

CHAPTER 257
SB 317-FN – FINAL VERSION

02/06/14 0238s

30Apr2014... 1467h

2014 SESSION

14-2810

04/03

SENATE BILL 317-FN

AN ACT relative to trafficking in persons.

SPONSORS: Sen. Soucy, Dist 18; Sen. Carson, Dist 14; Sen. Watters, Dist 4; Sen. Boutin, Dist 16; Sen. Hosmer, Dist 7; Sen. Cataldo, Dist 6; Sen. Kelly, Dist 10; Rep. Cushing, Rock 21; Rep. Shurtleff, Merr 11; Rep. G. Chandler, Carr 1; Rep. Charron, Rock 4; Rep. S. Chandley, Hills 22

COMMITTEE: Judiciary

ANALYSIS

This bill makes various changes to the law on trafficking in persons and authorizes a person injured as a result of trafficking to initiate a civil action for damages or injunctive relief.

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to trafficking in persons.

Be it Enacted by the Senate and House of Representatives in General Court convened:

257:1 New Paragraph; Trafficking in Persons; Definition Added. Amend RSA 633:6 by inserting after paragraph V the following new paragraph:

VI. "Abusing or threatening abuse of law or legal process" means using or threatening to use a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, to exert pressure on another person to cause that person to take some action or refrain from taking some action.

257:2 Interference With Freedom; Trafficking in Persons. Amend RSA 633:7 to read as follows:

633:7 Trafficking in Persons.

I.(a) It is a class A felony to knowingly [~~subject a person to involuntary servitude~~] ***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 [~~legal process or threatening to bring legal action against the person relating to the person's legal status or potential criminal liability~~] ***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) [~~Notwithstanding RSA 651:2, a person convicted of an offense under subparagraph I(a) involving a commercial sex act or sexually explicit performance by a victim under the age of 18 shall be subject to a minimum term of not more than 10 years and a maximum term of not more than 30 years.~~] ***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 ~~[more]~~ **less** than ~~[10]~~ 7 years and a maximum ~~[to be fixed by the court]~~ **term of not more than 30 years**, if the offender knew or believed it likely that the victim would be ~~[coerced into engaging]~~ **involved** in a commercial sex act or sexually-explicit performance.

~~[H.]~~ **IV.** Evidence of a trafficking victim's personal sexual history ~~[or]~~, 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.*

V. *In any investigation or prosecution for an offense under this section, the identity of the victim and the victim's family, and images of the victim and the victim's family, shall be confidential except to the extent disclosure is necessary for the purpose of investigation, prosecution, or provision of services and benefits to the victim and the victim's family, or if disclosure is required by a court order.*

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.*

(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.*

(c) *The defendant shall not be required to provide any official documentation indicating that he or she was a victim of trafficking, but such documentation, if provided, shall create the presumption that the defendant's participation in the offense was a direct result of being a victim of trafficking.*

257:3 New Section; Trafficking in Persons; Civil Remedy. Amend RSA 633 by inserting after section 10 the following new section:

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.

257:4 New Subparagraph; Criminal Code; Limitations. Amend RSA 625:8, III by inserting after subparagraph (h) the following new subparagraph:

(i) For any offense under RSA 633:7, within 20 years, except where the victim was under 18 years of age when the alleged offense occurred, in which case within 20 years of the victim's eighteenth birthday.

257:5 New Paragraph; Prostitution and Related Offenses. Amend RSA 645:2 by inserting after paragraph IV the following new paragraph:

V. A person under 18 years of age shall not be subject to a juvenile delinquency proceeding under RSA 169-B or criminal prosecution for the commission of an offense under subparagraph I(a).

257:6 Victim Compensation; Eligibility. Amend RSA 21-M:8-h, I(a)(3) to read as follows:

(3) Any person who is a victim of sexual abuse and is under the age of 18 at the time the claim is filed;

(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.

257:7 Victim Compensation; Eligible Expenses. Amend RSA 21-M:8-h, V to read as follows:

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.

257:8 Repeal. RSA 633:6, V, relative to the definition of involuntary servitude, is repealed.

257:9 Effective Date. This act shall take effect 90 days after its passage.

Approved: July 25, 2014

Effective Date: October 23, 2014