

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 304

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO HUMAN TRAFFICKING; PROVIDING FOR CIVIL REMEDIES;
PROVIDING FOR CERTAIN STATE BENEFITS AND SERVICES FOR HUMAN
TRAFFICKING VICTIMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. ~~[NEW MATERIAL]~~ HUMAN TRAFFICKING--CIVIL REMEDY
FOR HUMAN TRAFFICKING VICTIMS.--

A. A human trafficking victim may bring a civil
action in any court of competent jurisdiction for actual
damages, compensatory damages, punitive damages, injunctive
relief or any other appropriate relief. Where the court finds
that a defendant's actions were willful and malicious, the
court may award treble damages to the plaintiff. A prevailing
plaintiff is also entitled to recover reasonable attorney fees
and costs.

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underscored material = new
[bracketed material] = delete

1 B. A civil action pursuant to this section shall be
2 forever barred unless the action is filed within ten years from
3 the date on which:

4 (1) the defendant's human trafficking actions
5 occurred; or

6 (2) the victim attains eighteen years of age
7 if the victim was a minor when the defendant's actions
8 occurred.

9 SECTION 2. [NEW MATERIAL] SEALING OF RECORDS OF HUMAN
10 TRAFFICKING VICTIMS.--

11 A. On petition to the district court, a person who
12 is a victim of human trafficking who has been charged with
13 crimes arising out of the actions of someone charged with human
14 trafficking may have all legal and law enforcement records of
15 the charges and convictions in the person's case sealed. The
16 court may issue an order sealing records and files if the court
17 finds:

18 (1) the petitioner is a victim of human
19 trafficking;

20 (2) the charge or conviction is for a
21 non-homicide crime; and

22 (3) the petitioner's involvement in the
23 offense was due to duress, coercion, use of force, threat to or
24 fraud committed against the petitioner by a person who has
25 committed human trafficking involving the petitioner.

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1 B. Reasonable notice of the petition shall be given
2 to the district attorney or prosecutor who filed the original
3 case and to the law enforcement agency that has custody of the
4 law enforcement files and records for the case.

5 C. Upon the entry of the sealing order, the
6 proceedings in the case shall be treated as if they never
7 occurred and all index references shall be deleted. The court,
8 law enforcement agencies and the petitioner shall respond to an
9 inquiry that no record exists with respect to the petitioner
10 for the referenced case. Copies of the sealed order shall be
11 sent by the court to the district attorney or prosecutor who
12 filed the original case, and each law enforcement agency shall
13 be named in the order.

14 D. Inspection of files and records or release of
15 information in the records included in the sealing order may be
16 permitted by the court only upon subsequent order of the court
17 on a showing of good cause after notice to all parties to the
18 original petition.

19 **SECTION 3.** Section 30-52-2 NMSA 1978 (being Laws 2008,
20 Chapter 17, Section 2) is amended to read:

21 "30-52-2. HUMAN TRAFFICKING--BENEFITS AND SERVICES FOR
22 HUMAN TRAFFICKING VICTIMS.--

23 A. Human trafficking victims found in the state
24 shall be eligible for benefits and services from the state
25 until the victim qualifies for benefits and services authorized

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1 by the federal Victims of Trafficking and Violence Protection
2 Act of 2000; provided that the victim cooperates in the
3 investigation or prosecution of the person charged with the
4 crime of human trafficking. Benefits and services shall be
5 provided to eligible human trafficking victims as quickly as
6 can reasonably be arranged regardless of immigration status and
7 [~~may~~] shall include, when appropriate to a particular case:

- 8 (1) case management;
- 9 (2) emergency temporary housing;
- 10 (3) health care;
- 11 (4) mental health counseling;
- 12 (5) drug addiction screening and treatment;
- 13 (6) language interpretation, translation
14 services and English language instruction;
- 15 (7) job training, job placement assistance and
16 post-employment services for job retention;
- 17 (8) child care;
- 18 (9) legal assistance;
- 19 (10) state-funded cash assistance;
- 20 (11) food assistance;
- 21 [~~(8)~~] (12) services to assist the victim and
22 the victim's family members; [~~or~~] and
- 23 [~~(9)~~] (13) other general assistance services
24 and benefits as determined by the children, youth and families
25 department or the human services department.

1 B. A human trafficking victim advocate shall be
2 provided immediately upon identification of a human trafficking
3 victim.

4 C. A victim's ability to cooperate shall be
5 determined by the court, if that issue is raised by a human
6 trafficking victim advocate. Benefits and services shall
7 continue unless the court rejects the victim's claim regarding
8 inability to cooperate. A victim who is younger than eighteen
9 years of age is eligible for benefits and services without a
10 finding by the court. Any court proceeding regarding the
11 victim's ability to cooperate shall be held in camera. The
12 human trafficking victim advocate shall be allowed to attend
13 the proceeding. The record of any such proceeding shall be
14 sealed.

15 D. The attorney general shall coordinate plans
16 developed by state and local law enforcement agencies to
17 provide a human trafficking victim or the victim's family
18 members protection from retaliatory action immediately upon
19 identifying the presence in the state of a victim who offers
20 state or local law enforcement agencies information regarding a
21 perpetrator of human trafficking.

22 E. The prosecuting authority shall take all
23 reasonable steps within its authority to provide a human
24 trafficking victim with:

25 (1) all necessary documentation required

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1 pursuant to federal law for an adjustment of immigration status
2 that applies to that victim; and

3 (2) assistance in accessing civil legal
4 services providers who are able to petition for adjustment of
5 immigration status on behalf of the victim.

6 ~~[B-]~~ F. As used in this section:

7 (1) "human trafficking victim" means a person
8 subjected to human trafficking ~~[by a person charged in New~~
9 ~~Mexico with the crime of human trafficking]~~; and

10 (2) "human trafficking victim advocate" means
11 a person provided by a state or nonprofit agency with
12 experience in providing services for victims of crime through a
13 nonprofit agency with expertise in providing services for
14 victims of crime."

15 SECTION 4. Section 31-22-8 NMSA 1978 (being Laws 1981,
16 Chapter 325, Section 8, as amended) is amended to read:

17 "31-22-8. CRIMES ENUMERATED.--

18 A. The crimes to which the Crime Victims Reparation
19 Act applies and for which reparation to victims may be made are
20 the following enumerated offenses and all other offenses in
21 which any enumerated offense is necessarily included:

- 22 (1) arson resulting in bodily injury;
23 (2) aggravated arson;
24 (3) aggravated assault or aggravated battery;
25 (4) dangerous use of explosives;

- 1 (5) negligent use of a deadly weapon;
- 2 (6) murder;
- 3 (7) voluntary manslaughter;
- 4 (8) involuntary manslaughter;
- 5 (9) kidnapping;
- 6 (10) criminal sexual penetration;
- 7 (11) criminal sexual contact of a minor;
- 8 (12) homicide by vehicle or great bodily
- 9 injury by vehicle, as provided in Section 66-8-101 NMSA 1978;
- 10 (13) abandonment or abuse of a child;
- 11 (14) aggravated indecent exposure, as provided
- 12 in Section 30-9-14.3 NMSA 1978; ~~and~~
- 13 (15) aggravated stalking, as provided in
- 14 Section 30-3A-3.1 NMSA 1978; and
- 15 (16) human trafficking.

16 B. No award shall be made for any loss or damage to
17 property."

18 SECTION 5. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2013.