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FISCAL IMPACT REPORT

SPONSOR	<u>Thomson/Matthews</u>	LAST UPDATED	<u>1/26/24</u>
	Human Trafficking & Sexual Exploitation	ORIGINAL DATE	
SHORT TITLE	<u>Crime</u>	BILL NUMBER	<u>House Bill 116</u>
		ANALYST	<u>Sanchez</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY37	FY45	25 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Corrections Department	At least \$79.8	At least \$822.7	At least \$1,397.5	\$21,235.9	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
 Adult Parole Board (APB)
 Department of Public Safety (DPS)
 Office of the Attorney General (NMAG)
 Law Office of the Public Defender (LOPD)

Agency Analysis was Solicited but Not Received From
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of House Bill 116

House Bill 116 (HB116) broadens the definition of "sexual exploitation of children by prostitution" to include all minors up to the age of 18, rather than just those under 16. Additionally, the bill specifies that it is not a valid defense if the victim involved in such a crime is a police officer posing as a minor.

In terms of human trafficking, HB116 introduces several changes. It extends the range of activities considered human trafficking to include harboring, maintaining, patronizing, or providing support for such activities. This means that property owners where human trafficking occurs, as well as clients of trafficked individuals, can now be prosecuted. The bill also lowers the threshold for prosecution, requiring only that the defendant "should have known" about the use of force, fraud, or coercion. New grounds for prosecution are added, especially in cases where labor services are used to compel debt repayment under unfair conditions.

HB116 reclassifies the severity of human trafficking offenses based on the victim's age, with trafficking of anyone under 18 being a first-degree felony, attracting an 18-year mandatory prison sentence. It also states that each violation is a separate offense and prohibits charging trafficking victims as accessories or with prostitution. The definition of "coercion" is expanded, and a new definition of "harm" is introduced, covering psychological, financial, and reputational harm. Defenses based on the victim's sexual history or consent are invalidated, especially for minors.

Furthermore, the bill eliminates the statute of limitations for human trafficking, adds human trafficking to the list of racketeering offenses, and extends the rights and protections of the Victims of Crime Act to victims of human trafficking and sexual exploitation. Lastly, it modifies sentencing guidelines for human trafficking, allowing judges to limit the accrual of meritorious deductions in prison for these crimes.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. HB116 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

Overall, this analysis estimates HB116 will increase annual incarceration costs by \$1.9 million to the state. Because this bill impacts sentences that are already quite lengthy (up to first-degree felonies) and potentially increases the length of stay for those crimes, the bill's full cost impacts will not be felt for many years. Costs to the state are estimated to be at least \$79.8 in FY25 and will rise to \$1.4 million in FY45 and future fiscal years. More detailed cost calculations are provided below.

Additional system costs beyond incarceration, such as additional costs to the judicial branch for increased trials or increased costs to law enforcement to investigate and arrest individuals for the new and expanded crimes under HB116, are not included in this analysis but could be significant.

This analysis does not include the potential benefits of crime deterrence due to increased punishment, as research shows sentence length has little to no deterrent effect. The certainty of being caught is a significantly more effective deterrent to criminal behavior than the severity of punishment if convicted.

Detail of Incarceration Cost Calculations. Changes to the crime of sexual exploitation of children by prostitution: HB116 increases the scope of the current charges regarding sexual exploitation of children by prostitution to include acts involving individuals between 16 and 18 years of age; previously, only acts involving individuals under 16 were included in these charges. This expands the scope of:

- (1) Knowingly receiving pecuniary profit as a result of a child engaging in a prohibited sexual act with another, a second-degree felony;
- (2) Knowingly hiring or offering to hire a child to engage in any prohibited sexual act, a second-degree felony; and
- (3) A parent, legal guardian, or person having custody or control of a child knowingly permitting that child to engage in or to assist any other person to engage in any prohibited sexual act or simulation of such an act for the purpose of producing any visual or print medium depicting such an act, a third-degree felony.

Without additional information, it is not possible to estimate how many individuals would engage in acts covered by the expanded scope of these penalties and consequently be arrested or served time in prison as a result. For purposes of this analysis, it is estimated one additional individual will be admitted to prison each year for each of the three types of prohibited acts.

Based on the average time served for the existing crimes or second- and third-degree felonies generally, this will result in total increased annual costs per additional individual admitted to prison for each penalty of:

- (1) \$85.8 thousand;
- (2) \$105.8 thousand; and
- (3) \$66.4 thousand.

Overall, this analysis estimates the changes to this crime will result in additional costs to the state of at least \$258 thousand, rising from \$79.8 thousand in FY25 to \$258 thousand in FY28.

Changes to the crime of human trafficking: The changes to the penalties for the crime of human trafficking proposed by HB116 are as follows:

- (1) The penalty for engaging in human trafficking of a person under the age of 13 is changed from a regular offense to a serious violent offense (impacting the offender's ability to earn "good-time credit" and, as a result, increasing sentence length);
- (2) The penalty for engaging in human trafficking of a person at least 13 but less than 16 years of age is changed from a regular second-degree felony to a serious violent offense first-degree felony;
- (3) The penalty for engaging in human trafficking of a person at least 16 but less than 18 years of age is changed from a regular third-degree felony to a serious violent offense first-degree felony; and
- (4) The penalty for engaging in human trafficking of a person over the age of 18 is

changed from a regular third-degree felony to a serious violent offense second-degree felony.

In an analysis of a similar bill from the 2023 session (HB445), the Sentencing Commission (NMSC) reported no offenders were admitted to prison in FY22, with their most serious offense being human trafficking. It appears this offense is rarely *an offender's* most serious offense, and therefore, the impact of these changes may not be significant. However, it is also possible individuals are charged with these offenses and other, more serious, offenses, and these changes could impact such individuals. Without additional information, it is estimated one additional individual will be impacted by these changes each year, with the following results:

- (1) Individuals incarcerated for engaging in human trafficking of a person under the age of 13 will face an additional 6.9 years in prison for the offense, with the first cost impacts felt in FY38 (a cost of \$15.4 thousand), when an individual incarcerated for this offense in FY25 would have otherwise been released under the prior penalty (estimated time served of \$13.4 years), and rising to \$184.2 thousand in FY45 and future fiscal years;
- (2) Individuals incarcerated for engaging in human trafficking of a person at least 13 but less than 16 years of age will serve an additional 16.7 years in prison for the offense, with the first cost impacts felt in FY28 (a cost of \$9,353), when an individual incarcerated for this offense in FY25 would have otherwise been released under the prior penalty (estimated time served of 3.6 years), and rising to \$443.9 thousand in FY45 and future fiscal years;
- (3) Individuals incarcerated for engaging in human trafficking of a person at least 16 but less than 18 years of age will serve an additional 18.1 years in prison for the offense, with the first cost impacts felt in FY27 (a cost of \$18.8 thousand), when an individual incarcerated for this offense in FY25 would have otherwise been released under the prior penalty (estimated time served of 2.3 years), and rising to \$443.9 thousand in FY45 and future fiscal years;
- (4) Individuals incarcerated for engaging in human trafficking of a person over the age of 18 will serve an additional 1.2 years in prison for the offense, with the first cost impacts felt in FY27 (a cost of \$18.8 thousand), when an individual incarcerated for this offense in FY25 would have otherwise been released under the prior penalty (estimated time served of 2.3 years), and rising to \$31.4 thousand in FY28 and future fiscal years.

SIGNIFICANT ISSUES

Changes to the crime of human trafficking proposed by this bill increase penalties for the existing crime. Research shows the certainty of being caught is a more powerful deterrent to crime than the severity of punishment, and although laws and policies designed to deter crime focus mainly on increasing the severity of the punishment, this does little to deter criminals because most know little about sanctions for specific crimes. These findings suggest increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful than increasing penalties. In New Mexico, however, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent

felony cases dismissed. LFC’s evaluation team has found in the 2nd Judicial District (Bernalillo County) specifically, neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and in 2020, when felonies began to rise, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime than heightened penalties.

Analysis provided by the Office of the Attorney General (NMAG) noted:

This amendment seeks to add human trafficking to the list of optional serious violent offenses. A judge must still make a factual finding that the nature of the offense and the resulting harm are sufficient to justify the crime be designated as a serious violent offense, it would not be an automatic serious violent offense.

TECHNICAL ISSUES

Analysis from NMAG also stated:

1. Section 4: Amendments to §30-52-1

- a. Additions to Elements of Human Trafficking, specifically subsection (A)(4)i. Subsection (4) for this statute amendment, proposed legislation line 8 says “repayment of a financial debt”. It should say “payment of a financial debt” as it is to pay off the debt itself. This is a minor grammatical issue for clarity of the purpose of the labor being to pay off the debt.

OTHER SUBSTANTIVE ISSUES

Analysis from NMAG also noted:

1. Section 2: Amendment to NMSA 30-6a-4 NMSA 1978

- a. The increase of the child’s age from 16 to 18 for this section, while would allow for the inclusion of all minors, including those 16-18 years old, would no longer match the age ranges in NMSA 1978 § 30-37-3.2 for Child Solicitation by Electronic Communication Device which is still limited for children under the age 16. Potential consideration for matching related statutes of increasing the age limit in § 30-37-3.2 as well as this matter as often the charges go hand in hand.

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