

1 HOUSE BILL 237

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

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5 and Joseph L. Sanchez and Kelly K. Fajardo
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10 AN ACT

11 RELATING TO HUMAN TRAFFICKING; REVISING DEFINITIONS USED IN THE
12 SEX OFFENDER REGISTRATION AND NOTIFICATION ACT; EXPANDING THE
13 DEFINITION OF "SEX OFFENDER"; EXPANDING CONVICTIONS THAT ARE
14 CONSIDERED SEX OFFENSES REQUIRING REGISTRATION UNDER THE SEX
15 OFFENDER REGISTRATION AND NOTIFICATION ACT; PROVIDING NO
16 STATUTE OF LIMITATIONS FOR THE CRIME OF HUMAN TRAFFICKING;
17 INCREASING THE AGE OF A CHILD FOR THE CRIME OF SEXUAL
18 EXPLOITATION OF CHILDREN BY PROSTITUTION; AMENDING THE CRIME OF
19 HUMAN TRAFFICKING; PROVIDING MANDATORY RESTITUTION; PROVIDING
20 FOR FORFEITURE; EXPANDING THE DEFINITION OF "CRIMINAL OFFENSE"
21 IN THE VICTIMS OF CRIME ACT; EXPANDING THE DEFINITION OF
22 "SERIOUS VIOLENT OFFENSE" IN SECTION 33-2-34 NMSA 1978 (BEING
23 LAWS 1999, CHAPTER 238, SECTION 1, AS AMENDED).

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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1 SECTION 1. Section 29-11A-3 NMSA 1978 (being Laws 1995,
2 Chapter 106, Section 3, as amended) is amended to read:

3 "29-11A-3. DEFINITIONS.--As used in the Sex Offender
4 Registration and Notification Act:

5 A. "business day" means a day that is not a
6 Saturday, a Sunday or a state holiday;

7 B. "conviction" means a conviction in any [~~court of~~
8 ~~competent~~] jurisdiction resulting in a sanction, regardless of
9 whether adjudication is withheld. A sanction includes a fine,
10 probation, community control, parole, conditional release,
11 control release or incarceration and includes a deferred
12 sentence [~~but does not include a conditional discharge~~];

13 C. "department" means the department of public
14 safety;

15 [~~D. "institution of higher education" means a:~~

16 ~~(1) private or public post-secondary~~
17 ~~educational institution;~~

18 ~~(2) trade school; or~~

19 ~~(3) professional school;~~

20 E.] D. "habitually lives" means any place where a
21 sex offender lives for at least thirty days in any three-
22 hundred-sixty-five-day period;

23 E. "institution of higher education" means a:

24 (1) private or public post-secondary
25 educational institution;

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1 (2) trade school; or

2 (3) professional school;

3 F. "jurisdiction" means:

4 (1) a state of the United States;

5 (2) the United States and its territories;

6 (3) a military tribunal convened by the
7 military of the United States;

8 (4) the District of Columbia; or

9 (5) a tribal government;

10 [~~F.~~] G. "out-of-state registrant" means any person
11 who establishes a residence in New Mexico while the person is
12 required to register as a sex offender in another state or
13 territory;

14 [~~G.~~] H. "registration requirement" means any
15 requirement set forth in Section 29-11A-4 NMSA 1978 that
16 requires a sex offender to register; provide information,
17 including a DNA sample; renew, revise or change registration
18 information; or provide written notice or disclosure regarding
19 the sex offender's status as a sex offender;

20 [~~H.~~] I. "sex offender" means a person who:

21 (1) is a resident of New Mexico who is
22 convicted of a sex offense [~~pursuant to state, federal, tribal~~
23 ~~or military law~~];

24 (2) changes residence to New Mexico, when that
25 person has been convicted of a sex offense [~~pursuant to state,~~

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1 ~~federal, tribal or military law];~~

2 (3) does not have an established residence in
3 New Mexico, but owns a residential property in New Mexico,
4 lives in a shelter, halfway house or transitional living
5 facility or stays in multiple locations in New Mexico and who
6 has been convicted of a sex offense [~~pursuant to state,~~
7 ~~federal, tribal or military law];~~ or

8 (4) is a resident of another state and who has
9 been convicted of a sex offense pursuant to state, federal,
10 tribal or military law, but who is:

11 (a) employed full time or part time in
12 New Mexico for a period of time exceeding fourteen days or for
13 an aggregate period of time exceeding thirty days during any
14 calendar year, including any employment or vocation, whether
15 financially compensated, volunteered or for the purpose of
16 government or educational benefit; or

17 (b) enrolled on a full-time or part-time
18 basis in a private or public school or an institution of higher
19 education in New Mexico;

20 [~~F.~~] J. "sex offense" means any of the following
21 offenses or their equivalents in any other jurisdiction:

22 (1) aggravated criminal sexual penetration or
23 criminal sexual penetration in the first, second, third or
24 fourth degree, as provided in Section 30-9-11 NMSA 1978;

25 (2) criminal sexual contact in the fourth

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1 degree, as provided in Section 30-9-12 NMSA 1978;

2 (3) criminal sexual contact of a minor in the
3 second, third or fourth degree, as provided in Section 30-9-13
4 NMSA 1978;

5 (4) sexual exploitation of children, as
6 provided in Section 30-6A-3 NMSA 1978;

7 (5) sexual exploitation of children by
8 prostitution, as provided in Section 30-6A-4 NMSA 1978;

9 (6) kidnapping, as provided in Section 30-4-1
10 NMSA 1978, when committed with the intent to inflict a sexual
11 offense;

12 (7) false imprisonment, as provided in Section
13 30-4-3 NMSA 1978, when committed with the intent to inflict a
14 sexual offense;

15 (8) aggravated indecent exposure, as provided
16 in Section 30-9-14.3 NMSA 1978;

17 (9) enticement of child, as provided in
18 Section 30-9-1 NMSA 1978;

19 (10) incest, as provided in Section 30-10-3
20 NMSA 1978, when the victim is younger than eighteen years of
21 age;

22 (11) child solicitation by electronic
23 communication device, as provided in Section 30-37-3.2 NMSA
24 1978, for convictions occurring on or after July 1, 2013;

25 (12) solicitation to commit criminal sexual

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1 contact of a minor in the second, third or fourth degree, as
2 provided in Sections 30-9-13 and 30-28-3 NMSA 1978;

3 (13) human trafficking for commercial sexual
4 activity, as provided in Section 30-52-1 NMSA 1978; [or

5 ~~(13)] (14) attempt to commit any of the sex~~
6 offenses set forth in Paragraphs (1) through [~~(11)] (13) of~~
7 this subsection, as provided in Section 30-28-1 NMSA 1978; or

8 (15) any conviction entered by a court of a
9 jurisdiction outside of the state and requiring the individual
10 to register as a sex offender in that jurisdiction; and

11 [~~J-] K. "social networking site" means an internet~~
12 [~~web site] website that facilitates online social interaction~~
13 by offering a mechanism for communication with other users,
14 where such users are likely to include a substantial number of
15 minors under the age of sixteen, and allowing users, through
16 the creation of web pages, profiles or other means, to provide
17 information about themselves that is available to the public or
18 to other users."

19 **SECTION 2.** Section 29-11A-5 NMSA 1978 (being Laws 1995,
20 Chapter 106, Section 5, as amended by Laws 2007, Chapter 68,
21 Section 2 and by Laws 2007, Chapter 69, Section 6) is amended
22 to read:

23 "29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
24 ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION IN
25 THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

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1 A. A county sheriff shall maintain a local registry
2 of sex offenders in the sheriff's jurisdiction required to
3 register pursuant to the provisions of the Sex Offender
4 Registration and Notification Act.

5 B. The county sheriff shall forward:

6 (1) registration information obtained from sex
7 offenders to the department [~~of public safety~~]. The initial
8 registration information and any new registration information
9 subsequently obtained from a sex offender shall be forwarded by
10 the county sheriff no later than ten working days after the
11 information is obtained from a sex offender. If the department
12 [~~of public safety~~] receives information regarding a sex
13 offender from a governmental entity other than a county
14 sheriff, the department shall send that information to the
15 sheriff for the county in which the sex offender resides; and

16 (2) samples of DNA obtained from sex offenders
17 to the administrative center for the sex offender DNA
18 identification system pursuant to the provisions of the DNA
19 Identification Act.

20 C. The department [~~of public safety~~] shall maintain
21 a central registry of sex offenders required to register
22 pursuant to the provisions of the Sex Offender Registration and
23 Notification Act. The department shall participate in the
24 national sex offender registry administered by the United
25 States department of justice. The department shall send

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1 conviction information and fingerprints for all sex offenders
2 registered in New Mexico to the national sex offender registry
3 administered by the United States department of justice and to
4 the federal bureau of investigation.

5 D. The department [~~of public safety~~] shall retain
6 registration information regarding a sex offender convicted for
7 any of the following sex offenses for the entirety of the sex
8 offender's natural life:

9 (1) aggravated criminal sexual penetration or
10 criminal sexual penetration in the first, second or third
11 degree, as provided in Section 30-9-11 NMSA 1978;

12 (2) criminal sexual contact of a minor in the
13 second, third or fourth degree, as provided in Section
14 30-9-13 NMSA 1978;

15 (3) sexual exploitation of children, as
16 provided in Section 30-6A-3 NMSA 1978;

17 (4) kidnapping, as provided in Section
18 30-4-1 NMSA 1978, when the victim is less than eighteen years
19 of age and the offender is not a parent of the victim;

20 (5) criminal sexual contact in the fourth
21 degree, as provided in Section 30-9-12 NMSA 1978;

22 (6) human trafficking for commercial sexual
23 activity, as provided in Section 30-52-1 NMSA 1978;

24 (7) sexual exploitation of children by
25 prostitution, as provided in Section 30-6A-4 NMSA 1978; [~~or~~

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1 ~~(6)~~ (8) attempt to commit any of the sex
2 offenses set forth in Paragraphs (1) through ~~(5)~~ (7) of this
3 subsection, as provided in Section 30-28-1 NMSA 1978; or

4 (9) any conviction entered by a court of a
5 jurisdiction outside of the state and requiring the individual
6 to register as a sex offender in that jurisdiction.

7 E. The department ~~[of public safety]~~ shall retain
8 registration information regarding a sex offender convicted for
9 the following offenses for a period of ten years following the
10 sex offender's conviction, release from prison or release from
11 probation or parole, whichever occurs later:

12 (1) criminal sexual penetration in the fourth
13 degree, as provided in Section 30-9-11 NMSA 1978;

14 ~~[(2) sexual exploitation of children by~~
15 ~~prostitution, as provided in Section 30-6A-4 NMSA 1978;~~

16 ~~(3)~~ (2) false imprisonment, as provided in
17 Section 30-4-3 NMSA 1978, when the victim is less than eighteen
18 years of age and the offender is not a parent of the victim;

19 ~~[(4)]~~ (3) aggravated indecent exposure, as
20 provided in Section 30-9-14.3 NMSA 1978;

21 ~~[(5)]~~ (4) enticement of child, as provided in
22 Section 30-9-1 NMSA 1978;

23 ~~[(6)]~~ (5) incest, as provided in Section
24 30-10-3 NMSA 1978, when the victim is less than eighteen years
25 of age;

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1 [~~(7)~~] (6) solicitation to commit criminal
2 sexual contact of a minor in the second, third or fourth
3 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;

4 [~~(8)~~] (7) child solicitation by electronic
5 communication device, as provided in Section 30-37-3.2 NMSA
6 1978; or

7 [~~(9)~~] (8) attempt to commit any of the sex
8 offenses set forth in Paragraphs (1) through [~~(6)~~] (5) of this
9 subsection, as provided in Section 30-28-1 NMSA 1978.

10 F. Notwithstanding the provisions of Subsection E
11 of this section, if a sex offender is convicted a second or
12 subsequent time for a sex offense set forth in that subsection,
13 the department [~~of public safety~~] shall retain information
14 regarding the sex offender for the entirety of the sex
15 offender's natural life.

16 G. The department [~~of public safety~~] shall adopt
17 rules necessary to carry out the provisions of the Sex Offender
18 Registration and Notification Act. Rules necessary for the
19 collection of DNA samples and the administration and operation
20 of the sex offender DNA identification system shall be adopted
21 by the DNA identification system oversight committee pursuant
22 to the provisions of the DNA Identification Act."

23 SECTION 3. Section 30-1-8 NMSA 1978 (being Laws 1963,
24 Chapter 303, Section 1-8, as amended) is amended to read:

25 "30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--A

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1 person shall not be prosecuted, tried or punished in any court
2 of this state unless the indictment is found or information or
3 complaint is filed within the time as provided:

4 A. for a second degree felony, within six years
5 from the time the crime was committed;

6 B. for a third or fourth degree felony, within five
7 years from the time the crime was committed;

8 C. for a misdemeanor, within two years from the
9 time the crime was committed;

10 D. for a petty misdemeanor, within one year from
11 the time the crime was committed;

12 E. for any crime against or violation of Section
13 51-1-38 NMSA 1978, within three years from the time the crime
14 was committed;

15 F. for a felony pursuant to Section 7-1-71.3,
16 7-1-72 or 7-1-73 NMSA 1978, within five years from the time the
17 crime was committed; provided that for a series of crimes
18 involving multiple filing periods within one calendar year, the
19 limitation shall begin to run on December 31 of the year in
20 which the crimes occurred;

21 G. for an identity theft crime pursuant to Section
22 30-16-24.1 NMSA 1978, within five years from the time the crime
23 was discovered;

24 H. for any crime not contained in the Criminal Code
25 or where a limitation is not otherwise provided for, within

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1 three years from the time the crime was committed; and

2 I. for a capital felony or a first degree violent
3 felony or for any crime against or in violation of Section
4 30-52-1 NMSA 1978, no limitation period shall exist and
5 prosecution for these crimes may commence at any time after the
6 occurrence of the crime."

7 SECTION 4. Section 30-6A-4 NMSA 1978 (being Laws 1984,
8 Chapter 92, Section 4, as amended) is amended to read:

9 "30-6A-4. SEXUAL EXPLOITATION OF CHILDREN BY
10 PROSTITUTION.--

11 A. Any person knowingly receiving any pecuniary
12 profit as a result of a child under the age of [~~sixteen~~]
13 eighteen engaging in a prohibited sexual act with another is
14 guilty of a second degree felony, unless the child is under the
15 age of thirteen, in which event the person is guilty of a first
16 degree felony.

17 B. Any person knowingly hiring or offering to hire
18 a child under the age of [~~sixteen~~] eighteen to engage in any
19 prohibited sexual act is guilty of a second degree felony.

20 C. Any parent, legal guardian or person having
21 custody or control of a child under [~~sixteen~~] eighteen years of
22 age who knowingly permits that child to engage in or to assist
23 any other person to engage in any prohibited sexual act or
24 simulation of such an act for the purpose of producing any
25 visual or print medium depicting such an act is guilty of a

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1 third degree felony.

2 D. In a prosecution for sexual exploitation of
3 children by prostitution, it shall not constitute a defense to
4 prosecution that the defendant's intended victim was a peace
5 officer posing as a child under eighteen years of age."

6 SECTION 5. Section 30-42-3 NMSA 1978 (being Laws 1980,
7 Chapter 40, Section 3, as amended by Laws 2009, Chapter 253,
8 Section 7 and by Laws 2009, Chapter 261, Section 7) is amended
9 to read:

10 "30-42-3. DEFINITIONS.--As used in the Racketeering Act:

11 A. "racketeering" means any act that is chargeable
12 or indictable under the laws of New Mexico and punishable by
13 imprisonment for more than one year, involving any of the
14 following cited offenses:

15 (1) murder, as provided in Section 30-2-1 NMSA
16 1978;

17 (2) robbery, as provided in Section 30-16-2
18 NMSA 1978;

19 (3) kidnapping, as provided in Section 30-4-1
20 NMSA 1978;

21 (4) forgery, as provided in Section 30-16-10
22 NMSA 1978;

23 (5) larceny, as provided in Section 30-16-1
24 NMSA 1978;

25 (6) fraud, as provided in Section 30-16-6 NMSA

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1 1978;

2 (7) embezzlement, as provided in Section
3 30-16-8 NMSA 1978;

4 (8) receiving stolen property, as provided in
5 Section 30-16-11 NMSA 1978;

6 (9) bribery, as provided in Sections 30-24-1
7 through 30-24-3.1 NMSA 1978;

8 (10) gambling, as provided in Sections
9 30-19-3, 30-19-13 and 30-19-15 NMSA 1978;

10 (11) illegal kickbacks, as provided in
11 Sections 30-41-1 and 30-41-2 NMSA 1978;

12 (12) extortion, as provided in Section 30-16-9
13 NMSA 1978;

14 (13) trafficking in controlled substances, as
15 provided in Section 30-31-20 NMSA 1978;

16 (14) arson and aggravated arson, as provided
17 in Subsection A of Section 30-17-5 and Section 30-17-6 NMSA
18 1978;

19 (15) promoting prostitution, as provided in
20 Section 30-9-4 NMSA 1978;

21 (16) criminal solicitation, as provided in
22 Section 30-28-3 NMSA 1978;

23 (17) fraudulent securities practices, as
24 provided in the New Mexico Uniform Securities Act [~~of 1986~~];

25 (18) loan sharking, as provided in Sections

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1 30-43-1 through 30-43-5 NMSA 1978;

2 (19) distribution of controlled substances or
3 controlled substance analogues, as provided in Sections
4 30-31-21 and 30-31-22 NMSA 1978;

5 (20) a violation of the provisions of Section
6 30-51-4 NMSA 1978;

7 (21) unlawful taking of a vehicle or motor
8 vehicle, as provided in Section 30-16D-1 NMSA 1978;

9 (22) embezzlement of a vehicle or motor
10 vehicle, as provided in Section 30-16D-2 NMSA 1978;

11 (23) fraudulently obtaining a vehicle or motor
12 vehicle, as provided in Section 30-16D-3 NMSA 1978;

13 (24) receiving or transferring stolen vehicles
14 or motor vehicles, as provided in Section 30-16D-4 NMSA 1978;
15 [~~and~~]

16 (25) altering or changing the serial number,
17 engine number, decal or other numbers or marks of a vehicle or
18 motor vehicle, as provided in Section 30-16D-6 NMSA 1978; and

19 (26) human trafficking, as provided in Section
20 30-52-1 NMSA 1978;

21 B. "person" means an individual or entity capable
22 of holding a legal or beneficial interest in property;

23 C. "enterprise" means a sole proprietorship,
24 partnership, corporation, business, labor union, association or
25 other legal entity or a group of individuals associated in fact

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1 although not a legal entity and includes illicit as well as
2 licit entities; and

3 D. "pattern of racketeering activity" means
4 engaging in at least two incidents of racketeering with the
5 intent of accomplishing any of the prohibited activities set
6 forth in Subsections A through D of Section 30-42-4 NMSA 1978;
7 provided at least one of the incidents occurred after February
8 28, 1980 and the last incident occurred within five years after
9 the commission of a prior incident of racketeering."

10 SECTION 6. Section 30-52-1 NMSA 1978 (being Laws 2008,
11 Chapter 17, Section 1) is amended to read:

12 "30-52-1. HUMAN TRAFFICKING.--

13 A. Human trafficking consists of a person
14 knowingly:

15 (1) recruiting, soliciting, enticing,
16 transporting, harboring, maintaining, patronizing, providing or
17 obtaining by any means another person with the intent or
18 knowledge that force, fraud or coercion will be used to subject
19 the person to labor, services or commercial sexual activity;

20 (2) recruiting, soliciting, enticing,
21 transporting, harboring, maintaining, patronizing, providing or
22 obtaining by any means a person under the age of eighteen years
23 with the intent or knowledge that the person will be caused to
24 engage in commercial sexual activity; or

25 (3) benefiting, financially or by receiving

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1 anything of value, from the labor, services or commercial
2 sexual activity of another person with the knowledge that
3 force, fraud or coercion was used to obtain the labor, services
4 or commercial sexual activity.

5 B. The attorney general and the district attorney
6 in the county of jurisdiction have concurrent jurisdiction to
7 enforce the provisions of this section.

8 C. Whoever commits human trafficking is guilty of a
9 [~~third~~] second degree felony; except if the victim is under the
10 age of:

11 (1) sixteen, the person is guilty of a second
12 degree felony and, notwithstanding the provisions of Section
13 31-18-15 NMSA 1978, shall be sentenced to a minimum term of
14 imprisonment of three years, which shall not be suspended or
15 deferred. The imposition of a minimum, mandatory term of
16 imprisonment pursuant to the provisions of this paragraph shall
17 not be interpreted to preclude the imposition of sentencing
18 enhancements pursuant to the provisions of the Criminal
19 Sentencing Act; or

20 (2) thirteen, the person is guilty of a first
21 degree felony.

22 D. Prosecution pursuant to this section shall not
23 prevent prosecution pursuant to any other provision of the law
24 when the conduct also constitutes a violation of that other
25 provision. Each violation of this section constitutes a

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1 separate offense and shall not merge with any other offense.

2 E. In a prosecution pursuant to this section, a
3 human trafficking victim shall not be charged with accessory to
4 the crime of human trafficking, or for prostitution as provided
5 in Section 30-9-2 NMSA 1978.

6 F. A person convicted of human trafficking shall,
7 in addition to any other punishment, be ordered to make
8 restitution to the victim for the gross income or value of the
9 victim's labor or services and any other actual damages in
10 accordance with Section 31-17-1 NMSA 1978; provided that, at a
11 minimum, the restitution shall be an amount no less than the
12 value of the victim's labor as guaranteed by state or federal
13 minimum wage and overtime labor laws.

14 G. As used in this section:

15 (1) "coercion" means:

16 (a) causing or threatening to cause harm
17 or physical restraint to any person;

18 (b) using or threatening to use physical
19 force or physical restraint against any person;

20 (c) abusing or threatening to abuse the
21 law or legal process;

22 (d) threatening to report the
23 immigration status of any person to governmental authorities;
24 or

25 (e) knowingly destroying, concealing,

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1 removing, confiscating or retaining any actual or purported
2 government document of any person; ~~and~~

3 (2) "commercial sexual activity" means any
4 sexual act or sexually explicit exhibition for which anything
5 of value is given, promised to or received by any person; and

6 (3) "harm" means any harm, whether physical or
7 nonphysical, including psychological, financial or reputational
8 harm, that is sufficiently serious, under all of the
9 surrounding circumstances, to compel a reasonable person of the
10 same background and in the same circumstances to perform or to
11 continue performing compelled labor, services or commercial
12 sexual activity to avoid or attempt to avoid receiving harm.

13 H. In a prosecution for human trafficking pursuant
14 to this section, evidence of the following facts or conditions
15 shall not constitute a defense to prosecution:

16 (1) the victim's sexual history or history of
17 commercial sexual activity, specific instances of the victim's
18 sexual conduct, opinion evidence of the victim's sexual conduct
19 and reputation evidence of the victim's sexual conduct;

20 (2) consent of a minor;

21 (3) mistake as to the victim's age; and

22 (4) that the defendant's intended victim was a
23 peace officer posing as a child under eighteen years of age.

24 I. A person convicted of human trafficking pursuant
25 to this section, shall, in addition to the penalties prescribed

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1 in Subsection C of this section, forfeit to the state:

2 (1) any property used or commercial interest
3 acquired or maintained during the commission of human
4 trafficking; and

5 (2) any interest in, security of, claim
6 against or property or contractual rights of any kind affording
7 a source of influence over an enterprise that the person has
8 established, operated, controlled, conducted or participated in
9 committing human trafficking.

10 The provisions of the Forfeiture Act apply to the seizure,
11 forfeiture and disposal of property described in this section."

12 SECTION 7. Section 31-26-3 NMSA 1978 (being Laws 1994,
13 Chapter 144, Section 3, as amended) is amended to read:

14 "31-26-3. DEFINITIONS.--As used in the Victims of Crime
15 Act:

16 A. "court" means magistrate court, metropolitan
17 court, children's court, district court, the court of appeals
18 or the supreme court;

19 B. "criminal offense" means:

20 (1) negligent arson resulting in death or
21 bodily injury, as provided in Paragraph (1) of Subsection [B] G
22 of Section 30-17-5 NMSA 1978;

23 (2) aggravated arson, as provided in Section
24 30-17-6 NMSA 1978;

25 (3) aggravated assault, as provided in Section

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1 30-3-2 NMSA 1978;

2 (4) aggravated battery, as provided in Section
3 30-3-5 NMSA 1978;

4 (5) dangerous use of explosives, as provided
5 in Section 30-7-5 NMSA 1978;

6 (6) negligent use of a deadly weapon, as
7 provided in Section 30-7-4 NMSA 1978;

8 (7) murder, as provided in Section 30-2-1 NMSA
9 1978;

10 (8) voluntary manslaughter, as provided in
11 Section 30-2-3 NMSA 1978;

12 (9) involuntary manslaughter, as provided in
13 Section 30-2-3 NMSA 1978;

14 (10) kidnapping, as provided in Section 30-4-1
15 NMSA 1978;

16 (11) criminal sexual penetration, as provided
17 in Section 30-9-11 NMSA 1978;

18 (12) criminal sexual contact of a minor, as
19 provided in Section 30-9-13 NMSA 1978;

20 (13) armed robbery, as provided in Section
21 30-16-2 NMSA 1978;

22 (14) homicide by vehicle, as provided in
23 Section 66-8-101 NMSA 1978;

24 (15) great bodily injury by vehicle, as
25 provided in Section 66-8-101 NMSA 1978;

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1 (16) abandonment or abuse of a child, as
2 provided in Section 30-6-1 NMSA 1978;

3 (17) stalking or aggravated stalking, as
4 provided in the Harassment and Stalking Act;

5 (18) aggravated assault against a household
6 member, as provided in Section 30-3-13 NMSA 1978;

7 (19) assault against a household member with
8 intent to commit a violent felony, as provided in Section
9 30-3-14 NMSA 1978;

10 (20) battery against a household member, as
11 provided in Section 30-3-15 NMSA 1978; [~~or~~]

12 (21) aggravated battery against a household
13 member, as provided in Section 30-3-16 NMSA 1978;

14 (22) human trafficking, as provided in Section
15 30-52-1 NMSA 1978; or

16 (23) sexual exploitation of children, as
17 provided in Section 30-6A-3 NMSA 1978;

18 C. "court proceeding" means a hearing, argument or
19 other action scheduled by and held before a court;

20 D. "family member" means a spouse, child, sibling,
21 parent or grandparent;

22 E. "formally charged" means the filing of an
23 indictment, the filing of a criminal information pursuant to a
24 bind-over order, the filing of a petition or the setting of a
25 preliminary hearing;

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1 F. "victim" means an individual against whom a
2 criminal offense is committed. "Victim" also means a family
3 member or a victim's representative when the individual against
4 whom a criminal offense was committed is a minor, is
5 incompetent or is a homicide victim; and

6 G. "victim's representative" means an individual
7 designated by a victim or appointed by the court to act in the
8 best interests of the victim."

9 SECTION 8. Section 33-2-34 NMSA 1978 (being Laws 1999,
10 Chapter 238, Section 1, as amended) is amended to read:

11 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS
12 DEDUCTIONS.--

13 A. To earn meritorious deductions, a prisoner
14 confined in a correctional facility designated by the
15 corrections department must be an active participant in
16 programs recommended for the prisoner by the classification
17 supervisor and approved by the warden or the warden's
18 designee. Meritorious deductions shall not exceed the
19 following amounts:

20 (1) for a prisoner confined for committing a
21 serious violent offense, up to a maximum of four days per
22 month of time served;

23 (2) for a prisoner confined for committing a
24 nonviolent offense, up to a maximum of thirty days per month
25 of time served;

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1 (3) for a prisoner confined following
2 revocation of parole for the alleged commission of a new
3 felony offense or for absconding from parole, up to a maximum
4 of four days per month of time served during the parole term
5 following revocation; and

6 (4) for a prisoner confined following
7 revocation of parole for a reason other than the alleged
8 commission of a new felony offense or absconding from parole:

9 (a) up to a maximum of eight days per
10 month of time served during the parole term following
11 revocation, if the prisoner was convicted of a serious violent
12 offense or failed to pass a drug test administered as a
13 condition of parole; or

14 (b) up to a maximum of thirty days per
15 month of time served during the parole term following
16 revocation, if the prisoner was convicted of a nonviolent
17 offense.

18 B. A prisoner may earn meritorious deductions upon
19 recommendation by the classification supervisor, based upon
20 the prisoner's active participation in approved programs and
21 the quality of the prisoner's participation in those approved
22 programs. A prisoner may not earn meritorious deductions
23 unless the recommendation of the classification supervisor is
24 approved by the warden or the warden's designee.

25 C. If a prisoner's active participation in

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1 approved programs is interrupted by a lockdown at a
2 correctional facility, the prisoner may continue to be awarded
3 meritorious deductions at the rate the prisoner was earning
4 meritorious deductions prior to the lockdown, unless the
5 warden or the warden's designee determines that the prisoner's
6 conduct contributed to the initiation or continuance of the
7 lockdown.

8 D. A prisoner confined in a correctional facility
9 designated by the corrections department is eligible for lump-
10 sum meritorious deductions as follows:

11 (1) for successfully completing an approved
12 vocational, substance abuse or mental health program, one
13 month; except when the prisoner has a demonstrable physical,
14 mental health or developmental disability that prevents the
15 prisoner from successfully earning a high school equivalency
16 credential, in which case, the prisoner shall be awarded three
17 months;

18 (2) for earning a high school equivalency
19 credential, three months;

20 (3) for earning an associate's degree, four
21 months;

22 (4) for earning a bachelor's degree, five
23 months;

24 (5) for earning a graduate qualification,
25 five months; and

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1 (6) for engaging in a heroic act of saving
2 life or property, engaging in extraordinary conduct for the
3 benefit of the state or the public that is at great expense or
4 risk to or involves great effort on the part of the prisoner
5 or engaging in extraordinary conduct far in excess of normal
6 program assignments that demonstrates the prisoner's
7 commitment to self-rehabilitation. The classification
8 supervisor and the warden or the warden's designee may
9 recommend the number of days to be awarded in each case based
10 upon the particular merits, but any award shall be determined
11 by the director of the adult institutions division of the
12 corrections department or the director's designee.

13 E. Lump-sum meritorious deductions, provided in
14 Paragraphs (1) through (6) of Subsection D of this section,
15 may be awarded in addition to the meritorious deductions
16 provided in Subsections A and B of this section. Lump-sum
17 meritorious deductions shall not exceed one year per award and
18 shall not exceed a total of one year for all lump-sum
19 meritorious deductions awarded in any consecutive twelve-month
20 period.

21 F. A prisoner is not eligible to earn meritorious
22 deductions if the prisoner:

23 (1) disobeys an order to perform labor,
24 pursuant to Section 33-8-4 NMSA 1978;

25 (2) is in disciplinary segregation;

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1 (3) is confined for committing a serious
2 violent offense and is within the first sixty days of receipt
3 by the corrections department; or

4 (4) is not an active participant in programs
5 recommended and approved for the prisoner by the
6 classification supervisor.

7 G. The provisions of this section shall not be
8 interpreted as providing eligibility to earn meritorious
9 deductions from a sentence of life imprisonment or a sentence
10 of life imprisonment without possibility of release or parole.

11 H. The corrections department shall promulgate
12 rules to implement the provisions of this section, and the
13 rules shall be matters of public record. A concise summary of
14 the rules shall be provided to each prisoner, and each
15 prisoner shall receive a quarterly statement of the
16 meritorious deductions earned.

17 I. A New Mexico prisoner confined in a federal or
18 out-of-state correctional facility is eligible to earn
19 meritorious deductions for active participation in programs on
20 the basis of the prisoner's conduct and program reports
21 furnished by that facility to the corrections department. All
22 decisions regarding the award and forfeiture of meritorious
23 deductions at such facility are subject to final approval by
24 the director of the adult institutions division of the
25 corrections department or the director's designee.

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1 J. In order to be eligible for meritorious
2 deductions, a prisoner confined in a federal or out-of-state
3 correctional facility designated by the corrections department
4 must actively participate in programs that are available. If
5 a federal or out-of-state correctional facility does not have
6 programs available for a prisoner, the prisoner may be awarded
7 meritorious deductions at the rate the prisoner could have
8 earned meritorious deductions if the prisoner had actively
9 participated in programs.

10 K. A prisoner confined in a correctional facility
11 in New Mexico that is operated by a private company, pursuant
12 to a contract with the corrections department, is eligible to
13 earn meritorious deductions in the same manner as a prisoner
14 confined in a state-run correctional facility. All decisions
15 regarding the award or forfeiture of meritorious deductions at
16 such facilities are subject to final approval by the director
17 of the adult institutions division of the corrections
18 department or the director's designee.

19 L. As used in this section:

20 (1) "active participant" means a prisoner
21 who has begun, and is regularly engaged in, approved programs;

22 (2) "program" means work, vocational,
23 educational, substance abuse and mental health programs,
24 approved by the classification supervisor, that contribute to
25 a prisoner's self-betterment through the development of

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1 personal and occupational skills. "Program" does not include
2 recreational activities;

3 (3) "nonviolent offense" means any offense
4 other than a serious violent offense; and

5 (4) "serious violent offense" means:

6 (a) second degree murder, as provided
7 in Section 30-2-1 NMSA 1978;

8 (b) voluntary manslaughter, as provided
9 in Section 30-2-3 NMSA 1978;

10 (c) third degree aggravated battery, as
11 provided in Section 30-3-5 NMSA 1978;

12 (d) third degree aggravated battery
13 against a household member, as provided in Section 30-3-16
14 NMSA 1978;

15 (e) first degree kidnapping, as
16 provided in Section 30-4-1 NMSA 1978;

17 (f) first and second degree criminal
18 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

19 (g) second and third degree criminal
20 sexual contact of a minor, as provided in Section 30-9-13 NMSA
21 1978;

22 (h) first and second degree robbery, as
23 provided in Section 30-16-2 NMSA 1978;

24 (i) second degree aggravated arson, as
25 provided in Section 30-17-6 NMSA 1978;

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1 (j) shooting at a dwelling or occupied
2 building, as provided in Section 30-3-8 NMSA 1978;

3 (k) shooting at or from a motor
4 vehicle, as provided in Section 30-3-8 NMSA 1978;

5 (l) aggravated battery upon a peace
6 officer, as provided in Section 30-22-25 NMSA 1978;

7 (m) assault with intent to commit a
8 violent felony upon a peace officer, as provided in Section
9 30-22-23 NMSA 1978;

10 (n) aggravated assault upon a peace
11 officer, as provided in Section 30-22-22 NMSA 1978; or

12 (o) any of the following offenses, when
13 the nature of the offense and the resulting harm are such that
14 the court judges the crime to be a serious violent offense for
15 the purpose of this section: 1) involuntary manslaughter, as
16 provided in Section 30-2-3 NMSA 1978; 2) fourth degree
17 aggravated assault, as provided in Section 30-3-2 NMSA 1978;
18 3) third degree assault with intent to commit a violent
19 felony, as provided in Section 30-3-3 NMSA 1978; 4) fourth
20 degree aggravated assault against a household member, as
21 provided in Section 30-3-13 NMSA 1978; 5) third degree assault
22 against a household member with intent to commit a violent
23 felony, as provided in Section 30-3-14 NMSA 1978; 6) third and
24 fourth degree aggravated stalking, as provided in Section
25 30-3A-3.1 NMSA 1978; 7) second degree kidnapping, as provided

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1 in Section 30-4-1 NMSA 1978; 8) second degree abandonment of a
2 child, as provided in Section 30-6-1 NMSA 1978; 9) first,
3 second and third degree abuse of a child, as provided in
4 Section 30-6-1 NMSA 1978; 10) third degree dangerous use of
5 explosives, as provided in Section 30-7-5 NMSA 1978; 11) third
6 and fourth degree criminal sexual penetration, as provided in
7 Section 30-9-11 NMSA 1978; 12) fourth degree criminal sexual
8 contact of a minor, as provided in Section 30-9-13 NMSA 1978;
9 13) third degree robbery, as provided in Section 30-16-2 NMSA
10 1978; 14) third degree homicide by vehicle or great bodily
11 harm by vehicle, as provided in Section 66-8-101 NMSA 1978;
12 [~~or~~] 15) battery upon a peace officer, as provided in Section
13 30-22-24 NMSA 1978; or 16) human trafficking, as provided in
14 Section 30-52-1 NMSA 1978.

15 M. Except for sex offenders, as provided in
16 Section 31-21-10.1 NMSA 1978, an offender sentenced to
17 confinement in a correctional facility designated by the
18 corrections department who has been released from confinement
19 and who is serving a parole term may be awarded earned
20 meritorious deductions of up to thirty days per month upon
21 recommendation of the parole officer supervising the offender,
22 with the final approval of the adult parole board. The
23 offender must be in compliance with all the conditions of the
24 offender's parole to be eligible for earned meritorious
25 deductions. The adult parole board may remove earned

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1 meritorious deductions previously awarded if the offender
2 later fails to comply with the conditions of the offender's
3 parole. The corrections department and the adult parole board
4 shall promulgate rules to implement the provisions of this
5 subsection. This subsection applies to offenders who are
6 serving a parole term on or after July 1, 2004."