

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 86 proposes a number of changes to Chapter 30 NMSA 1978, Criminal Offenses, regarding offenses involving human trafficking and the sexual exploitation of minors. These changes are listed below.

- Amending Section 30-1-8 to add human trafficking to the list of offenses for which there is no statute of limitation;
- Amending Section 30-6A-4, regarding the sexual exploitation of children by prostitution, to include 16 and 17-year-olds, and to add that it shall not be a defense to prosecution that the defendant's intended victim was a peace officer posing as a child;
- Amending the definitions section of the Racketeering Act, Section 30-42-3, to add human trafficking to the list of offenses that may comprise racketeering;
- Amending the human trafficking statute, 30-52-1, to make the following changes:
 - o Adding "harboring, maintaining, patronizing, providing" to the definition of human trafficking;
 - o Replacing the actual knowledge requirement with a constructive knowledge requirement ("knew or should have known") with regard to individuals who commit human trafficking by virtue of benefitting therefrom;
 - o Adding that human trafficking may include indentured servitude;
 - o Increasing the penalty for human trafficking of a victim 18 or older from a third degree felony to a second degree felony;
 - o Increasing the penalty for human trafficking of a victim 13 to 17 years old from a second degree felony to a first degree felony;
 - o Specifying that each violation of the human trafficking statute shall constitute a separate offense and shall not merge with any other offense;
 - o Prohibiting prostitution charges against victims of human trafficking;
 - o Including physical restraint or threat thereof in the definition of coercion;
 - o Providing a definition of "harm", which consists of any harm sufficient to compel a person to perform labor, services, or commercial sexual activity in an attempt to avoid receiving harm;
 - o Providing a list of facts or conditions that shall not constitute a defense to prosecution of the offense of human trafficking; and
 - o Specifying that a person convicted of human trafficking shall be subject to the Forfeiture Act.

HB 86 also amends Section 31-26-3 NMSA 1978, the Definitions section of the Victims of Crime Act, to correct the citation to the statute regarding negligent arson, and to add human trafficking and sexual exploitation of children to the list of offenses included in the Act. The bill also amends Section 33-2-34 NMSA 1978, regarding eligibility for earned meritorious deductions, to add human trafficking to the list of offenses a court may determine to be serious violent offenses for the purposes of that statute.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

As of 2018, the latest 50-state survey available, 23 states have eliminated the statute of limitations for human trafficking. See “National State Law Survey: Statute of Limitations” published by Shared Hope International, available at: http://sharedhope.org/PICframe8/statesurveycharts/NSL_Survey_StatuteofLimitations.pdf. At least one other state is currently considering legislation to eliminate its statute of limitations for human trafficking. See New York Senate Bill 116 (2025), here: <https://trackbill.com/bill/new-york-senate-bill-116-relates-to-the-statute-of-limitations-of-actions-related-to-certain-sex-trafficking-offenses/2583034/>.

There is also no statute of limitations on the federal offense of human trafficking. See the “Victims of Trafficking and Violence Protection Act of 2000”, Pub. L. 106-386 (2000), available at: <https://www.govinfo.gov/content/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf>.

It is difficult to determine what the effect of passing HB 86 would be on the state’s prison population, but the increased penalties for human trafficking proposed by HB 86 would likely lead to longer prison sentences for those convicted under that statute. The average cost to incarcerate someone in the state’s prison system is \$155.63/day; this average includes private and public facilities.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship to HB 104: HB 104 also adds offenses to the list of crimes included in the Victims of Crime Act definitions (Section 31-26-3 NMSA 1978), which would change the list included in this bill and the enumeration thereof.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS