

**LFC Requester:**

**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**  
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**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 1/22/25 *Check all that apply:*  
**Bill Number:** HB 86 Original  Correction   
 Amendment  Substitute

**Sponsor:** Rep. Elizabeth "Liz" Thomson **Agency Name and Code:** AOC  
**Short Title:** Human Trafficking Changes **Number:** 218  
**Title:** \_\_\_\_\_ **Person Writing:** Kathleen Sabo  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Conflicts with SB 74 (also amending Sections 30-1-8, 30-6A-4, 30-42-3, 30-52-1, 31-26-3 and 33-2-34 NMSA 1978). Conflicts with SB 70 (also amending Section 30-42-3 NMSA 1978). Conflicts with HB 104 (also amending Section 31-26-3 NMSA 1978). Conflicts with HB 102 (also amending Section 33-2-34).

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: HB 86 amends statutory sections relating to human trafficking and sexual exploitation of children as follows:

- **Section 30-1-8 NMSA 1978:** provides for no limitation period for any crime against or in violation of Section 30-52-1 NMSA 1978, governing human trafficking, and provides that prosecution for these crimes may commence at any time after the occurrence of the crime.
- **Section 30-6A-4 NMSA 1978:** increases the age for sexual exploitation of children by prostitution from 16 to 18. Provides that in a prosecution for sexual exploitation of children by prostitution, it shall not constitute a defense to prosecution that the defendant's intended victim was a peace officer posing as a child under 18.
- **Section 30-42-3 NMSA 1978:** adds human trafficking, as provided in Section 30-52-1 NMSA 1978 to the definition of "racketeering".
- **Section 30-52-1 NMSA 1978:**
  - Expands the crime of human trafficking to include harboring, maintaining, patronizing or providing by any means another person with specified intent or knowledge.
  - Clarifies that the crime applies when a person benefitting knew or should have known that force, fraud or coercion was used to obtain the labor, services or commercial sexual activity.
  - Expands the crime to include utilizing a person's services to compel the repayment of a financial debt or other obligation when the person who holds or enforces the debt or obligation does not pay the laborer in accordance with state and local law and has actual or perceived control over the laborer, and the laborer has no reasonable means to terminate the labor arrangement.
  - Provides a first degree felony penalty when the victim is under 18.
  - Provides that each violation of this section constitutes a separate offense and shall not merge with any other offense.
  - Prohibits a human trafficking victim from being charged with prostitution as provided in Section 30-9-2 NMSA 1978.
  - Expands the definition of "coercion" to include using physical restraint. Defines "harm" to mean any harm that is sufficiently serious, under all of the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing compelled labor, services or commercial sexual activity to avoid or attempt to avoid receiving harm.
  - Lists the facts or conditions, evidence of which in a prosecution for human trafficking, shall not constitute a defense to prosecution.
  - Provides that a person convicted of human trafficking pursuant to this section shall be subject to the Forfeiture Act.

- **Section 31-26-3 NMSA 1978:** defines “criminal offense” as used in the Victims of Crime Act to include human trafficking, as provided in Section 30-52-1 NMSA 1978, and sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978.
- **Section 33-2-34 NMSA 1978:** includes human trafficking, as provided in Section 30-52-1 NMSA 1978 within the definition of “serious violent offense” when determining eligibility for earned meritorious deductions.

## FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions and forfeiture proceedings, and appeals from convictions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Increased penalties are likely to result in more defendants invoking their right to trials, as well as to jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. Indigent offenders are entitled to public defender services.

## SIGNIFICANT ISSUES

- 1) Under the federal Eliminating Limits to Justice for Child Sex Abuse Victims Act, 18 U.S.C. Section 2255, there is no statute of limitations for criminal child sex abuse charges under federal law and, in terms of scope, the Act applies to human trafficking as well as child sexual abuse civil claims. See *National State Law Survey: Statute of Limitations*, 2018 for a listing of state statute of limitations law related to human trafficking at [https://sharedhope.org/PICframe8/statesurveycharts/NSL\\_Survey\\_StatuteofLimitations.pdf](https://sharedhope.org/PICframe8/statesurveycharts/NSL_Survey_StatuteofLimitations.pdf).
- 2) According to the National Conference of State Legislatures (NCSL), as of August 2020, 26 states and the District of Columbia set forfeiture procedures for trafficking crimes. See <https://www.ncsl.org/civil-and-criminal-justice/human-trafficking-state-laws> for a comprehensive report on human trafficking state laws.

In a 2019 grading, New Mexico placed 47<sup>th</sup> out of the 50 states and the District of Columbia and received a “D” grade related to its provisions for addressing human trafficking. See *Criminal Provisions for Human Trafficking: Rankings, State Grades and Challenges*, Meshelemiah, 2019 at:

<https://www.heraldopenaccess.us/openaccess/criminal-provisions-for-human-trafficking-rankings-state-grades-and-challenges>

This article sets out the categories of laws that are deemed critical to a basic legal framework for combatting human trafficking, according to Polaris, the self-described survivor-centered, justice- and equity-driven movement to end human trafficking and the operator of the U.S. National Human Trafficking Hotline ([www.polarisproject.org](http://www.polarisproject.org)), as follows:

1. Sex trafficking [*a statute that criminalizes sex trafficking and its elements of force, fraud, or coercion to engage in commercialized sex*].
2. Labor trafficking [*a statute that criminalizes behaviors that compel a person to provide labor or services through force, fraud, or coercion*].

- a) Asset forfeiture for Human Trafficking [*a statute that amends the Racketeer Influential and Corrupt Organizations (RICO) Act statutes so that forfeiture of assets acquired with proceeds or used in the course of human trafficking are included*] and b) Investigative tools for law enforcement [*a statute that amends the Racketeer Influential and Corrupt Organizations (RICO) Act statutes so that wiretapping by law enforcement is permitted during human trafficking investigations*].
- a) Training on human trafficking for law enforcement [*a statute that requires or encourages law enforcement officers to become educated on human trafficking*] and b) Human trafficking commission or task force [*a statute that creates, establishes or encourages the creation of any of the following: A commission, task force or advisory committee on human trafficking*].
- 3. Lower burden of proof for sex trafficking of minors [*a statute that aligns with the federal level Trafficking Victims Protection Act that eliminates the need for minors who are sex trafficked to show proof of force, fraud, or coercion*].
- 4. Posting a human trafficking hotline [*a statute that encourages or requires the public posting of a human trafficking hotline number that is run at the state level or national level (e.g., National Human Trafficking Resource Center hotline that is run by Polaris)*].
- 5. Safe harbor: Protecting sexually exploited minors [*a statute that includes immunity from prosecution or diversion and welfare services for the child victim*].
- 6. Victim assistance [*a statute that provides assistance, requires the creation of a formal plan for victim services, or funds actual programming for trafficked persons.*]
- 7. Access to civil damages [*a statute that allows trafficked victims to sue their traffickers and pursue civil damages.*]
- 8. Vacating convictions for sex trafficking victims [*a statute that permits prostitution convictions to be vacated when the prostitution was the result of sex trafficking*]

See also <https://reportcards.sharedhope.org/year2023/newmexico/>, where New Mexico was given an “F” grade on a report card on child and youth sex trafficking, as of 2023, and access New Mexico’s 2023 report at <https://reportcards.sharedhope.org/wp-content/uploads/2023/11/2023-State-Report-NM-1.pdf>.

- 3) HB 86 amends Section 30-42-3 NMSA 1978 to add human trafficking, as provided in Section 30-52-1 NMSA 1978 to the definition of “racketeering”. Section 30-42-4 NMSA 1978 provides second and third degree felony penalties for those engaging in a pattern of racketeering activity, and provides for forfeiture of assets upon conviction, pursuant to the provisions of the Forfeiture Act, Chapter 31, Article 27 NMSA 1978. Additionally, HB 86 amends Section 30-52-1 NMSA 1978 to provide, in Subsection I, that a person convicted of human trafficking pursuant to that section shall be subject to the Forfeiture Act.

Under Section 31-27-4(A) NMSA 1978, within the Forfeiture Act, a person’s property is subject to forfeiture under state law if:

- A. A person's property is subject to forfeiture pursuant to state law if:
  - (1) the person was arrested for an offense to which forfeiture applies;

- (2) the person is convicted by a criminal court of the offense; and
- (3) the state establishes by clear and convincing evidence that the property is subject to forfeiture as provided in Subsection B of this section.

Subsection B provides that following a conviction, a court may order the person to forfeit: (1) property the person acquired through commission of the offense; 2) property directly traceable to property acquired through the commission of the offense; and 3) any instrumentality the person used in the commission of the offense.

Pursuant to Section 31-27-6(B) NMSA 1978, the district courts have jurisdiction over forfeiture proceedings.

- 4) The HB 86 amendments increasing penalties are likely to result in more defendants invoking their right to trials, as well as to jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury trials. Indigent offenders are entitled to public defender services.

### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

### **ADMINISTRATIVE IMPLICATIONS**

See “Fiscal Implications,” above.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Conflicts with SB 74 (also amending Sections 30-1-8, 30-6A-4, 30-42-3, 30-52-1, 31-26-3 and 33-2-34 NMSA 1978). Conflicts with SB 70 (also amending Section 30-42-3 NMSA 1978). Conflicts with HB 104 (also amending Section 31-26-3 NMSA 1978). Conflicts with HB 102 (also amending Section 33-2-34).

### **TECHNICAL ISSUES**

### **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

### **AMENDMENTS**