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FISCAL AND POLICY NOTE
Revised

House Bill 876
Judiciary

(Delegate Lawton, *et al.*)

Judicial Proceedings

Human Trafficking, Extortion, and Involuntary Servitude

This bill expands the prohibition against sexual solicitation of a minor and expands prohibitions against extortion. The bill also renames the crime of pandering to human trafficking, creates an enhanced penalty for human trafficking involving a minor, and gives the District Court jurisdiction concurrent with the circuit courts over felony human trafficking.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's incarceration penalty provisions.

Local Effect: Potential minimal increase in revenues due to the bill's monetary penalty provisions.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill expands the crime of sexual solicitation of a minor by adding commission of a violation of prostitution laws as a prohibited intent.

The bill also expands the crime of extortion by prohibiting a person from obtaining or conspiring to obtain labor or services by wrongfully inducing consent and adds actual or threatened destruction, concealment, removal, confiscation, or possession of any immigration or government identification document with intent to harm the immigration

status of another person as a prohibited way of inducing consent. Labor and services are also added to the language of prohibitions against extortion by false accusation and extortion by verbal threat.

In addition, the bill renames the crime of pandering as human trafficking, and creates an enhanced penalty for human trafficking involving a minor. A person who commits human trafficking involving a victim who is a minor is guilty of a felony and subject to maximum penalties of 25 years' imprisonment and/or a fine of \$15,000. The District Court is granted jurisdiction concurrent with the circuit court over felony human trafficking.

Current Law: Maryland statutes do not specifically address forced labor or involuntary servitude. However, these acts are prohibited by federal constitutional and statutory provisions. Maryland statutes generally prohibit the practice of prostitution.

The Thirteenth Amendment to the U.S. Constitution abolishes slavery and federal laws prohibit peonage (a system of forced labor based on the debts of workers), involuntary servitude, and forced labor. The penalties for violation of the federal laws include fines and up to 20 years imprisonment. Anyone who is convicted of obstruction, attempted obstruction, or prevention of the enforcement of any of these provisions is subject to the same penalties. If the violations result in the victim's death or include kidnapping, aggravated sexual abuse, or attempted murder, kidnapping, or aggravated sexual abuse, the violator is subject to a fine and/or any term of years of imprisonment up to life imprisonment.

Under the prohibition against sexual solicitation of a minor, a person may not, with intent to commit a violation of prohibitions against second degree rape or second or third degree sexual offense, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under the prohibitions against second degree rape or second or third degree sexual offense. A violator is guilty of a felony and subject to maximum penalties of 10 years' imprisonment and/or a \$25,000 fine.

Under the prohibition against extortion, a person may not obtain, attempt to obtain money, property, or anything of value from another person with the person's consent, if the consent is induced by wrongful use of actual or threatened force or violence or by wrongful threat of economic injury. If the value of the property is \$500 or more, a violator is guilty of a felony and subject to maximum penalties of imprisonment for 10 years and/or a \$5,000 fine. If the value of the property is less than \$500, a violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 18 months and/or a fine of \$500.

Under the prohibition against extortion by false accusation, a person, with the intent to extort money or procure other profit, may not falsely accuse or threaten to accuse another of a crime or of anything that, if the accusation were true, would tend to bring the other into contempt or disrepute. A violator is guilty of a misdemeanor and subject to a maximum penalty of imprisonment for two years.

Under the prohibition against extortion by verbal threat, a person, with the intent to extort or gain money, property, or anything of value from another, may not verbally threaten to: (1) accuse any person of a crime that may be charged by indictment under the laws of the State or of anything that, if true, would bring the person into contempt or disrepute; or (2) injure the person or property of anyone. A violator is guilty of a felony and subject to imprisonment for at least 2 but not more than 10 years.

Under the prohibition against pandering, a person may not knowingly:

- take or cause another to be taken to any place for prostitution;
- place, cause to be placed, or harbor another in any place for prostitution;
- persuade or encourage by threat or promise another to be taken to or placed in any place for prostitution;
- unlawfully take or detain another with the intent to use force, threat, or persuasion to compel the other to marry the person or a third person or perform a sexual act, sexual contact, or vaginal intercourse; or
- receive consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignation.

A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment of 10 years and/or a fine of \$5,000.

The District Court generally does not have jurisdiction to try a criminal case charging the commission of a felony, unless specifically enumerated by statute.

Background: Human and sex trafficking has been described as a growing underground industry fueled largely by the extreme economic hardship that families face in many parts of the world. Thirteen states have already passed criminal statutes, and several states have created task forces to study the issue.

Human trafficking is a modern day form of slavery and a lucrative criminal enterprise in today's world economy. It includes the recruitment, transportation, and sale of individuals, usually members of vulnerable populations in countries outside the United

States, for labor. Labor is forced and maintained through violence, threats, and coercion. Living conditions for victims are often prison-like. It is believed that the number of people involved began growing in the early 1990s and that the trend continues to increase. The United States is a country of destination for many trafficked persons, the majority of whom are transported from Asia and Latin America, with increasing numbers from the Newly Independent States of the former Soviet Union, Eastern Europe, and other regions.

Human trafficking takes many forms. It involves transporting people within or across borders to, among other things, labor in sweatshops, perform domestic work, work in the sex industry, work in hotels or restaurants, peddle or beg, or work as farm or timber laborers. Victims may also be exploited in mail-order bride or child adoption schemes. In their countries of origin, victims of trafficking commonly experience poverty, oppression, persecution, civil unrest, and lack of opportunity. Victims are often deceived by recruiters and led to believe that the opportunity offered will bring them and their loved ones a better life.

At the international and national level, remedies exist to address human trafficking. In February 2000, the United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the U.N. Convention Against Transnational Organized Crime. The federal Trafficking Victims Protection Act of 2000 (TVPA) is designed to prevent trafficking, punish traffickers, and protect and assist trafficked persons. TVPA extends assistance and benefits to victims of “severe forms of trafficking” which is defined as “a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” TVPA protects trafficked persons by providing immigration status (T visa), permission to work, and possible U.S. permanent residence.

The Trafficking Victims Protection Reauthorization Act of 2003 amended TVPA to remove obstacles in the process of securing needed assistance, increase benefits to victims of trafficking, increase knowledge about trafficking in persons, enhance prevention efforts, provide greater protection to victims, and increase prosecution.

The federal Refugee Act of 1980 provides cash assistance to newly arrived refugees, who are not eligible for Temporary Cash Assistance (TCA), for the first eight months after arrival. Persons who are victims of a severe form of trafficking are also eligible for this

cash assistance. Approximately 300 refugees per month in Maryland participate in this program.

In Baltimore City, Baltimore, Carroll, Howard, Anne Arundel, and Harford counties, beginning October 1, 2001, TCA cash assistance was replaced by Refugee Transitional Cash Assistance, which is administered by the voluntary agencies that resettle refugees. The monthly grant for individuals is \$195 for the first four months, dropping to \$180 for the final four months.

States have also enacted laws against human trafficking. Proponents of state laws against human trafficking contend that current laws prohibiting kidnapping, rape, sexual offense, prostitution, and the like do not adequately address human trafficking, in part because of the psychological aspect of the coercion that trafficking victims are subjected to and that federal authorities do not have the resources to address all cases of human trafficking that exist. Prior to the 2006 session, 13 states – Arizona, Arkansas, California, Florida, Illinois, Kansas, Louisiana, Minnesota, Missouri, Nevada, New Jersey, Texas, and Washington – had enacted laws to make trafficking a state offense.

According to the National Conference of State Legislatures, the following 12 states had enactments relating to human trafficking in 2006: California, Colorado, Connecticut, Florida, Hawaii, Idaho, Iowa, Maine, Michigan, Mississippi, North Carolina, and Virginia.

The extent to which human trafficking actually occurs in Maryland is unknown.

State Fiscal Effect: General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities. The number of people convicted of crimes under this bill is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,300 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$465 per month. Excluding medical care, the average variable costs total \$134 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their

incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2008 are estimated to range from \$21 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provisions because these cases would likely be heard in the circuit courts.

Additional Information

Prior Introductions: None. However, SB 630 and HB 996 of 2006 addressed the subject of human trafficking and had some similar features to this bill. SB 630 passed the Senate, was referred to the House Judiciary Committee, where no further action was taken. HB 996 received a hearing in Judiciary, but no further action was taken.

Cross File: None designated, although SB 606 is identical.

Information Source(s): State Department of Assessments and Taxation; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Department of Legislative Services

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Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510