

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 299

(Senator Jennings, *et al.*)

Judicial Proceedings

Judiciary

Wiretapping and Electronic Surveillance - Investigation of Human Trafficking

This bill adds human trafficking to the list of crimes for which evidence may be gathered during a criminal investigation through the interception of oral, wire, or electronic communications. The bill also adds human trafficking to the list of crimes for which a judge may grant an order authorizing the interception of wire, oral, or electronic communications.

Fiscal Summary

State Effect: None. The bill is procedural/technical in nature and does not materially affect State finances.

Local Effect: None. The bill is procedural/technical in nature and does not materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: Except as otherwise provided in statute, it is unlawful for a person to:

- willfully intercept, endeavor to intercept, or procure any other person to intercept a wire, oral, or electronic communication;
- willfully disclose, or endeavor to disclose, to any other person the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept; and

- willfully use, or endeavor to use, the contents of a wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through an illegal intercept.

However, it is lawful for law enforcement officers and persons acting with the prior direction and under the supervision of law enforcement officials to intercept communications as part of a criminal investigation to provide evidence of the commission of the following crimes:

- murder;
- kidnapping;
- rape;
- sexual offense in the first or second degree;
- child abuse in the first or second degree;
- child pornography;
- gambling;
- robbery;
- arson and related felonies;
- bribery;
- extortion;
- dealing in a controlled dangerous substance;
- fraudulent insurance act;
- manufacture or possession of destructive device;
- sexual solicitation or abuse of a minor;
- obstruction of justice; and
- a conspiracy or solicitation to commit any of the above crimes.

Wiretapping is also authorized if a person has created a barricade situation, and there is probable cause to believe a hostage or hostages may be involved.

The exception applies so long as the interceptor is a party to the communication or one of the parties to the communication has given prior consent to the interception.

The Attorney General, State Prosecutor, or any State's Attorney may apply to a judge of competent jurisdiction to grant an order authorizing interception of wire, oral, or electronic communications by investigative or law enforcement officers when the interception may provide or has provided evidence of the commission of specified crimes. However, no application or order is required if the interception is lawful under the general wiretap provisions.

Human Trafficking: Chapters 340 and 341 of 2007 renamed the crime of pandering to human trafficking. Under the human trafficking prohibition, 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, induce, or entice, or encourage another to be taken to or placed in any place for prostitution;
- 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;
- engage in a device, scheme, or continuing course of conduct intended to cause another to believe that if the other did not take part in a sexually explicit performance, the other or a third person would suffer physical restraint or serious harm; or
- destroy, conceal, remove, confiscate, or possess an actual or purported passport, immigration document, or government identification document of another while otherwise violating or attempting to commit these acts.

A person who commits human trafficking involving an adult victim is guilty of a misdemeanor and subject to maximum penalties of 10 years imprisonment and/or a fine of \$5,000. The misdemeanor offense of human trafficking is subject to prosecution at any time. The violator is subject to confinement in the penitentiary and may reserve a point or question for *in banc* review as provided by the Maryland Constitution.

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 felony human trafficking statute also prohibits a person from unlawfully taking or detaining 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.

A person who knowingly aids, abets, or conspires in the violation of human trafficking laws or knowingly benefits financially from ventures or activities in violation of State human trafficking laws is subject to the same penalties imposed on a person who violated the applicable statute.

The District Court has concurrent jurisdiction with the circuit court over the crime of human trafficking.

Background: The U.S. Department of State has estimated that approximately 600,000 to 800,000 victims are trafficked annually across international borders worldwide, and approximately half of these victims are minors. According to the 2005 report, 80% of internationally trafficked victims are female and 70% are trafficked into the sex industry. The United Nations' International Labor Organization estimates that at least 12.3 million adults and children are in forced labor, bonded labor, and commercial sexual servitude. Of this group, 1.4 million are in commercial sexual servitude and 56% of all forced labor victims are women and girls.

According to the Maryland State Commission on Criminal Sentencing Policy, five people have been convicted of human trafficking in the State's circuit courts from fiscal 2001 through 2010.

Additional Information

Prior Introductions: None.

Cross File: HB 345 (Delegate Simmons, *et al.*) - Judiciary.

Information Source(s): Department of State Police; Maryland State Commission on Criminal Sentencing Policy; Baltimore City; City of Rockville; Kent, Montgomery, Washington, and Worcester counties; U.S. Department of State; United Nations; Department of Legislative Services

Fiscal Note History: First Reader - February 11, 2011
mc/kdm Revised - Senate Third Reader - March 25, 2011

Analysis by: Amy A. Devadas

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