

New Mexico 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.

Rating: Tier One (green)

Total Points: 8

Credited Categories: 1 Sex Trafficking; 2 Labor Trafficking; 4(a) Training for Law Enforcement; 4(b) Human Trafficking Task Force; 5 No Requirement of Force, Fraud, or Coercion for Minor Victims of Sex Trafficking; 6 Posting of a Hotline; 8 Victim Assistance; and 9 Civil Remedy.

Categories Still Needed: 3(a) Asset Forfeiture 3(b) Investigative Tools; 7 Safe Harbor for Minors; and 10 Vacating Convictions.

Category By Category Break-Down:

Category 1: Sex Trafficking Statute

§ 30-52-1. Human trafficking

A. 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.

B. The attorney general and the district attorney in the county of jurisdiction have concurrent jurisdiction to enforce the provisions of this section.

C. Whoever commits human trafficking is guilty of a third degree felony; except if the victim is under the age of:

- (1) sixteen, the person is guilty of a second degree felony; or
- (2) thirteen, the person is guilty of a first degree felony.

D. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other provision of the law when the conduct also constitutes a violation of that other provision.



E. In a prosecution pursuant to this section, a human trafficking victim shall not be charged with accessory to the crime of human trafficking.

F. 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 in accordance with Section 31-17-1 NMSA 1978.

G. As used in this section:

(1) "coercion" means:

(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; and

(2) "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.

Category 2: Labor Trafficking Statute

Yes. See § 30-52-1.

Category 3(a): Asset Forfeiture

None.

Category 3(b): Investigative Tools

None.

Category 4(a): Training for Law Enforcement

§ 30-52-3. Temporary provision; task force to combat human trafficking; membership; duties.

B. The task force shall:

(4) develop and conduct training for law enforcement personnel and victims services providers to identify victims of human trafficking;

Category 4(b): Human Trafficking Task Force

§ 30-52-3. Temporary provision; task force to combat human trafficking; membership; duties.

A. The "task force to combat human trafficking" is created. The task force shall consist of the following members:

(1) the attorney general or the attorney general's designee;

(2) the secretary of health or the secretary's designee;

(3) the secretary of children, youth and families or the secretary's designee;

(4) the secretary of public safety or the secretary's designee;

(5) the chief public defender or the chief public defender's designee;

(6) a representative from the New Mexico district attorneys association;



(7) representatives of local law enforcement and state police from critical geographic areas of New Mexico affected by immigrant issues and human trafficking problems; and
(8) representatives from organizations that provide services to victims of human trafficking, including immigrants and immigrant victims of sexual assault and domestic violence.

B. The task force shall:

(1) collaborate with the United States attorney for the district of New Mexico, the United States border patrol and the United States immigration and customs enforcement to carry out the duties of the task force;
(2) collect and organize data on the nature and extent of human trafficking in New Mexico;
(3) monitor and evaluate the implementation of this 2008 act, including the progress of federal, state and local law enforcement agencies in preventing human trafficking, protecting and providing assistance to victims of human trafficking and prosecuting human trafficking offenders;
(4) develop and conduct training for law enforcement personnel and victims services providers to identify victims of human trafficking;
(5) examine the training protocols developed by federal, state and local law enforcement agencies related to dealing with human trafficking victims and offenders;
(6) assist in coordinating federal, state and local government agencies in the implementation of this 2008 act;
(7) implement a media awareness campaign in communities affected by human trafficking;
(8) develop recommendations on how to strengthen state and local efforts to prevent human trafficking, protect and assist human trafficking victims and prosecute human trafficking offenders; and
(9) submit an annual report of its activities, findings and recommendations, including any proposed legislation, in December of each year to the governor and the legislature.

C. The chair of the task force shall be the attorney general or the attorney general's designee, and the task force shall meet at the call of the chair.

D. The public members of the task force are entitled to per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other perquisite, compensation or allowance.

E. The attorney general shall provide the staff for the task force.

F. The task force to combat human trafficking is terminated on July 1, 2016.

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

Yes. See § 30-52-1A(2).

Category 6: Posting of a Human Trafficking Hotline

HB 181 (2014)

A. An employer subject to the Minimum Wage Act, a person licensed pursuant to Sections 60-6A-2 through 60-6A-5 NMSA 1978, a health facility licensed pursuant to the Public Health Act and a state or local government agency that manages a transportation facility, including a highway rest area, shall post a sign containing the following notice in English and in Spanish and in any other written language where ten percent or more of the workers or users of a covered facility speak that language:



"NOTICE ON HUMAN TRAFFICKING: OBTAINING FORCED LABOR OR SERVICES IS A CRIME UNDER NEW MEXICO AND FEDERAL LAW. IF YOU OR SOMEONE YOU KNOW IS A VICTIM OF THIS CRIME, CONTACT THE FOLLOWING: IN NEW MEXICO, CALL OR TEXT 505-GET-FREE (505-438- 3733); OR CALL THE NATIONAL HUMAN TRAFFICKING RESOURCE CENTER HOTLINE TOLL-FREE AT 1-888-373-7888 FOR HELP. YOU MAY ALSO SEND THE TEXT "HELP" OR "INFO" TO BEFREE ("233733"). YOU MAY REMAIN ANONYMOUS, AND YOUR CALL OR TEXT IS CONFIDENTIAL."

B. The sign shall be at least eight and one-half inches high and eleven inches wide. It shall be displayed in a conspicuous manner in the employer's business facility, in the licensees' licensed facilities or in the transportation facility clearly visible to the public and employees of the employer or licensees. The English language and Spanish language portions and any other written language portions of the sign shall be equal in size.

C. The director of the labor relations division of the workforce solutions department shall provide employers under the Minimum Wage Act with information about the notice required by this section and shall provide a version of the notice on its public access internet web site for employers to download or print.

D. The regulation and licensing department; the children, youth and families department; and the department of health shall each provide their respective licensees with information about the notice required by this section and shall provide a version of the notice on their respective public access internet web sites for licensees to download or print.

E. When necessary, a department shall update the relevant telephone and texting numbers provided in the version of the notice posted on its public access internet web site.

Category 7: Safe Harbor

None.

Category 8: Victim Assistance

§ 30-52-2. Human trafficking; benefits and services for human trafficking victims

A. 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) other general assistance services and benefits as determined by the children, youth and families department or the human services department.
- B. A human trafficking victim advocate shall be provided immediately upon identification by law enforcement of a human trafficking victim.
- C. Before providing benefits and services pursuant to Subsection A of this section, law enforcement shall certify to the human services department and the children, youth and families department that a person is:
- (1) a victim of human trafficking; and
 - (2) cooperating in the investigation or prosecution of the person charged with the crime of human trafficking.
- D. A victim's ability to cooperate shall be determined by the court, if that issue is raised by a human trafficking victim advocate. The victim is not required to cooperate if the court determines that the victim is unable to cooperate due to physical or psychological trauma. Benefits and services shall continue unless the court rejects the victim's claim regarding inability to cooperate. A victim who is younger than eighteen years of age is eligible for benefits and services without a finding by the court. Any court proceeding regarding the victim's ability to cooperate shall be held in camera. The human trafficking victim advocate shall be allowed to attend the proceeding. The record of any such proceeding shall be sealed.
- E. 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.
- F. The prosecuting authority shall take all reasonable steps within its authority to provide a human trafficking victim with:
- (1) all necessary documentation required pursuant to federal law for an adjustment of immigration status that applies to that victim; and
 - (2) assistance in accessing civil legal services providers who are able to petition for adjustment of immigration status on behalf of the victim.
- G. As used in this section:
- (1) "human trafficking victim" means a person subjected to human trafficking; and
 - (2) "human trafficking victim advocate" means a person provided by a state or nonprofit agency with experience in providing services for victims of crime.

Category 9: Civil Remedy

§ 30-52-1.1. Human trafficking; civil remedy for human trafficking victims

- A. A human trafficking victim may bring a civil action in any court of competent jurisdiction for 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 fees and costs.
- B. A civil action pursuant to this section shall be forever barred unless the action is 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.



Category 10: Vacating Convictions

*Recognition for efforts, but no credit awarded.

§ 30-52-1.2. Sealing of records of human trafficking victims.

A. 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.

B. Reasonable notice of the petition shall be given to the district attorney or prosecutor who filed the original case and to the law enforcement agency that has custody of the law enforcement files and records for the case.

C. Upon the entry of the sealing order, the proceedings in the case shall be treated as if they never occurred and all index references shall be deleted. The court, law enforcement agencies and the petitioner shall respond to an inquiry that no record exists with respect to the petitioner for the referenced case. Copies of the sealed order shall be sent by the court to the district attorney or prosecutor who filed the original case, and each law enforcement agency shall be named in the order.

D. Inspection of files and records or release of information in the records included in the sealing order may be permitted by the court only upon subsequent order of the court on a showing of good cause after notice to all parties to the original petition.

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