

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/13
LAST UPDATED 03/14/13 **HB** 304/HJCS/aSJC

SPONSOR HJC

SHORT TITLE Human Trafficking Civil Remedies and Services **SB** _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Aspen Changes	\$0.0	\$264.0	\$0.0	\$264.0	Non-Recurring	State General Fund and Federal Matching Funds
ISD2 Changes	\$0.0	\$210.0	\$0.0	\$28.0	Non-Recurring	State General Fund and Federal Matching Funds
Program Benefits	\$0.0	Unable to determine	Unable to determine	Unable to determine	Recurring	State General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 195.

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General's Office (AGO)
- New Mexico Corrections Department (NMCD)
- New Mexico Sentencing Commission (NMSC)
- Human Services Department (HSD)
- Children, Youth & Families Department (CYFD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to the House Judiciary Committee Substitute for

House Bill 304 makes these changes:

- Clarifies that a victim of human trafficking may bring a civil action for damages and equitable relief against the alleged trafficker;
- Inserts advocacy services in place of legal assistance in the list of benefits and services a human trafficking victim is eligible for from the state;
- Clarifies that a human trafficking advocate shall be provided upon a human trafficking victim's identification by law enforcement;
- Adds a new subsection C requiring law enforcement to certify to the Human Services Department and the Children, Youth & Families Department prior to services being provided that a person is a victim of human trafficking and is cooperating in the investigation or prosecution of the alleged human trafficker;
- Adds another exception to the cooperation requirement if a court has determined that the victim is unable to cooperate due to physical or psychological trauma; and
- Strikes redundant and potentially confusing language defining a human trafficking victim advocate to eliminate language that may suggest that the advocate can be provided only through a nonprofit agency.

The new subsection C does not reference or otherwise recognize the exceptions to the requirement that a victim cooperate that are set out in subsection D.

Synopsis of Original Bill:

House Judiciary Committee Substitute for House Bill 304 amends and enacts statutory sections to address the issue of human trafficking, as follows:

- provides a civil remedy for a victim of human trafficking, with a 10 year time limitation, which may be tolled for a victim who was a minor when the defendant's action occurred until the victim turns 18 years old;
- provides processes and procedures for sealing of all legal and law enforcement records by a victim of human trafficking if that victim has been charged with non-homicide crimes arising out of the actions of someone charged with human trafficking and the victim's involvement was due to duress, coercion, use of force, threat to or fraud committed against the victim by the trafficker;
- amends Section 30-52-2 NMSA 1978, governing benefits and services for human trafficking victims, to include child care, legal assistance, state-funded cash assistance and food assistance within the benefits and services required to be provided to eligible human trafficking victims when appropriate to a particular case;
- further amends Section 30-52-2 NMSA 1978 to provide that a human trafficking victim advocate (defined as a person provided by a state or nonprofit agency with experience in providing services for victims of crime through a nonprofit agency with expertise in providing services for victims of crime) be provided immediately upon identification of a human trafficking victim; to require that a court determine a victim's ability to cooperate if that issue is raised by an advocate and providing procedures for making that determination and for continuation of benefits and services to any victim who is younger than eighteen and, unless the court rejects the victim's claim of inability to cooperate, for victims over eighteen; to require the Attorney General to coordinate plans developed by state and local law enforcement agencies to provide a human trafficking victim or the victim's family members protection from retaliatory action immediately

upon identifying the presence in the state of a victim who offers state or local law enforcement agencies information regarding a perpetrator of human trafficking; and to require the prosecuting authority to take all reasonable steps within its authority to provide a victim with documentation required pursuant to federal law for an adjustment of immigration status that applies to that victim and with assistance in accessing civil legal services providers who are able to petition for adjustment of immigration status on behalf of the victim; and

- amends Section 31-22-8 NMSA 1978 to include human trafficking within the list of crimes to which the Crime Victims Reparation Act applies and for which reparation to victims may be made.

The effective date of the Act is July 1, 2013.

FISCAL IMPLICATIONS

The HSD notes that Section 3 requires HSD and CYFD provide victims of human trafficking with services existing in the current law and expanding the eligibility for these benefits and services to include child care, legal assistance, state-funded cash assistance, and food assistance. In light of this requirement, the number of individuals eligible for services will increase. The HSD estimates the changes to the ISD2 eligibility system will cost \$210,000 to accommodate changes to eligibility related to categories that currently require certification or are not available to this population, and that \$92,400 is the cost to the General Fund. Similarly, changes to the ASPEN eligibility system are estimated at \$264,000 to accommodate changes to eligibility rules related to categories that currently require certification or are not available to this population. \$118,800 is the cost to the General Fund. Total IT related fiscal impact is \$292,000, and is shown in the table above.

The CYFD points out that CS/HB 403 does not indicate how the assistance for child care is to be funded. If the child care assistance funds are to be used, it may have a small implication. That agency comments that it is unlikely that the population of people who will benefit from this inclusion would have a major impact on the funds, although it could impact funds availability.

In addition to the information technology costs set out in the table, a conservative estimate for the benefits to be provided to each victim under CS/HB 403 is \$10,000 a month.

Further, in its earlier analysis, the AGO did not provide a cost estimate for providing protection to victims of human trafficking, but if that is what is intended by the language in Section 3(D), an additional impact on the state general funds may be expected.

SIGNIFICANT ISSUES

The Section 1 codification of a civil action brought by a human trafficking victim against the defendant for damages and injunctive relief is something that already can be accomplished under current civil law.

In new Section 3, Section 30-52-2(D), the bill imposes requirements on the AGO that it may not be equipped to provide depending on the level of coordination necessary. Additionally there is not a corresponding appropriation to fund the additional proposed requirements. The requirements of this section would also involve providing an unprecedented level of protection

not provided to victims of any other state crime and their families. This will exceed the statutory and jurisdictional authority of the agencies involved.

The change in the definition of "human trafficking victim" in new Section 3, Section 30-52-2(F) contradicts the federal definition. This change also removes the requirement that a person be charged in New Mexico with human trafficking, which serves as a threshold determination on who is eligible to receive benefits. Under the proposed language, one would need to only claim to be a human trafficking victim, and they would be eligible to receive benefits, even though a criminal case has not been filed. Therefore, this section takes on new meaning by allowing a self-identifying victim to receive benefits and service from the state until the victim qualifies for federal benefits. With this proposed change and resulting inconsistency with the federal and state definition, it is critical to note that this victim will not qualify for federal benefits, absent a corresponding criminal charge against the trafficking offender.

The self-identifying victim would also be entitled to immediate services referenced in this bill, such as "a human trafficking victim advocate", and "protection" for themselves and their family "from retaliatory action." It is unclear if CS/HB 403 places that responsibility on the Attorney General's Office in the new subsection D of Section 3. Absent a criminal case, it is unlikely that the Attorney General's Office, District Attorney or law enforcement would be aware of the victim. Also it is not likely these agencies would have the resources to provide these services for anyone claiming to be a victim of human trafficking with no requirement of substantiation that typically presents itself through investigation and subsequent charging.

CS/HB 304 also amends Section 30-52-2 NMSA 1978 to include "legal assistance" within the benefits and services required to be provided to eligible human trafficking victims when appropriate to a particular case, but does not set out from whom the legal assistance would be provided and/or funded. There is also no appropriation in the bill for legal assistance or any of the additionally required benefits and services.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 195 requiring posting of notice re: National Human Trafficking Resource Center Hotline.

OTHER SUBSTANTIVE ISSUES

Section 2's new provision providing for sealing of all legal and law enforcement records relating to criminal charges against a human trafficking victim requires the victim's involvement be caused by duress, coercion, use of force, threat to or fraud committed against the victim by the trafficker. That requirement creates a problem in that a violation of Section 30-52-1(A)(2), obtaining a minor to engage in commercial sexual activity, does not require force, fraud or coercion. Cases with minor victims often do not have any evidence of coercion, which is the precise reason that this element is not required in the statute defining this type of human trafficking when the charge relates to minors. The language utilized in CS/HB 403 limiting sealing of records of charges against victims only under those circumstances prevents a minor victim from seeking the benefit of sealing records relating to crimes charged against that victim absent duress, coercion, use of force, threat to or fraud committed against the minor victim.

The immigration related services listed in new Section 3, Section 30-52-2(E) are federal in nature and jurisdiction. Further, many of the human trafficking cases in which adjustment of immigration status is appropriate for the victim will be prosecuted federally, to which this section would be inapplicable.

Forty eight out of 50 states and the District of Columbia have laws that address human trafficking. Only 20 states and the District of Columbia provide civil remedies for human trafficking victims.

MD/blm