

Since 2011, Shared Hope has laid the foundation for transformational policy, practice, and cultural change by supporting state legislators and stakeholders to identify gaps in the fabric of laws needed to address child sex trafficking. The Report Cards on Child & Youth Sex Trafficking build upon the progress already made, challenging states to take the next step in the fight against sex trafficking by focusing on the area where the largest gaps remain—victim protections. This report provides a thorough review of New Mexico’s laws related to both criminalization and victim protections while providing recommendations for addressing gaps in the law.



ISSUE 1: Criminal Provisions

Policy Goal 1.1 The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

New Mexico’s trafficking law can apply to buyers based on the terms “soliciting” and, following federal precedent, “obtaining.”¹ N.M. Stat. Ann. § 30-52-1(A) (Human trafficking) states, “Human trafficking consists of a person 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.”²

¹ See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain a “latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227, enacted on May 29, 2015. The JVTA adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” *Id.* at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular, the term “obtains”) to the extent such interpretation does not conflict with state case law.

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

Policy Goal 1.2 Commercial sexual exploitation of children (CSEC) laws specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

N.M. Stat. Ann. § 30-6A-4(B) (Sexual exploitation of children by prostitution) criminalizes both purchasing and soliciting commercial sex with a minor but only protects minors under 16 years of age; it states, “Any person knowingly hiring or offering to hire a child under the age of sixteen to engage in any prohibited sexual act³ is guilty of a second degree felony.”

- 1.2.1 Recommendation: Amend N.M. Stat. Ann. § 30-6A-4(B) (Sexual exploitation of children by prostitution) to protect all minors.

Policy Goal 1.3 Commercial sexual exploitation of children (CSEC) laws apply to traffickers and protect all minors under 18.

New Mexico’s CSEC laws address various conduct engaged in by traffickers but only protect minors under 16 years of age. Pursuant to N.M. Stat. Ann. § 30-6A-4(A) (Sexual exploitation of children by prostitution),

Any person knowingly receiving any pecuniary profit as a result of a child under the age of sixteen engaging in a prohibited sexual act⁴ with another is guilty of a second degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a first degree felony.

Further, N.M. Stat. Ann. § 30-9-1 (Enticement of child) states,

Enticement of child consists of:

- A. enticing, persuading or attempting to persuade a child under the age of sixteen years to enter any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 [30-9-1 NMSA 1978] of the Criminal Code;⁵ or
- B. having possession of a child under the age of sixteen years in any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 [30-9-1 NMSA 1978] of the Criminal Code .

Whoever commits enticement of child is guilty of a misdemeanor.

- 1.3.1 Recommendation: Amend N.M. Stat. Ann. § 30-6A-4(A) (Sexual exploitation of children by prostitution) and N.M. Stat. Ann. § 30-9-1 (Enticement of child) to protect all minors.

³ N.M. Stat. Ann. § 30-6A-2 defines “prohibited sexual act” as

- (1) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;
- (2) bestiality;
- (3) masturbation;
- (4) sadomasochistic abuse for the purpose of sexual stimulation; or
- (5) lewd and sexually explicit exhibition with a focus on the genitals or pubic area of any person for the purpose of sexual stimulation;

⁴ See *supra* note 3 for the definition of “prohibited sexual act.”

⁵ Article 9 (Sexual offenses) includes, among others, N.M. Stat. Ann. § 30-9-1 (Enticement of child), § 30-9-2 (Prostitution), § 30-9-3 (Patronizing prostitutes), § 30-9-4 (Promoting prostitution), § 30-9-4.1 (Accepting earnings of a prostitute), § 30-9-8 (House of prostitution; public nuisance), § 30-9-11 (Criminal sexual penetration), and § 30-9-13 (Criminal sexual contact of a minor).

Policy Goal 1.4 Mistake of age is not an available defense under sex trafficking and commercial sexual exploitation of children (CSEC) laws.

New Mexico law does not expressly prohibit a mistake of age defense in prosecutions for child sex trafficking and CSEC.

- 1.4.1 Recommendation: Prohibit a mistake of age defense in all cases involving child sex trafficking and CSEC.

Policy Goal 1.5 Use of a law enforcement decoy is not an available defense in child sex trafficking cases.

Although the trafficking law does not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, New Mexico’s criminal attempt statute could provide prosecutors with an alternative avenue to prosecute those cases. Pursuant to N.M. Stat. Ann. § 30-28-1 (Attempt to commit a felony) states, “Attempt to commit a felony consists of an overt act in furtherance of and with intent to commit a felony and tending but failing to effect its commission.” Accordingly, an offender could be found guilty of attempting to commit a child sex trafficking offense if the offender intended to commit the trafficking offense and acted on that intent even though the offender was prevented from perpetrating the offense since the intended victim was a law enforcement decoy rather than an actual minor.

Policy Goal 1.6 The trafficking law expressly allows for business entity liability and establishes a business-specific penalty scheme.

New Mexico’s trafficking law does not expressly allow for business entity liability.

- 1.6.1 Recommendation: Ensure business entities can be held liable under state trafficking laws and establish a business-specific penalty scheme.

Policy Goal 1.7 State law mandates that financial penalties are levied on sex trafficking and CSEC offenders and are directed to a victim services fund.

New Mexico law requires offenders convicted of a felony or misdemeanor to pay a crime victims reparation fee, which will be directed into the Crime Victims Reparation Fund. Specifically, N.M. Stat. Ann. § 31-12-13 (Crime victims reparation fee) states,

A. In addition to any other fees or penalties collected in a district court, metropolitan court and magistrate court, those courts shall assess and collect from a person convicted of a misdemeanor or felony offense a mandatory crime victims reparation fee. The fee shall be levied at the time of sentencing in addition to any sentence required or permitted by law, in accordance with the following schedule:

- (1) a person convicted of a felony shall pay a crime victims reparation fee of seventy-five dollars (\$75.00); and
- (2) a person convicted of a misdemeanor shall pay a crime victims reparation fee of fifty dollars (\$50.00).

B. Crime victim reparation fees shall be deposited in the crime victims reparation fund.

Pursuant to N.M. Stat. Ann. § 31-22-21(B)(1) (Crime victims reparation fund created; purposes), fees deposited into the fund may be used, in part, to “pay any award of reparation to victims made pursuant to the Crime Victims Reparation Act [31-22-1 NMSA 1978].”



ISSUE 2: Identification of & Response to Victims

Policy Goal 2.1 The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

The definition of child sex trafficking victim includes all commercially sexually exploited children without requiring third party control. Specifically, N.M. Stat. Ann. § 30-52-1(A) (Human trafficking) can apply directly to buyers of commercial sex with minors based on the terms “soliciting” and, following federal precedent, “obtaining,”⁶ meaning a buyer can be charged regardless of whether a trafficker is involved or identified. Accordingly, third party control is not required to establish the crime of child sex trafficking or, consequently, to identify a commercially sexually exploited child as a trafficking victim.

Policy Goal 2.2 State law provides policy guidance to facilitate access to services and assistance for trafficked foreign national children.

New Mexico law provides policy guidance that facilitates access to services and benefits for trafficked foreign national children. Specifically, N.M. Stat. Ann. § 30-52-2 (Human trafficking; benefits and services for human trafficking victims) affords child sex trafficking victims access to state-provided services and benefits regardless of immigration status, stating,

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 [Pub. L. No. 106-386, § 2002, 114 Stat. 1464]; 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.

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⁶ See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under N.M. Stat. Ann. § 30-52-1.

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.

.....

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.

Further, N.M. Stat. Ann. § 32A-26-3 (Fostering connections program; eligibility) provides,

A. The "fostering connections program" is established in the department. The department shall make the fostering connections program available, on a voluntary basis, to an eligible adult who:

- (1) has attained at least eighteen years of age and who is younger than:
 - (a) as of July 1, 2020, nineteen years of age;
 - (b) as of July 1, 2021, twenty years of age; and
 - (c) after July 1, 2022, twenty-one years of age;
- (2) meets one of the following criteria:
 - (a) has attained at least eighteen years of age and: 1) was adjudicated pursuant to the Children's Code [Chapter 32A NMSA 1978] or its equivalent under tribal law; 2) was subject to a court order that placement and care be the responsibility of the department or the Indian tribe that entered into an agreement with the department; and 3) was subject to an out-of-home placement order; or
 - (b) attained at least fourteen years of age when a guardianship assistance agreement or adoption assistance agreement was in effect and whose guardianship assistance agreement or adoption assistance agreement was terminated or the guardian or parents are no longer willing to provide emotional or financial support after the child attained eighteen years of age;
- (3) is:
 - (a) completing secondary education or an educational program leading to an equivalent credential;
 - (b) enrolled in an institution that provides post-secondary or vocational education;
 - (c) employed for at least eighty hours per month;
 - (d) participating in a program or activity designed to promote employment or remove barriers to employment; or
 - (e) incapable of doing any of the activities described in Subparagraphs (a) through (d) of this paragraph due to a medical or behavioral condition that is supported by regularly updated information in the transition plan; and
- (4) enters into a voluntary services and support agreement with the department pursuant to the Fostering Connections Act [Chapter 32A, Article 26 NMSA 1978].

B. The citizenship or immigration status of a young adult shall not be a factor when determining the young adult's eligibility pursuant to this section.

Policy Goal 2.3 State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.

New Mexico law does not require child welfare to conduct trauma-informed CSEC screening of system-involved children and youth who are at risk of sex trafficking.

2.3.1 Recommendation: Enact a state law requiring child welfare to screen system-involved children and youth at risk of sex trafficking for experiences of commercial sexual exploitation.

Policy Goal 2.4 State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.

New Mexico law does not require juvenile justice agencies to conduct trauma-informed CSEC screening of children and youth who are at risk of sex trafficking.

2.4.1 Recommendation: Enact a state law requiring juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation.

Policy Goal 2.5 State law prohibits the criminalization of minors under 18 for prostitution offenses.

New Mexico law prohibits the criminalization of all minors for prostitution offenses. While the state prostitution law applies equally to minors and adults, N.M. Stat. Ann. §32A-2-3 (Definitions) defines “delinquent act” to exclude prostitution offenses, stating, a “delinquent act” means an act committed by a child that would be designated as a crime under the law if committed by an adult, not including a violation of Section 30-9-2 [Prostitution]”

Further, N.M. Stat. Ann. § 32A-3B-3(a) (Protective custody; interference with protective custody; penalty) provides an alternative mechanism to arrest, permitting law enforcement to take a child sex trafficking victim into protective custody, stating,

A child may be taken into protective custody by a law enforcement officer without a court order when the officer has reasonable grounds to believe that the child:

. . . .

(5) is engaged in an act that would be designated as prostitution if committed by an adult; or

(6) is a victim of human trafficking as defined in Section 30-52-1 NMSA 1978.

Consequently, minors are protected arrest, detention, and prosecution for conduct in violation of the state prostitution law.

Policy Goal 2.6 State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.

New Mexico law does not prohibit the criminalization of child sex trafficking victims for status offenses nor does it prohibit charging victims with misdemeanors or non-violent felonies committed as a result of their trafficking victimization.

2.6.1 Recommendation: Enact a law that prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanors and non-violent felonies committed as a result of their trafficking victimization.

Policy Goal 2.7 State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

New Mexico law prohibits the criminalization of trafficking victims as accessories to human trafficking; however, victims can still be charged under state commercial sexual exploitation laws and as primary trafficking offenders. Pursuant to N.M. Stat. Ann. § 30-52-1(E) (Human trafficking), “In a prosecution pursuant to this section, a human trafficking victim shall not be charged with accessory to the crime of human trafficking.”

2.7.1 Recommendation: Amend state law to prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses committed as a result of their trafficking victimization.

Policy Goal 2.8 State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

New Mexico law does not provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

2.8.1 Recommendation: Enact a law that provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

Policy Goal 2.9 Juvenile court jurisdiction aligns with international human rights standards.

New Mexico law provides several protections for providing age-appropriate protections to children and youth accused of engaging in juvenile or criminal conduct. New Mexico law extends juvenile court jurisdiction to all minors under 18 years of age, requires the majority of juvenile cases to remain within the jurisdiction of the juvenile court, and directs the court to consider the child’s trauma history prior to making a determination as to whether the child should be adjudicated as a “youthful offender.” However, New Mexico law fails to establish a minimum age for purposes of juvenile court jurisdiction and requires cases involving minors older than 14 years of age who have been charged with first degree murder to be tried in adult criminal court.

| | Minimum Age for Juvenile Court Jurisdiction | Maximum Age for Charging a Minor in Juvenile Court | Automatic Transfers or Direct File | Discretionary Transfers | Requirement for Court to Consider Trauma or Past Victimization |
|---------|--|--|--|--|---|
| Summary | None. “Child” is defined as, “a person who is less than eighteen years old.” | 17 | Yes. Minors 15+ charged with and indicted for first degree murder. | No; however, minors 14+ years of age charged with certain felony offenses may be charged as a “youthful offender” and subject to either adult or juvenile sanctions. | Yes. In making a determination as to whether the child shall be adjudicated as a “youthful offender,” the court is required to consider the child’s trauma history. |

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|----------------------------|---|--|--|--|---|
| Relevant Statute(s) | N.M. Stat. Ann. § 32A-1-4(B) (Definitions); N.M. Stat. Ann. § 32A-2-3(B) (Definitions) | N.M. Stat. Ann. § 32A-1-4(B) (Definitions) | N.M. Stat. Ann. § 32A-2-3(H) (Definitions) | N.M. Stat. Ann. § 32A-2-3(J) (Definitions) | N.M. Stat. Ann. § 32A-2-20 (Disposition of youthful offender) |
|----------------------------|---|--|--|--|---|

Consequently, while state law includes several protections to ensure age-appropriate responses to children accused of violating the law, some minors may still face inappropriate juvenile court responses due to statutes that: (1) fail to establish a minimum age for juvenile court jurisdiction that aligns with international human rights standards; and (2) allow some juvenile cases to be subject to direct file.

- 2.9.1 Recommendation: Enact comprehensive state laws requiring age-appropriate juvenile court responses for all children accused of engaging in juvenile or criminal conduct.

Policy Goal 2.10 State law defines child abuse to include child sex trafficking for purposes of accessing child welfare services.

New Mexico law defines “abused child” to include commercial sexual exploitation but not child sex trafficking. Pursuant to N.M. Stat. Ann. § 32A-4-2(B)(3), (K)(1) (Definitions),

As used in the Abuse and Neglect Act [32A-4-1 NMSA 1978]:

....

B. “abused child” means a child:

....

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child’s parent, guardian or custodian;

....

....

K. “sexual exploitation” includes:

(1) allowing, permitting or encouraging a child to engage in prostitution;

- 2.10.1 Recommendation: Amend the definition of “child abuse” to expressly include child sex trafficking.

Policy Goal 2.11 State law clearly defines child welfare’s role in responding to non-familial child sex trafficking through an alternative specialized response that does not hinge on caregiver fault.

New Mexico’s child welfare code does not allow for a child welfare response in non-familial child sex trafficking cases and does not provide for a specialized response to child sex trafficking reports. The fault of the “child’s parent, guardian, or custodian” is required to find that a child is an “abused child” under N.M. Stat. Ann. § 32A-4-2(B) (Definitions), and no alternative response is provided for children reported to child welfare due to trafficking victimization perpetrated by a non-familial trafficker.

- 2.11.1 Recommendation: Amend the child welfare code to provide an alternative specialized response to child sex trafficking reports that does not hinge on caregiver fault and sets out a trafficking-specific response protocol for non-familial child sex trafficking cases.



ISSUE 3: Continuum of Care

Policy Goal 3.1 State law provides child sex trafficking victims with access to specialized services through a non-punitive system.

Although New Mexico law requires a commercially sexually exploited child to be referred to a child-serving entity, that entity is not mandated to provide that child with access to specialized services. Pursuant to N.M. Stat. Ann. § 32A-3B-4(A), (B) (Protective custody; restrictions; time limitations),

- A. A law enforcement officer who takes a child into protective custody⁷ shall, with all reasonable speed:
 - (1) inform the child of the reasons for the protective custody; and
 - (2) contact the department.
- B. When the department is contacted by a law enforcement officer who has taken a child into protective custody, the department shall refer the child to community based services and may:
 - (1) accept custody of the child and designate an appropriate placement in the community for the child;
 - or
 - (2) return the child to the child’s parent, guardian or custodian if the child’s safety is assured.

Further, a commercially sexually exploited child may receive services in conjunction with the “family in need of court-ordered services” process. N.M. Stat. Ann. § 32A-3B-2 (Definitions) defines “family in need of court-ordered services” as follows:

[T]he child or the family has refused family services or the department has exhausted appropriate and available family services and court intervention is necessary to provide family services to the child or family and it is a family:

....

- E. whose child is:
 - (1) alleged to be engaged in an act that would be designated as prostitution if committed by an adult; or
 - (2) a victim of human trafficking as defined in Section 30-52-1 NMSA 1978 [Human trafficking].

Although the “family in need of court-ordered services” provision creates an avenue to services, it may be used to penalize children and their families who do not willingly engage in services through the Department of Children, Youth & Families.

- 3.1.1 Recommendation: Strengthen existing law to require access to specialized services through a non-punitive system for all child sex trafficking victims.

Policy Goal 3.2 State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.

Although child sex trafficking victims could receive a multi-disciplinary team (MDT) response through an existing child abuse and neglect MDT, New Mexico law does not require an MDT response specific to child sex trafficking

⁷ See *supra* Policy Goal 2.5 for a full discussion of law enforcement’s ability to take a child sex trafficking victim into protective custody.

cases. Pursuant to N.M. Stat. Ann. § 32A-4A-4 (Multidisciplinary child abuse teams; establishment; membership; duties),

A. The following persons shall comprise a multidisciplinary child abuse investigation team in each judicial district in the state:

- (1) the district attorney of the judicial district in which the team is created and established, or the district attorney's designee;
- (2) a representative from the protective services division of the children, youth and families department, appointed by the director of the division or the director's designee;
- (3) a representative from a center that exists in the judicial district in which the team is located; and
- (4) the following members, appointed by the agency head or designee of the following agencies:
 - (a) a representative from each law enforcement agency within the judicial district;
 - (b) medical personnel with expertise and certification in pediatric sexual assault, child physical abuse and neglect identification or treatment;
 - (c) a mental health service provider with training and experience in evidence-supported trauma-focused cognitive behavioral therapy; and
 - (d) a family or victim advocate from an agency designated for advocacy services in that judicial district.

B. The following multidisciplinary child abuse investigation team members shall be present before a forensic interview can take place:

- (1) the center's forensic interviewer; and
- (2) when available and as appropriate:
 - (a) a representative from law enforcement; and
 - (b) the representative from the protective services division of the children, youth and families department.

C. A multidisciplinary child abuse investigation team shall:

- (1) develop a written protocol for the investigation and prosecution of cases of child abuse and neglect in accordance with each member agency's requirements;
- (2) convene on a regular ongoing basis, at least every other month, for the purpose of conducting case tracking, case review and general business and considering proposed modifications to the team's existing protocol; and
- (3) train and provide technical assistance to team members, agencies and medical providers that investigate child abuse and neglect cases.

3.2.1 Recommendation: Enact legislation requiring a multi-disciplinary team response specific to child sex trafficking victims.

Policy Goal 3.3 State law requires the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

New Mexico law does not provide access to specialized services for identified sex trafficked children and youth in the juvenile justice system.

3.3.1 Recommendation: Enact legislation requiring the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.

Policy Goal 3.4 State law extends foster care services to older foster youth.

New Mexico law extends foster care services to youth under 21 years of age through a voluntary extended foster care agreement. However, these services are not extended to youth under 23 years of age as permitted under federal

law.⁸ Specifically, N.M. Stat. Ann. § 32A-26-3(A)(1)(c) (Fostering connections program; eligibility) provides that “[t]he department shall make the fostering connections program available, on a voluntary basis, to an eligible adult who . . . has attained at least eighteen years of age and who is younger than . . . after July 1, 2022, twenty-one years of age.”

Further, N.M. Stat. Ann. § 32A-26-4 (Fostering connections program; services; supports) states,

A. The fostering connections program shall provide at least the following services and supports to eligible adults:

...

C. The department shall develop procedures to provide extended subsidies to families for adoption and guardianship until the eligible adult turns twenty-one years of age if:

(1) an adoption assistance or guardianship assistance agreement was in effect for the eligible adult when the eligible adult was sixteen years of age or older; and

(2) when at least eighteen years of age and under twenty-one years of age, the eligible adult meets at least one of the following participation criteria:

(a) completing secondary education or an educational program leading to an equivalent credential;

(b) enrolled in an institution that provides post-secondary or vocational education;

(c) participating in a program or activity designed to promote employment or remove barriers to employment;

(d) employed for at least eighty hours per month; or

(e) is incapable of doing any of the activities described in Subparagraphs (a) through (d) of this paragraph due to a medical or behavioral condition that is supported by regularly updated information in the transition plan.

3.4.1 Recommendation: Strengthen existing law to better support transition age youth by extending transitional foster care services to youth under 23 years of age.

Policy Goal 3.5 State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.

The New Mexico state legislature did not appropriate funds to support the development and provision of specialized, community-based services and care to child and youth survivors.

3.5.1 Recommendation: Appropriate state funds to support the development of and access to specialized, community-based services to child and youth survivors of sex trafficking.

Policy Goal 3.6 State funding is appropriated to support child-serving agencies with providing specialized services and a continuum of care for sex trafficked children.

The New Mexico state legislature did not appropriate funds to support child-serving agencies with developing and providing specialized services and ensuring a continuum of care for child and youth survivors who interact or are involved with state systems.

⁸ For more information, see Shared Hope Int’l, *Issue Brief 3.4: Continuum of Care*, https://sharedhope.org/wp-content/uploads/2020/12/SH_Issue-Brief-3.4_2020.pdf (discussing federal laws that allow for funded foster care services to be extended to youth under 23 years of age).

- 3.6.1 Recommendation: Appropriate state funds to support child-serving agencies in the development of and access to specialized services to child and youth survivors of sex trafficking.



ISSUE 4: Access to Justice for Trafficking Survivors

Policy Goal 4.1 State law allows trafficking victims to seek emergency civil orders of protection.

While civil orders of protection exist under New Mexico law, this protection is not expressly available to victims of child sex trafficking and CSEC.

- 4.1.1 Recommendation: Enact legislation expressly allowing victims of trafficking and CSEC to obtain ex parte civil orders of protection against their exploiters.

Policy Goal 4.2 Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking and commercial sexual exploitation of children (CSEC) from accessing compensation.

New Mexico's crime victims' compensation laws define "victim" to include child sex trafficking victims; however, CSEC victims are not expressly included, and ineligibility factors may prevent child sex trafficking victims from accessing an award.

For purposes of accessing crime victims' compensation, N.M. Stat. Ann. § 31-22-7(A)(1) (Eligibility for reparation) states,

If a person is injured or killed by an act or omission of another person coming within the criminal jurisdiction of the state after July 1, 1981, which act or omission includes a crime enumerated in Section 31-22-8 NMSA 1978, and upon application for reparation, the commission may award reparation in accordance with the Crime Victims Reparation Act [Chapter 31, Article 22 NMSA 1978] . . . to the victim.

N.M. Stat. Ann. § 31-22-8(A)(16) (Crimes enumerated) includes human trafficking as an enumerated offense. However, New Mexico's CSEC offenses are not included.

In addition to the narrow definition of victim, certain ineligibility factors may limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to N.M. Stat. Ann. § 31-22-7(C), (D) (Eligibility for reparation),

C. In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant. The commission shall consider the behavior of the victim and whether, because of provocation or otherwise, the victim bears responsibility for the act or omission constituting a crime that caused the victim's injury or death and shall reduce the amount of reparation in accordance with its assessment of the degree of responsibility attributable to the victim.

D. An order may be made under this section whether or not any person is prosecuted for or convicted of a crime enumerated in Section 31-22-8 NMSA 1978; provided an arrest has been made or the act or omission constituting a crime has been reported to the police in a reasonable time or the act or omission constituting a crime has been reported to a licensed medical, mental health or counseling provider, or tribal health provider. No order may be made under this section unless the commission finds that:

- (1) the act or omission constituting a crime did occur;
- (2) the injury or death of the victim resulted from the act or omission constituting a crime; and
- (3) the claimant or victim fully cooperated with the appropriate law enforcement agencies or the commission finds that the claimant or victim acted reasonably under the circumstances.

Lastly, commercially sexually exploited children face filing deadlines under N.M. Stat. Ann. § 31-22-14(A) (Limitations on award – Collateral recovery – Preliminary award), which states,

No order for the payment of reparation shall be made unless application has been made within two years after the date of the injury or death and the injury or death was the result of a crime enumerated in Section 31-22-8 NMSA 1978

- 4.2.1 Recommendation: Statutorily exempt victims of child sex trafficking and CSEC from ineligibility factors for crime victims' compensation.

Policy Goal 4.3 Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

Although New Mexico law allows child sex trafficking victims to vacate delinquency adjudications, vacatur is unavailable for criminal convictions arising from trafficking victimization, leaving sex trafficked youth without access to this important form of relief. Pursuant to N.M. Stat. Ann. § 32A-3B-21(A)–(C) (Expungement of records),

A. On motion by or on behalf of an individual who has been the subject of a petition filed under the Children's Code [32A-1-1 NMSA1978], or on the court's own motion, the court shall vacate its findings, orders and judgments on the petition, and order the legal and social files and records of the court, the department and any other agency in the case expunged, and if requested in the motion the court shall also order law enforcement files and records expunged. An order expunging records and files shall be entered if the court finds that:

- (1) two years have elapsed since the final release of the individual from legal custody and supervision or two years have elapsed since the entry of any other judgment not involving legal custody or supervision; and
- (2) the individual has not, within the two years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor involving moral turpitude or found delinquent by a court, and no proceeding is pending seeking such a conviction or finding.

. . . .

C. Upon the entry of the expungement order, the proceedings in the case shall be treated as if they never occurred, and all index references shall be deleted and the court, law enforcement officers and departments and agencies shall reply, and the individual may reply, to an inquiry that no record exists with respect to such person

Because delinquency petitions are filed under the Children's Code, a child sex trafficking victim may seek to vacate a delinquency adjudication and expunge related records under N.M. Stat. Ann. § 32A-3B-21. However, N.M. Stat. Ann. § 32A-3B-21(D) states that “[a]ny finding of delinquency or conviction of a crime, subsequent to the expungement order may at the court's discretion be used by the court as a basis to set aside the expungement order.”

- 4.3.1 Recommendation: Strengthen existing law by allowing trafficking victims to vacate criminal convictions for any offense arising from trafficking victimization.

Policy Goal 4.4 State law mandates restitution for child sex trafficking and commercial sexual exploitation of children (CSEC) offenses.

Restitution is mandatory in cases involving child sex trafficking but not CSEC. Under N.M. Stat. Ann. § 30-52-1(F) (Human trafficking), “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 [Victim restitution] NMSA 1978.”

Restitution may be available more generally to victims of other crimes under N.M. Stat. Ann. § 31-17-1 (Victim restitution). N.M. Stat. Ann. § 31-17-1(A) states that “It is the policy of this state that restitution be made by each violator of the Criminal Code [30-1-1 NMSA 1978] to the victims⁹ of his criminal activities¹⁰ to the extent that the defendant is reasonably able to do so. This section shall be interpreted and administered to effectuate this policy.”¹¹

4.4.1 Recommendation: Statutorily mandate restitution in CSEC cases.

Policy Goal 4.5 State law provides child sex trafficking victims with a trafficking-specific civil remedy.

New Mexico law allows victims of child sex trafficking to pursue civil remedies against their exploiters. N.M. Stat. Ann. § 30-52-1.1(A) (Human trafficking; civil remedy for human trafficking victims) states,

A human trafficking victim may bring a civil action in any court of competent jurisdiction against an alleged human trafficker 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.

⁹ N.M. Stat. Ann. § 31-17-1(A)(1) defines “victim” as “any person who has suffered actual damages as a result of the defendant’s criminal activities.”

¹⁰ N.M. Stat. Ann. § 31-17-1(A)(3) defines “criminal activities” to include “any crime for which there is a plea of guilty or verdict of guilty, upon which a judgment may be rendered and any other crime committed after July 1, 1977 which is admitted or not contested by the defendant.”

¹¹ However, N.M. Stat. Ann. § 31-17-1(B), which provides for the order of restitution, limits applicability to cases involving a deferred or suspended sentence and makes restitution a condition of probation or parole. N.M. Stat. Ann. § 31-17-1(B) states,

If the trial court exercises either of the sentencing options under Section 31-20-6 [Conditions of order deferring or suspending sentence] NMSA 1978, the court shall require as a condition of probation or parole that the defendant, in cooperation with the probation or parole officer assigned to the defendant, promptly prepare a plan of restitution, including a specific amount of restitution to each victim and a schedule of restitution payments. If the defendant is currently unable to make any restitution but there is a reasonable possibility that the defendant may be able to do so at some time during his probation or parole period, the plan of restitution shall also state the conditions under which or the event after which the defendant will make restitution. If the defendant believes that he will not be able to make any restitution, he shall so state and shall specify the reasons. If the defendant believes that no person suffered actual damages as a result of the defendant’s criminal activities, he shall so state.

Accordingly, N.M. Stat. Ann. § 31-17-1 does not contemplate restitution in cases where an offender is sentenced solely to incarceration for their crime.

Lastly, N.M. Stat. Ann. § 31-26-4(H) (Victim’s rights) authorizes, but does not mandate, restitution, stating, “A victim shall have the right to . . . restitution from the person convicted of the criminal offense that caused the victim’s loss or injury.” N.M. Stat. Ann. § 31-26-5 (Exercise of rights; requirement for victim) further limits this right as follows:

A victim may exercise his rights pursuant to the provisions of the Victims of Crime Act [31-26-1 NMSA 1978] only if he:

- A. reports the criminal offense within five days of the occurrence or discovery of the criminal offense, unless the district attorney determines that the victim had a reasonable excuse for failing to do so;
- B. provides the district attorney with current and updated information regarding the victim’s name, address and telephone number; and
- C. fully cooperates with and fully responds to reasonable requests made by law enforcement agencies and district attorneys.

EXTRA CREDIT



New Mexico law provides sex trafficked youth with a trafficking-specific civil remedy under N.M. Stat. Ann. § 30-52-1.1(A), which allows “[a] human trafficking victim [to] bring a civil action” Although the term “human trafficking victim” is not defined, New Mexico’s human trafficking offense, N.M. Stat. Ann. § 30-52-1 (Human trafficking) criminalizes sex trafficking of both minor and adult victims.



New Mexico law provides child labor trafficking victims with a trafficking-specific civil remedy under N.M. Stat. Ann. § 30-52-1.1(A), which allows “[a] human trafficking victim [to] bring a civil action” Although the term “human trafficking victim” is not defined, New Mexico’s human trafficking offense, N.M. Stat. Ann. § 30-52-1 (Human trafficking) criminalizes both sex trafficking and labor trafficking.

Policy Goal 4.6 Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

New Mexico law lengthens, but does not eliminate, the statute of limitation for filing trafficking-specific civil actions; however, the criminal statutes of limitation for trafficking and CSEC offenses are not eliminated or lengthened. Regarding civil actions, N.M. Stat. Ann. § 30-52-1.1(B) (Human trafficking; civil remedy for human trafficking victims) provides,

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.

In contrast, N.M. Stat. Ann. § 37-1-8 (Actions against sureties on fiduciary bonds; injuries to person or reputation) states, “Actions must be brought . . . for an injury to the person . . . within three years.”

Regarding criminal actions, N.M. Stat. Ann. § 30-1-8 (Time limitations for commencing prosecution) requires prosecutions to commence as follows:

A person shall not be prosecuted, tried or punished in any court of this state unless the indictment is found or information or complaint is filed within the time as provided:

- A. for a second degree felony, within six years from the time the crime was committed;
- B. for a third or fourth degree felony, within five years from the time the crime was committed;
- C. for a misdemeanor, within two years from the time the crime was committed;
- D. for a petty misdemeanor, within one year from the time the crime was committed;

. . . .

H. for any crime not contained in the Criminal Code [30-1-1 NMSA 1978] or where a limitation is not otherwise provided for, within three years from the time the crime was committed; and
I. for a capital felony or a first degree violent felony, no limitation period shall exist and prosecution for these crimes may commence at any time after the occurrence of the crime.

- 4.6.1 Recommendation: Eliminate criminal and civil statutes of limitation for all cases involving child sex trafficking and CSEC.



ISSUE 5: Tools for a Victim-Centered Criminal Justice Response

Policy Goal 5.1 State law provides a child sex trafficking-specific hearsay exception that applies to non-testimonial evidence to reduce reliance on victim testimony.

New Mexico law does not allow non-testimonial, out-of-court statements made by a commercially sexually exploited child to be admitted into evidence in lieu of, or for the purpose of corroborating, the child's testimony.

5.1.1 Recommendation: Enact a hearsay exception that applies to non-testimonial evidence in cases involving commercial sexual exploitation of children under 18 years of age.

Policy Goal 5.2 State law provides child sex trafficking victims with alternatives to live, in-court testimony regardless of the prosecuted offense.

New Mexico law allows child sex trafficking victims who are under 16 years of age to testify by an alternative method, including closed circuit television or videotaped deposition, regardless of the prosecuted offense. Specifically, N.M. Stat. Ann. § 38-6A-5 (Standards for determining whether a child witness may testify by alternative method) states,

A. In a criminal proceeding, the presiding officer may allow a child witness¹² to testify by an alternative method¹³ in the following situations:

¹² N.M. Stat. Ann. § 38-6A-2(B) (Definitions) defines "child witness" as "(1) an individual under the age of sixteen who has been or will be called to testify in a noncriminal proceeding; or (2) an alleged victim under the age of sixteen who has been or will be called to testify in a criminal proceeding."

¹³ N.M. Stat. Ann. § 38-6A-2(A) defines "alternative method" as follows:

- (1) in a criminal proceeding in which a child witness does not give testimony in an open forum in full view of the finder of fact, a videotaped deposition of the child witness that complies with the following requirements:
 - (a) the deposition was presided over by a district judge;
 - (b) the defendant was represented by counsel at the deposition or waived counsel;
 - (c) the defendant was present at the deposition; and
 - (d) the defendant was given an adequate opportunity to cross-examine the child witness, subject to such protection of the child witness as the judge deemed necessary;
- (2) in a criminal proceeding in which a child witness does not give testimony face-to-face with the defendant, a videotaped deposition of the child witness that complies with the following requirements:
 - (a) the deposition was presided over by a district judge;
 - (b) the defendant was represented by counsel at the deposition or waived counsel;
 - (c) the defendant was able to view the deposition, including the child witness, through closed-circuit television or equivalent technology, and the defendant and counsel were able to communicate with each other during the deposition through headsets and microphones or equivalent technology; and
 - (d) the defendant was given an adequate opportunity to cross-examine the child witness, subject to such protection of the child witness as the judge deemed necessary; or
- (3) in a noncriminal proceeding, testimony by closed-circuit television, deposition, testimony in a closed forum or any other method of testimony that does not include one or more of the following:

- (1) the child may testify otherwise than in an open forum in the presence and full view of the finder of fact upon a showing that the child witness may be unable to testify without suffering unreasonable and unnecessary mental or emotional harm; and
- (2) the child may testify other than face-to-face with the defendant if the presiding officer makes specific findings that the child witness would be unable to testify face-to-face with the defendant without suffering unreasonable and unnecessary mental or emotional harm.

B. In a noncriminal proceeding, the presiding officer may allow a child witness to testify by an alternative method if the presiding officer finds that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider:

- (1) the nature of the proceeding;
- (2) the age and maturity of the child;
- (3) the relationship of the child to the parties in the proceeding;
- (4) the nature and degree of mental or emotional harm that the child may suffer in testifying; and
- (5) any other relevant factor.

Notably, child victims who are 16 years of age or older are not permitted to testify by an alternative method, thereby increasing their risk of re-traumatization from testifying.

- 5.2.1 Recommendation: Strengthen existing protections to allow all commercially sexually exploited children to testify by an alternative method regardless of the child’s age and the offense charged.

Policy Goal 5.3 Child sex trafficking victims have access to victim protections in the criminal justice system.

| | Child sex trafficking victims have the right to a victim advocate | Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom | Child sex trafficking victims’ identifying information is protected from disclosure in court records |
|----------------------------|---|--|---|
| Summary | A human trafficking victim advocate shall be provided immediately upon identification of a human trafficking victim by law enforcement. | Not statutorily required. | Not statutorily required. |
| Relevant Statute(s) | N.M. Stat. Ann. § 30-52-2(B) (Human trafficking; benefits and services for trafficking victims) | None. | None. |

- 5.3.1 Recommendation: Statutorily require that child sex trafficking victims are provided courtroom supports when testifying against their exploiter and their identifying information is protected from disclosure in court records.

- (a) having the child testify in person in an open forum;
- (b) having the child testify in the presence and full view of the finder of fact and presiding officer; and
- (c) allowing all of the parties to be present, to participate and to view and be viewed by the child;

Policy Goal 5.4 State law provides for privileged communications between caseworkers and child sex trafficking victims.

New Mexico law does not provide for privileged communications between caseworkers and child sex trafficking victims.

5.4.1 Recommendation: Enact a child sex trafficking-specific caseworker privilege law that protects a child sex trafficking victim's communications with a caseworker from being disclosed.



ISSUE 6: Prevention & Training

Policy Goal 6.1 State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

New Mexico law does not mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

6.1.1 Recommendation: Statutorily mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

Policy Goal 6.2 State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

New Mexico law does not mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

6.2.1 Recommendation: Statutorily mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

Policy Goal 6.3 State law mandates ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

New Mexico law does not mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement.¹⁴

¹⁴ Although state law does not statutorily mandate broad, trafficking-specific training on child sex trafficking, it does contemplate more limited training. Under, N.M. Admin. Code § 10.29.9.8(J)(2) (Police officer minimum standards of training), training on human trafficking will be required in the context of domestic issues; it states,

The core basic training academy curriculum at a minimum will include:

.....

J. Block 10: Domestic issues: 20 total block hours. This unit of instruction will focus on the cycle of violence, the rights of victims and the responsibilities of law enforcement and the assistance available to victims. The subjects include:

.....

(2) victims assistance law and human trafficking - two hours;

Further, N.M. Admin. Code § 10.29.6.6(F) (Objective) provides for trafficking-specific training for those seeking waiver of basic training, stating,

The purpose of Part 6 [Police officer] is to establish training requirements and eligibility standards for police officers and telecommunicators who seek certification by waiver of basic training under Section 29-7-10 NMSA 1978 (Repl. Pamp. 1994),

- 6.3.1 Recommendation: Statutorily mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

Policy Goal 6.4 State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

New Mexico law does not mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

- 6.4.1 Recommendation: Statutorily mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

Policy Goal 6.5 State law mandates child sex trafficking training for school personnel.

New Mexico law does not mandate training on child sex trafficking for school personnel.

- 6.5.1 Recommendation: Statutorily mandate trafficking-specific prevention education training for school personnel.

Policy Goal 6.6 State law mandates child sex trafficking prevention education in schools.

New Mexico law does not mandate child sex trafficking prevention education in schools.

- 6.6.1 Recommendation: Statutorily mandate developmentally and age-appropriate child sex trafficking prevention education in schools.

Section 29-7C-6 NMSA 1978. Certification by waiver of previous training for officer minimum standards of training will include:

....

- F. domestic violence and human trafficking - eight hours;

State Laws Addressing Child Sex Trafficking

1. N.M. Stat. Ann. § 30-52-1(A), (C) (Human trafficking) states,

A. Human trafficking consists of a person knowingly:

.....

(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;¹⁵ 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.

.....

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.

A third degree felony is generally punishable by imprisonment for 3 years and a possible fine up to \$5,000. N.M. Stat. Ann. § 31-18-15(A)(11), (E)(11) (Sentencing authority; noncapital felonies; basic sentences and fines; parole authority; meritorious deductions). A second degree felony is generally punishable by imprisonment for 9 years and a possible fine up to \$10,000. N.M. Stat. Ann. § 31-18-15(A)(7), (E)(7). A first degree felony is generally punishable by imprisonment for 18 years and a possible fine up to \$15,000. N.M. Stat. Ann. § 31-18-15(A)(3), (E)(3).

¹⁵ N.M. Stat. Ann. § 30-52-1(G)(2) defines “commercial sexual activity” as “any sexual act or sexually explicit exhibition for which anything of value is given, promised to or received by any person.”

State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

1. N.M. Stat. Ann. § 30-6A-4(A), (B) (Sexual exploitation of children by prostitution) states,

A. Any person knowingly receiving any pecuniary profit as a result of a child under the age of sixteen engaging in a prohibited sexual act¹⁶ with another is guilty of a second degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a first degree felony.

B. Any person knowingly hiring or offering to hire a child under the age of sixteen to engage in any prohibited sexual act is guilty of a second degree felony.

A first degree felony is generally punishable by imprisonment for 18 years and a possible fine up to \$15,000. N.M. Stat. Ann. § 31-18-15(A)(3), (E)(3) (Sentencing authority; noncapital felonies; basic sentences and fines; parole authority; meritorious deductions). A second degree felony is generally punishable by imprisonment for 9 years and a possible fine up to \$10,000. N.M. Stat. Ann. § 31-18-15(A)(7), (E)(7).

2. N.M. Stat. Ann. § 30-9-1 (Enticement of child) states,

Enticement of child consists of:

A. enticing, persuading or attempting to persuade a child under the age of sixteen years to enter any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 [30-9-1 NMSA 1978] of the Criminal Code;¹⁷ or

B. having possession of a child under the age of sixteen years in any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 [30-9-1 NMSA 1978] of the Criminal Code .

Whoever commits enticement of child is guilty of a misdemeanor.

A misdemeanor is punishable by imprisonment for less than 1 year in county jail, a fine up to \$1,000, or both. N.M. Stat. Ann. § 31-19-1(A) (Sentencing authority; misdemeanors; imprisonment; and fines; probation).

¹⁶ N.M. Stat. Ann. § 30-6A-2 defines “prohibited sexual act” as

- (1) sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex;
- (2) bestiality;
- (3) masturbation;
- (4) sadomasochistic abuse for the purpose of sexual stimulation; or
- (5) lewd and sexually explicit exhibition with a focus on the genitals or pubic area of any person for the purpose of sexual stimulation;

¹⁷ Article 9 (Sexual offenses) includes, among others, N.M. Stat. Ann. § 30-9-1 (Enticement of child), § 30-9-2 (Prostitution), § 30-9-3 (Patronizing prostitutes), § 30-9-4 (Promoting prostitution), § 30-9-4.1 (Accepting earnings of a prostitute), § 30-9-8 (House of prostitution; public nuisance), § 30-9-11 (Criminal sexual penetration), and § 30-9-13 (Criminal sexual contact of a minor).