

LFC Requester: _____

**AGENCY BILL ANALYSIS
2020 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 X **Amendment** _____
Correction _____ **Substitute** _____

Date January 27, 2020

Bill No: HB 237-264

Sponsor: Georgene Louis
Short Human Trafficking Revisions;
Title: Sex Offender Registration

**Agency Name
and Code
Number:** Administrative Office of the
District Attorneys 264

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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

Synopsis:

Section 1: Page 2, lines 8-12 amends Section 29-11A-3B, NMSA 1978, by expanding the definition of “conviction.” The changes made in HB 237 establish that a conviction for purposes of this section will be any disposition short of dismissal that results in a sanction(s) and deletes language that presently exempts a conditional discharge from the definition of “conviction.” This language also provides that a person who is subject to conditional release, controlled release or incarceration be subject to sex offender registration. Page 2, lines 23-24, page 3, lines 1-9, is new material that defines institution of higher education and jurisdiction.

The definition of “sex offender” includes a person who “owns a residential property in New Mexico.” (Page 4, line 3).

Adds 1) human trafficking for commercial sexual activity, and 2) any conviction entered by a court of a jurisdiction outside of the State and requiring the individual to register as a sex offender in that jurisdiction to the list of definitions of “sex offense.” (Page 6, lines 3 and 4; lines 8-10).

Section 2: Adds human trafficking for commercial sexual activity; sexual exploitation of children by prostitution; and any conviction entered by a court of a jurisdiction outside of the State and requiring the individual to register as a sex offender in that jurisdiction, to the registry requirements administered by the Department of Public Safety. The Department is required to retain the registration information for the entirety of the sex offender’s natural life. These changes remove the offense of sexual exploitation of children by prostitution from the registration requirements for a period of 10 years to the requirements for retention of information for the entirety of the sex offender’s natural life. (Page 8, lines 22-25; page 9, lines 4-6).

Section 3: (Statute of Limitations) Includes any crime against, or in violation of, section 30-52-1 NMSA 1978 (human trafficking) to those offenses where there is no limitation period and prosecution may commence at any time after the occurrence of the crime. (Page 12, lines 3, 4).

Section 4: Increases the age of the child victim of sexual exploitation by prostitution from 16 to 18 years of age. (Page 12, lines 12, 18, 21). Page 13, lines 2-5 prohibit a person being prosecuted for sexual exploitation of children by prostitution from claiming as a defense that their intended victim was a peace officer posing as a child under 18 years of age.

Section 5: Adds human trafficking to the definitions of “racketeering” pursuant to section 30-42-3 NMSA (page 15, lines 19 and 20).

Section 6: Adds language to the elements of human trafficking. Changes include if a person is “harboring, maintaining, patronizing, providing....” to the crime of human trafficking. (Page 16, line 16). The same language is added to paragraph 2 of the same section. (Page 16, line 21). The penalty for conviction of human trafficking is increased from a third degree felony to a second degree felony. (Page 17, line 9). Page 17, lines 11-19 provides that a mandatory minimum term of imprisonment of three years for a conviction of human trafficking and that shall not be suspended or deferred. The mandatory term of imprisonment will also be subject to sentencing enhancements. Page 17, line 25, and page 18, line 1, provide that each violation constitutes a separate offense and shall not merge with any other offense. Page 18, lines 4 and 5 provide protection for a human trafficking victim from being charged with accessory to the crime of human trafficking or for prostitution. Page 18, lines 10-13 sets forth standards for restitution to the victim of human trafficking. Page 18, lines 17 and 19 include the language “physical restraint” to the definitions of “coercion.” Page 19, lines 6-12 include “harm” to the list of definitions contained in section 30-52-1 (human trafficking). Page 19, lines 13-23 set forth facts or conditions that shall not constitute a defense to prosecution for human trafficking. Page 19, lines 24, 25 and page 20 lines 1-11, provide for the seizure, forfeiture and disposal of certain property and/or interests of a person convicted of human trafficking.

Section 7: amends the definitions as used in the victims of crime act by including human trafficking and sexual exploitation of children (page 22, lines 14-17).

Section 8: adds human trafficking to the list of serious violent offenses as provided in the earned meritorious deductions act (section 33-2-34 NMSA). This means that if a judge determines that the nature of the offense and the resulting harm are such that it is a serious violent offense, the person will be eligible for no more than 4 days per month credit provided they also fulfill the requirements set forth in the statute.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

New crimes and increased penalties may lead to the need for more resources across the criminal justice system.

SIGNIFICANT ISSUES

1. Presently, a defendant who receives a conditional discharge order as a disposition, is not required to register as a sex offender. HB 237 would require that person to register as a sex offender if they receive a conditional discharge order. Additionally, a person who is subject to a conditional release, control release or incarceration will also have to register as a sex offender. It appears that this language would require a person who is on conditions of release, but who has not yet been tried to register as a sex offender. This will probably be challenged and the argument will be that a person should not be required to register if they have not been convicted. Jurisdiction for the purposes of the sexual offender registration act lists the jurisdictions in which

a conviction has been recorded and which requires a person to register pursuant to the sexual offender registration act.

2. Changing the requirement that a person convicted of sexual exploitation of children by prostitution be subject to registration for their life, as compared to 10 years, may be challenged by the criminal defense bar.

3. Because human is a crime that is highly mobile, traffickers rarely stay in one place and have developed many ways to hide themselves and their activities. Subjecting persons to prosecution without limitation may have a deterrence effect and may also give victims assurance that their offender may eventually be held accountable even if it takes some time.

4. Increasing the age of a child victim of sexual exploitation by prostitution from 16 to 18 years of age will provide adequate protection for those who are over the age of 16 but under the age of 18. That is still a very vulnerable and exploited age. Prohibiting a person being prosecuted for sexual exploitation of children by prostitution from claiming as a defense that their intended victim was a peace officer posing as a child under 18 years of age will provide accountability. Police sting operations where an undercover officer poses as a child under 18 have withstood challenges based on the defense of entrapment.

5. HB 237 recognizes and addresses the fact that human trafficking is mostly perpetrated by organized crime groups.

6. A conviction for human trafficking will increase from a third degree felony to a second degree felony. In addition, mandatory imprisonment, subject also to sentencing enhancements, will certainly be challenged by the criminal defense bar. There may be challenges to the separate offense and merger provisions. However, the legislature has the authority to make these provisions and the courts will look to legislative intent to decide the potential challenges.

7. Criminal defendants being prosecuted for human trafficking will not be able to avail themselves of certain defenses. Those are set forth in page 19, lines 13-23. Some, or all, of the defenses will be challenged by the criminal defense bar. Rule 11-412, NMRA 2019 and §30-9-16, NMSA 1978, (also known as the Rape Shield) is a rule of evidence that does not allow evidence of a victim's prior sexual history to be admitted in trial. There are, however, some exceptions and a judge may rule some or all of the victim's sexual history in. This statutory prohibition may limit a judge's discretion in admitting evidence of sexual history of a victim in human trafficking and sexual exploitation of a child prosecutions.

8. Seizure, forfeiture and disposal of property illegally gained as a result of criminal conduct is presently not happening much with the recent changes to the forfeiture act. It is not clear whether the proceedings set forth in HB 237 will be pursued. If so, more resources will be needed.

9. There may be more court hearings based on the changes to the meritorious deductions act. Sexual offenders will be able to get no more than four days of credit per month deductions if a judge deems their offense as a serious violent one. The defendant will still have to meet the other criteria in order to receive credit. There will be more prosecutors pursuing these and the defense bar will challenge. Should the judges make findings that the offense is a serious violent offense, there will be a need for more resources for the prison system to house the inmates for longer periods of time. On the other hand, the offender will not be out in the communities where

they might re-offend or be a danger to the victim(s).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

District court judges do not like mandatory sentences or provisions that limit their discretion.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS