

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 768

(Senators Lee and Watson)

Judicial Proceedings

Rules and Executive Nominations

Criminal Law - Victims of Child Sex Trafficking and Human Trafficking - Safe Harbor and Service Response

This bill (1) alters procedures that a law enforcement officer must follow when there is reason to believe a child who has been detained is a victim of “sex trafficking” or a “victim of human trafficking”; (2) specifies that in a criminal prosecution of or a juvenile proceeding against a minor for a “qualifying offense,” a “violation” (specified offenses for which a citation may be issued), or an offense under § 3-1102 of the Criminal Law Article (sex trafficking), it is an affirmative defense of duress if the minor committed the underlying act as a result of being the victim of another under Title 3, Subtitle 11 of the Criminal Law Article (sex trafficking and marriage trafficking) or specified federal human trafficking crimes; and (3) adds offenses to the list of qualifying offenses for which a person may file a motion to vacate judgment if the person’s participation was a direct result of being a victim of human trafficking.

Fiscal Summary

State Effect: The bill’s changes can be handled with existing budgeted resources and are not otherwise anticipated to materially affect State finances or operations.

Local Effect: The bill’s changes can be handled with existing budgeted resources and are not otherwise anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Law Enforcement Officers – Procedures and Requirements Regarding a Suspected Child Victim of Sex Trafficking or Human Trafficking

Under current law, in addition to compliance with requirements regarding the reporting of child abuse and neglect, a law enforcement officer who has reason to believe that a child who has been detained is a victim of sex trafficking must notify any appropriate regional navigator for the jurisdiction where the child was taken into custody or where the child is a resident that the child is a suspected victim of sex trafficking.

The bill extends the notification requirement to suspected victims of human trafficking and specifies that the notification must be made as soon as practicable so the regional navigator can coordinate a service response. The bill also requires (as soon as practicable), the law enforcement officer to (1) report to the local child welfare agency that the child is a suspected victim of sex trafficking or human trafficking and (2) release the child to the child's parents, guardian, or custodian if it is safe and appropriate to do so, or to the local child welfare agency if there is reason to believe that the child's safety will be at risk if the child is returned to the parent, guardian, or custodian.

Under current law, a law enforcement officer or other person authorized by the court may take a child into custody if the officer/person has reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary for the child's protection.

Under the bill, a law enforcement officer who takes a child who is a suspected victim of sex trafficking or human trafficking into custody under this provision may not detain the child in a juvenile detention facility if the reason for detaining the child is a suspected violation of a qualifying offense or § 3-1102 of the Criminal Law Article.

Affirmative Defense of Duress

Under the bill, in a criminal prosecution against a minor or in a juvenile proceeding against a delinquent child for a qualifying offense, a violation, or an offense under § 3-1102 of the Criminal Law Article, it is an affirmative defense of duress if the defendant or the child committed the act as a result of being the victim of another under Title 3, Subtitle 11 of the Criminal Law Article or the prohibition against human trafficking under federal law. A defendant or a child in a delinquency proceeding may not assert the affirmative defense unless the defendant or child notifies the State's Attorney of the intention to do so at least 10 days before trial.

Qualifying Offenses

Under § 8-302 of the Criminal Procedure Article, a “qualifying offense” is defined as:

- unnatural or perverted sexual practice;
- possessing or administering a controlled dangerous substance;
- possessing or purchasing a noncontrolled substance;
- possessing or distributing controlled paraphernalia;
- fourth-degree burglary;
- malicious destruction of property in the lesser degree;
- a trespass offense;
- misdemeanor theft;
- misdemeanor obtaining property or services by bad check;
- possession or use of a fraudulent government identification document;
- public assistance fraud;
- false statement to a law enforcement officer or public official;
- disturbing the public peace and disorderly conduct;
- indecent exposure;
- prostitution under § 11-303 of the Criminal Law Article;
- driving with a suspended registration;
- failure to display registration;
- driving without a license;
- failure to display license to police;
- possession of a suspended license;
- driving while privilege is canceled, suspended, refused, or revoked;
- owner failure to maintain security on a vehicle;
- driving while uninsured; or
- prostitution or loitering as prohibited under local law.

The bill adds the offenses of unauthorized use of a motor vehicle under § 14-102 of the Transportation Article and soliciting or offering to solicit prostitution or assignation under § 11-306 of the Criminal Law Article to the list of qualifying offenses under this statute.

Under current law, a person convicted of a qualifying offense may file a motion to vacate the judgment if the person’s participation in the offense was a direct result of being a victim of human trafficking. Specific procedural requirements apply to these motions, and a conviction that has been vacated under these provisions may not be considered a conviction for any purpose. Pursuant to Chapters 126 and 127 of 2020, a person who was convicted of a crime and has the conviction vacated under § 8-302 of the Criminal Procedure Article

is eligible to file a petition to expunge records regarding the vacated conviction under § 10-105(a)(13) of the Criminal Procedure Article.

Select Definitions (Applicable to, but Unchanged by the Bill)

Under § 5-701 of the Family Law Article, “sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act.

Under § 5-704.4 of the Family Law Article, a “regional navigator” is a provider of services designated by a grantee of the Safe Harbor Regional Navigator Grant Program, which was established to support services for youth victims of sex trafficking.

Under § 3-8A-01 of the Courts Article (involving juvenile delinquency proceedings for children younger than age 18), a “violation” includes specified offenses applicable only to minors or to those younger than age 21, including (1) the use or possession of less than 10 grams of marijuana; (2) certain alcoholic beverage violations; (3) possession of *Salvia divinorum* by an individual younger than age 21; (4) table game and video lottery terminal violations by an individual younger than age 21; and (5) drinking or possessing an alcoholic beverage on school premises by an individual younger than age 18.

Under § 8-302 of the Criminal Procedure Article “victim of human trafficking” means a person who has been subjected to an act of another committed in violation of Title 3, Subtitle 11 of the Criminal Law Article (sex trafficking and marriage trafficking) or specified federal human trafficking crimes.

Additional Information

Prior Introductions: None.

Cross File: HB 833 (Delegate Lierman) - Judiciary.

Information Source(s): Caroline, Montgomery, and Prince George’s counties; Governor’s Office of Crime Prevention, Youth, and Victim Services; 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 Human Services; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2022
fnu2/aad Third Reader - April 11, 2022
Revised - Amendment(s) - April 11, 2022

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510