



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 633 Amendment in the Nature of a Substitute (Patron Prior to Substitute – Cherry)

LD#: 24106914

Date: 02/08/2024

Topic: Labor trafficking, and forced labor or services

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Direct Care:**
Cannot be determined**
- **Juvenile Detention Facilities:**
Cannot be determined**

** Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends §§ 8.01-42.4, 17.1-805, 18.2-513, 19.2-10.2, 19.2-268.3, 19.2-299, and 19.2-392.02 and adds §§ 18.2-361.2 and 18.2-361.3 related to labor trafficking and forced labor or services. Under the proposal a defendant who provides or obtains the labor or services of a person by means of

- force, threats of force, physical restraint, or threats of physical restraint to that person or another person;
- serious harm, ill, or threats of serious harm to that person or another person;
- the abuse or threatened abuse of law or legal process, as defined; or
- any scheme, plan, or pattern intended to cause the person to believe that if that person did not perform such labor or services that person or another person would suffer serious harm or physical restraint;

would be guilty of labor trafficking. As proposed, any defendant who knowingly benefits from participation in a venture that has engaged in labor trafficking would be guilty of receiving money from labor trafficking.¹

¹ Under current law, the felony offenses proposed in § 18.2-361.2 would be eligible for the enhanced sentence credits specified in § 53.1-202.3.

As proposed, a violation of labor trafficking or receiving money from labor trafficking would be punishable as a Class 4 felony; however, any adult who commits an act of labor trafficking or receiving money from labor trafficking with a person under the age of 18 would be guilty of a Class 3 felony. The proposal also creates a civil cause of action against individuals who engage in labor trafficking or who receive money from labor trafficking and adds labor trafficking and receiving money from labor trafficking to provisions of the *Code of Virginia* defining racketeering and as a barrier crime from caring for children or the elderly or disabled, among other provisions listed in the bill.

Currently, racketeering activity is defined as committing, attempting or conspiring to commit, or soliciting, coercing or intimidating another to commit two or more of the following offenses: murder, voluntary manslaughter, selected assaults, kidnapping, crimes by gangs, shooting offenses, terrorism, obstruction of justice, violations of the Waste Management Act, injuries caused by prisoners, robbery, certain arsons, burglary, grand larceny, petit larceny, retail theft, embezzlement, several fraud offenses, money laundering, specific drug offenses, paramilitary activity, perjury, bribery, transmitting illegal money, medical assistance fraud, dog fighting, certain cigarette tax violations, prostitution and commercial sex trafficking.

Analysis:

Existing data sources do not contain sufficient detail to estimate the number of cases that will be affected by the proposal. However, individuals convicted of labor trafficking and forced labor or services may be sentenced similarly to those convicted under the existing provisions of § 18.2-356, receiving money for procuring forced labor or services and § 18.2-513, et seq., the Virginia RICO Act.

According to fiscal year (FY) 2022 and FY2023 Circuit Court Case Management System (CMS) data, 21 offenders were convicted of racketeering under the Virginia RICO Act as their primary (most serious) offense at sentencing. One defendant was sentenced to a local-responsible (jail) term of five months. The twenty remaining offenders were sentenced to state-responsible (prison) terms for which the median sentence was 4.0 years. During the same period, 33 offenders were convicted under § 18.2-356 for labor trafficking/forced labor. In these cases, however, this was not the most serious offense in the sentencing event. In 12 of the cases, the most serious offense was the distribution of drugs and, in the other 21 cases, the most serious offense was a violation of the Virginia RICO Act.

Impact of Proposed Legislation:

State adult correctional facilities. By adding Class 3 and Class 4 felonies, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Existing data do not provide sufficient detail to estimate the number of offenders who would be affected by the proposal; therefore, the magnitude of 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 programs. Because the proposal could result in felony convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for state community corrections resources. Since the number of cases that may be affected by the proposal cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia's Sentencing Guidelines. Convictions under the proposed § 18.2-361.2 would not be covered by the Sentencing Guidelines when the offense is the primary, or most serious, offense at sentencing. Such a conviction, however, could augment the Guidelines recommendation (as additional offenses) if

the most serious offense at sentencing is covered by the Guidelines. As proposed, convictions for § 18.2-361.2 would be defined as a violent offense in § 17.1-805(C) for the purposes of the Guidelines. No adjustment to the Guidelines is necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) 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 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, 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.

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