
Bill Analysis 2020 Regular Session**SPONSOR:** Representative Georgene Louis & Elizabeth Thomson**SHORT TITLE:** Human Trafficking

SYNOPSIS OF BILL: Imposes sex offense penalties and SORNA registration on all members of human sex trafficking organizations, expands the crime of human sex trafficking to those that utilize the services of sex workers who were forced into labor, eliminates the statute of limitation for prosecution, and raises the age for child victims from 16 to 18.¹

STRENGTHS: Protects human trafficking victims from being charged with prostitution. Brings state law in line with federal age definitions for child sex trafficking victims.

WEAKNESSES: HB237 fails to address criminalization of prostitution is the condition that allows for exploitation. Further, expanding SORNA and classifying human sex trafficking as a sex crime assumes everyone involved in human sex trafficking is acting at least in part to satisfy sexual gratification, rather than from monetary motives. This would be the equivalent of requiring drug dealers who do not use drugs to participate in drug addiction counseling.

Requiring registration for a conditional discharges severely limits prosecutors' ability to resolve cases by plea agreement. Courts only grant them in deserving cases and take the lack of registration into account. In addition to expanding registration requirements to convictions that are registrable in *any* state—without requiring equivalency to a New Mexico sex offense—could require registration for conduct that is not sexual *or not even criminal* under New Mexico law. Meanwhile, HB 237 would require *lifetime* registration for those offenses in New Mexico, even if their registration requirement the other state has ended. Because these out-of-state offenses are likely to be comparatively minor, lifetime registration is inappropriate.

While the federal human trafficking provisions treat all minors under 18 the same, in New Mexico 16 is the age of sexual consent. For consistency throughout the criminal code, 16 is the appropriate age for penalty distinction and children under 16 are the most targeted age group for victimization.¹ Removing the requirement for an actual victim moves away from punishing actual harms and actual victimization and exposes these cases to entrapment defenses.

HB 237 would add “persons harboring, maintaining, or **patronizing**” sex workers as elements to the crime of human trafficking; i.e., “Johns.” Although these sections require that the “patrons” have actual knowledge of age or the use of force, fraud, or coercion, this addition greatly expands the reach of this statute beyond the “traffickers” themselves.² Meanwhile, Sec. 6(C) bars any defense as to the age of the victim denying the accused the constitutional right to a defense. HB 237 would triple the three-year 3rd degree felony sentence to a nine-year 2nd degree felony sentence and would require a mandatory minimum of 3 years in prison if the victim is under the age of 16. Mandatory minima take away judicial discretion to consider individual facts of a crime when determining an appropriate sentence. Critically, Sec. (6)(D) would authorize multiple convictions but fails to define how to establish what constitutes a single violation. Finally, HB 237 would add human trafficking to the list of discretionary serious violent offenses, potentially increasing the amount of prison time served by the convicted.

<u>S</u>afer	<u>A</u>political	<u>F</u>iscally-Responsible	<u>E</u>vidence Based	Grade
Increasing penalties does not reduce recidivism ⁵ or address the root causes of sex trafficking. ³	Despite the lack of demonstrable evidence that raising the age of child victims in human sex trafficking cases, increasing the penalties, or eliminating the statute of limitations would reduce instances of sex trafficking, it is politically difficult for members of either party to oppose legislation touted to protect children.	The additional costs related to this bill include increased prosecution, prison housing and expansion of the SORNA registry and, accordingly, felony charges for failure to register. In that only 27 human trafficking cases were prosecuted in 2018, the cost is not prohibitive. ⁴ Any increased costs might be offset by the forfeiture provisions in the bill.	Increased sentences and mandatory minimums are strictly punitive. ⁵ There is no data to support the idea that mandatory prison sentences and increased penalties will reduce human sex trafficking.	C

1 Unveiling the Numbers, New Mexico Human Trafficking Taskforce, (Average age of entry into human trafficking is 12-14 years old). Review at <https://www.stopnmtrafficking.org/home/understanding-human-trafficking/unveiling-the-numbers>

2 *State v. Jackson*, (Sept 12, 2018) 429 P.3d 6742018 -NMCA- 066 “we conclude human trafficking does not require knowledge of any of the ages enumerated in Section 30-52-1. The act of knowingly “recruiting, soliciting, enticing, transporting or obtaining,” or knowingly “benefiting” is sufficient, regardless of whether the accused knows the victim is under the age of eighteen, sixteen, or thirteen.”

3 *Human Trafficking and the Opioid Crisis* (Webinar March 19, 2019). Transcript available at https://www.acf.hhs.gov/sites/default/files/otip/opioid_transcript.txt

4 In 2018, 27 sex trafficking cases were prosecuted in New Mexico. New Mexico Human Trafficking Taskforce, Review at <https://www.stopnmtrafficking.org/>

5 Why Punishment Doesn't Reduce Crime, William R. Kelly Ph.D., Psychology Today (Apr 25, 2018). Found at <https://www.psychologytoday.com/us/blog/crime-and-punishment/201804/why-punishment-doesnt-reduce-crime>