

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 454

(Senator Robey, *et al.*)

Judicial Proceedings

Judiciary

**Criminal Law - Child Kidnapping for the Purpose of Committing a Sexual Crime
- Penalty**

This bill (1) alters the elements of the offense of abduction of a child younger than age 16 for purposes of prostitution or committing a sexual crime; (2) reclassifies the offense from a misdemeanor to a felony; and (3) increases the maximum incarceration penalty for this offense from 10 to 25 years.

Under the bill, a person is prohibited from persuading or enticing or aiding in the persuasion or enticement of an individual younger than age 16 from the individual's home or from the custody of the individual's parent or guardian and knowingly secreting or harboring or aiding in the secreting or harboring of the individual for the purpose of committing a sexual crime (a crime under Title 3, Subtitle 3 of the Criminal Law Article).

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's incarceration penalty. Revenues are not affected.

Local Effect: None. The bill is not expected to materially affect circuit court caseloads or local finances.

Small Business Effect: None.

Analysis

Current Law:

Abduction of Child Under Age 16: A person is prohibited from committing the following acts for purposes of prostitution or committing a sexual crime: (1) persuading or enticing or aiding in the persuasion or enticement of an individual younger than age 16 from the individual's home or from the custody of the individual's parent or guardian; or (2) knowingly secreting or harboring or aiding in the secreting or harboring of an individual younger than age 16 who has been persuaded or enticed away from home or away from the custody of a parent or guardian.

Violators are guilty of a misdemeanor and subject to imprisonment for up to 10 years and/or a maximum fine of \$5,000.

Human Trafficking of a Minor: The abduction offense described above is somewhat similar to the offense of human trafficking of a minor.

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.

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 maximum penalties of 25 years imprisonment and/or a 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.

Background: According to the Maryland Sentencing Guidelines database, there have been no convictions in the circuit courts for the offense affected by this bill from the time it was placed into the Criminal Law Article in 2002 through fiscal 2013. According to the District Court, there was one violation in fiscal 2012 and three violations in fiscal 2013 of the prohibitions on the abduction of a child younger than age 16 for purposes of prostitution or committing a sexual crime.

State Expenditures: General funds increase minimally if individuals receive longer sentences as a result of the bill. This estimate assumes that the bill's provisions do not materially affect the number of individuals convicted of the offense affected by the bill.

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 \$3,100 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 State inmate (including variable health care costs) is about \$735 per month. Excluding all health care, the average variable costs total \$185 per month.

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.

Additional Information

Prior Introductions: Similar bills have been introduced during previous sessions. HB 943 of 2013 received an unfavorable report from the House Judiciary Committee. HB 1293 of 2012 received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: HB 701 (Delegate Lee, *et al.*) - Judiciary.

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

Fiscal Note History: First Reader - February 14, 2014
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