



NEW MEXICO

Legal System	Constitution	Bill of Rights	Form of Government
Common Law Statutory Law	Written	Yes	Republic

A. Criminal Statutes

1. Human Trafficking and Related Offenses

a. N.M. Stat. Ann. § 30-52-1 (2008) – Human Trafficking

i. Summary

The crime of human trafficking:

consists of a person knowingly:

- (1) recruiting, soliciting, enticing, transporting or obtaining 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;
- (2) recruiting, soliciting, enticing, transporting or obtaining by any means a person under the age of eighteen years with the intent or knowledge that the person will be caused to engage in commercial sexual activity; or
- (3) benefiting, financially or by receiving anything of value, from the labor, services or commercial sexual activity of another person with the knowledge that force, fraud or coercion was used to obtain the labor, services or commercial sexual activity.

N.M. Stat. Ann. § 30-52-1(A).

“Coercion” is defined as:

- (a) Causing or threatening to cause harm to any person;
- (b) using or threatening to use physical force against any person;
- (c) abusing or threatening to abuse the law or legal process;
- (d) threatening to report the immigration status of any person to governmental authorities;
or
- (e) knowingly destroying, concealing, removing, confiscating or retaining any actual or purported government document of any person

N.M. Stat. Ann. § 30-52-1(G)(1).

“Commercial sexual activity” means “any sexual act or sexually explicit exhibition for which anything of value is given, promised to or received by any person.” N.M. Stat. Ann. § 30-52-1(G)(2).

“In a prosecution pursuant to this section, a human trafficking victim shall not be charged with being an accessory to the crime of human trafficking.” N.M. Stat. Ann. § 30-52-1(E).

ii. Sentencing

A person who commits human trafficking is generally guilty of a third degree felony. If the victim is under the age of 16, the person is guilty of a second degree felony. If the victim is under the age of 13, the person is guilty of a first degree felony. N.M. Stat. Ann. § 30-52-1(C).

In New Mexico, the “appropriate basic sentence of imprisonment shall be imposed ..., unless the court alters the sentence pursuant to the provisions of the Criminal Sentencing Act.” N.M. Stat. Ann. § 31-18-15(B). The court may impose a fine in addition to imprisonment. N.M. Stat. Ann. § 31-18-15(E).

A person convicted of a first degree felony faces a basic sentence of imprisonment for 18 years and a fine not to exceed USD 15,000. N.M. Stat. Ann. § 31-18-15(A)(3) & (E)(3).

A person convicted of a second degree felony generally faces a basic sentence of imprisonment for nine years and a fine not to exceed USD 10,000. N.M. Stat. Ann. § 31-18-15(A)(7) & (E)(7). A person convicted of a second degree felony for a sexual offense against a child faces a basic sentence of imprisonment for 15 years and a fine not to exceed USD 12,500. N.M. Stat. Ann. § 31-18-15(A)(5) & (E)(5). A person convicted of a second degree felony for sexual exploitation of children faces a basic sentence of imprisonment for 12 years and a fine not to exceed USD 5,000. N.M. Stat. Ann. § 31-18-15(A)(6) & (E)(6).

A person convicted of a third degree felony generally faces a basic sentence of imprisonment for three years and a fine not to exceed USD 5,000. N.M. Stat. Ann. § 31-18-15(A)(11) & (E)(11). A person convicted of a third degree felony for a sexual offense against a child faces a basic sentence of imprisonment for six years and a fine not to exceed USD 5,000. N.M. Stat. Ann. § 31-18-15(A)(9) & (E)(9). A person convicted of a third degree felony for sexual exploitation of children faces a basic sentence of imprisonment for 11 years and a fine not to exceed USD 5,000. N.M. Stat. Ann. § 31-18-15(A)(10) & (E)(10).

“A person convicted of human trafficking shall, in addition to any other punishment, be ordered to make restitution to the victim for the gross income or value of the victim’s labor or services and any other actual damages.” N.M. Stat. Ann. § 30-52-1(F).

iii. Statute of Limitations

There is no statute of limitations in New Mexico for a first degree violent felony “and prosecution for these crimes may commence at any time after the occurrence of the crime.” N.M. Stat. Ann. § 30-1-8(I). The statute of limitations for a second degree felony is six years from the time the crime was committed. N.M. Stat. Ann. § 30-1-8(A). For a third or fourth degree felony, it is five years from the time the crime was committed. N.M. Stat. Ann. § 30-1-8(B).

b. N.M. Stat. Ann. § 30-52-1.2 (2013) – Sealing of Records of Human Trafficking Victims

On petition to the district court, a person who is a victim of human trafficking who has been charged with crimes arising out of the actions of someone charged with human trafficking may have all legal and law enforcement records of the charges and convictions in the person’s case sealed. The court may issue an order sealing records and files if the court finds:

- (1) the petitioner is a victim of human trafficking;
- (2) the charge or conviction is for a non-homicide crime; and
- (3) the petitioner’s involvement in the offense was due to duress, coercion, use of force, threat to or fraud committed against the petitioner by a person who has committed human trafficking involving the petitioner.

N.M. Stat. Ann. § 30-52-1.2(A).

c. Expungement

New Mexico does not have an expungement statute specific to human trafficking; however, two general expungement statutes may be useful.

i. N.M. Stat. Ann. § 29-3A-4 (2021) – Expungement of Records Without Conviction

“One year from the date of the final disposition in the case in which an individual is released without conviction, that person may petition the district court where the charges against the person originated for an order to expunge arrest records and any public records related to the case.” N.M. Stat. Ann. § 29-3A-4(A).

[T]he court shall issue an order, within thirty days of the hearing on the petition, requiring all relevant arrest records and public records related to the case be expunged if it finds that no other charge or proceeding is pending against the petitioner and if the petitioner was released without a conviction, including:

- (1) an acquittal or finding of not guilty;
- (2) a nolle prosequi, a no bill or other dismissal;
- (3) a referral to a pre-prosecution diversion program;
- (4) an order of conditional discharge pursuant to [N.M. Stat. Ann. § 31-20-13]; or
- (5) the proceedings were otherwise discharged.

N.M. Stat. Ann. § 29-3A-4(C).

ii. N.M. Stat. Ann. § 29-3A-5 (2020) – Expungement of Records With Conviction

A person convicted of a violation of a municipal ordinance, misdemeanor, or felony, following the completion of the person’s sentence and the payment of any fines or fees owed to the state for the conviction, may petition the district court where the person was convicted for an order to expunge arrest records and public records related to that conviction.

N.M. Stat. Ann. § 29-3A-5(A).

[T]he court shall issue an order, within thirty days of the hearing, requiring that all arrest records and public records related to the conviction be expunged if the court finds that:

- (1) no other charge or proceeding is pending against the petitioner;
- (2) justice will be served by an order to expunge;
- (3) the petitioner has fulfilled any victim restitution ordered by the court in connection with the petitioner’s conviction; and
- (4) no other criminal conviction of the petitioner has occurred over a certain period of time.

N.M. § 29-3A-5(C).

To determine whether justice will be served by an order to expunge, the court shall consider:

- (1) the nature and gravity of the offense or conduct that resulted in the petitioner’s conviction;
- (2) the petitioner’s age, criminal history, and employment history;
- (3) the length of time that has passed since the offense was committed and the related sentence was completed;
- (4) the specific adverse consequences to the petitioner if the petition is denied; and
- (5) any reasons to deny expungement of the records submitted by the district attorney.

N.M. § 29-3A-5(E).

2. Online Child Sexual Exploitation and Child Pornography Offenses

N.M. Stat. Ann. § 30-6A-3 (2016) – Sexual Exploitation of Children

N.M. Stat. Ann. § 30-6A-4 (2016) – Sexual Exploitation of Children by Prostitution

N.M. Stat. Ann. § 30-9-1 (1963) – Enticement of Child

N.M. Stat. Ann. § 30-37-2 (1973) – Offenses; Books; Pictures

N.M. Stat. Ann. § 30-37-2.1 (1985) – Offenses; Retail Display

N.M. Stat. Ann. § 30-37-3 (1973) – Offenses; Motion Picture; Plays

N.M. Stat. Ann. § 30-37-3.2 (2007) – Child Solicitation by Electronic Communication Device

N.M. Stat. Ann. § 30-37-3.3 (2007) – Criminal Sexual Communication with a Child; Penalty

3. N.M. Stat. Ann. §§ 29-11A-1–29-11A-10 (1997) – Sex Offender Registry

“A sex offender residing in this state shall register with the county sheriff for the county in which the sex offender resides.” N.M. Stat. Ann. § 29-11A-4. A sex offender means a person who committed offenses, among others, under N.M. Stat. Ann. §§ 30-6A-3 (sexual exploitation of children), 30-6A-4 (sexual exploitation of children by prostitution), 30-9-1 (enticement of child), and 30-37-3.2 (child solicitation by electronic communication device). N.M. Stat. Ann. § 29-11A-3(l)(4), (5), (9), and (11). An offense of the New Mexico trafficking statute is not listed as an offense for which registration is required.

B. Civil Liability Statutes

1. N.M. Stat. Ann. § 30-52-1.1 (2013) – Civil Lawsuits

a. Summary

“A human trafficking victim may bring a civil lawsuit in any court of competent jurisdiction against an alleged human trafficker” N.M. Stat. Ann. § 30-52-1.1(A).

b. Damages and Other Relief

A victim may recover “actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief. Where the court finds that a defendant’s actions were willful and malicious, the court may award

treble damages to the plaintiff. A prevailing plaintiff is also entitled to recover reasonable attorney’s fees and costs.” N.M. Stat. Ann. § 30-52-1.1(A).

c. Statute of Limitations

A civil lawsuit pursuant to this section must be “filed within ten years from the date on which:

- (1) the defendant’s human trafficking actions occurred; or
- (2) the victim attains eighteen years of age if the victim was a minor when the defendant’s actions occurred.”

N.M. Stat. Ann. § 30-52-1.1(B).

C. Additional Statutes Specific to Human Trafficking

1. N.M. Stat. Ann. §§ 50-4-1 (2019) et seq. – Minimum Wage Act

An employee may bring a civil lawsuit to recover unpaid wages. In addition to unpaid wages, an employee may also receive twice the amount of unpaid wages in liquidated damages, plus attorney’s fees and costs. A noncompliant employer may be subject to additional criminal penalties. N.M. Stat. § 50-4-26.

More information is available at: <https://www.dws.state.nm.us/en-us/Labor-Relations/Labor-Information/Wage-and-Hour>.

2. N.M. Stat. Ann. § 30-52-2 (2013) – Benefits and Services for Human Trafficking Victims

Human trafficking victims found in the state shall be eligible for benefits and services from the state until the victim qualifies for benefits and services authorized by the federal Victims of Trafficking and Violence Protection Act of 2000, provided that the victim cooperates in the investigation or prosecution of the person charged with the crime of human trafficking. Benefits and services shall be provided to eligible human trafficking victims as quickly as can reasonably be arranged regardless of immigration status and shall include, when appropriate to a particular case:

- (1) case management;
- (2) emergency temporary housing;
- (3) health care;
- (4) mental health counseling;
- (5) drug addiction screening and treatment;
- (6) language interpretation, translation services and English language instruction;
- (7) job training, job placement assistance and post-employment services for job retention;
- (8) child care;
- (9) advocacy services;
- (10) state-funded cash assistance;
- (11) food assistance;

- (12) services to assist the victim and the victim’s family members; and
- (13) general assistance services and benefits as determined by the children, youth and families department or the human services department.

N.M. Stat. Ann. § 30-52-2(A).

“A human trafficking victim advocate shall be provided upon identification by law enforcement of a human trafficking victim.” N.M. Stat. Ann. § 30-52-2(B).

“Human trafficking victim advocate” means a person provided by a state or nonprofit agency with experience in providing services for victims of crime. N.M. Stat. Ann. § 30-52-2(G)(2).

The court will determine a victim’s ability to cooperate in the investigation or prosecution if the issue is raised by a human trafficking victim advocate. The record of such court proceeding will be sealed. If the court determines the victim is unable to cooperate due to physical or psychological trauma, the victim is not required to cooperate and will continue to receive benefits and services. Victims under the age of 18 are “eligible for benefits and services without a finding by the court.” N.M. Stat. Ann. § 30-52-2(D).

“The attorney general shall coordinate plans developed by state and local law enforcement agencies to provide a human trafficking victim or the victim’s family members protection from retaliatory action immediately upon identifying the presence in the state of a victim who offers state or local law enforcement agencies information regarding a perpetrator of human trafficking.” N.M. Stat. Ann. § 30-52-2(E).

3. N.M. Stat. Ann. § 30-52-2.1 (2014) – Posters

A notice on human trafficking must be conspicuously posted by employers subject to the Minimum Wage Act, entities licensed to dispense and sell alcohol, licensed health facilities, and agencies that manage transportation facilities, including highway rest areas. The notice must be written in English, Spanish, and any other written language spoken by at least 10% of a facility’s workers or users. N.M. Stat. Ann. § 30-52-2.1(A)–(B).

4. N.M. Stat. Ann. § 32A-3B-3 (2019) – Child Trafficking Victims and Protective Custody

A law enforcement officer may take a child into protective custody without a court order “when the officer has reasonable grounds to believe that the child ... is a victim of human trafficking as defined in [N.M. Stat. Ann. § 30-52-1].” N.M. Stat. Ann. § 32A-3B-3(A)(6).

Anyone “who interferes with placing the child in protective custody is guilty of a petty misdemeanor” N.M. Stat. Ann. § 32A-3B-3(D).

D. Significant Cases

1. *State v. Jackson*, 429 P.3d 674 (N.M. Ct. App. 2018)

As a matter of first impression, the New Mexico appellate court ruled that knowledge of the victim’s age is not an element of the offense of human trafficking under N.M. Stat. Ann. § 30-52-1(A)(2), which criminalizes knowingly “recruiting, soliciting, enticing, transporting or obtaining by any means a person under the age of eighteen years with the intent or knowledge that the person will be caused to engage in commercial sexual activity.”

E. Academic Research/Papers

Amanda Peters, *Disparate Protections for American Human Trafficking Victims*, 61 CLEV. ST. L. REV. 1 (2013).

Laura Shoop, *Uncovering the “Hidden Crime” of Human Trafficking by Empowering Individuals to Respond*, 36 GA. ST. U. L. REV. 1173 (2020).

Renee M. Knudsen, *From Second Class to Certified Class: Using Class-Action Lawsuits to Combat Human Trafficking*, 28 REGENT U. L. REV. 137 (2016).

Samantha M. Meiers, *Removing Insult from Injury: Expunging State Criminal Records of Persons Trafficked in the Commercial Sex Trade*, 47 U. TOL. L. REV. 211 (2015).

F. Resources

Department of Homeland Security Blue Campaign:

<https://www.dhs.gov/blue-campaign>

Federal Bureau of Investigation, Human Trafficking:

<https://www.fbi.gov/investigate/violent-crime/human-trafficking>

The Life Link:

<http://www.thelifelink.org/human-trafficking-aftercare>

National Center for Missing and Exploited Children — Child Sex Trafficking:

<https://www.missingkids.org/theissues/trafficking>

National Human Trafficking Hotline (New Mexico):

<https://humantraffickinghotline.org/state/new-mexico>

National Human Trafficking Hotline for New Mexico:

<https://www.505getfree.org/>

New Mexico Attorney General, Human Trafficking Task Force:

<https://www.nmag.gov/human-trafficking-task-force.aspx>

New Mexico Human Trafficking Task Force:

<https://www.stopnmtrafficking.org/>

New Mexico’s Internet Crimes Against Children Unit:

<https://www.nmag.gov/internet-crimes-against-children.aspx>

Shared Hope International, New Mexico Report Card (2019):

https://sharedhope.org/PICframe9/reportcards/PIC_RC_2019_NM.pdf

Shared Hope International, New Mexico Analysis and Recommendations (2019):

https://sharedhope.org/PICframe9/analysis/PIC_AR_2019_NM.pdf

U.S. Department of Health & Human Services, *New Mexico: Efforts to Combat Trafficking* (2017):

https://nhttac.acf.hhs.gov/sites/default/files/2019-06/new_mexico_profile_efforts_to_combat_human_trafficking.pdf

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