

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 44
Judiciary

(Delegate Benson)

Human Trafficking - Felony - Restitution

This bill makes the offense of human trafficking of an adult victim a felony rather than a misdemeanor, and requires a court to order restitution by the offender to a victim of any human trafficking offense.

Fiscal Summary

State Effect: General fund revenues could decrease minimally as a result of shifting some cases from the District Court to the circuit courts. It is assumed that restitution collection responsibilities could be handled with the existing budgeted resources of the Division of Parole and Probation and/or the Central Collection Unit of the Comptroller's Office.

Local Effect: Local revenues could increase minimally as a result of some cases being heard in the circuit courts rather than the District Court. It is assumed that an increase in orders of restitution in such cases could be handled with the existing budgeted resources of the circuit courts.

Small Business Effect: None.

Analysis

Bill Summary: The bill provides that the crime of human trafficking (involving an adult victim) is a felony rather than a misdemeanor. The maximum penalty provisions for this offense are not altered.

The bill requires that a court order a person convicted of this felony, or the felony of human trafficking when the victim is a minor, to pay restitution to the victim. Such a restitution order must be governed by restitution provisions of Title 11, Subtitle 6 of the Criminal Procedure Article. In addition to restitution for damages or expenses listed under that subtitle, the bill also allows such a restitution order to include other enumerated costs, fees, compensations, expenses, and purchases. The bill provides that an order of restitution under these provisions is enforceable even if the victim leaves the jurisdiction.

The bill's provisions are required to be applied prospectively, only.

Current Law: Chapter 340 of 2007 expanded the crime of sexual solicitation of a minor by adding commission of a violation of prostitution laws as a prohibited intent. The Act also expanded the crime of extortion by prohibiting a person from obtaining or conspiring to obtain labor or services by wrongfully inducing consent and adds actual or threatened destruction, concealment, removal, confiscation, or possession of any immigration or government identification document with intent to harm the immigration status of another person as a prohibited way of inducing consent. Labor and services are also added to the language of prohibitions against extortion by false accusation and extortion by verbal threat.

In addition, Chapter 340 renamed the crime of pandering as human trafficking and created an enhanced penalty for human trafficking involving a minor. A person who commits human trafficking involving an adult victim is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$5,000. A person who commits human trafficking involving a victim who is a minor is guilty of a felony and subject to maximum penalties of 25 years' imprisonment and/or a fine of \$15,000. The District Court is granted jurisdiction concurrent with the circuit court over felony human trafficking.

A court may enter a judgment of restitution that orders a defendant or child respondent to make restitution in addition to any other penalty for the commission of a crime or delinquent act, if:

- as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;
- as a direct result of the crime or delinquent act, the victim suffered: (1) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses; (2) direct out-of-pocket loss; (3) loss of earnings; or (4) expenses incurred with rehabilitation;

- the victim incurred medical expenses that were paid by the Department of Health and Mental Hygiene (DHMH) or any other governmental unit;
- a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle;
- the Criminal Injuries Compensation Board paid benefits to a victim; or
- DHMH or other governmental unit paid expenses incurred under a right to HIV testing.

A victim is presumed to have a right to restitution under these provisions if the victim or the State requests restitution, and the court is presented with competent evidence of any item listed under these provisions. A judgment of restitution does not preclude the property owner or the victim who suffered personal physical or mental injury, out-of-pocket loss of earnings, or support from bringing a civil action to recover damages from the restitution obligor. A civil verdict must be reduced by the amount paid under the criminal judgment of restitution.

Under the State's victim compensation law, a person who suffers personal injury or property damage directly resulting from a crime or delinquent act, or the person's representative in the event of the person's death, is entitled to restitution to cover the person's actual expenses, including the loss of wages. In such a case, the court enters a judgment of restitution.

Collection responsibilities for orders of restitution fall first to the Division of Parole and Probation. If collections remain outstanding, the division may refer such cases to the Central Collection Unit in the Comptroller's Office.

Background: At the international and national level, remedies exist to address human trafficking. In February 2000, the United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the U.N. Convention Against Transnational Organized Crime. The reauthorized federal Trafficking Victims Protection Act (TVPA) is designed to prevent trafficking, punish traffickers, and protect and assist trafficked persons. TVPA extends assistance and benefits to victims of "severe forms of trafficking" which is defined as "a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." TVPA protects trafficked persons by providing immigration status (T visa), permission to work, and possible U.S. permanent residence.

The Trafficking Victims Protection Reauthorization Act of 2003 amended TVPA to remove obstacles in the process of securing needed assistance, increase benefits to victims of trafficking, increase knowledge about trafficking in persons, enhance prevention efforts, provide greater protection to victims, and increase prosecution. The federal Refugee Act of 1980 provides cash assistance to newly arrived refugees, who are not eligible for Temporary Cash Assistance (TCA), for the first eight months after arrival. Persons who are victims of a severe form of trafficking are also eligible for this cash assistance. Approximately 300 refugees per month in Maryland participate in this program.

In Baltimore City, Baltimore, Carroll, Howard, Anne Arundel, and Harford counties, beginning October 1, 2001, TCA cash assistance was replaced by Refugee Transitional Cash Assistance, which is administered by the voluntary agencies that resettle refugees. The monthly grant for individuals is \$195 for the first four months, dropping to \$180 for the final four months.

At the federal level, certifications of trafficking victims are done by the U.S. Department of Health and Human Services so they may qualify for the same assistance available to refugees.

According to the National Conference of State Legislatures, since 2004, 26 states have enacted comprehensive laws on human trafficking, generally establishing the offense as a felony. Ten states have established a task force, commission, or special committee on the issues. Of the 26 felony enactments, 8 specifically provide for restitution to trafficking victims.

The extent to which human trafficking actually occurs in Maryland is unknown.

Changing crimes from misdemeanors to felonies means: (1) that such cases will likely be filed in the circuit courts rather than the District Court; and (2) some persons could eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses, for prior felony convictions. It is not known whether, under the bill's provisions, the prospect of a jury trial might spur more plea bargains and affect actual sentencing practices for this offense.

In any case, the bill would shift some unknown number of cases from the District Court to the circuit courts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): 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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