

New Hampshire State Report State Ratings 2014

The Polaris annual state ratings process tracks the presence or absence of 10 categories of state statutes that Polaris believes are critical to a comprehensive anti-trafficking legal framework. It is important to note that these 10 categories are not exhaustive of all the important legislation that helps combat human trafficking in a given state. Moreover, the ratings do not assess the effectiveness or implementation of these laws, nor the anti-trafficking efforts of task forces, law enforcement, prosecutors, judges, service providers, and advocates in the state. The purpose of the annual state ratings process is to document laws on the books, to motivate legislators and policy advocates, and to focus the attention of states on the statutes that still need to be enacted in order to achieve a strong anti-trafficking legal framework.

Recognition: Most Improved in 2014

Rating: Tier One (green)

Total Points: 7.5

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 3(a) Asset Forfeiture; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 7 Safe Harbor for Minors; 8 Victim Assistance; 9 Civil Remedy; and 10 Vacating Convictions.

Categories Still Needed: 3(b) Investigative Tools; 4(a) Training for Law Enforcement; 4(b) Human Trafficking Task Force; and 6 Posting of a Hotline.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

RSA 633:7. Trafficking in Persons.

I.

(a) It is a class A felony to knowingly compel a person against his or her will to perform a service or labor, including a commercial sex act or a sexually-explicit performance, for the benefit of another , where the compulsion is accomplished by any of the following means:

- (1) Causing or threatening to cause serious harm to any person.
- (2) Confining the person unlawfully as defined in RSA 633:2, II, or threatening to so confine the person.
- (3) Abusing or threatening abuse of law or legal process.
- (4) Destroying, concealing, removing, confiscating, or otherwise making unavailable to that person any actual or purported passport or other immigration document, or any other actual or purported government identification document.
- (5) Threatening to commit a crime against the person.
- (6) False promise relating to the terms and conditions of employment, education, marriage, or financial support.
- (7) Threatening to reveal any information sought to be kept concealed by the



person which relates to the person's legal status or which would expose the person to criminal liability.

(8) Facilitating or controlling the person's access to an addictive controlled substance.

(9) Engaging in any scheme, plan, or pattern, whether overt or subtle, intended to cause the person to believe that, if he or she did not perform such labor, services, commercial sex acts, or sexually explicit performances, that such person or any person would suffer serious harm or physical restraint.

(10) Withholding or threatening to withhold food or medication that the actor has an obligation or has promised to provide to the person.

(11) Coercing a person to engage in any of the foregoing acts by requiring such in satisfaction of a debt owed to the actor.

(b) The means listed in subparagraphs (a)(4), (a)(10), and (a)(11) are not intended to criminalize the actions of a parent or guardian who requires his or her child to perform common household chores under threat of typical parental discipline.

(c) A person performs a service or labor against his or her will if the person is coerced into performing the service or labor, or if the person willingly begins to perform the service or labor but later attempts to withdraw from performance and is compelled to continue performing. The payment of a wage or salary shall not be determinative on the question of whether or not a person was compelled to perform a service or labor against his or her will.

II. A person shall be guilty of a class A felony if such person maintains or makes available an individual under 18 years of age for the purpose of engaging the individual in a commercial sex act or sexually-explicit performance for the benefit of another. A person convicted under this paragraph shall be sentenced to a minimum term of imprisonment of not less than 7 years and a maximum term of not more than 30 years. Knowledge of the individual's actual age shall not be required as an element of this offense. Consent of the individual shall not constitute a defense to a charge under this paragraph.

III. It is a class A felony to recruit, entice, harbor, transport, provide, obtain, or otherwise make available a person, knowing or believing it likely that the person will be subjected to trafficking as defined in paragraph I or II. Notwithstanding RSA 651:2, a person convicted of an offense under this paragraph involving a victim under the age of 18 shall be subject to a minimum term of not less than 7 years and a maximum term of not more than 30 years, if the offender knew or believed it likely that the victim would be involved in a commercial sex act or sexually - explicit performance.

IV. Evidence of a trafficking victim's personal sexual history, history of commercial sexual activity, or reputation or opinion evidence regarding the victim's past sexual behavior shall not be admissible at trial unless the evidence is:

(a) Admitted pursuant to rule 412 of the New Hampshire rules of evidence; or

(b) Offered by the prosecution to prove a pattern of trafficking by the defendant.

Category 2: Labor Trafficking Statute

Yes. See RSA 633:7.



Category 3(a): Asset Forfeiture

RSA 633:8 Forfeiture of Items Used in Connection With Trafficking in Persons.

I. All offenses under this section shall qualify as offenses for forfeiture and thereby upon petition of the attorney general, shall be subject to forfeiture to the state and said property interest shall be vested in the state:

- (a) All materials, products, and equipment of any kind used in violation of this section.
- (b) Any property interest in any conveyance used in furtherance of an act which violates this section.
- (c) Any moneys, coin, currency, negotiable instruments, securities, or other investments knowingly used or intended for use in violation of this section.
- (d) Any books, records, ledgers, and research material, including formulae, microfilm, tapes, and any other data which are used or intended for use in felonious violation of this section.
- (e) Any real property, including any right, title, leasehold interest, and other interest in the whole of any lot or tract of land and any appurtenances or improvements, which real property is knowingly used or intended for use, in any manner or part, in felonious violation of this section.

XVIII. After payment of costs outlined in paragraph XVI, any forfeited money and the proceeds of any sale or public auction of forfeited items shall first be used to satisfy any order of restitution or compensation imposed by the court. Any remaining funds shall go to the victims' assistance fund as defined in RSA 21-M:8-i.

RSA 633:9 Administrative Forfeiture of Items Used in Connection With Trafficking in Persons.

I. Interests in property subject to forfeiture under the provisions of RSA 633:8, I(a), I(b), I(c) excepting proceeds, and I(d), but not real property, shall be subject to administrative forfeiture by the department of justice provided that the total amount or value of such property does not exceed \$75,000. The provisions of RSA 633:8 shall apply in any case of administrative forfeiture except as otherwise provided in this section.

II. The department of justice may administratively forfeit property seized under paragraph I of this section as follows:

- (a) The department of justice shall provide a notice of intent to forfeit property administratively by publication for 3 consecutive weeks in a local newspaper of general circulation where the property was seized.
- (b) In addition, to the extent practicable, the department of justice shall provide notice by certified mail return receipt addressee only requested, of intent to forfeit the property administratively to all persons having a recorded interest or claiming an equitable interest in the property seized.
- (c) Notice by publication and by mail shall include:
 - (1) A description of the property;
 - (2) Its appraised value;
 - (3) The date and place of seizure;
 - (4) The violation of law alleged against the subject property;
 - (5) Instructions for filing a claim and posting bond or filing a petition for remission or mitigation; and
 - (6) Notice that the property will be forfeited to the state if a petition for remission



or mitigation has not been filed in a timely manner or a claim has not been filed and bond has not been posted in a timely manner.

(d) Persons claiming an interest in the property may file petitions for remission or mitigation of forfeiture or file a claim and post bond with the department of justice within 30 days of the first notice by publication or 30 days from the receipt of written notice, whichever is later.

(e) It shall be the duty of the department of justice to inquire into the facts and circumstances surrounding petitions for remission or mitigation of forfeiture.

(f) The department of justice shall provide the seizing agency and the petitioner a written decision on each petition for remission or mitigation within 60 days of receipt of such petition unless the circumstances of the case require additional time in which case the department of justice shall notify the petitioner in writing and with specificity within the 60-day period that the circumstances of the case require additional time, and further notify the petitioner of the expected decision date.

(g) Any person claiming an interest in seized property may institute judicial review of the seizure and proposed forfeiture by timely filing with the department of justice a claim and bond to the state in the amount of 10 percent of the appraised value or in the penal sum of \$2,500, whichever is less, with sureties to be approved by the department of justice, upon condition that in the case of forfeiture the claimant shall pay all costs and expenses of the proceedings at the discretion of the court. A sworn affidavit of indigency may be filed in lieu of a cost bond. Upon receipt of the claim and bond, or, if department of justice otherwise so elects, the department shall file with the court a petition in rem to order forfeiture of items or property interests subject to forfeiture under the provisions of this section. All judicial proceedings thereafter shall be conducted in accordance with the provisions of RSA 633:8. Any bonds received by the department of justice shall be held by it pending final disposition of the case.

(h) If no petitions or claims with bonds are timely filed, the department of justice shall prepare a written declaration of forfeiture of the subject property to the state and dispose of the property in accordance with this section and the department of justice rules, if any, relative to this section.

(i) If the petition is denied, the department of justice shall prepare a written declaration of forfeiture to the state and dispose of the property in accordance with this section and the department of justice rules, if any, relative to this section.

(j) A written declaration of forfeiture signed by the attorney general or designee pursuant to this chapter shall be deemed good and sufficient title to the forfeited property.

Category 3(b): Investigative Tools

None.

Category 4(a): Training for Law Enforcement

None.



Category 4(b): Human Trafficking Task Force

None.

Category 5: No Requirement of Force, Fraud, or Coercion for Sex Trafficking of Minors

Yes. See 633.7.

Category 6: Posting of a Human Trafficking Hotline

None.

Category 7: Safe Harbor

SB 317 (2014)

RSA 633:7. Trafficking in Persons.

VI.(a) A victim under this section who was under 18 years of age at the time of the offense shall not be subject to juvenile delinquency proceeding under RSA 169-B, or prosecuted for conduct chargeable as indecent exposure and lewdness under RSA 645:1 or prostitution under RSA 645:2, where the conduct was committed as a direct result of being trafficked.

Category 8: Victim Assistance

SB 617 (2014)

RSA 257:6 Victim Compensation; Eligibility.

(4) Any person who is a victim of human trafficking and has been tattooed with an identifying mark of human trafficking by a person who has forced him or her into trafficking.

RSA 257:7 Victim Compensation; Eligible Expenses.

V. The claimant may be reimbursed for reasonable out-of-pocket expenses, medical expenses, funeral expenses, counseling expenses, rehabilitative expenses, expenses associated with the victim's participation in post-conviction proceedings and victim-offender dialogue programs or other restorative justice programs, and lost wages directly resulting from the crime. Claimants eligible under subparagraph I(a)(4) may be reimbursed for the costs of removing the tattoo with an identifying mark. No reimbursement shall be paid unless the claimant has incurred reimbursable expenses of at least \$100. There shall be a \$25,000 maximum recovery per claimant per incident. If expenses paid through the victims' assistance program fund are later covered by insurance settlements, civil suit settlements, or restitution, or through any other source, the claimant shall reimburse the fund for the amount of expenses recovered.



Category 9: Civil Remedy

SB 617 (2014)

RSA 633:11 Civil Remedy.

I. A victim may bring a civil action against a person that commits an offense under this subdivision for damages, injunctive relief, or other appropriate relief.

II. In an action under this section, the court shall award a prevailing plaintiff reasonable attorney's fees and costs.

III. An action under this section shall be commenced not later than 10 years after the date on which the victim was released from the human trafficking situation or 10 years after the date on which the victim attains 18 years of age, whichever is later.

IV. Any damages awarded to the victim under this section shall be offset by any restitution paid to the victim pursuant RSA 633:10.

V. This section shall not preclude the victim from pursuing any other remedy available to the victim under federal or state law.

Category 10: Vacating Convictions

SB 317 (2014)

RSA 633:7. Trafficking in Persons.

VI. (b) An individual convicted of an offense under RSA 645:1 or RSA 645:2 for conduct committed as a direct result of being a victim of human trafficking may file a motion with the circuit court, district division, to vacate the conviction. A copy of the motion shall be provided to the agency that prosecuted the offense. After a hearing, the court may grant the request upon a finding, by clear and convincing evidence, that the defendant's participation in the offense was a direct result of being trafficked.

If you would like assistance in enacting laws to fill in the gaps, please contact the Polaris Policy Program at policy@polarisproject.org.