

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 905
Judiciary

(Delegate Waldstreicher, *et al.*)

Criminal Law - Human Trafficking - Affirmative Defense

This bill establishes that in a prosecution for a charge relating to prostitution under Criminal Law Article § 11-306, it is an affirmative defense of duress if the defendant committed the act (1) as a result of being a victim of human trafficking under Criminal Law § 11-303 or under federal law or (2) in order to acquire necessities immediately required for the survival or safety of the defendant or a dependent of the defendant. A defendant is prohibited from asserting the affirmative defense unless the defendant notifies the State's Attorney of the defendant's intention to assert the defense prior to trial.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues and expenditures if the bill results in fewer convictions for prostitution.

Local Effect: Potential minimal decrease in local incarceration expenditures if the bill results in fewer convictions for prostitution. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law:

Prostitution – Under Criminal Law Article § 11-306, a person may not knowingly (1) engage in prostitution or assignation by any means; (2) keep, set up, occupy, maintain, or operate a building, structure, or conveyance for prostitution or assignation; (3) allow a building, structure, or conveyance owned or under the person's control to be used for

prostitution or assignation; (4) allow or agree to allow a person into a building, structure, or conveyance for prostitution or assignation; or (5) procure or solicit, or offer to procure or solicit, for prostitution or assignation. A person who violates this section is guilty of prostitution, a misdemeanor punishable by imprisonment for up to one year and/or a \$500 maximum fine.

Human Trafficking of an Adult (In General) – 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.

In general, 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.

Human Trafficking 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. 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. A felony may be prosecuted at any time.

The Criminal Law Article defines a “minor” as an individual younger than 18 years old.

Human Trafficking (Compelled Marriage or Performance of Specified Acts) – The felony human trafficking penalty also applies to a person who knowingly takes or detains another person with the intent to use force, threat, coercion, or fraud to compel the other person to marry the person or a third person or perform a sexual act, sexual contact, or vaginal intercourse.

Human Trafficking (Financial Benefit or Aiding and Abetting) – 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 courts over the crime of felony human trafficking.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2015
md/kdm

Analysis by: Amy A. Devadas

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