

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 266
Judiciary

(Delegate Waldstreicher, *et al.*)

Judicial Proceedings

Human Trafficking Victim Protection Act

This bill authorizes a person convicted of prostitution to file a motion to vacate the judgment if (1) the person committed the act or acts of prostitution while under duress caused by threats of harm to the person or the person's family; and (2) the person's conviction for prostitution was the result of another person's violation of the prohibitions against human trafficking under Maryland or federal law. The motion must: (1) be in writing; (2) be signed and consented to by the State's Attorney; (3) be made within a reasonable period of time after the conviction; and (4) describe the evidence and provide copies of official documents showing that the defendant is entitled to a vacated judgment for a conviction of prostitution in accordance with the bill's eligibility criteria.

The court must hold a hearing on the motion if the motion meets the statutory requirements. However, a court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted. The defendant has the burden of proof in a proceeding to vacate the conviction. In ruling on a motion, the court may vacate the conviction, modify the sentence, or grant a new trial.

Fiscal Summary

State Effect: The bill is procedural/technical in nature and does not materially affect State finances.

Local Effect: The bill is procedural/technical in nature and does not materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: Chapters 340 and 341 of 2007 renamed the crime of pandering to human trafficking.

Human Trafficking: 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, or 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.

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 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.

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 felony human trafficking statute also prohibits a person from unlawfully taking or detaining 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.

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 court over the crime of human trafficking.

Prostitution: A person is prohibited from (1) knowingly engaging in prostitution or assignation by any means; (2) keeping, setting up, occupying, maintaining, or operating a building, structure, or conveyance for prostitution or assignation; (3) allowing a building, structure, or conveyance owned or controlled by the person to be used for prostitution or assignation; (4) allowing or agreeing to allow a person into a building, structure, or conveyance for prostitution or assignation; or (5) procuring, soliciting, or offering to procure or solicit for prostitution or assignation. Prostitution is a misdemeanor offense, and is subject to maximum penalties of imprisonment for one year and/or a \$500 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, 1.4 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, five people have been convicted of human trafficking in the State's circuit courts from fiscal 2001 through 2010.

New York has a law authorizing a defendant to bring a motion to vacate a conviction if the defendant was charged with prostitution and the defendant's participation in prostitution was the result of having been a victim of human trafficking.

Additional Information

Prior Introductions: None.

Cross File: SB 327 (Senator Forehand, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore City; Kent, Montgomery, Washington, and Worcester counties; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State Commission on Criminal Sentencing Policy; National Conference of State Legislatures; New York State Assembly; U.S. Department of State; United Nations; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2011
mc/kdm Revised - House Third Reader - April 5, 2011

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510