

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 754
Judiciary

(Delegate Crosby)

Criminal Law - Sex Trafficking - Felony

This bill reclassifies specified violations of the State’s prohibition on sex trafficking from a misdemeanor to a felony. The reclassified violations are subject to the existing statutory penalty for felony sex trafficking. The bill also establishes that in a prosecution for any sex trafficking violation under § 3-1102 of the Criminal Law Article, it is an affirmative defense of duress if the defendant committed the alleged sex trafficking violation as a result of being a victim of the act of another person who was charged with a sex trafficking offense under State or federal law.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Section 3-1102 of the Criminal Law Article prohibits a person from engaging in sex trafficking. The penalties for the offense vary based on the type of victim and the circumstances involved.

Sex Trafficking in General – Prohibitions

Under the current prohibition against sex trafficking, 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.

Also, a parent, guardian, or person who has permanent or temporary care or custody or responsibility for supervision of another may not consent to the taking or detention of the other person for prostitution.

The bill does not alter the existing statutory prohibitions.

Penalties

In general, a person who commits the sex trafficking offenses detailed above 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.

Under § 3-1102(b) of the Criminal Law Article, a person who commits sex trafficking involving a victim who is a minor (defined as an individual younger than age 18) or with the use of or intent to use force, threat, coercion, or fraud is guilty of a felony and subject to imprisonment for up to 25 years and/or a maximum fine of \$15,000. The District Court has concurrent jurisdiction with the circuit courts over the crime of felony sex trafficking under § 3-1102(b).

Under the bill, the misdemeanor designation and penalty continue to apply to the first four prohibitions listed above. However, the bill reclassifies violations of the final two prohibitions in the bulleted list above as felonies and subjects them to the existing statutory penalty for felony sex trafficking. Thus, under the bill, it is a felony to knowingly

(1) 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 (2) 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 sex trafficking.

Under current law, a person who knowingly aids, abets, or conspires in the violation of State sex trafficking laws or knowingly benefits financially or receives anything of value from a venture that includes an act prohibited under State sex trafficking laws is subject to the same penalties imposed on a person who violated the applicable statute. The bill does not modify this provision.

Under current law, a defendant's lack of knowledge of the victim's age is not a defense in a prosecution for (1) sex trafficking of a minor or (2) knowingly benefitting financially from or aiding or abetting a sex trafficking violation. The bill does not alter this provision.

The bill establishes an affirmative defense of duress to a prosecution under § 3-1102 if the defendant committed the alleged sex trafficking violation as a result of being a victim of the act of another person and the other person was charged with a sex trafficking violation under State or federal law.

State Revenues: General fund revenues may increase due to fine penalties increasing for specified offenses under the bill and may decrease due to fine penalties in cases shifted from the District Court to the circuit courts. However, the overall impact on State finances is not expected to be material, due to the offsetting nature of the described effects and the expectation that the number of individuals convicted of the specified offenses will be minimal.

State Expenditures: The bill is not expected to materially affect State incarceration expenditures, District Court caseloads, or workloads for the Office of the Public Defender. The Department of Public Safety and Correctional Services advises that during fiscal 2022, it did not receive any inmates in the Division of Corrections and did not open any supervisions in the Division of Parole and Probation for the offenses being reclassified as felonies under the bill.

Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to more stringent penalty provisions, applicable to some offenses for prior felony convictions. However, a felony under § 3-1102(b) is within the jurisdiction of both the District Court and the circuit courts.

Local Revenues: Any increase in revenues from fines imposed in cases shifted from the District Court to the circuit courts is not expected to materially affect local finances.

Local Expenditures: The bill is not expected to materially affect local expenditures or circuit court caseloads. The Judiciary anticipates a minimal impact on the trial courts as a result of the bill. The State's Attorneys' Association advises that the bill has no effect on prosecutors.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Baltimore City; Prince George's County; 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; Department of Legislative Services

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