

064861380

HOUSE BILL NO. 1152

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 18.2-374.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 18.2 an article numbered 10, consisting of sections numbered 18.2-76.3 through 18.2-76.9, creating the Human Anti-Trafficking Act; penalties.

Patrons—Lingamfelter, Albo, Athey, Callahan, Cosgrove, Gilbert, Jones, S.C., Kilgore, Landes, Morgan, O'Bannon, Rust and Suit

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-374.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 18.2 an article numbered 10, consisting of sections numbered 18.2-76.3 through 18.2-76.9 as follows:

*Article 10.**Human Anti-Trafficking Act.**§ 18.2-76.3. Definitions.*

As used in this article, unless the context requires otherwise:

"Blackmail" is to be given its ordinary meaning and includes but is not limited to a threat to expose any secret tending to subject any person to hatred, contempt, or ridicule.

"Commercial sexual activity" means any sex act on account of which anything of value is given, promised to, or received by any person.

"Financial harm" includes credit extortion, entering into or enforcing a contract for the payment of interest at a rate that exceeds the maximum rate allowed by applicable statute, and entering into or performing an agreement of employment upon which no action may be brought or maintained, as provided in subdivision 8 of § 11-2.

"Forced labor or services" means labor or services, as defined in this section, that are performed or provided by another person and are obtained or maintained through an actor's (i) causing or threatening to cause serious harm to any person; (ii) physically restraining or threatening to restrain another person; (iii) abusing or threatening to abuse the law or legal process; (iv) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; (v) blackmail; or (vi) causing or threatening to cause financial harm to any person.

"Labor" means work of economic or financial value.

"Maintain" means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type of service.

"Obtain" means, in relation to labor or services, to secure performance thereof.

"Services" means an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor and includes commercial sexual activity and sexually-explicit performances. Nothing in this provision shall be construed to legitimize or legalize prostitution.

"Sexually-explicit visual material" shall have the same meaning as set forth in § 18.2-374.1.

"Trafficking victim" means a person subjected to the practices set forth in §18.2-76.4 (involuntary servitude) or §18.2-76.5 (sexual servitude of a minor) or transported in violation of § 18.2-76.6 (trafficking of persons for forced labor or services).

§ 18.2-76.4. Involuntary servitude; penalties.

Any person who knowingly subjects, or attempts to subject, another person to forced labor or services (i) and who causes or threatens to cause physical harm to any person, is guilty of a Class 3 felony; (ii) and who physically restrains or threatens to physically restrain another person, is guilty of a Class 6 felony; (iii) and who abuses or threatens to abuse the law or legal process, is guilty of a Class 5 felony; (iv) and who knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person, is guilty of a Class 6 felony; (v) and who uses blackmail, or causes or threatens to cause financial harm to any person, is guilty of a Class 6 felony.

§ 18.2-76.5. Sexual servitude of a minor; penalties.

Any person who knowingly recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, provide, or obtain by any means, another person under 18 years

INTRODUCED

HB1152

58 of age to engage in commercial sexual activity, the creation of sexually explicit visual material, or the
59 production of pornography, or causes or attempts to cause a minor to engage in commercial sexual
60 activity, the creation of sexually explicit visual material, or the production of pornography, shall be
61 punished as follows, subject to the provisions of § 18.2-76.7: (i) when the victim is age 15 or older but
62 under the age of 18 years and there is no use of overt force or threat, by a Class 4 felony, (ii) when the
63 victim is under the age of 15 years and there is no use of overt force or threat, by a Class 3 felony and
64 (iii) when overt force or threat is used, by imprisonment for not more than 25 years.

65 § 18.2-76.6. Trafficking of persons for forced labor or services; penalty.

66 Any person who knowingly (i) recruits, entices, harbors, transports, provides, or obtains by any
67 means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another
68 person, intending or knowing that the person will be subjected to forced labor or services or (ii)
69 benefits, financially or by receiving anything of value from participation in a venture which has engaged
70 in an act described in violation of § 18.2-76.4 or 18.2-76.5 shall, subject to the provisions of
71 § 18.2-76.7, be imprisoned for no more than 15 years.

72 §18.2-76.7. Sentencing enhancements.

73 A. A violation of this article involving kidnapping or an attempting to kidnap shall be deemed a
74 violation of § 18.2-48.

75 B. A violation of this article involving aggravated sexual abuse or the attempt to commit aggravated
76 sexual abuse shall be deemed a violation of §18.2-67.3.

77 § 18.2-76.8. Restitution.

78 Restitution is mandatory under this article. In addition to any other amount of loss identified, the
79 court shall order restitution including the greater of (i) the gross income or value to the defendant of
80 the victim's labor or services or (ii) the value of the victim's labor as guaranteed under the minimum
81 wage and overtime provisions of the Fair Labor Standards Act (29 U.S.C. § 201 et seq.) or the Virginia
82 Minimum Wage Act (§ 40.1-28.8 et seq.).

83 § 18.2-76.9. Assessment of victim protection needs.

84 A. The Office of the Attorney General, in consultation with the Department of Criminal Justice
85 Services, shall, no later than July 1, 2007, issue a report to the General Assembly outlining how
86 existing victim/witness laws and regulations respond to the needs of trafficking victims and suggesting
87 areas of improvement and modification.

88 B. The Secretary of Health and Human Resources, in consultation with the Office of the Attorney
89 General, shall, no later than July 1, 2007, issue a report to the General Assembly outlining how existing
90 social service programs respond or fail to respond to the needs or trafficking victims, the interplay of
91 such existing programs with federally-funded victim service programs, and suggesting areas of
92 improvement and modification. Such inquiry shall include, but not be limited to, the ability of state
93 programs and licensing bodies to recognize federal T nonimmigrant status for the purposes of benefits,
94 programs, and licenses.

95 § 18.2-374.1. Production, publication, sale, possession with intent to distribute, financing, etc., of
96 sexually explicit items involving children; presumption as to age; severability.

97 A. For the purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, the term
98 "sexually explicit visual material" means a picture, photograph, drawing, sculpture, motion picture film,
99 digital image or similar visual representation which depicts sexual bestiality, a lewd exhibition of nudity,
100 as nudity is defined in § 18.2-390, or sexual excitement, sexual conduct or sadomasochistic abuse, as
101 also defined in § 18.2-390, or a book, magazine or pamphlet which contains such a visual representation.
102 An undeveloped photograph or similar visual material may be sexually explicit material notwithstanding
103 that processing or other acts may be required to make its sexually explicit content apparent.

104 B. A person shall be guilty of a Class 5 felony who:

105 1. Accosts, entices or solicits a person less than eighteen years of age with intent to induce or force
106 such person to perform in or be a subject of sexually explicit visual material; or

107 2. Produces or makes or attempts or prepares to produce or make sexually explicit visual material
108 which utilizes or has as a subject a person less than eighteen years of age; or

109 3. Who knowingly takes part in or participates in the filming, photographing or other reproduction
110 of sexually explicit visual material by any means, including but not limited to computer-generated
111 reproduction, which utilizes or has as a subject a person less than eighteen years of age; or

112 4. Sells, gives away, distributes, electronically transmits, displays with lascivious intent, purchases, or
113 possesses with intent to sell, give away, distribute, transmit or display with lascivious intent sexually
114 explicit visual material which utilizes or has as a subject a person less than eighteen years of age.

115 5. [Repealed.]

116 B1. [Repealed.]

117 C. A person shall be guilty of a Class 4 felony who knowingly finances or attempts or prepares to
118 finance sexually explicit visual material which utilizes or has as a subject a person less than eighteen
119 years of age.

D. For the purposes of this section a person who is depicted as or presents the appearance of being less than eighteen years of age in sexually explicit visual material is prima facie presumed to be less than eighteen years of age.

E. The provisions of this section shall be severable and, if any of its provisions shall be held unconstitutional by a court of competent jurisdiction, then the decision of such court shall not affect or impair any of the remaining provisions.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

INTRODUCED

HB1152