

Department of Legislative Services
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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 881

(Senator Lee)

Judicial Proceedings

Rules and Executive Nominations

Criminal Law - Human Trafficking and Prostitution Offenses

This bill (1) expands prohibitions on human trafficking; (2) establishes the offense of “labor trafficking” and creates separate offenses for behavior similar to behavior currently prohibited under various human trafficking and prostitution statutes; (3) renames “human trafficking” as “sex trafficking”; (4) adds human trafficking under Title 3, Subtitle 11 of the Criminal Law Article to the definition of a “crime of violence” under § 14-101 of the Criminal Law Article; and (5) makes corresponding changes to existing statutes to reflect the bill’s alteration of offenses.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions and alteration of existing statutes, as discussed below.

Local Effect: Minimal increase in revenues due to the bill’s monetary penalty provisions and alteration of application of existing monetary penalties. The bill is not expected to materially affect local expenditures.

Small Business Effect: None.

Analysis

Bill Summary:

Sex Trafficking (Criminal Law Article, § 3-1102)

The bill alters the prohibitions on human trafficking under § 11-303 of the Criminal Law Article and renames the offense as sex trafficking. The bill retains the existing penalties for the offense. The bill repeals the provisions for felony human trafficking under § 11-303 pertaining to compelled marriage and performance of specified acts. Under the bill, felony sex trafficking (codified as § 3-1102(b) of the Criminal Law Article) occurs when a person commits one of the specified misdemeanor acts, but involving a victim who is a minor, or when a person violates the specified misdemeanor prohibitions with the use of or intent to use force, threat, coercion, or fraud.

Labor Trafficking (Criminal Law Article, § 3-1103)

The bill creates the offense of labor trafficking, a felony punishable by imprisonment for up to 25 years and/or a \$15,000 maximum fine. Under this offense, a person is prohibited from knowingly (1) obtaining or procuring the labor or services of another person by wrongful use of force, physical restraint, wrongful use of serious harm, specified types of threats, or use of a scheme, plan, or pattern of conduct designed to cause the other person to believe that the other person will suffer serious harm if the other person does not perform labor or services; (2) causing another person to engage in “debt bondage,” as defined under the bill; or (3) destroying or interfering with the possession of another person’s passport or other specified immigration/identification documents while committing labor trafficking.

A person who knowingly benefits financially by receiving anything of value from participation in a venture that includes labor trafficking, or who knowingly aids, abets, or conspires with one or more persons to violate the labor trafficking prohibition, is subject to the same penalties that would apply if the person had violated the labor trafficking prohibition.

A person may be charged, tried, and sentenced for labor trafficking in any county in or through which the person transported or attempted to transport the victim. The District Court has concurrent jurisdiction with the circuit courts over felony labor trafficking.

Forced Marriage (Criminal Law Article, § 3-1104)

The bill establishes the offense of forced marriage. The offense is similar to the prohibitions on forced marriage under the current felony human trafficking statute (§ 11-303(b) of the Criminal Law Article). Forced marriage is a felony, punishable by

imprisonment for up to 25 years and/or a \$15,000 maximum fine. This is the same penalty available under the current applicable statute.

Criminal Gangs

The bill alters the definition of an “underlying crime” in the criminal gang statutes to include labor trafficking and forced marriage and reflect the bill’s changes to the existing human trafficking statute, including renaming the offense as sex trafficking.

Prostitution Offenses

The bill rearranges and alters the prostitution offenses that are located in § 11-306 of the Criminal Law Article but retains the existing penalties for these offenses.

The bill establishes a separate offense for knowingly engaging in prostitution or assignation by any means or occupying a building, structure, or conveyance for prostitution or assignation (codified as § 11-306(a) of the Criminal Law Article), retains the existing penalty for this offense, and alters provisions for an affirmative defense of duress by permitting this defense if the defendant committed the act as a result of being a victim of an act of another person in violation of Title 3, Subtitle 11 of the Criminal Law Article or the offense of human trafficking under federal law. Under current statute, the other person must have been *charged* with a human trafficking violation in order for this affirmative defense to be available. The bill establishes separate offenses and makes similar changes to the prostitution-related offenses located under § 11-306(a)(2) through (5) of the Criminal Law Article.

Forfeitures and Authority of Police Employees

The bill adds labor trafficking and makes changes reflecting the bill’s alteration of offenses to various forfeiture statutes and a statute regarding the authority of a police employee to act within the limits of a municipal corporation that maintains a police force.

Abduction of a Child Younger than Age 16

The bill establishes that it is not a defense to the crime of abduction of a child younger than age 16 under § 11-305 of the Criminal Law Article that the defendant did not know the age of the victim.

Current Law: Section 11-303 of the Criminal Law Article prohibits a person from engaging in human trafficking. The penalties for the offense vary based on the type of victim and the circumstances involved.

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 imprisonment for up to 10 years and/or a maximum fine of \$5,000. While a misdemeanor generally carries a 1-year statute of limitations, 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 specified in the Maryland Constitution.

Human Trafficking of a Minor

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 imprisonment for up to 25 years and/or a maximum 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.

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)

Under § 11-303(e) of the Criminal Law Article, 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.

Abduction of a Child Younger than Age 16

A person may not commit the following acts for the purpose of committing a crime under Title 3, Subtitle 3 of the Criminal Law Article (Sexual Crimes):

- persuade or entice or aid 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 secrete or harbor or aid in the secreting or harboring of the individual who has been persuaded or enticed in the manner specified in statute.

Violators are guilty of a felony, punishable by imprisonment for up to 25 years and/or a \$5,000 maximum fine.

§ 14-101 of the Criminal Law Article

Individuals convicted of a crime of violence under § 14-101 of the Criminal Law Article are eligible for various additional criminal penalties and earn diminution credits at a lower rate than other offenders.

Section 14-101(a) of the Criminal Law Article specifies offenses classified as crimes of violence. Sections 14-101(b) through (d) impose mandatory sentences for individuals who have prior convictions for these offenses and meet other specified criteria.

Section 14-101(a) defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of

certain sexual conduct with a child; (18) assault in the first degree; or (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Mandatory Sentences for Crimes of Violence (§ 14-101)

Subsequent offenders sentenced for a crime of violence under § 14-101 of the Criminal Law Article are generally subject to mandatory sentences. For a second conviction of a crime of violence committed on or after October 1, 1994, a person must be sentenced to a mandatory minimum, nonsuspendable term of 10 years, if the person has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 1994, and served a term for that conviction confined in a correctional facility.

For a third conviction, a person must be sentenced to a mandatory minimum term of 25 years, if the person has been convicted on two separate occasions of a crime of violence, in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion and for which the convictions do not arise from a single incident, and has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to life imprisonment without the possibility of parole.

Diminution Credits

Generally, inmates sentenced to a State correctional facility are entitled to earn diminution of confinement credits to reduce the lengths of their incarcerations. Specified sexual offenders are not eligible to earn diminution credits. In addition, an inmate whose mandatory supervision release has been revoked may not be awarded any new diminution credits on the term of confinement for which the inmate was on mandatory supervision release.

Diminution credits are deducted from an inmate's "term of confinement," which is defined as (1) the length of the sentence, for a single sentence or (2) the period from the first day of the sentence that begins first through the last day of the sentence that ends last, for concurrent sentences, partially concurrent sentences, consecutive sentences, or a combination of concurrent and consecutive sentences.

Diminution credits are made for good conduct, work tasks, education, and special projects or programs, as follows:

- *For sentences imposed before October 1, 1992:* Good conduct credits are awarded at a rate of five days per month regardless of the offense.
- *For sentences imposed between October 1, 1992, and October 1, 2017:* Good conduct credits are awarded at the rate of 5 days per month if the inmate's term of confinement includes a sentence for a crime of violence under § 14-101 or distribution of controlled dangerous substances. Good conduct credits are awarded at the rate of 10 days per month for all other inmates (except for those inmates who are statutorily prohibited from earning diminution credits). Credits for work tasks and education may be awarded at the rate of up to 5 days per month. Special project credits may be awarded at the rate of up to 10 days per month. Such inmates may not be allowed a total deduction, including good conduct credits, of more than 20 days per month.
- *For sentences imposed on October 1, 2017, or later:* Chapter 515 of 2016 increased the maximum possible deduction for diminution credits from 20 days to 30 days per calendar month, except for inmates serving a sentence in a State correctional facility for a crime of violence under § 14-101, specified sexual offenses, or specified volume or kingpin drug offenses. Also, except for that same group of inmates, the deduction for special selected work projects or other special programs, including recidivism reduction programming, increased from 10 to 20 days per calendar month. In addition, the maximum deduction for diminution credits increased for an individual who is serving a sentence in a local correctional facility (for a crime other than a crime of violence or specified volume drug offenses) from 5 to 10 days per month.

Parole and Mandatory Supervision

State inmates must serve either one-quarter or one-half of their sentence to be eligible for parole, depending on the offense (including crimes of violence). Parole eligibility for inmates sentenced to local detention centers is one-quarter regardless of the offense. Certain persons are not eligible for parole while serving a mandatory minimum sentence.

Generally, a person convicted of a violent crime under § 14-101 committed on or after October 1, 2009, is not eligible for release on mandatory supervision until after the person becomes eligible for parole. Usually, a person sentenced to a mandatory sentence for a crime of violence under § 14-101 is not eligible for parole. However, with specified exceptions, as of October 1, 2017, a person sentenced for a crime of violence may petition for, and be granted, parole if the person (1) is at least age 60 and (2) has served at least 15 years of the sentence imposed.

Background: The Judiciary provided the information featured below on human trafficking violations and guilty dispositions in the District Court and the circuit courts during fiscal 2017. A violation is a charge filed with the court. It is not a conviction, and one person may be the subject of multiple violations.

- Felony Human Trafficking, § 11-303(b): 55 violations were filed in the District Court, with 0 guilty dispositions; 73 violations were filed in the circuit courts, with 8 guilty dispositions;
- Felony Financial Benefit, Aiding or Abetting Human Trafficking, § 11-303(e): 16 violations were filed in the District Court, and 6 violations were filed in the circuit court, with 0 guilty dispositions for all courts;
- Misdemeanor Human Trafficking, § 11-303(a): 77 violations were filed in the District Court, with 0 guilty dispositions; 11 guilty dispositions in the circuit courts; and
- Misdemeanor Financial Benefit, Aiding or Abetting, § 11-303(e): 70 violations were filed in the District Court, with 0 guilty dispositions.

According to the Maryland Sentencing Guidelines Database, the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) received information for four individuals sentenced in the State's circuit courts for felony human trafficking under § 11-303(b) of the Criminal Law Article during fiscal 2017. These individuals represent eight counts of felony human trafficking. Two of the individuals were sentenced for one count, one was sentenced for two counts, and one was sentenced for four counts. According to MSCCSP, the sentences imposed for these counts ranged from 10 to 25 years with an average of 20.63 years, including suspended sentences. Excluding suspended sentences, the average sentence imposed was 16.13 years and ranged from 9 to 20 years.

MSCCSP received information for 11 individuals sentenced in the State's circuit courts during fiscal 2017 for a violation of the misdemeanor human trafficking statute under § 11-303(a). These individuals represented 14 counts, with 1 individual sentenced for 2 counts, 1 individual sentenced for 3 counts, and 9 individuals sentenced for 1 count. According to MSCCSP, the sentences imposed for these counts ranged from .46 to 10 years with an average of 7.10 years, including suspended sentences. Excluding suspended sentences, the average sentence imposed was 3.88 years and ranged from 0 to 10 years.

MSCCSP advises that it did not receive any information for any individual sentenced for felony or misdemeanor financial benefit, aiding, or abetting in the State's circuit courts during fiscal 2017.

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

State Expenditures: General fund expenditures increase minimally for the Department of Public Safety and Correctional Services (DPSCS) as a result of the bill's incarceration penalty and alteration of the application of existing penalties due to more people being committed to State correctional facilities. The number of people convicted as a result of the bill is expected to be minimal. General fund expenditures for DPSCS also increase minimally due to people being committed to State correctional facilities for longer periods of time as a result of the bill's classification of felony sex trafficking as a crime of violence. However, this increase in expenditures is more likely to be felt in future years, when the consequences of classifying an offense as a crime of violence become more pronounced on individuals sentenced for felony sex trafficking in the State's courts.

This estimate assumes that:

- the number of individuals found guilty of and sentenced for offenses codified in the bill under Title 3, Subtitle 11 of the Criminal Law Article ("Human Trafficking" subtitle) does not significantly change as a result of the bill;
- designation of human trafficking as a crime of violence does not materially alter prosecutorial decisions regarding plea bargains, etc.; and
- the bill's creation of a labor trafficking offense and alteration of existing offenses do not materially affect caseloads for the Office of the Public Defender.

The bill impacts first-time violators of the prohibitions under Title 3, Subtitle 11 of the Criminal Law Article ("Human Trafficking") and individuals who commit and are sentenced for a second or subsequent crime of violence. The offenses contained in this subtitle are equivalent to felony and misdemeanor offenses under the current human trafficking statute and the labor trafficking offense established under the bill. First-time offenders are subject to reduced eligibility for diminution credits (generally 20 days per month maximum versus 30 days per month maximum) and have to serve a larger portion of their sentences in incarceration before becoming eligible for parole (generally 50% compared to 25%). Subsequent offenders are also subject to these effects and are subject to mandatory minimum sentences (which are nonsuspendable and nonparolable).

However, given the small group of individuals being sentenced for these offenses each year, sentences currently being imposed for these offenses, and the penalties under existing statute for other offenses classified as crimes of violence, any increase in general fund incarceration expenditures due to the bill 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 \$3,800 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities.

Local Revenues: Revenues increase minimally as a result of the bill’s monetary penalty and alteration of the application of existing monetary penalty provisions from cases heard in the circuit courts.

Additional Comments: The bill contains multiple references to “human trafficking.” Title 3, Subtitle 11 of the Criminal Law Article is titled “Human Trafficking.” However, as a result of the bill’s provisions and alterations to existing statute, none of the offenses under that subtitle or anywhere else in the Code of Maryland is named “human trafficking.” Thus, this analysis assumes that references to human trafficking are in fact references to an offense contained in Title 3, Subtitle 11 of the Criminal Law Article, including the bill’s expansion of the definition of a “crime of violence” under § 14-101 of the Criminal Law Article.

Additional Information

Prior Introductions: None.

Cross File: HB 1276 (Delegate Chang, *et al.*) - Judiciary.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of Legislative Services

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