theft by deception could occur in an adoption setting
 - b. *Douglas v. The State* 263 Ga. 748 (1994): Statute was sufficiently clear to apprise defendant that offering an automobile to a mother in exchange for physical custody or control of her child was proscribed
 - c. *Maryland v. Runkles* 326 Md. 384 (1992): The consent to the transfer of the legal and physical custody of a child in exchange for money is ordinarily the sale, barter, or trade of a child proscribed by this section; This section's application is not limited to for-profit adoptions
 - d. *In re Adoption No. 9979* 323 Md. 39 (1990): Payments to natural parents fall within the prohibition of the Family Law Article, rather than this section

- e. ***State of Utah v. Julie Warren Verde*** 770 P.2d 116 (1989): "Act of charity" of certain legitimate expenses of the birth mother incident to the birth of a child is not to be treated as the furnishing of consideration for the criminal sale of a child; It was not necessary to show that defendant actually received certain consideration, so long as there was sufficient evidence that she attempted to engage in a transaction which would have led to her receiving consideration; Evidence showing that defendant received approximately \$90 worth of health care in consideration of arranging a proposed adoption, that she received \$5 for "gas money" from a person seeking an adoption, and that she planned to extract additional "legal" and "medical" fees was sufficient to establish consideration
 - f. ***Opinion of the Office of the Attorney General of the State of Washington*** 1989 Op. Atty. Gen. Wash. No. 4. (1989): It is not lawful for a person, in return for money or other valuable consideration, to serve as a broker or otherwise arrange or facilitate a surrogate parenting agreement, unless the person is an agency certified or licensed by the department of social and health services as a child-placing agency or as an adoption agency, or unless the only payment is reimbursement of prenatal hospital or medical expenses involved in the birth of the child, or attorneys fees and court costs involved in transfer of child custody
 - g. ***State of Missouri v. Cole Wilson Daugherty*** 744 S.W.2d 849 (1988): "To another person" included one who offered to pay money for the delivery of a child, so an allegation in an information as to trafficking in children was sufficiently precise
 - h. ***The People v. Alan Charles Daniel*** 195 Cal. App. 3d 623 (1987): Parent who demands money for giving consent to an adoption has engaged in conduct that is the equivalent of selling a child; Although defendant asserted he never got out of his car or displayed any money, his conduct went beyond mere preparation and constituted an attempt to commit the crime
3. Law Reviews
- a. ***Adoptions in Missouri after House Bill 343*** 54 J. Mo. B. 74 (1998): "Counsel must give careful consideration to who must be named as a party (which, in turn, determines who must either consent or against whom there must be grounds authorizing a termination of parental rights or adoption granted in absence of consent), counsel must be careful to choose the correct venue, and to draft a petition which states a cause of action..."
 - b. ***Child Selling*** 23 U. Balt. L. Rev. 645 (1994): "In determining that the statute is not merely limited to proscribing for-profit adoptions, but also includes any transfer of custody of a child for money, the court broadly, but correctly, interpreted the intent of the General Assembly..."