

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 162

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

Judicial Proceedings

Judiciary

Criminal Law - Crime of Violence - Human Trafficking

This Administration bill adds human trafficking under § 11-303(b) of the Criminal Law Article (felony human trafficking) to the definition of a “crime of violence” under § 5-101 of the Public Safety Article and § 14-101 of the Criminal Law Article.

Fiscal Summary

State Effect: Minimal increase in general fund incarceration expenditures. 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. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: Section 11-303 of the Criminal Law Article prohibits a person from engaging in human trafficking. The penalties for the offense vary based on the type of victim and the circumstances involved. 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 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 specified in the Maryland Constitution.

Human Trafficking of a Minor

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

Section 11-303(b) of the Criminal Law Article also applies the felony human trafficking penalty 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.

The District Court has concurrent jurisdiction with the circuit courts over the crime of felony human trafficking under § 11-303(b).

Crimes of Violence

Section 5-101 of the Public Safety Article and § 14-101 of the Criminal Law Article have independent definitions of a “crime of violence.” Designation of an offense under one of these definitions may subject a person to varying consequences.

§ 5-101 of the Public Safety Article

Section 5-101 defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) assault in the first or second degree; (4) burglary in the first, second, or third degree; (5) carjacking and armed carjacking; (6) escape in the first degree; (7) kidnapping; (8) voluntary manslaughter; (9) maiming; (10) mayhem; (11) murder in the first or second degree; (12) rape in the first or second degree; (13) robbery; (14) robbery with a dangerous weapon; (15) sexual offense in the first, second, or third degree; (16) home invasion; (17) an attempt to commit offenses (1) through (16); or (18) assault with the intent to commit offenses (1) through (16) or a crime punishable by imprisonment for more than one year.

This definition is cross-referenced in statutes pertaining to reckless endangerment, committing a crime in the presence of a minor, use of a handgun or antique firearm in the commission of a crime, use of an assault weapon or magazine in the commission of a felony or a crime of violence, and possession of a rifle or shotgun by a person previously convicted of specified offenses.

§ 14-101 of the Criminal Law Article

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. Section 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(a) 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 firearm in the commission of a felony or other crime of violence,

except possession with intent to distribute a controlled dangerous substance; (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; and (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, 2018, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable 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, 2018, and served a term of confinement in a correctional facility for that conviction.

For a third conviction, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 25 years, if the person has been convicted on two prior 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 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

In general, a State inmate who is serving a sentence of six months or more is not eligible for parole until the inmate has served one-quarter of the inmate's sentence. A sentence for a violent crime does not become parole-eligible until the inmate has served one-half of the sentence. An inmate serving a term of incarceration that includes a mandatory minimum sentence that is not subject to parole by statute is not eligible for parole until the inmate has served that mandatory minimum sentence.

As previously noted, a person convicted for the fourth time of a crime of violence must be sentenced to life imprisonment without the possibility of parole. In general, a sentence for

a third crime of violence or a second crime of violence committed on or after October 1, 2018, is not eligible for parole. However, with specified exceptions, beginning October 1, 2017, a person serving a mandatory sentence 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.

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.

Background: In August 2018, Governor Lawrence J. Hogan, Jr. announced several efforts aimed at addressing human trafficking, including (1) the creation of an Anti-Human Trafficking Director position within the Governor’s Office of Crime Control and Prevention; (2) a \$500,000 grant to the University of Maryland to assist in the creation of the Maryland Crime Research and Innovation Center; (3) \$5 million in funding for direct services for human trafficking victims; and (4) classification of felony human trafficking as a violent crime.

The Judiciary advises that in fiscal 2017, the latest year for which complete information is available, 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, and a person may be associated with multiple violations.

According to the Maryland Sentencing Guidelines Database, the Maryland State Commission on Criminal Sentencing Policy received information for 11 individuals sentenced in the State’s circuit courts for human trafficking under § 11-303(b) of the Criminal Law Article during fiscal 2018. These individuals represent 15 counts of felony human trafficking. The sentences imposed for these counts ranged from 10 to 25 years, with an average of 19.3 years, including suspended sentences. Excluding suspended sentences, the average sentence imposed was 11.8 years and ranged from 5 to 25 years.

The Department of Public Safety and Correctional Services (DPSCS) advises that during fiscal 2018, the Division of Correction conducted seven intakes on individuals convicted of felony human trafficking; five of the intakes had split sentences. One inmate with a conviction for felony human trafficking was paroled to the Division of Parole and Probation.

State Expenditures: General fund expenditures for DPSCS 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 and (2) designation of felony human trafficking as a crime of violence does not materially alter prosecutorial decisions regarding plea bargains, etc.

The bill's addition of human trafficking to the definition of "crime of violence" under § 5-101 of the Public Safety Article expands the applicability of various other prohibitions and penalties to the commission of human trafficking offenses or by an individual previously convicted of human trafficking (*e.g.*, use of a handgun or antique firearm in the commission of a crime and possession of a rifle or shotgun by a person previously convicted of specified offenses). However, some of these provisions also apply to the commission of a felony. Thus, violations of § 11-303(b) are already subject to some of these statutes. While the bill's provisions make individuals defending themselves against human trafficking eligible for a specified exception to the prohibition on reckless endangerment, expanded eligibility for this statutory exception is not expected to materially affect State finances.

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%). In general, subsequent violent crime offenders are not eligible for parole and, as a result, are not eligible for release on mandatory supervision through the application of diminution credits.

However, given the small group of individuals 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. Excluding overhead, the average cost of housing a new State inmate (including health care costs) is about \$895 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$199 per month.

Additional Information

Prior Introductions: SB 297 of 2018, a similar bill, passed the Senate with amendments and received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, HB 346, received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: HB 234 (The Speaker, *et al.*) (By Request - Administration) - Judiciary.

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

Fiscal Note History: First Reader - January 29, 2019
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

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

BILL NUMBER: SB162/HB234

PREPARED BY: Governor's Legislative Office

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