

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 283

(Delegate Waldstreicher, *et al.*)

Judiciary

Judicial Proceedings

Criminal Law - Human Trafficking - Prohibitions

This bill extends the application of the human trafficking statute by applying current statutory penalties to individuals who act in support of or benefit from human trafficking; changes specified human trafficking violations from misdemeanors to felonies; and expands the current prohibition on human trafficking to include forced participation in a “sexually explicit performance” and interference with possession of immigration documents.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures from the bill’s expansion of the scope and application of human trafficking penalties and reclassification of an offense from a misdemeanor to a felony.

Local Effect: Potential increase in local revenues and expenditures from the bill’s expansion of the scope and application of human trafficking penalties and reclassification of an offense from a misdemeanor to a felony.

Small Business Effect: None.

Analysis

Bill Summary: The bill extends the application of the human trafficking statute by subjecting individuals who knowingly aid, abet, or conspire in the violation of human trafficking laws or knowingly benefit financially from ventures or activities in violation of State human trafficking laws to the same penalties imposed on a person who violated the applicable statute. The bill changes from a misdemeanor to a felony the current

prohibition on knowingly taking or detaining another with the intent to use force, threat, coercion, or fraud to compel the other to marry the person or a third person or perform a sexual act, sexual contact, or vaginal intercourse. The bill expands the current prohibition on human trafficking to include prohibitions on forced participation in a “sexually explicit performance” and interference with the possession of a passport, immigration document, or government identification document of another while violating or attempting to violate State human trafficking laws. “Sexually explicit performance” is defined as a public or private, live, photographed, recorded, or videotaped act or show in which the performer is wholly or partially nude, and which is intended to sexually arouse or appeal to the prurient interest of patrons or viewers.

Current Law: Chapters 340 and 341 of 2007 renamed the crime of pandering to human trafficking, created an enhanced penalty for human trafficking involving a minor, and expanded the prohibition against sexual solicitation of a minor.

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. A person who commits human trafficking involving an adult victim is guilty of a misdemeanor and subject to maximum penalties of 10 years imprisonment and/or a fine of \$5,000. The District Court has concurrent jurisdiction with the circuit court over the crime of human trafficking.

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, or entice, or encourage another to be taken to or placed in any place for prostitution;
- unlawfully take or detain another with the intent to use force, threat, or persuasion to compel the other to marry the person or a third person or perform a sexual act, sexual contact, or vaginal intercourse; or
- 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.

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 provided by the Maryland Constitution.

Under the prohibition against sexual solicitation of a minor, a person may not, with intent to commit a violation of prohibitions against prostitution, second degree rape, or second

or third degree sexual offense, 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 prohibitions against second degree rape or second or third degree sexual offense. A violator is guilty of a felony and subject to maximum penalties of 10 years imprisonment and/or a \$25,000 fine.

Background: The U.S. Department of State has estimated that approximately 600,000 to 800,000 victims are trafficked annually across international borders worldwide and approximately half of these victims are minors. According to the 2005 report, 80% of internationally trafficked victims are female and 70% are trafficked into the sex industry. The United Nations' International Labor Organization estimates that at least 12.3 million adults and children are in forced labor, bonded labor, and commercial sexual servitude. Of this group, 1.39 million are in commercial sexual servitude and 56% of all forced labor victims are women and girls.

According to the Maryland State Commission on Criminal Sentencing Policy, four people have been convicted of human trafficking from fiscal 2001 through 2009.

State and Local Fiscal Effect: 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 enhanced penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of 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.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's expansion of the application and scope of human trafficking penalties and reclassification of an offense from a misdemeanor to a felony subject to incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,750 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is

\$409 per month. Excluding all medical care, the average variable costs total \$182 per month.

The Office of the Public Defender advises that it does not foresee the bill resulting in a marked increase in cases.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: None.

Cross File: SB 261 (Senator Forehand, *et al.*) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland State Commission on Criminal Sentencing Policy, State's Attorneys' Association, Office of the Public Defender, U.S. Department of State, U.S. Department of Health and Human Services, Department of Legislative Services

Fiscal Note History: First Reader - February 5, 2010
ncs/kdm Revised - House Third Reader - March 25, 2010

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