

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 963
Judiciary

(Delegates Taveras and Pena-Melnyk)

Criminal Law - Sexual Solicitation of a Minor, Human Trafficking, and Drug
Distribution - Sensitive Locations

This bill prohibits a person from committing the crimes of sexual solicitation of a minor, sex trafficking, or marriage trafficking within five miles of specified locations. A person who violates this section is guilty of a felony and on conviction is subject to (1) for an adult offender, up to 15 years imprisonment or (2) for a minor offender, up to 5 years imprisonment. A sentence imposed for such a violation must be separate from and consecutive to any other sentence imposed by the court for any crime based on the act establishing the violation. The bill also alters the prohibition against drug distribution in, on, or within 1,000 feet of a school to be in, on, or within *five miles* of a school.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Department of Public Safety and Correctional Services in the out-years, as discussed below. Revenues are not materially affected.

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

Small Business Effect: None.

Analysis

Bill Summary: A person may not commit the crime of sexual solicitation of a minor (§ 3-324 of the Criminal Law Article), sex trafficking (§ 3-1102 of the Criminal Law Article), or marriage trafficking (§ 3-1103 of the Criminal Law Article) within five miles of a (1) public or private elementary, vocational, or secondary school; (2) public or private

college, community college, or university; (3) site where a school-sponsored activity is being conducted; (4) playground or housing facility owned by a public housing authority; (5) public or private youth center; (6) public park; (7) public playground; (8) public swimming pool; or (9) video arcade.

The bill prohibits a person from manufacturing, distributing, dispensing, or possessing with intent to distribute a controlled dangerous substance (CDS) or conspire to do so within *five miles* (rather than 1,000 feet under current law) of real property owned by or leased to an elementary or secondary school, or county board and used for elementary or secondary education.

Current Law:

Sexual Solicitation of a Minor – § 3-324 of the Criminal Law Article

“Solicit” means to command, authorize, urge, entice, request, or advise a person by any means, including (1) in person; (2) through an agent or agency; (3) over the telephone; (4) through any print medium; (5) by mail; (6) by computer or Internet; or (7) by any other electronic means.

A person may not, with the intent to commit any of the crimes listed below, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under the laws on (1) rape in the second degree; (2) sexual offense in the third degree; (3) engaging in prostitution; (4) receiving the earnings of a prostitute; (5) abduction of a child younger than age 16 for the commission of a sexual crime; (6) procuring or soliciting prostitution; or (7) maintaining a house of prostitution.

A person who intends to commit any of the crimes listed above may not knowingly solicit the consent of a parent, guardian, or custodian of a minor, or a law enforcement officer posing as such a person, to engage in activities with the minor that would be unlawful for the person to engage in under the laws corresponding to those crimes.

A violation of either prohibition is a felony with a maximum penalty of (1) imprisonment for up to 10 years and/or a fine of up to \$25,000 for a first offense or (2) imprisonment for up to 20 years and/or a fine of up to \$50,000 for a second or subsequent offense.

For the purposes of determining jurisdiction, a violation is committed in the State if the solicitation originated in or is received in the State.

Sex Trafficking – § 3-1102 of the Criminal Law Article

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.

Also, a parent, guardian, or person who has permanent or temporary care or custody or responsibility for supervision of another may not consent to the taking or detention of the other person for prostitution.

In general, a person who commits the sex trafficking offenses detailed above 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.

Under § 3-1102(b) of the Criminal Law Article, a person who commits sex trafficking involving a victim who is a minor (defined as an individual younger than age 18) or with the use of or intent to use force, threat, coercion, or fraud is guilty of a felony and subject to imprisonment for up to 25 years and/or a maximum fine of \$15,000. The District Court has concurrent jurisdiction with the circuit courts over the crime of felony sex trafficking under § 3-1102(b).

A person who knowingly aids, abets, or conspires in the violation of State sex trafficking laws or knowingly benefits financially or receives anything of value from a venture that includes an act prohibited under State sex trafficking laws is subject to the same penalties imposed on a person who violated the applicable statute.

A defendant's lack of knowledge of the victim's age is not a defense in a prosecution for (1) sex trafficking of a minor or (2) knowingly benefitting financially from or aiding or abetting a sex trafficking violation.

Marriage Trafficking – § 3-1103 of the Criminal Law Article

A person may not knowingly (1) take or detain another with the intent to use force, threat, coercion, or fraud to compel the other to marry any person; (2) receive financial benefit or thing of value in relation to the crime of marriage trafficking; or (3) aid, abet, or conspire with another to commit the crime of marriage trafficking. A violator is guilty of the felony of forced marriage and on conviction subject to imprisonment for up to 25 years and/or a \$15,000 maximum fine.

Controlled Dangerous Substances Near School – § 5-627 of the Criminal Law Article

A person may not manufacture, distribute, dispense, or possess with the intent to distribute a CDS or conspire to do so in a school vehicle or in, on, or within 1,000 feet of real property owned by or leased to an elementary or secondary school, or county board and used for elementary or secondary education. These provisions apply regardless of whether or not school was in session at the time of the crime, or the real property was being used for other purposes at the time of the crime.

Violators are guilty of a felony and for a first conviction, subject to a maximum sentence of 20 years imprisonment and/or a fine up to \$20,000. For each subsequent conviction, violators are subject to a mandatory minimum sentence of 5 years imprisonment, a maximum sentence of 40 years imprisonment, and/or a fine of up to \$40,000. Sentences imposed for violations must be consecutive to any other sentence. Additionally, for subsequent convictions, an individual is not eligible for parole during the period of the mandatory minimum sentence.

Possession with Intent to Distribute a Controlled Dangerous Substance – § 5-602 of the Criminal Law Article

A person may not distribute a CDS or possess a CDS other than cannabis in sufficient quantity to reasonably indicate under all circumstances an intent to distribute or dispense a CDS. A person who violates this prohibition is guilty of a felony and on conviction is subject to the penalties from **Exhibit 1**.

Exhibit 1
Penalties for Distribution of Controlled Dangerous Substances and Related Offenses

<u>Offense</u>	<u>Current Penalty^{1, 2}</u>
CDS (Other Than Schedule I or II Narcotic Drugs and Other Specified CDS)³	
First-time Offender	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
Repeat Offender	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
CDS (Schedule I or II Narcotic Drug and Specified Drugs)⁴	
First-time Offender	Maximum penalty of 20 years imprisonment and/or \$15,000 fine
Second-time Offender	Maximum penalty of 20 years imprisonment and/or \$15,000 fine
Third-time Offender	Maximum penalty of 25 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)
Fourth-time Offender	Maximum penalty of 40 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)

CDS: controlled dangerous substance

¹ Repeat offenders are subject to twice the term of imprisonment and/or fines that are otherwise authorized. Under Chapter 515 of 2016, effective October 1, 2017, this authorization is made applicable only when the person has also been previously convicted of a crime of violence.

² Chapter 569 of 2017 prohibits a person from knowingly distributing or possessing with the intent to distribute (1) a mixture of CDS that contains heroin and a detectable amount of fentanyl or any analogue of fentanyl or (2) fentanyl or any analogue of fentanyl. In addition to any other penalty imposed, a person is subject to imprisonment for up to 10 years. A sentence imposed for a violation of this prohibition must be served consecutively to any other sentence imposed.

³ e.g., cannabis.

⁴ e.g., cocaine and heroin.

Source: Department of Legislative Services

State Expenditures: General fund incarceration expenditures may increase significantly in the out-years due to the bill’s penalty provisions. **Exhibit 2** contains information on the number of violations for offenses affected by the bill’s prohibitions and alterations in the courts during fiscal 2022 and 2023.

Exhibit 2
Violations for Fiscal 2022 and 2023
Sections 3-324, 3-1102, 3-1103, 5-602, and 5-627 of the Criminal Law Article

	Fiscal 2022 Violations		Fiscal 2023 Violations	
	<u>District Court</u>	<u>Circuit Court</u>	<u>District Court</u>	<u>Circuit Court</u>
<i>§ 3-324 – Sexual Solicitation of a Minor</i>	112	87	116	118
<i>§ 3-1102 – Sex Trafficking</i>	49	29	58	47
<i>§ 3-1103 – Marriage Trafficking</i>	0	0	0	0
<i>§ 5-602 – Possession with Intent to Distribute CDS</i>	6789	7291	6541	6766
<i>§ 5-627 – CDS Near School</i>	132	109	92	64

CDS: controlled dangerous substance

Source: Maryland Judiciary; Department of Legislative Services

Prohibitions Against Committing Sexual Solicitation of a Minor, Sex Trafficking, or Marriage Trafficking within Five Miles of Specified Locations

The bill creates a new offense with a maximum penalty of 15 years imprisonment for adults or 5 years imprisonment for minors that must be separate from and consecutive to any other sentence imposed by the court for any crime based on the act establishing the violation. Based on the data in Exhibit 2 related to offenses for which the new prohibitions may apply, general fund expenditures may increase minimally beginning in the out-years.

Prohibition Against Drug Distribution in, on, or within Five Miles of a School

The bill significantly expands application of the existing prohibition against manufacturing, distributing, dispensing, or possessing with the intent to distribute a CDS or conspiring to do so near a school under § 5-627. Based on the data in Exhibit 2 related to the potential pool of violations under § 5-602 that the bill’s expanded application may

apply to, significantly more people (particularly in densely populated areas where virtually every location is within five miles of a school) may be subject to an increased penalty under the bill.

Thus, general fund expenditures may increase significantly as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of costs for incarcerated individuals. Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per incarcerated individual, including overhead, is estimated at \$5,110 per month. Excluding overhead, the average cost of housing a new State incarcerated individual (including health care costs) is about \$1,244 per month. Excluding all health care (which is a fixed cost under the current contract), the average variable costs total \$336 per month.

For illustrative purposes only, if the expanded application applies to just 10% of the average annual violations for § 5-602 during the last 2 years that are subject to the 5-year maximum penalty under current law available for offenses involving CDS other than Schedule I or II or narcotics (approximately 380 individuals) and just 5% of those violations (approximately 19 individuals) are sentenced to the maximum 20-year penalty, the bill may add as much as 285 years of incarceration. Assuming the variable costs for incarcerated individuals of \$336 per month excluding health care, State costs could increase by \$1.1 million for each annual cohort of defendants sentenced under the bill's expanded application. Any impact from these additional incarcerations will likely be realized in the out-years, as individuals conclude incarceration penalties available under existing statute and begin additional incarceration time under the bill.

Office of the Public Defender

The Office of the Public Defender (OPD) advises that the bill's provisions create additional charges for clients of OPD who already have felony cases and that the additional charges will increase the level of effort required in existing OPD cases equivalent to two attorneys at a cost of \$192,176 in fiscal 2025 and increasing to \$264,084 by fiscal 2029. However, the Department of Legislative Services advises that the increase in workloads for OPD *solely* resulting from the bill and the corresponding need for additional staff cannot be reliably estimated at this time and can only be determined with actual experience under the bill. Should actual workloads increase to the point that additional resources are required, OPD can request those resources through the annual budget process.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced in the last three years.

Designated Cross File: SB 719 (Senator Benson) - Judicial Proceedings.

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

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