

Department of Planning and Budget 2021 Fiscal Impact Statement

1. Bill Number: HB2234

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Brewer

3. Committee: Courts of Justice

4. Title: Victims of human trafficking; affirmative defense to prosecution for certain offenses.

5. Summary: This proposal provides an affirmative defense to prosecution for prostitution (§ 18.2-346) and keeping, residing in, or frequenting a bawdy place (§ 18.2-347) if, at the time of the offense leading to such charge, such person was a victim of human trafficking (§ 18.2-357.1), as defined in the bill, and (i) was coerced to engage in the offense through the use of force or intimidation of another, (ii) such offense was committed as part of a commercial sex trafficking scheme, or (iii) such offense was committed at the direction of an operator of a commercial sex trafficking scheme. The bill provides that a victim of human trafficking may raise such affirmative defense regardless of whether any other person has been arrested for, prosecuted for, charged with, or convicted of an offense.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: This proposal may decrease the number of convictions for these crimes since offenders that are also victims of human trafficking could be determined not guilty as a result of this bill. According to data from the Virginia Criminal Sentencing Commission in FY 2018 and FY 2019, in cases where the primary offense was § 18.2-346, the convictions were:

- 365 cases of prostitution or solicitation of prostitution – of these, about 41 cases per year were sentenced to jail with an average sentence of one month.
- Two cases of soliciting prostitution from a minor with one sentenced to four years imprisonment and the other to one year imprisonment – this is an average of one person per year with an average sentence of 2.5 years.

In addition, according to the General District Court Case Management System (CMS) for FY 2018 and 2019, 243 offenders (about 121 per year) were convicted of a Class 1 misdemeanor under § 18.2-347 (keeping, residing in, or frequenting a bawdy place) during the two-year period. Of these, 58.8% (about 71 per year) did not receive an active term of incarceration

after sentencing. The remaining 41.2% (about 50 per year) were sentenced to local-responsible (jail) terms with a median sentence of two months.

This proposal provides an affirmative defense to prosecution for prostitution (§ 18.2-346) and keeping, residing in, or frequenting a bawdy place (§ 18.2-347) if, at the time of the offense leading to such charge, such person was a victim of human trafficking. Because it is not possible to determine the number of people who would assert affirmative defense under the proposed legislation, any decrease in jail or prison population cannot be determined at this time.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections, Department of Juvenile Justice, Local and regional jails, law enforcement agencies, Courts, Commonwealth's Attorneys, and Public Defenders Offices.

10. Technical Amendment Necessary: No

11. Other Comments: None