



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 716

(Patron – McClellan)

LD #: 14102656

Date: 12/27/2013

Topic: Human trafficking

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Summary of Proposed Legislation:

The proposal modifies numerous sections of the *Code of Virginia* relating to trafficking in persons and forced labor. The proposed amendments to the *Code* include creating an anti-trafficking committee, allowing for the substitution of petitions for a child in need of services in place of juvenile delinquency petitions in cases involving child prostitution, and requiring restitution to victims in human trafficking cases.

The proposed § 18.2-50.3 establishes felony penalties for forced labor or sexual servitude. Under the proposal, any person who knowingly uses coercion to compel another to provide labor or services would be guilty of forced labor, a Class 4 felony. Forced labor of a minor would be punishable as a Class 3 felony. The definition of coercion would include destroying, taking, or threatening to destroy or take an individual's property, controlling or threatening to control an individual's access to a controlled substance, the abuse or threatened abuse of law or legal process, the use of debt bondage, and the commission of criminal fraud. The proposal also establishes a new Class 3 felony offense for knowingly maintaining or making a minor available for the purpose of engaging the minor in commercial sexual activity. Any person who knowingly uses coercion or deception to compel an adult to engage in commercial sexual activity would be guilty of a Class 4 felony. In addition, an individual who knowingly recruits, transports, harbors, receives, provides, obtains, isolates, maintains, or entices another in furtherance of forced labor or sexual servitude would be guilty of a Class 4 felony. If the victim of this offense is a minor, the penalty would be increased to a Class 3 felony.

The proposal also expands numerous other criminal statutes to account for the new offenses defined in § 18.2-50.3. Under the proposed modifications to § 17.1-805(C), any conviction under § 18.2-50.3 would be classified as a violent offense for the purposes of the sentencing guidelines. Offenders with prior convictions for violent felony offenses listed in subsection C of § 17.1-805 receive "enhancements" on

the guidelines that increase the recommended sentences for those offenders. In addition, the proposal amends § 18.2-46.1 to expand the definition of a “predicate criminal act” associated with gang activity to include any violation of § 18.2-50.3. This proposed change could impact a number of gang-related felony offenses defined in the *Code of Virginia*. The proposed modifications to § 18.2-513 broaden the definition of “racketeering activity” under the Virginia Racketeer Influenced and Corrupt Organization (RICO) Act to include human trafficking. Criminal penalties associated with violations of the RICO Act range from offenses punishable as Class 6 felonies to crimes carrying a statutory maximum penalty of life imprisonment.

The proposal overlaps with several existing felony offenses, including kidnapping another for the purposes of forced labor (§ 18.2-47), extortion by destroying, withholding, etc., immigration documents (§ 18.2-59), and obtaining a person for certain unlawful acts (§ 18.2-356). Specifically, under § 18.2-356, receiving money for procuring a person to engage in unlawful sex acts or causing a person to engage in forced labor, concubinage, prostitution, or the manufacture of obscene or child pornography is a Class 4 felony. In addition, the General Assembly has passed several bills in recent years to address human trafficking. For instance, the 2009 General Assembly expanded § 18.2-47, regarding abduction and kidnapping, to include acts of human trafficking. Under § 18.2-47(B), any person who, by force, intimidation, or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to subject him to forced labor or services is guilty of a Class 5 felony. In 2006, the General Assembly expanded § 18.2-59 to include extorting money or any other benefit by threatening to report another as being illegally present in the U.S. The 2007 General Assembly further expanded § 18.2-59 to include acts in which a person extorts money, property, or any other pecuniary benefit by destroying, concealing, confiscating, withholding, or threatening to withhold a passport, immigration document, or other government identification document. The 2010 General Assembly clarified the definition of injury to property for the purposes of this statute. Any violation of § 18.2-59 is punishable as a Class 5 felony.

Analysis:

According to Sentencing Guidelines data for fiscal year (FY) 2012 and FY2013, four offenders were convicted of receiving money for procuring a person for prostitution under § 18.2-356. This offense was the primary, or most serious, offense in three of the cases. While two of these offenders received local-responsible (jail) terms of 5 months and 12 months, respectively, the third offender did not receive an active term of incarceration to serve after sentencing. No convictions for forced labor, concubinage, manufacture of obscene or child pornography under § 18.2-356 were identified in Circuit Court Case Management System (CMS)¹ data for the same time period.

Circuit Court Case Management System (CMS) data for FY2012 and FY2013 indicate that seven offenders were convicted of a violation of § 18.2-47(B) for kidnapping another for forced labor or service. This offense was the most serious offense in four of the cases. Three offenders received state-responsible (prison) terms with a median sentence of two years, while the remaining offender was sentenced to a local-responsible (jail) term of three months. According to Circuit Court CMS data for FY2012 and FY2013, there were no convictions under § 18.2-59 for extorting money by withholding or threatening to withhold a passport or other government identification document or extorting money by threatening to report another as being illegally present in the U.S. during this time period.

The Circuit Court CMS data for FY2012 and FY2013 also indicate that nine offenders were convicted of a violation of the RICO statutes. None of these offenses were accompanied by another felony conviction for an act that could be construed as being related to human trafficking.

¹ Formerly referred to as the Court Automated Information System (CAIS).

Impact of Proposed Legislation:

State adult correctional facilities. By adding new felony offenses relating to human trafficking and expanding existing felony offenses to include acts involving human trafficking, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions that could result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

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

Adult community corrections resources. Because the proposal could result in felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be determined.

Virginia's sentencing guidelines. As new felony offenses, convictions under the proposed § 18.2-50.3 would not be covered by the sentencing guidelines as the primary, or most serious, offense in a case. Such a conviction, however, could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities 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; therefore, Chapter 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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