



## Impact Analysis on Proposed Legislation

### Virginia Criminal Sentencing Commission

#### Senate Bill No. 291

(Patron – Cuccinelli)

LD #: 06-1236720

Date: 12/14/2005

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 18.2-76.9 to create the Human Anti-Trafficking Act. The proposed legislation mandates restitution for victims, directs the Office of 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 proposal specifies punishment for unlawful human servitude of another based on the means used.

- Causing or threatening physical harm is punished as a Class 3 felony (5 to 20 years);
- Actual or threatened physical restraint is punished by imprisonment up to 15 years;
- Actual or threatened abuse of the legal process is punished as a Class 5 felony (1 to 10 years);
- Denying access to an actual or purported passport, immigration document or government identification document is punished as a Class 6 felony (1 to 5 years); and
- Blackmail or threatened financial harm is punished by imprisonment up to 3 years.

Under the proposal, procuring or attempting to procure a minor for sexual servitude (defined as commercial sexual activity, sexually-explicit performances, or the production of pornography) is punished based on the age of the minor and the means used.

- Procuring a minor at least 15 years of age without overt force or threat is punished by imprisonment up to 15 years;
- Procuring a minor under age 15 without overt force or threat is punished as a Class 3 felony (5 to 20 years); and
- Procuring any minor by overt force or threat is punished by imprisonment up to 25 years.

Furthermore, trafficking in persons for unlawful human servitude, or benefiting financially or otherwise from such practices, is punishable by imprisonment up to 15 years.

The proposed Act also defines several sentencing enhancements based on case circumstances.

- The sentence may be enhanced by one, two or three years based on the degree of victim injury (applicable when the victim suffers bodily injury, serious bodily injury, or permanent/life-threatening bodily injury, respectively);
- The court must consider the length of time a victim is held in servitude; the sentence must be increased (within statutory maximums) if the victim was held more than six months and increased again if the victim was held for a year or more (the size of these sentence enhancements are not specified by the proposal).
- The court must consider the number of victims and may substantially increase sentences (within statutory maximums) in cases involving more than 10 victims (the size of the enhancement is not specified).

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### Analysis:

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

According to the U.S. Department of Justice (DOJ), in fiscal year (FY) 2004 there were 43 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.<sup>1</sup> 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

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	1	0%	100%	0%	NA

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<sup>1</sup> 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.

Felony Crimes	Number of Cases	% No Incarceration	% Local Responsible (Jail)	% State Responsible (Prison)	Median State Responsible Sentence
minors for prostitution					
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

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### 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 through 18.2-76.6 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.

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**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.**