

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE

House Bill 6
Judiciary

(Delegate Chang)

Criminal Law - Human Trafficking - Felony

This bill establishes that all violations of the State's prohibition on human trafficking are felony offenses.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances, as discussed below.

Local Effect: The bill is not expected to materially affect local finances, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: The State's prohibition on human trafficking under § 11-303 of the Criminal Procedure Article prohibits several acts, which are considered felonies or misdemeanors depending on the nature of the crime. The bill reclassifies the acts listed below as Human Trafficking of an Adult (In General) from misdemeanors to felonies. As noted below, an individual who knowingly benefits financially from a violation of the human trafficking statute or knowingly aids, abets, or conspires in a violation of the human trafficking statute is subject to the same penalties as the underlying human trafficking crime.

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.

Under current law, 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 specified in 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 felony human trafficking under § 11-303(b) of the Criminal Law Article (human trafficking of a minor, compelled marriage, or performance of specified acts).

Background: According to the Judiciary, there were 77 violations of § 11-303(a) of the Criminal Law Article (Human Trafficking – In General) and 70 violations of § 11-303(e) of the Criminal Law Article (Human Trafficking – Financial Benefit or Aiding and Abetting) filed in the District Court during fiscal 2017. The Maryland State Commission on Criminal Sentencing Policy advises that it received information on 11 individuals sentenced for misdemeanor human trafficking (in general) in the State’s circuit courts during fiscal 2017.

State Revenues: Any decrease in general fund revenues from fines in cases shifted from the District Court to the circuit courts is not expected to materially affect State finances.

State Expenditures: The bill is not expected to materially affect State expenditures or District Court caseloads. While the bill does not change incarceration penalties, 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 more stringent penalty provisions, applicable to some offenses for prior felony convictions. Based on fiscal 2017 statistics, the bill may shift as many as 147 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.

The Office of the Public Defender (OPD) advises that because OPD provides representation in these cases, the bill does not have a fiscal impact on the office.

Local Revenues: Any increase in revenues from fines imposed in cases shifted from the District Court to the circuit courts is not expected to materially affect local finances.

Local Expenditures: The bill is not expected to materially affect local expenditures or circuit court caseloads. The Judiciary advises that it does not anticipate a significant fiscal or operational impact on the trial courts as a result of the bill. The State’s Attorney’s Association advises that the bill has no effect on prosecutors.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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nb/kdm

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