

RESOLUTION OF THE
NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL -- Third Year, 2017

AN ACT

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, LAW AND ORDER,
NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL; AMENDING NAVAJO
NATION CODE, TITLE 17 AND ENACTING THE LAW AGAINST HUMAN TRAFFICKING
2017

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Health, Education and Human Services Committee of the Navajo Nation Council reviews and recommends resolutions relating to social services and health. 2 N.N.C. §401(B)(6)(a).
- B. The Law and Order Committee of the Navajo Nation Council reviews and makes recommendations to the Navajo Nation Council proposed amendments to the Navajo Nation Code. 2 N.N.C. §601(B)(14).
- C. The Naabik'íyáti' Committee of the Navajo Nation Council reviews proposed legislation which requires final action by the Navajo Nation Council. 2 N.N.C. §164(A)(9)
- D. Enactments of positive law must be reviewed and approved by resolution by the Navajo Nation Council. 2 N.N.C. §164(A).

SECTION TWO. FINDINGS

- A. The Navajo Nation leaders have a duty to protect and enhance the Diné Way of Life, the sovereignty of the people and their government. 1 N.N.C. ch. 2, cl. 3 (2002).
- B. Diné Traditional Law declares and teaches that the Legislative Branch leaders "shall enact policies and laws to address the immediate and future needs." 1 N.N.C. §203 (D)
- C. Diné Customary Law declares and teaches, "[i]t is the right and freedom of the people that every child and every elder be respected, honored and protected with a healthy physical and mental environment, free from all abuse." 1 N.N.C. §204(E).
- D. Trafficking is defined as the act of transporting, trading, or dealing, especially in illegal goods or people. *Trafficking*, Black's Law Dictionary (10th ed. 2014).

- E. Human Trafficking is the illegal recruitment, transportation, transfer, harboring, or receipt of a person, especially one from another country, with the intent to hold the person captive or exploit the person for labor, services, or body parts. Human trafficking offenses include forced prostitution, forced marriages, sweat-shop labor, slavery, and harvesting organs from unwilling donors. *Human trafficking, Black's Law Dictionary* (10th ed. 2014).
- F. The Navajo Nation must take appropriate measures to prevent human trafficking, punish the traffickers, assist and protect the victims of such trafficking, and protecting their human rights. Human Trafficking constitutes a serious offense and a violation of human rights.
- G. In order to deter traffickers and bring them to justice, it is necessary to appropriately criminalize human trafficking and related offenses, prescribe appropriate punishment, give priority to the investigation and prosecution of trafficking offenses and assist and protect the victims of such offenses.
- H. All actions and initiatives against human trafficking must be non-discriminatory and take gender equality into account and take a child-sensitive approach. Children who are victims or witnesses are particularly vulnerable and need special protection, assistance and support appropriate to their age, gender, level of maturity and special needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process.
- I. Effective measures against human trafficking require national coordination and cooperation between government agencies as well as between government agencies and civil society, including non-governmental organizations.
- J. Human Trafficking is a transnational crime, where criminals work across boundaries, therefore the response to human trafficking gives rise to jurisdictional limitations, and the Navajo Nation must cooperate bilaterally and multilaterally to effectively suppress this crime.
- K. Advocacy, awareness-raising, education, research, training, counseling and other measures are necessary to help families, local communities and governmental and civil society institutions to fulfil their responsibilities in preventing human trafficking, in protecting and assisting the victims of such trafficking and in law enforcement.
- L. The authority of the Navajo Nation (Navajo Tribe of Indians) to punish crimes is inherent and pre-existed the creation of the United States of America. In 1978, United States Supreme Court

ruled in *Oliphant v. Suquamish Indian Tribe* that Indian tribes do not have criminal jurisdiction to try and to punish non-Indians. In the same case, Justice Marshall and Chief Justice Burger dissented. Navajo Nation never participated in the *Oliphant* litigation and should not be restricted by the *Oliphant* decision. The Treaty of 1868 is a solemn agreement between the United States and the Navajo Nation. Pursuant to the Treaty, the Navajo Nation is willing to defer to the federal government to try and to punish non-Indians who commit crimes on Navajo Nation. When the federal government does not exercise jurisdiction to try and to punish non-Indians who commit crimes on Navajo Nation, it harms and jeopardizes the public safety of Navajoland, including all of its residents.

M. Enacting the Law against Human Trafficking is in the Navajo Nation's best interest in order to protect the Navajo Nation people.

SECTION THREE. AMENDING NAVAJO NATION CODE TITLE 17

The Navajo Nation amends the Navajo Nation Code, Title 17 as follows:

NAVAJO NATION CODE

TITLE 17. LAW AND ORDER

CHAPTER 3. OFFENSES

SUBCHAPTER 26. LAW AGAINST HUMAN TRAFFICKING

§650. Title

The Law may be cited as the Navajo Nation Law against Human Trafficking.

§651. Authority

Navajo Nation court shall exercise jurisdiction for crimes covered by this subchapter over all persons, including non-Indians, when a federal law enforcement agency or a federal court declines or does not exercise jurisdiction to prosecute the crime.

§652. Definitions

A. "Coercion" for the purposes of human trafficking means:

- 1. causing or threatening to cause harm to any person;

2. using or threatening to use physical force against any person;
3. abusing or threatening to abuse the law or legal process;
4. threatening to report the immigration status of any person to governmental authorities; or
5. knowingly destroying, concealing, removing, confiscating or retaining any actual or purported governmental document of any person;

B. "Commercial sexual activity" means any sexual act or sexually explicit exhibition for which anything of value is given, promised to or received by a person.

§653. Human Trafficking

A. Offense. A person commits human trafficking if he or she knowingly;

1. recruits, solicits, entices, transports or obtains by any means another person with the intent or knowledge that force, fraud or coercion will be used to subject that person to provide labor, services or to engage in commercial sexual activity; or
2. recruits, solicits, entices, transports or obtains by any other means a person under the age of eighteen (18) years with the intent or knowledge that the person will be caused to engage in commercial sexual activity; or
3. benefits, financially or by receiving anything of value, from the labor, services or commercial sexual activity of another person with the knowledge that force, fraud or coercion was used to obtain the labor, services or commercial sexual activity.

B. Sentence.

1. A person found guilty of human trafficking may be sentenced to imprisonment for a term not to exceed three hundred and sixty-five (365) days and a fine up to five thousand dollars (\$5,000) or both.
2. Additionally, a trial court may order that restitution or nályééh be paid to the victim(s).

C. Unit of Prosecution. Prosecution for human trafficking shall not prevent prosecution under any other provision of law when violations of other provisions may be prosecuted from the same circumstances.

D. Immunity of Victim(s). In a prosecution for human trafficking, a victim shall not be charged with accessory to the crime of human trafficking or with prostitution under 17 N.N.C. §431.

§664. Cooperation

A. Law enforcement, labor and other relevant agencies shall, as appropriate, cooperate with one another to prevent and prosecute trafficking crimes and to protect the victims of trafficking in persons, without prejudice to the victims' right to privacy, by exchanging and sharing information and participating in training programs, in order, among other things.

1. To identify victims and traffickers;
2. To identify (the type of) travel documents used to cross the border for the purpose of trafficking in persons;
3. To identify the means and methods used by criminal groups for the purpose of trafficking in persons;
4. To identify best practices on all aspects of preventing and combating trafficking in persons;
5. To provide assistance and protection to victims, witnesses and victim witnesses.

B. In the development and implementation of policies, programs and measures to prevent and combat trafficking in persons and to assist and protect its victims, tribal agencies shall cooperate, as appropriate, with non-governmental organizations, other civil society institutions and international organizations.

SECTION FOUR. CODIFICATION

The provisions of the Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

SECTION FIVE. SAVINGS CLAUSE

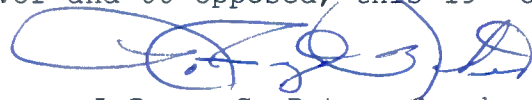
Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.

SECTION SIX. EFFECTIVE DATE

The provisions of this Act shall become effective in accordance with 2 N.N.C. § 221(B).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 16 in favor and 00 opposed, this 19th day of July 2017.



LoRenzo C. Bates, Speaker
Navajo Nation Council


7/28/17

Date

Motion: Honorable Seth A. Damon
Second: Honorable Amber Kanazbah Crotty
Speaker Bates not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(10), on this 7th day of August 2017.



Russell Begaye, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (c)(11), on this _____ day of _____ 2017 for reason(s) expressed in the attached letter to the Speaker

Russell Begaye, President
Navajo Nation

NAVAJO NATION

RCS# 807

NNC Summer Session

7/19/2017
05:13:12 PM

Amd# to Amd#

Legis.No.0117-17 (as amended)

PASSED

MOT Damon
SEC Crotty

Amending Navajo Nation Code,
Title 17 and Enacting the Law
Against Human Trafficking 2017

Yea : 16

Nay : 0

Not Voting : 8

Yea : 16

Begay, K
Begay, NM
Begay, S
Bennett

Brown
Chee
Crotty
Damon

Hale
Perry
Pete
Smith

Tso
Tsosie
Witherspoon
Yazzie

Nay : 0

Not Voting : 8

Bates
BeGaye, N

Daniels
Filfred

Jack
Phelps

Shepherd
Slim