

Department of Planning and Budget 2014 Fiscal Impact Statement

1. Bill Number: HB 716

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

2. Patron: McClellan

3. Committee: House Courts of Justice

4. Title: Human trafficking

5. Summary:

The proposed legislation contains numerous provisions relating to human trafficking: criminal penalties, assistance for victims, and administrative actions.

Criminal penalties

New offenses

The following new offenses related to “trafficking in persons for forced labor or sexual servitude” (human trafficking) are set out in the proposed legislation:

- Forced labor. Knowingly using coercion to compel an individual to provide labor or services--Class 4 felony. If the victim is a minor, the offense would be a Class 3 felony.
- Sexual servitude of a minor. Knowingly maintaining or making available a minor for the purpose of engaging the minor in commercial sexual activity—Class 3 felony. It would not be a defense to prosecution that the minor consented to the activity.
- Sexual servitude. Knowingly using coercion or deception to compel an adult to engage in commercial sexual activity—Class 4 felony.

Any person who knowingly recruits, transports, harbors, etc. an individual in furtherance of any of the offenses listed above would be guilty of a Class 4 felony. If the victim of the offense were a minor, the offense would be a Class 3 felony.

Sentencing guidelines

The Virginia Criminal Sentencing Commission is charged by state law with the development of a set of guidelines for judges to use, at their discretion, in sentencing persons convicted of felony offenses. The law requires that the guidelines be enhanced for offenders with a prior conviction of a violent felony offense and the statute sets out the specific offenses that constitute “violent felony offenses” for this purpose. The proposed legislation would add the proposed new offenses related to human trafficking to the list of “violent felony offenses”. The result would be that the potential sentence for a felony sentence would

be enhanced for any offender with a prior conviction of one of the human trafficking offenses.

Criminal street gangs

Current law makes participation in a criminal act to benefit a criminal street gang a separate Class 5 felony offense. If the criminal street gang includes a juvenile member or participant, such participation in a criminal act to benefit the gang is a Class 4 felony. The recruitment of a juvenile to join a criminal street gang is also a felony offense. The law sets out the following definitions:

“Criminal street gang”—a group of three or more persons who meet the following criteria:

- Have as one of its primary objectives or activities the commission of criminal activities;
- Have an identifying name or symbol; and
- Engage in the commission of two or more “predicate criminal acts” of which at least one is an act of violence.

“Predicate criminal act”—an act of violence (as defined by statute) or any one of several specified assault, trespass, and vandalism offenses.

The proposed legislation would add the proposed human trafficking offenses to the list of “predicate criminal acts”.

Racketeering

Current law defines racketeering as committing, attempting to commit, or soliciting another to commit two or more of a list of specified offenses. A first conviction of racketeering is punishable with a sentence of 5 to 40 years; a subsequent offense is a Class 2 felony. The proposed legislation would add the human trafficking offenses to the list of offenses that are used to define racketeering.

Assistance for victims of human trafficking

The proposed legislation includes the following provisions to assist victims of human trafficking:

- Civil action—provides victims a cause for civil action against an individual who has engaged in human trafficking.
- Witness’s prior sexual conduct—Prohibits evidence of complaining witness’s unchaste character or prior sexual conduct to be admitted in trials regarding human trafficking offenses.
- Prostitution defense—Provides that being a victim of sexual servitude shall be an affirmative defense to prosecution for prostitution.

- Name of victim—Prohibits the use of the first or last name of the victim in the appeal of any case involving human trafficking.
- Restitution—Requires that persons convicted of human trafficking be ordered to pay restitution to victims equal to the value of the victim’s labor or sexual activity, based on formulas set out in the proposed language.

Administrative provisions

The proposed legislation includes the following administrative actions and penalties:

- Coordinating Committee—Directs the Secretary of Public Safety to convene an Anti-Human Trafficking Coordinating Committee consisting of representatives from numerous state agencies. The committee is directed to meet regularly to discuss ways to “identify and implement additional actions and strategies to further strengthen the Commonwealth’s responses to human trafficking.” The committee is required to report annually to the Governor on its activities, accomplishments, and recommendations.
- Trafficking Victim Fund—Creates the Virginia Human Trafficking Victim Fund. The fund shall be administered by the Department of Criminal Justice Services and all money in it shall be used to further the prosecution of human trafficking and to support victims in human trafficking cases. The proposed legislation does not designate a source of revenue for the fund.
- Property seizure and forfeiture—Subjects all money and property used to further human trafficking to seizure and forfeiture.

6. Budget Amendment Necessary: Yes. Item 385.

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

Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2015	\$50,000	General
2016	\$0	
2017	\$0	
2018	\$0	
2019	\$0	
2020	\$0	

8. Fiscal Implications:

The proposed legislation creates numerous felony offenses, ranging from a Class 5 felony to a Class 2 felony. The penalties for these offenses are as follows:

- Class 5 felony—up to 12 months in jail or 1 to 10 years in prison.
- Class 4 felony—2 to 10 years in prison.
- Class 3 felony—5 to 20 years in prison.
- Class 2 felony—20 years to life in prison.

There is not enough information available to reliably estimate how many additional inmates in jail could result from this proposal. Any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$4.00 a day for each misdemeanor or otherwise local responsible prisoner held in a jail and \$12.00 a day for each state responsible inmate. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2013), the estimated total state support for local jails averaged \$30.06 per inmate, per day in FY 2012.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 806 of the 2013 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

9. Specific Agency or Political Subdivisions Affected:

Department of Corrections
Secretary of Public Safety
Department of Criminal Justice Services

10. Technical Amendment Necessary: None.

11. Other Comments: Similar to SB 373.

Date: 1/27/2014

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