

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original Amendment
Correction Substitute

Date 18JAN2024

Bill No: HB116

Sponsor: Elizabeth Thomson
Short Title: HUMAN TRAFFICKING &
SEXUAL EXPLOITATION

Agency Name and Code 790-Department of Public Safety
Number:
Person Writing Dale R. Wagoner
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
NFI	NFI	N/A	N/A
NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
NFI	NFI	NFI	N/A	N/A
NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

If passed, this human trafficking law would amend various criminal statutes. The bill removes the statute of limitation for human trafficking by eliminating all limitation periods for the commencement of the prosecution of the crime. Additionally, it increases the age from 16 to 18 for sexual exploitation of children by prostitution and prohibits a defense related to peace officers posing as children under the age of 18 in a prosecution for sexual exploitation of children by prostitution. This bill also proposes to amend the racketeering statute to add human trafficking as an enumerated offense.

The bill expands the types of activity that fall under the crime by adding harboring, maintaining, patronizing, providing along with specific indentured servitude and related wage theft actions to the definition of human trafficking under the statute. The *men's rea* requirement related to a person benefiting from forced, fraudulent, or coerced labor or commercial sexual activity is clarified to include "knew of should have known." The act increases the penalty from a third degree to a second degree when the crime involves adult victims of human trafficking. The bill removes the degree of felony distinction between child victims between the ages of 13 and 16, providing that for human trafficking crimes involving victims under the age of 18, the penalty is a first-degree felony. For victims of human trafficking, the bill adds language prohibiting their being charged for the crime of prostitution.

The bill further adds to the human trafficking statute by including physical restraint and threats of physical restraint and defines harm as physical or nonphysical, including psychological, financial or reputational harm under the definition of coercion. Additionally, the bill limits the defenses available during the prosecution of the crime of human trafficking by barring evidence of a victim's sexual history and conduct, the consent of a minor, mistake of fact relating to the victim's age, and that a peace officer was posing as a child under the age of 18 as affirmative defenses. The bill adds human trafficking as an enumerated offense under the Forfeiture Act and the Victims of Crime Act. The sexual exploitation of children is also added to the Victims of Crime Act.

Further, the bill increases the period of incarceration following a human trafficking conviction by designating the crime as an optional serious violent offense subject to a court finding, and thus allowing an inmate to earn up to eight days a month of good time under the earned meritorious

deduction statute.

FISCAL IMPLICATIONS

No fiscal implications to DPS.

SIGNIFICANT ISSUES

None for DPS.

PERFORMANCE IMPLICATIONS

No performance implications to DPS.

ADMINISTRATIVE IMPLICATIONS

No administrative implications to DPS.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

No conflict, duplication, companionship, or relationship issues to DPS.

TECHNICAL ISSUES

- In Section 4, should “harboring, maintaining, patronizing, providing” read “harboring, maintaining, patronizing, providing for”? What is “providing by any means another person with the intent or knowledge that force, fraud or coercion will be used to subject the person to labor, services or commercial sexual activity”?
- On page 9, lines 5-6, this language belongs in the Section 30-9-2 NMSA 1978. The prostitution statute should also state that a victim of human trafficking cannot be charged with prostitution.
- On page 10, line 5 use of “including” does not align with *State v. Strauch*. Therefore, every behavior after “including” is considered harm as is every behavior that is not included.

OTHER SUBSTANTIVE ISSUES

The definition of non-physical harm is significantly different than other criminal statutes and even under the reasonable person standard, some ambiguity with the language remains.

ALTERNATIVES

Not applicable as no impact to DPS.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None at this time.