



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 1827

(Patron – Suit)

LD#: 07-5181520

Date: 12/14/2006

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 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)	Means	Proposed Penalty
<u>Involuntary servitude:</u> Knowingly subjecting or attempting to subject another to forced labor or services (proposed § 18.2-76.4)	Causing or threatening physical harm to another person	Class 3 felony
	Abusing or threatening to abuse the law or legal process	Class 5 felony
	Physically restraining or threatening to restrain another person, or Knowingly destroying or concealing passport/immigration documents, or Blackmailing, causing or threatening to cause financial harm	Class 6 felony
<u>Sexual servitude of a minor:</u> Knowingly recruiting, enticing harboring, transporting, providing or obtaining by any means a minor under the age of 18 to engage in commercial sexual activity, sexually explicit material or pornography; any attempt to commit such an act (proposed § 18.2-76.5)	No overt force or threat and victim is 15 to 17 years of age	Class 4 felony
	No overt force or threat and victim is under age 15	Class 3 felony
	Overt force or threat	Imprisonment up to 25 years

Offense(s)	Means	Proposed Penalty
<u>Trafficking in persons for forced labor or services:</u> Knowingly recruiting, enticing, harboring, transporting, or obtaining by any means another person intending or knowing that the person will be subjected to forced labor or services; benefiting from such activity (proposed § 18.2-76.6)	Any	Imprisonment up to 15 years

Included in the proposal are provisions for mandatory restitution for trafficking victims. The proposal specifies that violations involving kidnapping or aggravated sexual abuse shall be deemed to be in violation of § 18.2-48 and § 18.2-67.3, respectively.

The proposal also amends § 18.2-374.1 by removing the provision that makes it a Class 5 felony for a person to accost, entice, or solicit a minor with the intent to induce or force the minor to perform in, or be the subject of, sexually explicit material. This crime is assigned a higher penalty under the proposed § 18.2-76.5.

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.

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#### 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.<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.

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#### 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.

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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.

**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.

**Virginia's sentencing guidelines.** 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 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.**

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