



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 815

(Patron – Cuccinelli)

LD#: 07-3236720

Date: 12/27/2006

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:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

Summary of Proposed Legislation:

The proposal amends the *Code of Virginia* to create the Human Anti-Trafficking Act. The crimes and the associated penalties defined by the proposed Act are listed in the table below.

Offense(s)	Proposed Penalty	Sentencing Considerations
<u>Trafficking in persons:</u> Knowingly recruiting, enticing, soliciting, isolating, harboring, transporting or providing another person for the purposes of commercial sex acts, sexually explicit performances, labor or services (proposed § 18.2-76.4(A))	Class 4 felony	Sentence may be enhanced as follows: <ul style="list-style-type: none">• 3 years if victim suffered bodily injury• 7 years if victim suffered serious bodily injury• 10 years if victim suffered permanent or life-threatening injury Court should increase sentences in cases in which: <ul style="list-style-type: none">• the victim was held between 180 days and 1 year• the victim was held for more than 1 year• more than 2 victims were involved
<u>Trafficking in minors:</u> Knowingly recruiting, enticing, soliciting, isolating, harboring, transporting or providing a minor for commercial sex acts or sexually explicit performances (proposed § 18.2-76.4(B))	Class 2 felony	
<u>Trafficking in persons through specified means:</u> Knowingly subjecting another person to commercial sex acts, sexually explicit performances, labor or services through actual or threatened serious harm, actual or threatened physical restraint, abuse of the law or legal process, destroying or concealing immigration documents, extortion, deception, fraud, debt bondage, financial harm, access to addictive controlled substances (proposed § 18.2-76.4(C))	Class 2 felony	
<u>Benefit from human trafficking:</u> Knowingly benefiting from participation in human trafficking (proposed § 18.2-76.4(D))	Class 4 felony	

Offense(s)	Proposed Penalty	Sentencing Considerations
Violation of proposed Act involving abduction or aggravated sexual assault (proposed § 18.2-76.4(E))	Imprisonment for any term of years or life	

The proposal specifies that if death results, the offender shall be sentenced pursuant to murder provisions of Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2.

Included in the proposal are provisions for criminal liability of business entities involved in human trafficking, seizure and forfeiture of property used in connection with human trafficking, and mandatory restitution for trafficking victims. In addition, the definition of “racketeering activity” under § 18.2-513 is expanded to include violations of the Human Anti-Trafficking Act.

The 2006 General Assembly expanded § 18.2-59 to include acts in which a person extorts money or other benefit by threatening to report another as being illegally present in the US. This offense is a Class 5 felony.

Analysis:

Because the proposed Human Anti-Trafficking Act defines crimes not currently found in the *Code of Virginia*, cases involving human servitude or forced labor cannot be identified using existing state data sources. A number of crimes included in the proposal may be covered by existing provisions of the *Code of Virginia*, such as kidnapping or extortion. The number of cases that would constitute violations of the proposed Act cannot be identified.

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.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates new felony provisions, the proposal may increase the state-responsible (prison) bed space needs of the Commonwealth. Some elements of the proposal may be covered under existing provisions; however, the number of additional felony convictions that may result from the proposal cannot be estimated. Therefore, the impact of the proposal on prison bed space needs cannot be determined.

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

Adult community corrections programs. The proposal may increase the need for adult community corrections programs, but the magnitude of the impact cannot be determined.

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.

Virginia's sentencing guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. The Department of Juvenile Justice (DJJ) reports that the number of additional juveniles who may be committed cannot be determined. Therefore, DJJ is not able to assess the impact of the proposal on Juvenile Correctional Center (JCC) bed space needs.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal may have an impact on the bed space needs of juvenile detention facilities, but the impact cannot be determined.

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 cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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