

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 15 (Senator Young)
Judicial Proceedings

Child Placement - Prohibition on Human Trafficking, Restrictions on
Advertising, and Reporting Requirements

This bill expands prohibitions on human trafficking to include prohibiting a person from knowingly “rehome” or committing specified acts related to the “rehome” of a minor who is the subject of a guardianship or adoption order. A person is prohibited from advertising regarding the placement or acceptance of a child for adoption. The bill also establishes provisions relating to the reporting of situations in which an individual has reason to believe that a child is living with someone other than an individual who has legal custody of the child or an individual related by blood or marriage to such an individual.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions. The bill does not materially impact the workload of the Judiciary or the Office of the Public Defender.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill’s penalty provisions. The bill does not materially impact the workload of the circuit courts or state’s attorneys.

Small Business Effect: None.

Analysis

Bill Summary: “Rehome” means transferring physical custody of a minor who is the subject of a guardianship or an adoption order to a person who is not related by blood or marriage to an adoptive parent or a legal guardian of the minor (1) with the intent of

permanently divesting an adoptive parent or legal guardian of parental responsibilities and (2) without prior approval of a court. Rehoming does not include (1) the placement of a minor by the Department of Human Resources (DHR) or a child placement agency; (2) transferring physical custody of a minor to a child placement agency or DHR; (3) transferring physical custody of a minor to another person on a temporary basis due to a vacation or school-sponsored activity or the incarceration, military service, medical treatment, or temporary incapacity of the minor's adoptive parent or legal guardian; (4) placing a minor in another state in accordance with the Interstate Compact on Placement of Children; or (5) leaving a newborn in accordance with specified statutory provisions relating to immunity from liability for an individual who leaves an unharmed newborn child with a responsible adult.

The bill also prohibits a person from knowingly (1) advertising, recruiting, or soliciting a minor for rehoming; (2) harboring, transporting, transferring, or receiving a minor for the purpose of rehoming; or (3) entering into any agreement, with or without valuable consideration, to rehome a minor. A violator is guilty of the felony of human trafficking and subject to maximum penalties of 25 years imprisonment and/or a \$15,000 fine. It is an affirmative defense to prosecution that physical custody of the minor was transferred by a valid power of attorney and at the time the transfer occurred, there was a petition pending before an appropriate court or administrative agency to appoint the person to whom the minor was transferred as the minor's legal guardian.

Whenever a child placement agency licensed by the Social Services Administration of DHR, or by a comparable governmental unit of another state, advertises regarding the placement or acceptance of a child for adoption, the advertisement must include the agency's license number. The bill also prohibits a person from advertising regarding the placement or acceptance of a child for adoption. A licensed attorney is not prohibited from advertising the attorney's availability to provide legal services related to adoptions. A person who violates these provisions is guilty of a misdemeanor and subject to maximum penalties of a \$100 fine and/or imprisonment of three months for each offense.

The bill authorizes an individual to notify the local department of social services or the appropriate law enforcement agency if the individual has reason to believe that a child is living with someone other than (1) an individual who has legal custody of the child or (2) an individual related by blood or marriage to an individual who has legal custody of the child. An individual who is a mandatory reporter under State law must immediately notify the local department or the appropriate law enforcement agency if there is reason to believe that a child has been living with someone other than an individual specified above for six months or longer. A report may be oral or in writing. To the extent reasonably possible, the report must include specified information as well as any other information that would help to determine whether the child has been subject to human trafficking. If acting as a

staff member of specified institutions, an individual who makes a report must notify and give all of the information required to the head of the institution or the designee.

Current Law: Although parents of a minor child are responsible for the child's support, care, nurture, welfare, and education, State law does not specifically prohibit the practice of rehoming and no federal laws prohibit the exchange of unwanted adopted children.

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, 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 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 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.

The District Court has concurrent jurisdiction with the circuit courts over the crime of felony human trafficking.

Mandatory Reporters

Health care practitioners, police officers, educators, and human service workers who are acting in a professional capacity, and who have reason to believe that a child has been

subjected to abuse or neglect, must notify the local department of social services or the appropriate law enforcement agency. An “educator or human service worker” includes any teacher, counselor, social worker, caseworker, and parole or probation officer. If the worker is acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, then the individual must notify the head of the institution or the designee.

In general, a person other than a health care practitioner, police officer, educator, or human service worker who has reason to believe that a child has been subjected to abuse or neglect must notify the local department of social services or the appropriate law enforcement agency.

Background: According to the American Bar Association, an increase in foreign adoptions and the inability of some parents to handle troubled youth has resulted in an epidemic known as “rehoming,” which is when an individual (other than a licensed attorney, a child placement agency, or a local department of social services) seeks an alternative home for an adopted child, often through placing an ad on the Internet. Children who are rehomed may end up in homes where they are subject to abuse or neglect by their new guardians. In 2014, Wisconsin became the first state to criminalize the practice of rehoming. The law makes it illegal for anyone not licensed by the state to advertise a child older than age one for adoption or any other custody transfer. Louisiana also enacted a similar law in 2014.

According to the Child Welfare Information Gateway, as of 2012 (the latest information readily available), 2 states prohibit any use of adoption advertising and another 11 states prohibit advertising by any person or entity other than the state social services department or a licensed agency. Three additional states specifically prohibit specified individuals or entities, such as attorneys or hospitals, from advertising.

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

State Expenditures: General fund expenditures may increase minimally as a result of the bill’s incarceration penalties due to more people being committed to State correctional facilities 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 State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,300 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 \$770 per month. Excluding all health care, the average variable costs total \$200 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem 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 State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

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

Local Expenditures: Expenditures may increase minimally as a result of the bill's incarceration penalties. 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 State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: SB 208 of 2015, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1125, was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Human Resources, Department of Public Safety and Correctional Services, Department of State Police, Child Welfare Information Gateway, American Bar Association, Department of Legislative Services

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md/kdm

Analysis by: Jennifer K. Botts

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