

HOUSE BILL 445

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

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

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 a branch
7 of the United States military;

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; [~~or~~]

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

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.

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

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

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

13 [~~(3)~~] (2) false imprisonment, as provided in
14 Section 30-4-3 NMSA 1978, when the victim is less than eighteen
15 years of age and the offender is not a parent of the victim;

16 [~~(4)~~] (3) aggravated indecent exposure, as
17 provided in Section 30-9-14.3 NMSA 1978;

18 [~~(5)~~] (4) enticement of child, as provided in
19 Section 30-9-1 NMSA 1978;

20 [~~(6)~~] (5) incest, as provided in Section
21 30-10-3 NMSA 1978, when the victim is less than eighteen years
22 of age;

23 [~~(7)~~] (6) solicitation to commit criminal
24 sexual contact of a minor in the second, third or fourth
25 degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;

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1 ~~[(8)]~~ (7) child solicitation by electronic
2 communication device, as provided in Section 30-37-3.2 NMSA
3 1978; ~~[or]~~

4 (8) any conviction entered by a court of a
5 jurisdiction outside of the state requiring the individual to
6 register as a sex offender in that jurisdiction; provided that
7 an individual may petition a court for an order excepting the
8 individual from registering pursuant to the Sex Offender
9 Registration and Notification Act if:

10 (a) the individual would not have been
11 required to register in New Mexico; and

12 (b) the court finds good cause to except
13 the individual from registering pursuant to the Sex Offender
14 Registration and Notification Act; or

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

18 F. Notwithstanding the provisions of Subsection E
19 of this section, if a sex offender is convicted a second or
20 subsequent time for a sex offense set forth in that subsection,
21 the department ~~[of public safety]~~ shall retain information
22 regarding the sex offender for the entirety of the sex
23 offender's natural life.

24 G. The department ~~[of public safety]~~ shall adopt
25 rules necessary to carry out the provisions of the Sex Offender

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1 Registration and Notification Act. Rules necessary for the
2 collection of DNA samples and the administration and operation
3 of the sex offender DNA identification system shall be adopted
4 by the DNA identification system oversight committee pursuant
5 to the provisions of the DNA Identification Act."

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

8 "30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--A
9 person shall not be prosecuted, tried or punished in any court
10 of this state unless the indictment is found or information or
11 complaint is filed within the time as provided:

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

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

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

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

20 E. for any crime against or violation of Section
21 51-1-38 NMSA 1978, within three years from the time the crime
22 was committed;

23 F. for a felony pursuant to Section 7-1-71.3,
24 7-1-72 or 7-1-73 NMSA 1978, within five years from the time the
25 crime was committed; provided that for a series of crimes

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1 involving multiple filing periods within one calendar year, the
2 limitation shall begin to run on December 31 of the year in
3 which the crimes occurred;

4 G. for an identity theft crime pursuant to Section
5 30-16-24.1 NMSA 1978, within five years from the time the crime
6 was discovered;

7 H. for any crime not contained in the Criminal Code
8 or where a limitation is not otherwise provided for, within
9 three years from the time the crime was committed; and

10 I. for a capital felony, a first degree violent
11 felony, ~~[or]~~ second degree murder pursuant to Subsection B of
12 Section 30-2-1 NMSA 1978 or for any crime against or in
13 violation of Section 30-52-1 NMSA 1978, no limitation period
14 shall exist and prosecution for these crimes may commence at
15 any time after the occurrence of the crime."

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

18 "30-6A-4. SEXUAL EXPLOITATION OF CHILDREN BY
19 PROSTITUTION.--

20 A. Any person knowingly receiving any pecuniary
21 profit as a result of a child under the age of ~~[sixteen]~~
22 eighteen engaging in a prohibited sexual act with another is
23 guilty of a second degree felony, unless the child is under the
24 age of thirteen, in which event the person is guilty of a first
25 degree felony.

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

4 C. Any parent, legal guardian or person having
5 custody or control of a child under [~~sixteen~~] eighteen years of
6 age who knowingly permits that child to engage in or to assist
7 any other person to engage in any prohibited sexual act or
8 simulation of such an act for the purpose of producing any
9 visual or print medium depicting such an act is guilty of a
10 third degree felony.

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

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

19 "30-42-3. DEFINITIONS.--As used in the Racketeering Act:

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

24 (1) murder, as provided in Section 30-2-1 NMSA
25 1978;

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- 1 (2) robbery, as provided in Section 30-16-2
2 NMSA 1978;
- 3 (3) kidnapping, as provided in Section 30-4-1
4 NMSA 1978;
- 5 (4) forgery, as provided in Section 30-16-10
6 NMSA 1978;
- 7 (5) larceny, as provided in Section 30-16-1
8 NMSA 1978;
- 9 (6) fraud, as provided in Section 30-16-6 NMSA
10 1978;
- 11 (7) embezzlement, as provided in Section
12 30-16-8 NMSA 1978;
- 13 (8) receiving stolen property, as provided in
14 Section 30-16-11 NMSA 1978;
- 15 (9) bribery, as provided in Sections 30-24-1
16 through 30-24-3.1 NMSA 1978;
- 17 (10) gambling, as provided in Sections
18 30-19-3, 30-19-13 and 30-19-15 NMSA 1978;
- 19 (11) illegal kickbacks, as provided in
20 Sections 30-41-1 and 30-41-2 NMSA 1978;
- 21 (12) extortion, as provided in Section 30-16-9
22 NMSA 1978;
- 23 (13) trafficking in controlled substances, as
24 provided in Section 30-31-20 NMSA 1978;
- 25 (14) arson and aggravated arson, as provided

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1 in Subsection A of Section 30-17-5 and Section 30-17-6 NMSA
2 1978;

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

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

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

9 (18) loan sharking, as provided in Sections
10 30-43-1 through 30-43-5 NMSA 1978;

11 (19) distribution of controlled substances or
12 controlled substance analogues, as provided in Sections
13 30-31-21 and 30-31-22 NMSA 1978;

14 (20) a violation of the provisions of Section
15 30-51-4 NMSA 1978;

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

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

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

22 (24) receiving or transferring stolen vehicles
23 or motor vehicles, as provided in Section 30-16D-4 NMSA 1978;

24 [~~and~~]

25 (25) altering or changing the serial number,

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1 engine number, decal or other numbers or marks of a vehicle or
2 motor vehicle, as provided in Section 30-16D-6 NMSA 1978; and
3 (26) human trafficking, as provided in Section
4 30-52-1 NMSA 1978;

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

7 C. "enterprise" means a sole proprietorship,
8 partnership, corporation, business, labor union, association or
9 other legal entity or a group of individuals associated in fact
10 although not a legal entity and includes illicit as well as
11 licit entities; and

12 D. "pattern of racketeering activity" means
13 engaging in at least two incidents of racketeering with the
14 intent of accomplishing any of the prohibited activities set
15 forth in Subsections A through D of Section 30-42-4 NMSA 1978;
16 provided at least one of the incidents occurred after February
17 28, 1980 and the last incident occurred within five years after
18 the commission of a prior incident of racketeering."

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

21 "30-52-1. HUMAN TRAFFICKING.--

22 A. Human trafficking consists of a person
23 knowingly:

24 (1) recruiting, soliciting, enticing,
25 transporting, harboring, maintaining, patronizing, providing or

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1 obtaining by any means another person with the intent or
2 knowledge that force, fraud or coercion will be used to subject
3 the person to labor, services or commercial sexual activity;

4 (2) recruiting, soliciting, enticing,
5 transporting, harboring, maintaining, patronizing, providing or
6 obtaining by any means a person under the age of eighteen years
7 with the intent or knowledge that the person will be caused to
8 engage in commercial sexual activity; or

9 (3) benefiting, financially or by receiving
10 anything of value, from the labor, services or commercial
11 sexual activity of another person with the knowledge that
12 force, fraud or coercion was used to obtain the labor, services
13 or commercial sexual activity.

14 B. The attorney general and the district attorney
15 in the county of jurisdiction have concurrent jurisdiction to
16 enforce the provisions of this section.

17 C. Whoever commits human trafficking is guilty of a
18 [~~third~~] second degree felony; except if the victim is under the
19 age of

20 [~~(1) sixteen, the person is guilty of a second~~
21 ~~degree felony; or~~

22 [~~(2) thirteen~~] eighteen, the person is guilty
23 of a first degree felony.

24 D. Prosecution pursuant to this section shall not
25 prevent prosecution pursuant to any other provision of the law

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1 when the conduct also constitutes a violation of that other
2 provision. Each violation of this section constitutes a
3 separate offense and shall not merge with any other offense.

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

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

16 G. As used in this section:

17 (1) "coercion" means:

18 (a) causing or threatening to cause harm
19 or physical restraint to any person;

20 (b) using or threatening to use physical
21 force or physical restraint against any person;

22 (c) abusing or threatening to abuse the
23 law or legal process;

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

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1 or

2 (e) knowingly destroying, concealing,
3 removing, confiscating or retaining any actual or purported
4 government document of any person; ~~and~~

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

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

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

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

22 (2) consent of a minor;

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

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

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1 I. A person convicted of human trafficking pursuant
2 to this section shall be subject to the Forefeiture Act."

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

5 "31-26-3. DEFINITIONS.--As used in the Victims of Crime
6 Act:

7 A. "court" means magistrate court, metropolitan
8 court, children's court, district court, the court of appeals
9 or the supreme court;

10 B. "criminal offense" means:

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

14 (2) aggravated arson, as provided in Section
15 30-17-6 NMSA 1978;

16 (3) aggravated assault, as provided in Section
17 30-3-2 NMSA 1978;

18 (4) aggravated battery, as provided in Section
19 30-3-5 NMSA 1978;

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

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

24 (7) murder, as provided in Section 30-2-1 NMSA
25 1978;

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- 1 (8) voluntary manslaughter, as provided in
2 Section 30-2-3 NMSA 1978;
- 3 (9) involuntary manslaughter, as provided in
4 Section 30-2-3 NMSA 1978;
- 5 (10) kidnapping, as provided in Section 30-4-1
6 NMSA 1978;
- 7 (11) criminal sexual penetration, as provided
8 in Section 30-9-11 NMSA 1978;
- 9 (12) criminal sexual contact of a minor, as
10 provided in Section 30-9-13 NMSA 1978;
- 11 (13) armed robbery, as provided in Section
12 30-16-2 NMSA 1978;
- 13 (14) homicide by vehicle, as provided in
14 Section 66-8-101 NMSA 1978;
- 15 (15) great bodily injury by vehicle, as
16 provided in Section 66-8-101 NMSA 1978;
- 17 (16) abandonment or abuse of a child, as
18 provided in Section 30-6-1 NMSA 1978;
- 19 (17) stalking or aggravated stalking, as
20 provided in the Harassment and Stalking Act;
- 21 (18) aggravated assault against a household
22 member, as provided in Section 30-3-13 NMSA 1978;
- 23 (19) assault against a household member with
24 intent to commit a violent felony, as provided in Section
25 30-3-14 NMSA 1978;

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1 (20) battery against a household member, as
2 provided in Section 30-3-15 NMSA 1978; ~~[e#]~~

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

5 (22) human trafficking, as provided in Section
6 30-52-1 NMSA 1978; or

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

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

11 D. "family member" means a spouse, child, sibling,
12 parent or grandparent;

13 E. "formally charged" means the filing of an
14 indictment, the filing of a criminal information pursuant to a
15 bind-over order, the filing of a petition or the setting of a
16 preliminary hearing;

17 F. "victim" means an individual against whom a
18 criminal offense is committed. "Victim" also means a family
19 member or a victim's representative when the individual against
20 whom a criminal offense was committed is a minor, is
21 incompetent or is a homicide victim; and

22 G. "victim's representative" means an individual
23 designated by a victim or appointed by the court to act in the
24 best interests of the victim."

25 SECTION 8. Section 33-2-34 NMSA 1978 (being Laws 1999,

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1 Chapter 238, Section 1, as amended) is amended to read:

2 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS
3 DEDUCTIONS.--

4 A. To earn meritorious deductions, a prisoner
5 confined in a correctional facility designated by the
6 corrections department must be an active participant in
7 programs recommended for the prisoner by the classification
8 supervisor and approved by the warden or the warden's
9 designee. Meritorious deductions shall not exceed the
10 following amounts:

11 (1) for a prisoner confined for committing a
12 serious violent offense, up to a maximum of four days per
13 month of time served;

14 (2) for a prisoner confined for committing a
15 nonviolent offense, up to a maximum of thirty days per month
16 of time served;

17 (3) for a prisoner confined following
18 revocation of parole for the alleged commission of a new
19 felony offense or for absconding from parole, up to a maximum
20 of four days per month of time served during the parole term
21 following revocation; and

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

25 (a) up to a maximum of eight days per

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1 month of time served during the parole term following
2 revocation, if the prisoner was convicted of a serious violent
3 offense or failed to pass a drug test administered as a
4 condition of parole; or

5 (b) up to a maximum of thirty days per
6 month of time served during the parole term following
7 revocation, if the prisoner was convicted of a nonviolent
8 offense.

9 B. A prisoner may earn meritorious deductions upon
10 recommendation by the classification supervisor, based upon
11 the prisoner's active participation in approved programs and
12 the quality of the prisoner's participation in those approved
13 programs. A prisoner may not earn meritorious deductions
14 unless the recommendation of the classification supervisor is
15 approved by the warden or the warden's designee.

16 C. If a prisoner's active participation in
17 approved programs is interrupted by a lockdown at a
18 correctional facility, the prisoner may continue to be awarded
19 meritorious deductions at the rate the prisoner was earning
20 meritorious deductions prior to the lockdown, unless the
21 warden or the warden's designee determines that the prisoner's
22 conduct contributed to the initiation or continuance of the
23 lockdown.

24 D. A prisoner confined in a correctional facility
25 designated by the corrections department is eligible for lump-

1 sum meritorious deductions as follows:

2 (1) for successfully completing an approved
3 vocational, substance abuse or mental health program, one
4 month; except when the prisoner has a demonstrable physical,
5 mental health or developmental disability that prevents the
6 prisoner from successfully earning a high school equivalency
7 credential, in which case, the prisoner shall be awarded three
8 months;

9 (2) for earning a high school equivalency
10 credential, three months;

11 (3) for earning an associate's degree, four
12 months;

13 (4) for earning a bachelor's degree, five
14 months;

15 (5) for earning a graduate qualification,
16 five months; and

17 (6) for engaging in a heroic act of saving
18 life or property, engaging in extraordinary conduct for the
19 benefit of the state or the public that is at great expense or
20 risk to or involves great effort on the part of the prisoner
21 or engaging in extraordinary conduct far in excess of normal
22 program assignments that demonstrates the prisoner's
23 commitment to self-rehabilitation. The classification
24 supervisor and the warden or the warden's designee may
25 recommend the number of days to be awarded in each case based

1 upon the particular merits, but any award shall be determined
2 by the director of the adult institutions division of the
3 corrections department or the director's designee.

4 E. Lump-sum meritorious deductions, provided in
5 Paragraphs (1) through (6) of Subsection D of this section,
6 may be awarded in addition to the meritorious deductions
7 provided in Subsections A and B of this section. Lump-sum
8 meritorious deductions shall not exceed one year per award and
9 shall not exceed a total of one year for all lump-sum
10 meritorious deductions awarded in any consecutive twelve-month
11 period.

12 F. A prisoner is not eligible to earn meritorious
13 deductions if the prisoner:

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

16 (2) is in disciplinary segregation;

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

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

23 G. The provisions of this section shall not be
24 interpreted as providing eligibility to earn meritorious
25 deductions from a sentence of life imprisonment or a sentence

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1 of life imprisonment without possibility of release or parole.

2 H. The corrections department shall promulgate
3 rules to implement the provisions of this section, and the
4 rules shall be matters of public record. A concise summary of
5 the rules shall be provided to each prisoner, and each
6 prisoner shall receive a quarterly statement of the
7 meritorious deductions earned.

8 I. A New Mexico prisoner confined in a federal or
9 out-of-state correctional facility is eligible to earn
10 meritorious deductions for active participation in programs on
11 the basis of the prisoner's conduct and program reports
12 furnished by that facility to the corrections department. All
13 decisions regarding the award and forfeiture of meritorious
14 deductions at such facility are subject to final approval by
15 the director of the adult institutions division of the
16 corrections department or the director's designee.

17 J. In order to be eligible for meritorious
18 deductions, a prisoner confined in a federal or out-of-state
19 correctional facility designated by the corrections department
20 must actively participate in programs that are available. If
21 a federal or out-of-state correctional facility does not have
22 programs available for a prisoner, the prisoner may be awarded
23 meritorious deductions at the rate the prisoner could have
24 earned meritorious deductions if the prisoner had actively
25 participated in programs.

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1 K. A prisoner confined in a correctional facility
2 in New Mexico that is operated by a private company, pursuant
3 to a contract with the corrections department, is eligible to
4 earn meritorious deductions in the same manner as a prisoner
5 confined in a state-run correctional facility. All decisions
6 regarding the award or forfeiture of meritorious deductions at
7 such facilities are subject to final approval by the director
8 of the adult institutions division of the corrections
9 department or the director's designee.

10 L. As used in this section:

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

13 (2) "program" means work, vocational,
14 educational, substance abuse and mental health programs,
15 approved by the classification supervisor, that contribute to
16 a prisoner's self-betterment through the development of
17 personal and occupational skills. "Program" does not include
18 recreational activities;

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

21 (4) "serious violent offense" means:

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

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

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

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

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

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

10 (g) second and third degree criminal
11 sexual contact of a minor, as provided in Section 30-9-13 NMSA
12 1978;

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

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

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

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

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

23 (m) assault with intent to commit a
24 violent felony upon a peace officer, as provided in Section
25 30-22-23 NMSA 1978;

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

3 (o) any of the following offenses, when
4 the nature of the offense and the resulting harm are such that
5 the court judges the crime to be a serious violent offense for
6 the purpose of this section: 1) involuntary manslaughter, as
7 provided in Section 30-2-3 NMSA 1978; 2) fourth degree
8 aggravated assault, as provided in Section 30-3-2 NMSA 1978;
9 3) third degree assault with intent to commit a violent
10 felony, as provided in Section 30-3-3 NMSA 1978; 4) fourth
11 degree aggravated assault against a household member, as
12 provided in Section 30-3-13 NMSA 1978; 5) third degree assault
13 against a household member with intent to commit a violent
14 felony, as provided in Section 30-3-14 NMSA 1978; 6) third and
15 fourth degree aggravated stalking, as provided in Section
16 30-3A-3.1 NMSA 1978; 7) second degree kidnapping, as provided
17 in Section 30-4-1 NMSA 1978; 8) second degree abandonment of a
18 child, as provided in Section 30-6-1 NMSA 1978; 9) first,
19 second and third degree abuse of a child, as provided in
20 Section 30-6-1 NMSA 1978; 10) third degree dangerous use of
21 explosives, as provided in Section 30-7-5 NMSA 1978; 11) third
22 and fourth degree criminal sexual penetration, as provided in
23 Section 30-9-11 NMSA 1978; 12) fourth degree criminal sexual
24 contact of a minor, as provided in Section 30-9-13 NMSA 1978;
25 13) third degree robbery, as provided in Section 30-16-2 NMSA

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1 1978; 14) third degree homicide by vehicle or great bodily
2 harm by vehicle, as provided in Section 66-8-101 NMSA 1978;
3 [~~or~~] 15) battery upon a peace officer, as provided in Section
4 30-22-24 NMSA 1978; or 16) human trafficking, as provided in
5 Section 30-52-1 NMSA 1978.

6 M. Except for sex offenders, as provided in
7 Section 31-21-10.1 NMSA 1978, an offender sentenced to
8 confinement in a correctional facility designated by the
9 corrections department who has been released from confinement
10 and who is serving a parole term may be awarded earned
11 meritorious deductions of up to thirty days per month upon
12 recommendation of the parole officer supervising the offender,
13 with the final approval of the adult parole board. The
14 offender must be in compliance with all the conditions of the
15 offender's parole to be eligible for earned meritorious
16 deductions. The adult parole board may remove earned
17 meritorious deductions previously awarded if the offender
18 later fails to comply with the conditions of the offender's
19 parole. The corrections department and the adult parole board
20 shall promulgate rules to implement the provisions of this
21 subsection. This subsection applies to offenders who are
22 serving a parole term on or after July 1, 2004."