

**Department of Legislative Services**  
Maryland General Assembly  
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**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 404  
Judiciary

(Delegate Chang)

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**Criminal Law - Crime of Violence - Human Trafficking**

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This bill adds human trafficking under § 11-303 of the Criminal Law Article to the definition of “crime of violence” under § 5-101 of the Public Safety Article and §§ 4-401 and 14-101 of the Criminal Law Article.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund incarceration expenditures. Revenues are not affected.

**Local Effect:** The bill is not expected to materially affect local finances, as discussed below.

**Small Business Effect:** None.

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**Analysis**

**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.

### *Crimes of Violence*

Section 5-101 of the Public Safety Article and §§ 4-401 and 14-101 of the Criminal Law Article have independent definitions of a “crime of violence.” Designation of an offense under one of these definitions may subject a person to varying consequences.

#### *§ 5-101 of the Public Safety Article*

Section 5-101 defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) assault in the first or second degree; (4) burglary in the first, second, or third degree; (5) carjacking and armed carjacking; (6) escape in the first degree; (7) kidnapping; (8) voluntary manslaughter; (9) maiming; (10) mayhem; (11) murder in the first or second degree; (12) rape in the first or second degree; (13) robbery; (14) robbery with a dangerous weapon; (15) sexual offense in the first, second, or third degree; (16) home invasion; (17) an attempt to commit offenses (1) through (16); or (18) assault with the intent to commit offenses (1) through (16) or a crime punishable by imprisonment for more than one year.

This definition is cross-referenced in statutes pertaining to reckless endangerment, committing a crime in the presence of a minor, use of a handgun or antique firearm in the commission of a crime, use of an assault weapon or magazine in the commission of a felony or a crime of violence, and possession of a rifle or shotgun by a person previously convicted of specified offenses.

#### *§ 4-401 of the Criminal Law Article*

Section 4-401 of the Criminal Law Article defines a “crime of violence” as (1) murder in any degree; (2) manslaughter; (3) kidnapping; (4) rape in any degree; (5) assault in the first degree; (6) robbery under § 3-402 or § 3-403 of the Criminal Law Article; (7) burglary in any degree; (8) home invasion; (9) escape in the first degree or (10) theft.

This definition is used in connection with various machine gun offenses.

#### *§ 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; (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  
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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, beginning 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 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 Expenditures:** General fund expenditures for the Department of Public Safety and Correctional Services increase minimally due to people being committed to State correctional facilities for longer periods of time and for individuals being committed to State correctional facilities due to the designation of offenses under the bill as crimes of violence.

This estimate assumes that (1) the number of individuals found guilty of and sentenced for human trafficking remains constant and (2) the designation of human trafficking as a crime of violence does not materially alter prosecutorial decisions regarding plea bargains, etc.

The bill's addition of human trafficking to the definition of "crime of violence" under § 5-101 of the Public Safety Article expands the applicability of various other prohibitions and penalties to the commission of human trafficking offenses or by an individual previously convicted of human trafficking (*e.g.*, use of a handgun or antique firearm in the commission of a crime and possession of a rifle or shotgun by a person previously convicted of specified offenses). While the bill's provisions make individuals defending themselves against human trafficking eligible for a specified exception to the prohibition on reckless endangerment, expanded eligibility for this statutory exception is not expected to materially affect State finances.

The addition of the offense to the definition of crime of violence under § 14-101 of the Criminal Law Article affects first-time violators of the human trafficking statute and individuals who commit and are sentenced for a second or subsequent crime of violence. 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 currently being sentenced for human trafficking each year and the penalties under existing statute for other offenses classified as crimes of violence, increases in general fund incarceration expenditures are expected to

be minimal as a result of the bill's alteration of § 14-101. Any increase in expenditures is more likely to be felt in future years, when the consequences of classifying an offense as a crime of violence under § 14-101 become more pronounced on individuals sentenced for human trafficking in the State's courts.

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 Fiscal Effect:** The bill may shift some individuals, most likely misdemeanor human trafficking offenders, from local detention centers to State correctional facilities. However, given the small group of individuals sentenced for misdemeanor human trafficking each year, this shift is not expected to materially affect local finances.

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### **Additional Information**

**Prior Introductions:** None.

**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 Public Safety and Correctional Services; Department of Legislative Services

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