

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 689

(Senator Lee, *et al.*)

Judicial Proceedings

Judiciary

Criminal Law - Labor Trafficking (Anti-Exploitation Act of 2019)

This bill establishes the offense of labor trafficking, a felony punishable by imprisonment for up to 25 years and/or a \$15,000 maximum fine. A State's Attorney or the Attorney General may investigate and prosecute a violation of the bill or of any crime based on the act establishing a labor trafficking violation. If the Attorney General exercises this authority, the Attorney General has all the powers and duties of a State's Attorney to investigate and prosecute the violation.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's penalty provision. Assuming that the bill results in a minimal increase in caseloads, the Office of the Attorney General (OAG) can handle the bill's requirements with existing budgeted resources. Revenues are not affected.

Local Effect: Minimal increase in local revenues due to the bill's penalty provision. Expenditures are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits a person from knowingly:

- taking, placing, harboring, persuading, inducing, or enticing another by force, fraud, or coercion to provide services or labor; or
- receiving a benefit or thing of value from the provision of services or labor by another that was induced by force, fraud, or coercion.

The bill also prohibits a person from aiding or conspiring with another to commit the aforementioned acts.

“Coercion” includes actual or threatened:

- use of physical force against an individual;
- restraint, abduction, isolation, or confinement of an individual against the individual’s will and without lawful authority;
- control or direction of the activity of an individual through “debt bondage,” as defined;
- destruction, concealment, removal, confiscation, withholding, or possession of an actual or purported passport, immigration document, or governmental identification document of an individual;
- infliction of serious psychological harm to an individual;
- control of an individual’s access to a controlled dangerous substance;
- exposure or dissemination of any fact or information that would tend to subject an individual to criminal or immigration proceedings;
- notification to an agency or unit of the State or federal government that an individual is present in the United States in violation of federal immigration law; and
- exploitation of a vulnerable adult.

“Debt bondage” means the status or condition of an individual who provides labor, services, or sex acts to pay a real or alleged debt, where (1) the value of the labor, services, or sex act is not applied toward the liquidation of the debt; (2) the nature of the labor, services, or sex act is not limited or defined; or (3) the amount of the debt does not reasonably reflect the value of items, services, or other things of value for which the debt was incurred.

Current Law: While there is no equivalent offense under existing statute, the crimes of extortion and human trafficking contain components of or prohibit activities related to the labor tracking offense established under the bill.

Extortion

Under the State’s general extortion statute, a person may not obtain, attempt to obtain, or conspire to obtain money, property, labor, services, or anything of value from another person with the person’s consent, if the consent is induced by wrongful use of actual or threatened (1) force or violence; (2) economic injury; (3) destruction, concealment, removal, confiscation, or possession of any immigration or government identification document with intent to harm the immigration status of another person; or (4) notification

of law enforcement officials about another person’s undocumented or illegal immigration status.

The prohibition does not apply to legitimate efforts by employees or their representatives to obtain certain wages, hours, or working conditions.

Classification of and penalties for violations of the statute vary based on the value of the property, labor, or services extorted, as noted in **Exhibit 1**. A prosecution for felony extortion must be instituted within five years after the crime was committed.

Exhibit 1
Classification of and Penalties for Violations of the General Extortion Statute

Value of Property, Labor, or Services Extorted	Classification and Penalty
Less than \$1,000	Misdemeanor Imprisonment for up to 18 months and/or a \$1,000 maximum fine
At least \$1,000 but less than \$10,000	Felony Imprisonment for up to 10 years and/or a \$10,000 maximum fine
At least \$10,000 but less than \$100,000	Felony Imprisonment for up to 15 years and/or a \$15,000 maximum fine
\$100,000 or more	Felony Imprisonment for up to 25 years and/or a \$25,000 maximum fine

Source: Department of Legislative Services

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 one-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).

Exploitation of a Vulnerable Adult

A “vulnerable adult” is an adult who lacks the physical or mental capacity to provide for the adult’s daily needs.

Under the offense of exploitation of a vulnerable adult, a person may not knowingly and willfully obtain, by deception, intimidation, or undue influence, the property of an individual that the person knows or reasonably should know is at least age 68 or is a vulnerable adult with intent to deprive the individual of the individual’s property. Penalties for the offense vary based on the value of the property, as listed below. A sentence imposed for the offense may be separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing the violation.

Property Value

Less than \$1,500

\$1,500 to less than \$25,000

\$25,000 to less than \$100,000

\$100,000 or more

Maximum Penalty

Misdemeanor – 1 year and/or \$500

Felony – 5 years and/or \$10,000

Felony – 10 years and/or \$15,000

Felony – 20 years and/or \$25,000

In addition to the penalties listed above, violators must restore the property taken or its value to the owner or, if the owner is deceased, restore the property or its value to the owner’s estate. If a defendant fails to restore fully the property taken or its value as ordered, the defendant is disqualified, to the extent of the defendant’s failure to restore the property or its value, from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the victim of the offense, whether by operation of law or pursuant to a legal document executed or entered into by the victim before the defendant has been convicted. The defendant has the burden of proof with respect to establishing that the defendant has fully restored the property taken or its value.

The statutory prohibition on exploitation of a vulnerable adult may not be construed to impose criminal liability on a person who, at the request of the victim of the offense, the victim’s family, or the court-appointed guardian of the victim, has made a good faith effort to assist the victim in the management of or transfer of the victim’s property.

Chapter 114 of 2016 generally authorizes the Division of Consumer Protection in OAG to bring a civil action for damages against a person who violates the State’s prohibition against exploitation of a vulnerable adult on behalf of a victim of the offense or, if the victim is deceased, the victim’s estate. Chapter 794 of 2018 extends this authority to the Securities Commissioner of the Division of Securities of OAG. The division and commissioner may recover damages for property loss or damage. If the division or commissioner prevails in an action, the costs of the action may be recovered for the use of

OAG. A conviction for the criminal offense is not a prerequisite for maintenance of an action.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities. 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 \$3,800 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.

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

Additional Information

Prior Introductions: None.

Cross File: HB 734 (Delegate W. Fisher, *et al.*) - Judiciary.

Information Source(s): Garrett and Montgomery counties; City of Laurel; 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 Public Safety and Correctional Services; Office of the Attorney General; Department of State Police; Department of Legislative Services

Fiscal Note History:
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