

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1152
Judiciary

(Delegate Cox, *et al.*)

Interstate Human Trafficking of Minors Prohibition Act

This bill (1) prohibits a person from bringing or causing another to bring a minor into the State for human trafficking; (2) requires an officer, employee, or agent of the State to notify a State’s Attorney if the individual encounters a child who the individual has reason to believe is pregnant, subject to criminal penalties; and (3) restricts funding, or use of specified funding, for abortion services provided to a minor who was brought into the State for human trafficking.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provision and expanded application of existing penalty provisions.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s penalty provision and expanded application of existing penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary:

Human Trafficking: The bill prohibits a person from bringing or causing another to bring a minor into the State to commit a violation of the State’s prohibition on human trafficking under § 11-303(a) (misdemeanor human trafficking) and § 11-303(b)(2) (felony human trafficking – compelled marriage, performance of specified acts). Violators are guilty of

felony human trafficking and subject to the existing penalties of imprisonment for up to 25 years and/or a \$15,000 maximum fine.

Mandatory Reporting of Suspected Pregnancy: The bill requires an officer, employee, or agent of the State who encounters a child who the individual has reason to believe is pregnant to notify the State's Attorney for the county in which the child was encountered. The reporter must make an oral report via telephone or direct communication as soon as possible and a written report no later than 48 hours after the encounter with the allegedly pregnant child. The reporter must include specified information about the child in the report, including any information that would help to determine whether the child is a victim of human trafficking, insofar as is possible. A mandatory reporter who knowingly fails to comply with these requirements is guilty of a misdemeanor, punishable by imprisonment for up to two years and/or a \$5,000 maximum fine.

Abortion Services: The bill prohibits the Criminal Injuries Compensation Board (CICB) from paying for abortion services provided under § 11-1007 of the Criminal Procedure Article (services for a victim of alleged rape, sexual offense, or child abuse) if it is determined that the person who received the services is a minor who is not a resident of the State and whose presence in the State is a direct result of being brought into the State in relation to a violation of the State's prohibition on human trafficking.

The bill also prohibits the Governor from including an appropriation in the annual State budget to be used to provide funds for abortion services or reimbursement for abortion services or expenses related to abortion services provided to a minor who is not a resident of the State and whose presence in the State is a direct result of being brought in the State in relation to a violation of the State's prohibition on human trafficking. An agency or unit of State government may not use funds received from an appropriation in the annual State budget for this purpose.

The cost of abortion services provided to a minor who is not a resident of the State, and whose presence in the State is the direct result of being brought into the State in relation to a violation of the State's prohibition on human trafficking, is not eligible to receive benefits under a medical assistance plan established by the State.

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 Child Younger Than Age 16: A person is prohibited from committing the following acts for purposes of prostitution or committing a sexual crime: (1) persuading or enticing or aiding 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 or (2) knowingly secreting or harboring or aiding in the secreting or harboring of an individual younger than age 16 who has been persuaded or enticed away from home or away from the custody of a parent or guardian.

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

Kidnapping: A person may not, by force or fraud, carry or cause a person to be carried in or outside the State with the intent to have the person carried or concealed in or outside the State. Violators are guilty of kidnapping, a felony punishable by imprisonment for up to 30 years. Kidnapping does not include the act of a parent in carrying a minor child of that parent in or outside the State.

Child Kidnapping: A person may not, without color of right:

- forcibly abduct, take, or carry away a child younger than age 12 from the home or usual place of abode of the child or the custody and control of the child's parent or legal guardian;
- without the consent of the child's parent or legal guardian, persuade or entice a child younger than age 12 from the child's home or usual place of abode or the custody and control of the child's parent or legal guardian; or
- with the intent of depriving the child's parent or legal guardian, or any person lawfully possessing the child, of the custody, care, and control of the child, knowingly secrete or harbor a child younger than age 12.

Violators are guilty of a felony, punishable by imprisonment for up to 20 years.

A person may not, by force or fraud, kidnap, steal, take, or carry away a child younger than age 16. A person, other than a parent of the child, who violates this prohibition is guilty of a felony, punishable by imprisonment for up to 30 years. However, if a person convicted of this offense is convicted in the same proceeding of rape or a first degree sexual offense, the person is guilty of a felony, punishable by imprisonment not exceeding life without the possibility of parole. The State must notify the defendant in writing of the State's intention to pursue a penalty of life imprisonment without the possibility of parole at least 30 days before trial.

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.

A worker who notifies the appropriate authorities must make an oral report by telephone or direct communication as soon as possible to the local department or the appropriate law enforcement agency if the worker has reason to believe the child has been subjected to abuse or neglect. A written report to the local department is required not later than 48 hours after the contact, examination, or treatment that caused the worker to believe that the child had been subjected to abuse or neglect. A copy of the written report must be provided to the local State’s Attorney. An agency that receives an oral report of suspected abuse or neglect must immediately notify the other agency.

As far as reasonably possible, a worker who makes a report must include the name, age, and home address of the child; the name and home address of the child’s parent or other person responsible for the child’s care; the whereabouts of the child; and the nature and extent of the child abuse or neglect. The report must include any available evidence about previous instances of abuse or neglect, any information that would help to determine the cause of the suspected abuse or neglect, and the identity of any person responsible for the abuse or neglect.

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. Attorneys and clergy are generally exempt from reporting if they become aware of suspected abuse or neglect through privileged communications, as specified in statute.

Individuals who in good faith make or participate in making a report of abuse or neglect or participate in an investigation or resulting judicial proceeding are immune from civil liability or criminal penalties.

Background: The Judiciary advises that in fiscal 2017, the latest year for which complete information is available, 55 violations of the felony human trafficking statute under § 11-303(b) were filed in the District Court, with zero guilty dispositions; 73 violations were filed in the circuit courts, with eight guilty dispositions. A “violation” is a charge filed in the court, and a person may be associated with multiple violations.

According to the Maryland Sentencing Guidelines Database, the Maryland State Commission on Criminal Sentencing Policy 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 may increase minimally from fines imposed in the District Court.

State Expenditures:

Department of Public Safety and Correctional Services: General fund expenditures for DPSCS may increase minimally as a result of the bill's incarceration penalty and expanded application of an existing incarceration penalty 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 as a result of the bill is expected to be minimal. This estimate assumes that (1) State's Attorneys will prosecute a failure to report an encounter with a pregnant minor under very limited circumstances and (2) individuals charged under the bill's expansion of the human trafficking statute would likely face serious charges under existing law for the same acts.

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. 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. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from 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.

Other Agencies: The bill prohibits the Governor from including an appropriation for specified purposes in the budget. The legislature cannot enact statutes to limit the Governor's ability to include items in the budget. The funding of particular State programs and projects in future annual budgets is a matter constitutionally committed to the Governor's discretion. *Maryland Action for Foster Children, Inc. v. State*, 279 Md. 133, 148 (1977).

Participation in the Maryland Medical Assistance Program is limited to State residents. An individual is a Maryland resident if the individual resides in Maryland with the intent of remaining permanently or for an indefinite period, regardless of whether the individual maintains the residence permanently or at a fixed address. According to the Maryland Department of Health, a noninstitutionalized, unmarried individual younger than age 21 is considered a resident of the state where the child lives with the child's parent or other caretaker relative; or in another living arrangement if the child is not living with the child's parent or other caretaker relative, and the child's parent or other caretaker relative is not responsible for the child's day-to-day care and supervision. Qualified immigrants who have been federally determined to be trafficking survivors are eligible to apply for Medicaid.

Thus, it is unclear under what circumstances the bill's prohibition relating to eligibility for benefits under a medical assistance plan would apply, especially given that the minor, or an adult accompanying the minor, would have to produce evidence of the minor's State residency. School enrollment documentation is one type of proof of residency, but to what extent an out-of-state minor brought into the State for trafficking purposes is enrolled in a Maryland school cannot be reliably determined at this time.

The Maryland Association of County Health Officers (MACHO) advises that it is not aware of any local health departments that provide any abortion services, nor of any local health department funding any abortions on site or off site. Thus, according to MACHO, no State funds are used by local health departments for abortion services.

According to the Governor's Office of Crime Control and Prevention, CICB does not reimburse for abortion services, nor does the Sexual Assault Reimbursement Unit (SARU). According to regulations, SARU is required to discuss prophylactic medication with a victim and offer the medication to the victim who is at risk for pregnancy as a result of the alleged rape or sexual assault. SARU, paid through CICB, does offer emergency contraception to these victims if appropriate.

The Judiciary advises that since the majority of court personnel are State employees, the bill's reporting requirements may have an operational impact and affect use of clerical and administrative time.

Local Revenues: Revenues may increase minimally as a result of fines imposed in cases heard in the circuit courts.

Local Expenditures: Expenditures may increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years. This estimate assumes that local State's Attorneys' offices will not experience a high volume of reports of encounters with pregnant minors under the bill.

Harford County advises that the reporting required under the bill would result in investigations by a multidisciplinary team to determine if the child is the victim of abuse or human trafficking. According to the county, there could be a significant fiscal impact to the county. The county advises that it is unable to quantify the fiscal effect at this time. However, the Department of Legislative Services advises that the county's estimate appears to be based on the anticipation of a significant number of reports from mandatory reporters. While the mandatory reporting requirement under the bill is not premised on actual knowledge of a pregnancy or the existence of criminal activity, it is unclear at this time whether mandatory reporters would feel inclined to make reports and get State's Attorneys involved in a situation of which they have limited knowledge.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Harford and Talbot counties; Maryland Association of Counties; City of College Park; Governor's Office of Crime Control and Prevention; 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 Budget and Management; Maryland Department of Health; Maryland Association of County Health Officers; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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