

New Hampshire Law

Trafficking in Persons

RSA 633:6 Definitions. – In this subdivision:

I. "Commercial sex act" means any sex act because of which anything of value is given, promised to, or received, directly or indirectly, by any person.

II. "Sex act" means any act of sexual contact as defined in RSA 632-A:1, IV, any act of sexual penetration as defined in RSA 632-A:1, V, or any other sexually explicit conduct as defined in RSA 649-A:2.

III. "Sexually-explicit performance" means an act or show involving one or more sex acts, intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, or videotaped.

IV. "Serious harm" includes physical and non-physical harm. It can be any improper threat of a consequence sufficient under the circumstances to compel or coerce a reasonable person in the same situation to provide or continue to provide labor or services, or to engage in commercial sex acts or sexually explicit performances.

V. "Involuntary servitude" means a condition of compulsory service or labor, including commercial sex acts or sexually explicit performances, performed by one person, against his or her will, for the benefit of another. If a person willingly begins to perform the labor or service but later attempts to withdraw and is forced to remain and perform against his or her will, the service becomes involuntary. The payment of a wage or salary is not determinative of the question as to whether that person has been held in involuntary servitude.

RSA 633:7 Trafficking in Persons. –

I. (a) It is a class A felony to knowingly subject a person to involuntary servitude, 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.

(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.

II. It is a class A felony to recruit, 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. 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 than 10 years and a maximum to be fixed by the court, if the offender knew or believed it likely that the victim would be coerced into engaging in a commercial sex act or sexually explicit performance.

III. Evidence of a trafficking victim's personal sexual history or history of commercial sexual activity shall not be admissible at trial.

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

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

(a) All materials, products, and equipment of any kind used in violation of this section.

(b) Any property interest in any conveyance used in furtherance of an act which violates this section.

(c) Any moneys, coin, currency, negotiable instruments, securities, or other investments knowingly used or intended for use in violation of this section.

(d) Any books, records, ledgers, and research material, including formulae, microfilm, tapes, and any other data which are used or intended for use in felonious violation of this section.

(e) Any real property, including any right, title, leasehold interest, and other interest in the whole of any lot or tract of land and any appurtenances or improvements, which real property is knowingly used or intended for use, in any manner or part, in felonious violation of this section.

II. The state shall have a lien on any property subject to forfeiture under this section upon seizure thereof. Upon forfeiture, the state's title to the property relates back to the date of seizure.

III. (a) Property may be seized for forfeiture by any law enforcement agency designated by the department of justice, as follows:

(1) Upon process issued by any justice, associate justice, or special justice of the district or superior court. The court may issue a seizure warrant on an affidavit under oath demonstrating that probable cause exists for its forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of any state or of the United States. The application for process and the issuance, execution, and return of process shall be subject to applicable state law. The court may order that the property be seized and secured on such terms and conditions as are reasonable in the discretion of the court. Such order may include an order to a financial institution or to any fiduciary

or bailee to require the entity to impound any property in its possession or control and not to release it except upon further order of the court. The order may be made on or in connection with a search warrant;

(2) Physically, without process on probable cause to believe that the property is subject to forfeiture under this section; or

(3) Constructively, without process on probable cause to believe that the property is subject to forfeiture under this section, by recording a notice of pending forfeiture in the registry of deeds in the county where the real property is located or at the town clerk's office where the personal property is located stating that the state intends to seek forfeiture of the identified property pursuant to this section.

(b) A seizure for forfeiture without process under subparagraph (a)(2) or (a)(3) shall be reasonable if made under circumstances in which a warrantless seizure or arrest would be valid in accordance with state law.

IV. Upon seizure of any items or property interests the property shall not be subject to alienation, sequestration, or attachment but is deemed to be in the custody of the department of justice subject only to the order of the court.

V. Upon the seizure of any personal property, the person making or directing such seizure shall inventory the items or property interests and issue a copy of the resulting report to any person or persons having a recorded interest, or claiming an equitable interest in the item within 7 days of the seizure.

VI. Upon seizure of any real property, the person making or directing such seizure shall notify any person having a recorded interest or claiming an equitable interest in the property within 7 days of the seizure.

VII. The seizing agency shall cause an appraisal to be made of the property as soon as possible and shall promptly send to the department of justice a written request for forfeiture. This request shall include a statement of all facts and circumstances supporting forfeiture of the property, including the names of all witnesses then known, and the appraised value of the property.

VIII. The department of justice shall examine the facts and applicable law of the cases referred pursuant to paragraph VII, and if it is probable that the property is subject to forfeiture, shall cause the initiation of administrative or judicial proceedings against the property. If upon inquiry and examination, the department of justice determines that such proceedings probably cannot be sustained or that the ends of justice do not require the institution of such proceedings, the department shall make a written report of such findings and send a copy to the seizing agency, and, if appropriate, shall also authorize and direct the release of the property.

IX. The department of justice shall, within 60 days of the seizure, file a petition in the superior court having jurisdiction under this section. If no such petition is filed within 60 days, the items or property interest seized shall be released or returned to the owners.

X. Pending forfeiture and final disposition, the law enforcement agency making the seizure shall:

(a) Place the property under seal;

(b) Remove the property to a storage area for safekeeping;

(c) Remove the property to a place designated by the court;

(d) Request another agency to take custody of the property and remove it to an appropriate location within the state, or in the case of moneys, file a motion for transfer of evidence under RSA 595-A:6. Upon the court's granting of the motion, the moneys shall be immediately forwarded to an interest-bearing seized asset escrow account to be administered by the attorney general.

XI. The court may order forfeiture of all items or property interests under this section, except no item

or property interest shall be subject to forfeiture unless the owner or owners thereof were consenting parties to a felonious violation of this section and had knowledge thereof.

XII. The department of justice may petition the superior court in the name of the state in the nature of a proceeding in rem to order forfeiture of items or property interests subject to forfeiture under the provisions of this section. Such petition shall be filed in the court having jurisdiction over any related criminal proceedings which could be brought under this section. Such proceeding shall be deemed a civil suit in equity in which the state shall have the burden of proving all material facts by a preponderance of the evidence and in which the owners or other persons claiming an exception pursuant to paragraph XI shall have the burden of proving such exception.

XIII. The court shall issue orders of notice to all persons who have a recorded interest or claim an equitable interest in said items or property interests seized under this section and shall schedule a hearing on the petition to be held within 90 days of the return date on said petition.

XIV. At the request of any party to the forfeiture proceeding, the court shall grant a continuance until the final resolution of any criminal proceedings which were brought against a party under this section and which arose from the transaction which gave rise to the forfeiture proceeding. No party's interest in property shall be forfeited unless a party has been found guilty of the underlying felonious charge.

XV. At the hearing, the court shall hear evidence and make findings of fact and rulings of law as to whether the property is subject to forfeiture under this section. Except in the case of proceeds, upon a finding that the property is subject to forfeiture the court shall determine whether the forfeiture of the property is not excessive in relation to the underlying criminal offense. In making this determination the court shall consider whether in addition to any other pertinent considerations:

(a) There is a substantial connection between the property to be forfeited and the underlying offense;

(b) Criminal activities conducted by or through the use of the property were extensive; and

(c) The value of the property to be forfeited greatly outweighs the cost of prosecution and the harm caused by the criminal conduct.

XVI. The court shall, thereupon, make a final order, from which all parties shall have a right of appeal. Final orders for forfeiture of property under this section shall be implemented by the department of justice and shall provide for disposition of the items or property interests by the state in any manner not prohibited by law, including payment of restitution to a victim of trafficking or sale at public auction. The department of justice shall pay the reasonable expenses of the forfeiture proceeding, seizure, storage, maintenance of custody, advertising, court costs, and notice of sale from any money forfeited and from the proceeds of any sale or public auction of forfeited items. All outstanding recorded liens on said items or property interests seized shall be paid in full upon conclusion of the court proceedings from the proceeds of any sale or public auction of forfeited items.

XVII. Overseas assets of persons convicted of trafficking in persons shall also be subject to forfeiture to the extent they can be retrieved by the government.

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

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

I. Interests in property subject to forfeiture under the provisions of RSA 633:8, I(a), I(b), I(c)

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

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

(a) The department of justice shall provide a notice of intent to forfeit property administratively by publication for 3 consecutive weeks in a local newspaper of general circulation where the property was seized.

(b) In addition, to the extent practicable, the department of justice shall provide notice by certified mail return receipt addressee only requested, of intent to forfeit the property administratively to all persons having a recorded interest or claiming an equitable interest in the property seized.

(c) Notice by publication and by mail shall include:

(1) A description of the property;

(2) Its appraised value;

(3) The date and place of seizure;

(4) The violation of law alleged against the subject property;

(5) Instructions for filing a claim and posting bond or filing a petition for remission or mitigation;

and

(6) Notice that the property will be forfeited to the state if a petition for remission or mitigation has not been filed in a timely manner or a claim has not been filed and bond has not been posted in a timely manner.

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

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

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

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

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

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

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

633:10 Restitution and Compensation. –

I. A person convicted under this section shall be ordered by the court to pay restitution to the victim. Such restitution may include but not be limited to:

(a) Any economic loss compensable under RSA 651:62, in accordance with the provisions of RSA 651:61-a through RSA 651:67; and

(b) The value of the victim's labor as guaranteed under the minimum wage law and overtime provisions of the Fair Labor Standards Act or the state minimum wage law, whichever is greater.

II. To the extent not included in economic loss that is compensable under paragraph I, the court may also order a person convicted under this section to pay compensation as follows:

(a) Costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion;

(b) Costs of necessary transportation, temporary housing, and child care, at the court's discretion;

(c) Return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair;

(d) Expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his or her associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items; and

(e) Any and all other losses suffered by the victim as a result of an offense under this section.

III. The return of the victim to her or his home country or other absence of the victim from the jurisdiction shall not relieve the defendant of his or her restitution obligation.

IV. Except as otherwise provided in this section, the provisions of RSA 651:61-a through RSA 651:67 shall govern all restitution and compensation orders.