



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 710 (Patron – Edwards)

LD #: 15100898

Date: 11/21/2014

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 2 of the 2014 Acts of Assembly, Special Session I, 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. Under the proposed § 18.2-50.3, 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 abduction, physical force, destroying, taking, or threatening to destroy or take an individual's passport, governmental identification or other 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 any person who maintains or makes a minor available for commercial sexual activity. Any person who knowingly uses coercion or threatens to cause serious harm 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, etc., another person in the 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. Violations of the RICO Act range from offenses punishable as Class 6 felonies to crimes carrying a statutory maximum penalty of life imprisonment.

Under the proposed modifications to § 18.2-346, the courts would have the discretion to dismiss delinquency petitions for juveniles engaged in commercial sexual conduct. Juveniles who express a willingness to participate in specialized services may have a petition for a child in need of services filed on their behalf. If the court proceeds on the petition, the court would be required to dismiss the delinquency petition.

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. 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.

An anti-trafficking committee, a new victim’s fund, and several modifications to existing procedures are also proposed. Specifically, under the proposed § 2.2-224.2, the Secretary of Public Safety and Homeland Security would be required to convene an anti-trafficking committee. Victims of human trafficking, under the proposed § 8.01-42.4, would be allowed to seek compensatory and punitive damages, even if the individual has not been convicted under § 18.2-50.3. A Virginia Prevention of Human Trafficking Victim Fund would also be established to support victim services in human trafficking cases. In addition, § 18.2-67.7, which pertains to the admission of evidence in certain cases, would be expanded to include prosecutions under §§ 18.2-50.3 and 18.2-356. Under the proposed amendments to § 19.2-11.2, victims of forced labor or sexual servitude would be given the same right to nondisclosure of certain information that is currently granted to victims of sexual assault or family abuse. The proposed § 19.2-11.5 would establish a new law-enforcement protocol for victims of human trafficking. Under the proposal, § 19.2-215.1 would also be amended to allow multijurisdictional grand juries to investigate violations of § 18.2-50.3. Defendants convicted of offenses defined by § 18.2-50.3 would be required to pay victims \$58 per day for each day the victims were subjected to forced labor or sexual servitude. Finally, all money, equipment, vehicles, and other property connected with human trafficking would be subject to seizure as established by § 19.2-386.35.

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) data for the same time period.

Circuit Court 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 this time period, 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.

Impact of Proposed Legislation:

State adult correctional facilities. By adding new felony offenses relating to human trafficking to the *Code*, 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 2 of the 2014 Acts of Assembly, Special Session I, 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.