

**Department of Legislative Services**  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**Third Reader**

Senate Bill 297

(The President, *et al.*) (By Request - Administration)

Judicial Proceedings

Judiciary

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**Criminal Law - Crime of Violence - Human Trafficking**

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This Administration bill adds human trafficking under § 11-303(b) of the Criminal Law Article (felony human trafficking) to the definition of “crime of violence” under § 14-101 of the Criminal Law Article.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund incarceration expenditures, as discussed below. Revenues are not affected.

**Local Effect:** The bill is not expected to materially affect local finances.

**Small Business Effect:** The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

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**Analysis**

**Current Law:** Section 11-303(b) of the Criminal Law Article prohibits a person from engaging in the human trafficking of a minor or human trafficking through compelled marriage or the performance of specified acts.

*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.

#### *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)*

Under § 11-303(e) of the Criminal Law Article, 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.

#### *Crimes of Violence*

Individuals convicted of a crime of violence under § 14-101 of the Criminal Law Article are eligible for various additional criminal penalties and earn diminution credits at a lower rate than other offenders.

Section 14-101(a) of the Criminal Law Article specifies offenses classified as crimes of violence. Sections 14-101(b) through (d) impose mandatory sentences for individuals who have prior convictions for these offenses and meet other specified criteria.

Section 14-101 of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of certain sexual conduct with a child; (18) assault in the first degree; or (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

### *Mandatory Sentences for Crimes of Violence*

Subsequent offenders sentenced for a crime of violence under § 14-101 of the Criminal Law Article are generally subject to mandatory sentences. For a second conviction of a crime of violence committed on or after October 1, 1994, a person must be sentenced to a mandatory minimum, nonsuspendable term of 10 years, if the person has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 1994, and served a term for that conviction confined in a correctional facility.

For a third conviction, a person must be sentenced to a mandatory minimum term of 25 years, if the person has been convicted on two separate occasions of a crime of violence, in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion and for which the convictions do not arise from a single incident, and has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to life imprisonment without the possibility of parole.

### *Diminution Credits*

Generally, inmates sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. Specified sexual offenders are not eligible to earn diminution credits. In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.

Diminution credits are deducted from an inmate's "term of confinement," which is defined as (1) the length of the sentence, for a single sentence or (2) the period from the first day of the sentence that begins first through the last day of the sentence that ends last, for concurrent sentences, partially concurrent sentences, consecutive sentences, or a combination of concurrent and consecutive sentences.

Diminution credits are made for good conduct, work tasks, education, and special projects or programs, as follows:

- *For sentences imposed before October 1, 1992:* Good conduct credits are awarded at a rate of five days per month regardless of the offense.

- *For sentences imposed between October 1, 1992, and October 1, 2017:* Good conduct credits are awarded at the rate of 5 days per month if the inmate's term of confinement includes a sentence for a crime of violence or distribution of controlled dangerous substances. Good conduct credits are awarded at the rate of 10 days per month for all other inmates (except for those inmates who are statutorily prohibited from earning diminution credits). Credits for work tasks and education may be awarded at the rate of up to 5 days per month. Special project credits may be awarded at the rate of up to 10 days per month. Such inmates may not be allowed a total deduction, including good conduct credits, of more than 20 days per month.
- *For sentences imposed on October 1, 2017, or later:* Chapter 515 of 2016 increased the maximum possible deduction for diminution credits from 20 days to 30 days per calendar month, except for inmates serving a sentence in a State correctional facility for a crime of violence, specified sexual offenses, or specified volume or kingpin drug offenses. Also, except for that same group of inmates, the deduction for special selected work projects or other special programs, including recidivism reduction programming, increased from 10 to 20 days per calendar month. In addition, the maximum deduction for diminution credits increased for an individual who is serving a sentence in a local correctional facility (for a crime other than a crime of violence or specified volume drug offenses) from 5 to 10 days per month.

### *Parole and Mandatory Supervision*

State inmates must serve either one-quarter or one-half of their sentences to be eligible for parole, depending on the offense (including crimes of violence). Parole eligibility for inmates sentenced to local detention centers is one-quarter regardless of the offense. Certain persons are not eligible for parole while serving a mandatory minimum sentence.

Generally, a person convicted of a violent crime committed on or after October 1, 2009, is not eligible for release on mandatory supervision until after the person becomes eligible for parole. Usually, a person sentenced to a mandatory sentence for a crime of violence is not eligible for parole. However, with specified exceptions, beginning October 1, 2017, a person sentenced for a crime of violence may petition for, and be granted, parole if the person (1) is at least age 60 and (2) has served at least 15 years of the sentence imposed.

**Background:** The Judiciary advises that in fiscal 2017, 55 violations of the felony human trafficking statute under § 11-303(b) were filed in the District Court, with 0 guilty dispositions; 73 violations were filed in the circuit courts, with 8 guilty dispositions. A “violation” is a charge filed in the court.

According to the Maryland Sentencing Guidelines Database, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) received information for SB 297/ Page 4

four individuals sentenced in the State's circuit courts for human trafficking under § 11-303(b) of the Criminal Law Article during fiscal 2017. These individuals represent eight counts of felony human trafficking. Two of the individuals were sentenced for one count, one was sentenced for two counts, and one was sentenced for four counts. According to MSCCSP, the sentences imposed for these counts ranged from 10 to 25 years with an average of 20.63 years, including suspended sentences. Excluding suspended sentences, the average sentence imposed was 16.13 years and ranged from 9 to 20 years.

**State Expenditures:** General fund expenditures for the Department of Public Safety and Correctional Services increase minimally due to people being committed to State correctional facilities for longer periods of time. However, this increase in expenditures is more likely to be felt in future years, when the consequences of classifying an offense as a crime of violence become more pronounced on individuals sentenced for felony human trafficking in the State's courts.

This estimate assumes that (1) the number of individuals found guilty of and sentenced for felony human trafficking remains constant; (2) designation of felony human trafficking as a crime of violence does not materially alter prosecutorial decisions regarding plea bargains, etc.; and (3) individuals sentenced under § 11-303(e) of the Criminal Law Article for financial gain/aiding/abetting a violation of the felony human trafficking statute under § 11-303(b) are not subject to the bill's provisions.

The bill impacts first-time violators of the felony human trafficking statute and individuals who commit and are sentenced for a second or subsequent crime of violence. First-time offenders are subject to reduced eligibility for diminution credits (generally 20 days per month maximum versus 30 days per month maximum) and have to serve a larger portion of their sentences in incarceration before becoming eligible for parole (generally 50% compared to 25%). Subsequent offenders are also subject to these effects and are subject to mandatory minimum sentences (which are nonsuspendable and nonparolable).

However, given the small group of individuals currently being sentenced for felony human trafficking each year, sentences currently being imposed for felony human trafficking, and the penalties under existing statute for other offenses classified as crimes of violence, any increase in general fund incarceration expenditures due to the bill are expected to be minimal.

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 \$3,800 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities.

## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 346 (The Speaker, *et al.*) (By Request - Administration) - Judiciary.

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

**Fiscal Note History:** First Reader - February 5, 2018  
md/kdm Third Reader - March 14, 2018

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**ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

TITLE OF BILL: **Criminal Law – Crime of Violence – Human Trafficking**

BILL NUMBER: SB0297/HB0346

PREPARED BY: Melissa Ross

**PART A. ECONOMIC IMPACT RATING**

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

**OR**

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

**PART B. ECONOMIC IMPACT ANALYSIS**