



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1100

(Patron – Griffith)

LD #: 06-1332308

Date: 1/9/2006

Topic: Human Anti-Trafficking Act

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
Cannot be determined
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
None (\$0)
- **Juvenile Detention Facilities:**
None (\$0)

Summary of Proposed Legislation:

The proposal adds §§ 18.2-76.3 through 18.2-76.6 to create the Human Anti-Trafficking Act. The proposed legislation mandates restitution for victims, requires the Attorney General and the Secretary of Health and Human Resources to report on the needs of victims, and defines several new crimes and penalty enhancements related to unlawful human servitude.

The proposed § 18.2-76.4 specifies punishment for involuntary servitude. Under this section, any person who knowingly subjects, or attempts to subject, another person to forced labor or services and (1) who causes or threatens to cause physical harm is guilty of a Class 3 felony, (2) who physically restrains or threatens to restrain another person is guilty of a Class 4 felony, (3) who abuses or threatens to abuse the law or legal process is guilty of a Class 5 felony, or (4) who knowingly destroys, etc., any passport or government identification document, etc., or who uses extortion or causes or threatens financial harm to another is guilty of a Class 6 felony.

The proposed § 18.2-76.5 specifies punishment for trafficking of persons for forced labor or services. Under this section, it is a Class 3 felony for any person to knowingly recruit, entice, harbor, transport, provide or obtain another person for forced labor or services. The statute also makes benefiting financially from participation in such a venture a Class 3 felony. Subsection B of § 18.2-76.5 stipulates mandatory minimum sentences based on victim injury and the length of time the victim was held in servitude. If the victim was held in servitude for more than 180 days or if the victim suffered bodily injury, the sentence would include a one-year mandatory minimum term of incarceration. If the victim suffered serious bodily injury, the mandatory minimum would be two years; and if the victim suffered permanent serious bodily injury or life-threatening bodily injury, the mandatory minimum would be three years incarceration.

Analysis:

Because the proposal defines crimes and sentence enhancements not currently found in the *Code of Virginia*, cases involving human servitude or forced labor cannot be identified using existing state data sources.

According to the U.S. Department of Justice (DOJ), in fiscal year (FY) 2004 there were 43 federal convictions for cases brought under the Involuntary Servitude, Forced Labor, or Sex Trafficking statutes. Of these, nearly all (93%) involved Sex Trafficking. Based on Administrative Office of the U.S. Courts (AOUSC) data, DOJ was able to determine the sentences for 18 of the convictions.¹ A majority (78%) were sentenced to a prison term with a median sentence of 6.6 years, while the remaining 22% received probation.

The *Code of Virginia*, however, does contain many crimes that may be associated with cases of human servitude, such as kidnapping, sexual assault, prostitution, and pornography. Sentencing information for many of these crimes is provided below.

Background Sentencing Information – FY2002 and FY2003

Felony Crimes	Number of Cases	% No Incarceration	% Local Responsible (Jail)	% State Responsible (Prison)	Median State Responsible Sentence
Threat, intimidation for pecuniary benefit	2	0%	0%	100%	1.5 yrs.
Abduct child under 16 for immoral purposes	4	0%	0%	100%	10.0 yrs.
Abduct with intent to defile	37	8.1%	2.7%	89.2%	25 yrs.
Abduct with intent to gain pecuniary benefit	29	10.3%	0%	89.7%	8.6 yrs.
Produce obscene material involving minor	2	50.0%	0%	50.0%	1.8 yrs.
Electronic means to solicit minors for prostitution	1	0%	100%	0%	NA
Aggravated sexual battery by force, threat, etc.	82	18.3%	24.4%	57.3%	2.0 yrs.
Aggravated sexual battery, victim under 13	301	10.3%	9.6%	80.1%	3.0 yrs.
Pander, pimp, or receive money from prostitute	1	100%	0%	0%	NA
Prostitution, parent permitting child	1	100%	0%	0%	NA
Receive money for procurement of prostitute	3	66.7%	33.3%	0%	NA

Data Source: FY2002 and FY2003 Pre/Post-Sentence Investigation (PSI) database

¹ The AOUSC database has at least two limitations that DOJ did not overcome. First, the AOUSC database contains the statutes involved in the conviction, not the underlying facts of the case; therefore, persons who pled guilty to non-trafficking offenses such as immigration violations or visa fraud may not appear when searching under trafficking statutes. Second, the AOUSC database only contains the top five offenses charged and if the trafficking offenses were lesser offenses, a search of the data would fail to find a trafficking offense.

Impact of Proposed Legislation:

State adult correctional facilities. Because the proposed legislation introduces new criminal penalties and sentence enhancements, the proposal may have an impact on the future state-responsible (prison) bed space needs of the Commonwealth. Although the impact cannot be determined, some acts of unlawful human servitude may also be covered by existing crimes defined in the *Code of Virginia*. In addition, under the proposal, a judge could suspend part, or all, of the sentence imposed for these crimes.

Local adult correctional facilities. The proposal may increase the local-responsible (jail) bed space needs of the Commonwealth; however, the magnitude of the potential impact cannot be determined.

Adult community corrections programs. Because the proposal may result in additional offenders placed on community supervision (or lengthier supervision periods for offenders already in the community), the proposal may have an impact on community corrections resources. The potential impact on adult community corrections cannot be determined.

Virginia's sentencing guidelines. Convictions under §§ 18.2-76.4 and 18.2-76.5 would not be covered by the sentencing guidelines as the primary (or most serious) offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

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.

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