

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 101
Judiciary

(Delegate C. Howard, *et al.*)

Criminal Law - Human Trafficking and Related Crimes - Penalties

This bill alters the classifications of and/or penalties for the following offenses: (1) human trafficking; (2) receiving the earnings of a prostitute; (3) abduction of a child younger than age 16; and (4) prostitution.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential significant increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: The bill alters the classifications of and/or penalties for several offenses, as listed below in **Exhibit 1**.

Exhibit 1
Classifications and Penalties under Current Law and under the Bill

Offense	Current Penalty	Penalty Under HB 101
Human Trafficking of an Adult (In General)	Misdemeanor Imprisonment for up to 10 years and/or a \$5,000 maximum fine	Felony Imprisonment for up to 10 years and/or a \$15,000 maximum fine
Human Trafficking of a Minor/Compelled Marriage, etc.	Felony Imprisonment for up to 25 years and/or a \$15,000 maximum fine	Felony Imprisonment for up to 25 years and/or a \$50,000 maximum fine
Receiving Earnings of a Prostitute	Misdemeanor Imprisonment for up to 10 years and/or a \$10,000 maximum fine	Felony Imprisonment for up to 10 years and/or a \$15,000 maximum fine
Abduction of Child Younger than Age 16	Felony Imprisonment for up to 25 years and/or a maximum fine of \$5,000.	Felony Imprisonment for up to 25 years and/or a maximum fine of \$50,000.
Prostitution	Misdemeanor Imprisonment for up to 1 year and/or a \$500 maximum fine	Misdemeanor Imprisonment for up to 5 years and/or a \$15,000 maximum fine

Source: Department of Legislative Services

Current Law:

Human Trafficking of an Adult (In General): 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, 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.

In general, a person who commits human trafficking involving an adult victim is guilty of a misdemeanor and subject to imprisonment for up to 10 years and/or a maximum fine of \$5,000. While a misdemeanor generally carries a 1-year statute of limitations, 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.

Human Trafficking of a Minor: A person who commits human trafficking involving a victim who is a minor (defined as an individual younger than age 18) is guilty of a felony and subject to imprisonment for up to 25 years and/or a maximum fine of \$15,000. In a prosecution for human trafficking of a minor, it is not a defense that the defendant did not know the age of the victim. A felony may be prosecuted at any time.

Human Trafficking (Compelled Marriage or Performance of Specified Acts): The felony human trafficking penalty also applies to a person who knowingly takes or detains another person with the intent to use force, threat, coercion, or fraud to compel the other person to marry the person or a third person or perform a sexual act, sexual contact, or vaginal intercourse.

Human Trafficking (Financial Benefit or Aiding and Abetting): 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 courts over the crime of felony human trafficking.

Receiving Earnings of a Prostitute: A person may not receive or acquire money or proceeds from the earnings of a person engaged in prostitution with the intent to (1) promote a crime under this subtitle; (2) profit from a crime under this subtitle; or (3) conceal or disguise the nature, location, source, ownership, or control of money or proceeds of a crime under this subtitle.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to 10 years and/or a \$10,000 maximum fine. While a misdemeanor generally carries a 1-year statute of limitations, the misdemeanor offense of receiving the earnings of a prostitute is subject to prosecution at any time.

Abduction of Child Younger than Age 16: A person is prohibited from persuading or enticing or aiding in the persuasion or enticement of an individual younger than age 16 from the individual's home or from the custody of the individual's parent or guardian and knowingly secreting or harboring or aiding in the secreting or harboring of the individual for the purpose of committing a sexual crime (a crime under Title 3, Subtitle 3 of the Criminal Law Article). Violators are guilty of a felony, punishable by imprisonment for up to 25 years and/or a maximum fine of \$5,000.

Prostitution: Under Criminal Law Article, § 11-306, a person may not knowingly (1) engage in prostitution or assignation by any means; (2) keep, set up, occupy, maintain, or operate a building, structure, or conveyance for prostitution or assignation; (3) allow a building, structure, or conveyance owned or under the person's control to be used for prostitution or assignation; (4) allow or agree to allow a person into a building, structure, or conveyance for prostitution or assignation; or (5) procure or solicit, or offer to procure or solicit, for prostitution or assignation. A person who violates this section is guilty of prostitution, a misdemeanor punishable by imprisonment for up to one year and/or a \$500 maximum fine.

Chapter 357 of 2015 established that in a prosecution for a charge relating to prostitution under Criminal Law Article § 11-306, it is an affirmative defense of duress if the defendant committed the act as a result of being a victim of an act committed by another person who was charged with violating the prohibition against human trafficking under federal law or § 11-303 of the Criminal Law Article. A defendant is prohibited from asserting the affirmative defense unless the defendant notifies the State's Attorney of the defendant's intention to assert the defense at least 10 days prior to trial.

Background: **Exhibit 2** contains information on the number of violations of the offenses affected by the bill in the District Court and the circuit courts during fiscal 2015. It should be noted that a "violation" is a charge/count brought before the court; it is not a conviction. Also, one defendant may represent multiple violations.

Exhibit 2
Violations of the Offenses Affected by the Bill
District Court and Circuit Courts
Fiscal 2015

<u>Offense</u>	<u>District Court</u> <u>Violations</u>	<u>Circuit Court</u> <u>Violations</u>
Human Trafficking of an Adult (In General)	128	177
Human Trafficking of a Minor/Compelled Marriage, etc.	46	56
Human Trafficking – Financial Benefit (Adult Victim)	23	15
Human Trafficking – Financial Benefit (Minor Victim)	8	1
Receiving Earnings of a Prostitute	39	69
Abduction of Child Younger than Age 16	1	2
Prostitution	2,031	702

Source: Maryland Judiciary

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) compiles and analyzes information on individuals sentenced for crimes eligible for the Maryland sentencing guidelines in the State's circuit courts. MSCCSP gets its information from sentencing guidelines worksheets completed and voluntarily submitted to the commission by circuit court judges and other data sources. **Exhibit 3** contains information MSCCSP received on individuals sentenced in the circuit courts during fiscal 2015 for the crimes affected by the bill.

MSCCSP advises that the groups of individuals listed below are not mutually exclusive. The commission received sentencing information concerning 28 defendants sentenced on 36 counts of the offenses affected by the bill during fiscal 2015 in the State's circuit courts.

Exhibit 3
Sentencing Information Received by MSCCSP on Offenses Affected by the Bill
Circuit Courts
Fiscal 2015

<u>Offense</u>	<u>Sentencing Information Received</u>
Human Trafficking of an Adult (In General)	10 people received sentences 14 total counts
Human Trafficking of a Minor/Compelled Marriage, etc.	4 people sentenced Each person sentenced for 1 count
Receiving Earnings of a Prostitute	9 people sentenced Each person sentenced for 1 count
Abduction of Child Younger than Age 16	0 people sentenced
Prostitution	7 people sentenced 9 total counts

Source: Maryland State Commission on Criminal Sentencing Policy

The bill's only change to an existing incarceration penalty is the increase of the maximum incarceration penalty for prostitution from one year to five years. MSCCSP advises that the sentences imposed for the nine counts of prostitution featured in Exhibit 3 ranged from no incarceration to 12 months, with an average sentence of 6.6 months, including suspended time. *Excluding* suspended time, the average sentence imposed for these nine counts ranged from no incarceration to 7.7 months, with an average sentence of 2.1 months. Information is not readily available on the sentences imposed for prostitution cases in the District Court.

State Fiscal Effect: The bill changes the penalties and/or classification of several offenses. Based on the bill's changes to the penalties for the three most common offenses in the District Court and the circuit courts (misdemeanor human trafficking of an adult, receiving earnings of a prostitute, and prostitution), general fund revenues increase and general fund expenditures increase, perhaps significantly, as noted below.

State Revenues: General fund revenues increase, perhaps significantly, as a result of the bill's monetary penalty provisions from cases heard in the District Court. The magnitude of this increase depends on the frequency with which judges impose fines in excess of the

monetary penalties allowed under existing statute and the extent to which imposed fines exceed current maximum fines.

MSCCSP advises that because it is tasked with analyzing incarceration penalties, it receives no information or incomplete information about fines imposed as part of a sentence in circuit court cases. That being said, the worksheets submitted to MSCCSP for 3 of the 28 defendants whose sentencing information is featured in Exhibit 3 include specific fine information. According to those worksheets, two defendants, who were each sentenced for one count of prostitution, each received a \$200 fine (out of a \$500 maximum possible fine). Another defendant, who was convicted of three counts of prostitution, received \$145 in total fines.

State Expenditures: General fund expenditures increase, perhaps significantly, as a result of the bill's incarceration penalty for prostitution due to people being committed to State correctional facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The magnitude of this increase depends on (1) the extent to which judges impose longer sentences on defendants convicted of prostitution and (2) the magnitude of the increase in actual jail time served by defendants convicted of prostitution.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,300 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 State inmate (including variable health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The Department of Public Safety and Correctional Services advises that in fiscal 2015, it conducted intake at correctional facilities for 48 offenders with at least one conviction for prostitution. Prostitution was the most serious offense for 27 of these offenders, with an average sentence of 5.1 months, representing 42.5% of the maximum incarceration penalty under current statute.

For illustrative purposes only, if judges sentence individuals convicted of prostitution (as their most serious offense) to 42.5% of the maximum incarceration penalty under the bill, then the average sentence imposed is 25.5 months. This represents an increase of 20.4 months in the average sentence.

As noted above, the average cost (excluding overhead) of housing an inmate in a State correctional facility is approximately \$770 per month or \$9,240 per year. Applying this cost to the additional 20.4 months of incarceration mentioned above results in an additional expenditure of \$15,708 per individual convicted of prostitution under the bill for the entire 20.4 months of additional time served.

Any shift in cases from the District Court to the circuit courts is not anticipated to materially affect general fund expenditures for the Judiciary. Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

Local Revenues: Revenues increase, perhaps significantly, as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase, perhaps significantly, as a result of the bill's incarceration penalty for prostitution. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Any shift in cases from the District Court to the circuit courts under the bill can be handled with existing budgeted local resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of Public Safety and Correctional Services, Department of Legislative Services

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