

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 690

(Senator Lee, *et al.*)

Judicial Proceedings

Judiciary

Criminal Law - Human Trafficking and Prostitution Offenses

This bill (1) expands prohibitions on human trafficking; (2) 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) generally makes corresponding changes to existing statutes to reflect the bill’s alteration of offenses; and (5) adds a felony offense under Title 3, Subtitle 11 of the Criminal Law Article to the definitions of a “crime of violence” under § 14-101 of the Criminal Law Article and § 5-101 of the Public Safety Article.

Fiscal Summary

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

Local Effect: Minimal increase in revenues due to the bill’s alteration of the 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. The bill also establishes that a defendant's lack of knowledge of the victim's age is not a defense in a prosecution for knowingly benefitting financially from or aiding or abetting a sex trafficking violation.

Forced Marriage (Criminal Law Article, § 3-1103)

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 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 the existing provisions of § 11-306(a) (2) through (5) of the Criminal Law Article.

Forfeitures and Authority of Police Employees

The bill 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.

Crimes of Violence

The bill adds a felony offense under Title 3, Subtitle 11 of the Criminal Law Article to the definitions of a "crime of violence" under § 14-101 of the Criminal Law Article and § 5-101 of the Public Safety Article. As a result, the following crimes are added to those definitions: felony sex trafficking (general); felony sex trafficking (financial benefit or aiding and abetting); and forced marriage.

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. Section 11-303(b) of the Criminal Law Article prohibits a person from engaging in the human trafficking of a minor or human trafficking through compelled marriage or the performance of specified acts.

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.

Human Trafficking of a Minor

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

Section 11-303(b) of the Criminal Law Article also applies the felony human trafficking penalty 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 under § 11-303(b).

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.

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.

Crimes of Violence

Section 5-101 of the Public Safety Article 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.

Disqualifying Crime: State law contains several factors which prohibit a person from possessing a regulated firearm, a rifle, or a shotgun, including if the person has been convicted of a disqualifying crime.

“Disqualifying crime” means a crime of violence under § 5-101 of the Public Safety Article, a felony, or a misdemeanor in the State that carries a statutory penalty of imprisonment of more than two years. “Convicted of a disqualifying crime” includes a case in which a person received probation before judgment for a crime of violence and a case in which a person received probation before judgment in a domestically related crime. “Convicted of a disqualifying crime” does not include a case in which a person received a probation before judgment for second-degree assault (unless the crime was a domestically related crime) or a crime which was expunged under Title 10, Subtitle 1 of the Criminal Procedure Article.

In general, a person who violates this prohibition is guilty of a misdemeanor and subject to maximum penalties of five years imprisonment and/or \$10,000 fine. However, a person who has previously been convicted of a crime of violence under § 5-101 of the Public Safety Article is guilty of a felony, punishable for at least 5 years and up to 15 years. The five-year minimum sentence is nonsuspendable and nonparolable. If more than five years has elapsed since the defendant completed the sentence for the crime of violence, (1) the imposition of the mandatory minimum sentence is within the discretion of the court and (2) the mandatory minimum sentence may not be imposed unless the State provides notice of its intent to seek the mandatory minimum sentence to the defendant at least 30 days before trial.

§ 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. Section 14-101(b) through (d) imposes mandatory sentences for individuals who have prior convictions for these offenses and meet other specified criteria.

Section 14-101(a) of the Criminal Law Article 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 firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (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; and (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

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, 2018, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable 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, 2018, and served a term of confinement in a correctional facility for that conviction.

For a third conviction, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 25 years, if the person has been convicted on two prior 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 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 to 30 days per calendar month, except for inmates serving a sentence in a State correctional facility for a crime of violence, 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

In general, a State inmate who is serving a sentence of six months or more is not eligible for parole until the inmate has served one-quarter of the inmate's sentence. A sentence for a violent crime does not become parole-eligible until the inmate has served one-half of the sentence. An inmate serving a term of incarceration that includes a mandatory minimum sentence that is not subject to parole by statute is not eligible for parole until the inmate has served that mandatory minimum sentence.

As previously noted, a person convicted for the fourth time of a crime of violence must be sentenced to life imprisonment without the possibility of parole. In general, a sentence for a third crime of violence or a second crime of violence committed on or after October 1, 2018, is not eligible for parole. However, with specified exceptions, beginning October 1, 2017, a person serving a mandatory sentence 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.

Generally, a person convicted of a violent crime committed on or after October 1, 2009, is not eligible for release on mandatory supervision until after the person becomes eligible for parole.

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) of the Criminal Law Article: 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) of the Criminal Law Article: 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) of the Criminal Law Article: 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) of the Criminal Law Article: 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 a total of 22 individuals sentenced to 39 counts of felony and misdemeanor human trafficking in the State's circuit courts during fiscal 2018. With respect to felony human trafficking specifically, MSCCSP received information for 11 individuals sentenced in the State's circuit courts for human trafficking under § 11-303(b) of the Criminal Law Article during fiscal 2018. These individuals represent 15 counts of felony human trafficking. The sentences imposed for these counts ranged from 10 to 25 years, with an average of 19.3 years, including suspended sentences. Excluding suspended sentences, the average sentence imposed was 11.8 years and ranged from 5 to 25 years.

The Department of Public Safety and Correctional Services (DPSCS) advises that during fiscal 2018, the Division of Correction conducted seven intakes on individuals convicted of felony human trafficking; five of the intakes had split sentences. One inmate with a conviction for felony human trafficking was paroled to the Division of Parole and Probation.

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

State Expenditures: General fund expenditures increase minimally for DPSCS as a result of (1) the bill's alteration of the application of existing penalties due to more people being committed to State correctional facilities and (2) the bill's classification of specified felony offenses as crimes of violence due to people being committed to State correctional facilities for longer periods of time. The number of people convicted and subject to increased penalty provisions as a result of the bill is expected to be minimal. The effect of the bill's classification of offenses as crimes of violence 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 these offenses 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;
- the number of individuals found guilty of and sentenced for felony offenses under Title 3, Subtitle 11 of the Criminal Law Article (currently felony human trafficking offenses) does not significantly change as a result of the bill’s provisions regarding those offenses;
- the bill’s alteration of specified provisions of § 3-1102(b)(2) of the Criminal Law Article does not significantly increase the number of individuals convicted of felony sex trafficking compared to the number of individuals currently convicted of felony human trafficking;
- designation of specified offenses as crimes of violence does not materially alter prosecutorial decisions regarding plea bargains, etc.; and
- the bill’s alteration of existing offenses does not materially affect caseloads for the Office of the Public Defender.

The bill’s classification, as crimes of violence under § 5-101 of the Public Safety Article, of specified felony offenses that are, for the most part, considered felony human trafficking expands application of (1) the prohibitions on possession of a regulated firearm under § 5-133 of the Public Safety Article to individuals who received a probation before judgment for these felony offenses and (2) the increased penalty for violations of § 5-133 to individuals convicted of these felony offenses. However, given the fiscal 2018 statistics for individuals convicted of felony human trafficking, the bill is not expected to significantly increase State expenditures.

The bill affects first-time violators of the felony human trafficking statute and individuals who commit and are sentenced for a second or subsequent crime of violence under § 14-101 of the Criminal Law Article. 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%). In general, subsequent violent crime offenders are not eligible for parole and, as a result, are not eligible for release on mandatory supervision through the application of diminution credits.

However, given the small group of individuals being sentenced for felony human trafficking offenses each year, sentences being imposed for felony human trafficking, 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 are 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 alteration of the application of existing monetary penalty provisions from cases heard in the circuit courts.

Additional Information

Prior Introductions: SB 881 of 2018, a similar bill, passed the Senate with amendments and was referred to the House Rules and Executive Nominations Committee. No further action was taken on the bill. Its cross file, HB 1276, received a hearing in the House Judiciary Committee. No further action was taken on the bill.

Cross File: HB 871 (Delegate Pippy, *et al.*) - Judiciary.

Information Source(s): Montgomery, Washington, and Worcester counties; City of Westminster; Town of Leonardtown; Maryland State Commission on Criminal Sentencing Policy; 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 State Police; Maryland Department of Transportation; Department of Legislative Services

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