

## Can giving chores to a foster child be forced labor?

Daniel Pollack and Julia Sands | May 19, 2022



Some children have lots of chores to do; others have hardly any at all. We know that doing chores can build a sense of responsibility and belonging. No one would argue that certain tasks are reasonable to expect a young child to do: helping to set and clear the table, keeping their belongings in order, and making their beds. Depending on the child's age, maturity, and ability, some children are asked to do the laundry, clean the bathroom, do the yard work, and wash the car. On a farm, there are plenty of

barnyard and field tasks that need to be done, with children expected to help.

Being part of a family, even temporarily, implies responsibilities as well as rights. Are those responsibilities different if the youngster is a child in foster care? Are foster parents treated differently than biological parents under the law? Are there distinctions between forced labor under federal law and New York law? Of course, the chore requested of the child cannot be dangerous or arduous. Still, from a legal perspective, how much is too much, such that it becomes abusive or might even be construed as forced labor?

According to 18 U.S.C.A. §1589, forced labor is defined as:

(a) Whoever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—

(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person;

(2) by means of serious harm or threats of serious harm to that person or another person;

(3) by means of the abuse or threatened abuse of law or legal process; or

(4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint, shall be punished as provided under subsection (d).

(b) Whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which has engaged in the providing or obtaining of labor or services by any of the means described in subsection (a), knowing or in reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means, shall be punished as provided in subsection (d) ...

In a 2014 case from the U.S. Court of Appeals for the Sixth Circuit, *United States v. Jean Claude Kodjo Toviave*, 761 F.3d 623, No. 13-1441 (2014), the court opined:

Child abuse is a state crime, but not a federal crime. Forced labor is a federal crime, 18 U.S.C. §1589, but the statute obviously does not extend to requiring one's children to do their homework, babysit on occasion, and do household chores. Only by bootstrapping can this combination of two actions that are not federal crimes—child abuse and requiring children to do household chores—be read as a federal crime.

Defendant Toviave brought four young relatives from Togo to live with him in Michigan. After they arrived, Toviave made the children cook, clean, and do the laundry. He also occasionally made the children babysit for his girlfriend and relatives. Toviave would beat the children if they misbehaved or failed to follow one of Toviave's many rules. While his actions were deplorable, Toviave did not subject the children to forced labor. The mere fact that Toviave made the children complete chores does not convert Toviave's conduct—what essentially amounts to child abuse—into a federal crime. Toviave's federal forced labor conviction must accordingly be reversed.

An American parent has always had the right to make his child perform household chores.... Mich. Comp. Laws §722.2; see also *Rohm v. Stroud*, 386 Mich. 693, 194 N.W.2d 307, 308 (1972). In addition, “A person standing in loco parentis, or “in the place of a parent; instead of a parent; charged, factitiously, with a parent’s rights, duties, and responsibilities” also has that right. *Hush v. Devilbiss Co.*, 77 Mich.App. 639, 259 N.W.2d 170, 174 n. 1 (1977) (emphasis added).

*Toviave* makes clear that in order to rise to the level of federal forced labor, the presence of both child abuse and elements of forced labor must be present. Furthermore, the law does not draw a distinction between a biological parent or a foster parent, nor does it differentiate between a biological child or one in foster care when it comes to defining forced labor.

It is possible to have “force” (i.e., abuse) without the presence of “labor.” Alternatively, there can exist forced labor with the absence of any physical force. For example: “... paradigmatic forced labor, such as prostitution, forced sweatshop work, or forced domestic service, may be federally criminal even though the force is not physical at all, but merely psychological, such as isolation and pretended threats to the victim’s friends or relations.” *Id.*, see also 18 U.S.C. §1589(c)(2); *United States v. Sabhnani*, 599 F.3d 215, 226 (2d Cir. 2010). Courts may also consider several other factors when making a forced labor determination, including withholding education, extreme isolation, false promises of payment and withholding travel documents such as a passport.

In New York, forced labor is commonly referred to as “labor trafficking.” According to New York’s McKinney’s Penal Law §135.35, a person is

guilty of labor trafficking if he or she compels or induces another to engage in labor or recruits, entices, harbors, or transports such other person by means of intentionally:

(1) requiring that the labor be performed to retire, repay, or service a real or purported debt that the actor has caused by a systematic ongoing course of conduct with intent to defraud such person;

(2) withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document, of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;

(3) using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in or continue to engage in labor activity by means of instilling a fear in such person that, if the demand is not complied with, the actor or another will do one or more of the following:

(a) cause physical injury, serious physical injury, or death to a person; or

(b) cause damage to property, other than the property of the actor; or

(c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this article; or

(d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against such person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or

(e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

A person can be convicted of labor trafficking in New York if they have forced another person to work either by physical force, coercion or fraud. Moreover, they can also be found guilty if a person is forced to do "work" that is illegal.

On Jan. 12, 2016, a *New York Times* article by Rick Rojas and John Surico was published, titled "Guardian Is Accused of Holding 2 Teenagers Captive and Forcing Them to Work." According to the article, Sook Yeong Park, a Queens guardian, was accused of holding two children captive and forcing them to work for six years beginning when they were 9 and 11 years of age. She was arraigned on several charges including labor

trafficking, third-degree assault and endangering the welfare of a child. In this case, two minor siblings were brought to New York from South Korea by one of Park's relatives to attend school while living with Park. Park confiscated the siblings' passports, moved them to another location, forced them to sleep on the floor, and forced them to work both inside and outside of the home. Their work included giving hours-long massages, providing manicures/pedicures, doing the housework, and working several days a week at a grocery store, forced to hand over all pay earned. Moreover, Park cut off all contact with their parents and forced them to miss school in order to work for prolonged periods of time.

Park and her husband pleaded guilty to labor trafficking charges. Initially, Park accepted a plea deal with a sentence of six months in prison followed by five years' probation. Her husband also pleaded guilty to labor trafficking and accepted a sentence of five years' probation. Subsequently, Judge Joseph Zayas sua sponte increased Park's sentence from six months to two to six years in prison. This case provides valuable insight into which factors are considered in determining labor trafficking, as well as the seriousness with which New York considers these crimes.

Like many biological parents, most foster parents are caring individuals looking to help children, all the while teaching them responsibility. However, in some less loving foster care households, there may be an "earn your keep" mentality rather than a mindset of instilling values. As demonstrated above, when it comes to determining forced labor, the law does not differentiate between a biological parent and one standing in loco parentis, nor does it draw a distinction between biological children

and those in foster care. In New York, labor trafficking can be found with the presence of either physical force, coercion or fraud. Federally, the combination of both child abuse and forced labor must be present in order to charge a caregiver with a forced labor violation against a child in their care.

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