

Department of Legislative Services  
 Maryland General Assembly  
 2006 Session

FISCAL AND POLICY NOTE

House Bill 996 (Delegates Petzold and Lawton)  
 Judiciary

Trafficking of Persons and Involuntary Servitude

This bill prohibits human trafficking and involuntary servitude in Maryland.

Fiscal Summary

**State Effect:** General fund expenditure increase of \$234,700 for the State Police in FY 2007. Out-year costs reflect annualization and inflation. Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions. The requirements applicable to the Department of Human Resources (DHR) and the Police Training Commission could be handled with existing budgeted resources.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	-	-	-	-	-
GF Expenditure	234,700	317,000	326,300	336,200	346,600
Net Effect	(\$234,700)	(\$317,000)	(\$326,300)	(\$336,200)	(\$346,600)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** The criminal penalty provisions are not expected to significantly affect local finances or operations.

**Small Business Effect:** None.

Analysis

**Bill Summary:** The bill prohibits the following acts:

- knowingly recruiting, enticing, harboring, transporting, providing, or “obtaining” another person or a minor for a commercial sex act, a sexually explicit performance, labor, or services by specified means. An attempt to commit such an act is similarly prohibited. A person is also prohibited from benefiting financially or receiving anything of value from participation in such ventures. A violator is guilty of a felony and subject to maximum penalties of imprisonment for 15 years and/or a fine of \$15,000; if the victim is a minor, imprisonment for 20 years and/or a fine of \$25,000.
- Knowingly subjugating or attempting to subjugate another person for a commercial sex act, a sexually explicit performance, labor, or services by the same means. A violator is guilty of a felony and subject to maximum penalties of imprisonment for 20 years and/or a fine of \$25,000.
- A person may not violate any of these provisions while also committing specified sexual offenses. A violator is guilty of a felony and subject to maximum penalties of imprisonment for 30 years and/or a fine of \$35,000.

A business entity that knowingly aids or participates in a violation of these provisions is subject to the following sanctions: (1) suspension or revocation of any business license, permit, or approval to operate issued by the State; (2) dissolution or reorganization; (3) surrender of corporate charter, if organized under State law; or (4) revocation of a certificate to conduct business, if it is a corporation not organized under Maryland law.

The bill specifies defenses to prosecution under these provisions that are not allowed, including that the defendant had the consent of the victim to engage in a commercial sex act or sexually explicit performance. It is an affirmative defense for a victim of a violation of these provisions that the victim was under duress or coerced into committing the offense. A victim is not criminally liable for such an act or performance committed as a direct result of a violation of these provisions.

A person convicted under these provisions must be ordered to pay restitution to the victim. The bill delineates provisions governing such restitution. An order of restitution under these provisions is enforceable even if the victim leaves the jurisdiction.

The bill authorizes a person who has suffered an injury or a violation of a specific right as a result of a violation of these provisions to bring a civil action. A court may award actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief. A court may also award court costs and reasonable attorney’s fees to a prevailing plaintiff.

The bill authorizes the Secretary of State Police to make grants for aiding enforcement of these provisions or to develop, expand, or strengthen victim services for violations of

these provisions. Such grants may be made to local law enforcement agencies, Native American tribes, and nonprofit, nongovernmental victims' services organizations. The Secretary is required to develop and implement specified public awareness programs.

The State Police is also required, with the cooperation of other State agencies and nongovernmental organizations as necessary, to collect, analyze, and disseminate specified information about the occurrence of violations under these provisions, including the number of investigations, arrests, prosecutions, and convictions. Local law enforcement agencies must provide information on this subject to the State Police. Procedures for the collection and analysis of this information must be adopted by the State Police.

The bill creates a Task Force for the Prevention of Trafficking of Persons and Involuntary Servitude, staffed by the State Police. The task force is required to develop and recommend plans to address this issue in the State, and review existing services and facilities intended to meet the needs of victims, including those related to health services, housing, education, job training, English as a second language classes, interpreting services, legal and immigration services, and victim compensation. The task force must report its findings and recommendations to the Governor and the General Assembly by September 30, 2008. Provisions relating to the task force terminate after September 30, 2008.

The bill provides for services, procedures, and protocols to be followed during investigations of "trafficking in persons," including relocation services when there is a likelihood that a victim or victim's family may be subject to a crime of violence. DHR is required to establish specified support services programs for victims of trafficking. DHR is authorized to contract with public or private nonprofit organizations to operate such programs. Each victim receiving these services must be provided with a caseworker by DHR. Money for the support services programs must be provided in the annual State budget and must be used to supplement, but not supplant, money that the programs receive from other sources. The Secretary of Human Resources must include a report on these services in the department's annual report to the General Assembly.

A person is prohibited from maliciously publishing, disseminating, or otherwise disclosing the location of a shelter for victims of human trafficking or a residence being used to protect the safety of such victims. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$500.

The bill requires the Police Training Commission to require, for entrance-level police training and at least every three years for in-service level police training conducted by a State and local police training school, curriculum and minimum courses of study on

violations of these provisions and various specified methodologies to address such violations.

**Current Law:** Maryland statutes do not specifically address forced labor or involuntary servitude. However, these acts are prohibited by federal constitutional and statutory provisions. Maryland statutes generally prohibit the practice of prostitution.

The Thirteenth Amendment to the U.S. Constitution abolishes slavery and federal laws prohibit peonage (a system of forced labor based on the debts of workers), involuntary servitude, and forced labor. The penalties for violation of the federal laws include fines and up to 20 years imprisonment. Anyone who is convicted of obstruction, attempted obstruction, or prevention of the enforcement of any of these provisions is subject to the same penalties. If the violations result in the victim's death or include kidnapping, aggravated sexual abuse, or attempted murder, kidnapping, or aggravated sexual abuse, the violator is subject to a fine and/or any term of years of imprisonment up to life imprisonment.

The State's Criminal Injuries Compensation Board provides financial assistance for innocent victims of crime. The board may compensate victims who suffer physical injury for their medical expenses and loss of earnings. In cases of homicide, the board may assist with funeral expenses and loss of support on the part of the victim's dependents. A claimant seeking compensation from the Criminal Injuries Compensation Fund must file a claim no later than 180 days after the occurrence of the crime or delinquent act or the death of the victim. For good cause, the board may extend the filing time up to three years after the occurrence of the crime or delinquent act or death of the victim. In a case of child abuse, a claimant may file a claim up to three years after the claimant knew or should have known of the abuse. A person who commits the crime or delinquent act that is the basis of a claim, or an accomplice of the person, is not eligible to receive an award.

The board may make an award only if the board finds that: (1) a crime or delinquent act was committed; (2) the crime or delinquent act directly resulted in physical injury to or death of the victim or psychological injury to the victim that necessitated mental health counseling; (3) police, other law enforcement, or judicial records show that the crime or delinquent act or the discovery of child abuse was reported to the proper authorities within 48 hours after the occurrence of the crime or delinquent act or the discovery of the child abuse; and (4) the victim has cooperated fully with all law enforcement units.

The board may make an award only if the claimant, as a result of the injury on which the claim is based, has: (1) incurred at least \$100 in unreimbursed and unreimbursable expenses or indebtedness reasonably incurred or claimed for specified necessary services; or (2) lost at least two continuous weeks' earnings or support. A claim awarded for lost

wages may not exceed two-thirds of gross weekly salary or \$668 per week, whichever is greater.

Compensation from the fund may not exceed:

- \$25,000 for a disability-related or dependency-related claim;
- \$45,000 for a medical claim;
- \$5,000 for each claimant for psychiatric, psychological, or mental health counseling;
- a total of \$45,000, including any subsequent and supplemental awards;
- \$250 for each claimant for repair, replacement, or cleaning of property damaged, soiled, or littered as a result of a crime or law enforcement investigation of a crime; or
- for an award for psychiatric, psychological, or mental health counseling resulting from the death of a victim: (1) \$1,000 for each claimant; and (2) \$5,000 for each incident.

**Background:** Human and sex trafficking has been described as a growing underground industry fueled largely by the extreme economic hardship that families face in many parts of the world. Thirteen states have already passed criminal statutes, and several states have created task forces to study the issue.

Human trafficking is a modern day form of slavery and a lucrative criminal enterprise in today's world economy. It includes the recruitment, transportation, and sale of individuals, usually members of vulnerable populations in countries outside the United States, for labor. Labor is forced and maintained through violence, threats, and coercion. Living conditions for victims are often prison-like. It is believed that the number of people involved began growing in the early 1990s and that the trend continues to increase. The United States is a country of destination for many trafficked persons, the majority of whom are transported from Asia and Latin America, with increasing numbers from the Newly Independent States of the former Soviet Union, Eastern Europe, and other regions.

Human trafficking takes many forms. It involves transporting people within or across borders to, among other things, labor in sweatshops, perform domestic work, work in the sex industry, work in hotels or restaurants, peddle or beg, or work as farm or timber laborers. Victims may also be exploited in mail-order bride or child adoption schemes. In their countries of origin, victims of trafficking commonly experience poverty, oppression, persecution, civil unrest, and lack of opportunity. Victims are often deceived

by recruiters and led to believe that the opportunity offered will bring them and their loved ones a better life.

At the international and national level, remedies exist to address human trafficking. In February 2000, the United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the U.N. Convention Against Transnational Organized Crime. The federal Trafficking Victims Protection Act of 2000 (TVPA) is designed to prevent trafficking, punish traffickers, and protect and assist trafficked persons. TVPA extends assistance and benefits to victims of “severe forms of trafficking” which is defined as “a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” TVPA protects trafficked persons by providing immigration status (T visa), permission to work, and possible U.S. permanent residence.

The Trafficking Victims Protection Reauthorization Act of 2003 amended TVPA to remove obstacles in the process of securing needed assistance, increase benefits to victims of trafficking, increase knowledge about trafficking in persons, enhance prevention efforts, provide greater protection to victims, and increase prosecution.

The federal Refugee Act of 1980 provides cash assistance to newly arrived refugees, who are not eligible for Temporary Cash Assistance (TCA), for the first eight months after arrival. Persons who are victims of a severe form of trafficking are also eligible for this cash assistance. The fiscal 2006 budget allowance shows \$690,057 in federal funds under TCA. Approximately 312 refugees per month in Maryland participate in this program. According to DHR, monthly grants to individuals average about \$177 (with the maximum grant set at \$216).

In Baltimore City, Baltimore, Carroll, Howard, Anne Arundel, and Harford counties, beginning October 1, 2001, TCA cash assistance was replaced by Refugee Transitional Cash Assistance, which is administered by the voluntary agencies that resettle refugees. The monthly grant for individuals is \$195 for the first four months, dropping to \$180 for the final four months.

States have also enacted laws against human trafficking. Proponents of state laws against human trafficking contend that current laws prohibiting kidnapping, rape, sexual offense, prostitution, and the like do not adequately address human trafficking, in part because of the psychological aspect of the coercion that trafficking victims are subjected to and that

federal authorities do not have the resources to address all cases of human trafficking that exist. To date, 13 states – Arizona, Arkansas, California, Florida, Illinois, Kansas, Louisiana, Minnesota, Missouri, Nevada, New Jersey, Texas, and Washington – have enacted laws to make trafficking a state offense. Several states, including Colorado, Connecticut, Washington, Idaho, Minnesota, and California, have established task forces to study the issue of human trafficking.

The provisions of this bill are based on *Model Elements of Comprehensive State Legislation to Combat Trafficking in Persons* as prepared by the Polaris Project, a self-described “multicultural grassroots organization combating human trafficking and modern-day slavery.” The House Judiciary Committee held a hearing on the issue of human trafficking during the 2005 interim.

The extent to which human trafficking actually occurs in Maryland is unknown.

**State Fiscal Effect:** General fund expenditures for the State Police could increase by an estimated \$234,678 in fiscal 2007, which accounts for the bill’s October 1, 2006 effective date. This estimate reflects the cost of hiring two management associates to handle agency responsibilities to develop and implement public awareness programs; to develop, expand, and strengthen victim services; to collect, analyze, and disseminate information about the occurrence of violations; and to participate in task force activities. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including the production of informational materials.

Positions	2
Salaries and Fringe Benefits	\$93,542
Informational Materials	132,000
Other Operating Expenses	<u>9,136</u>
<b>Total FY 2007 State Police Expenditures</b>	<b>\$234,678</b>

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses, including production costs for informational materials.

The bill’s requirements for DHR would be handled with the existing budgeted resources of the Community Services Administration, due to an expectation that the bill would not result in a significant number of new cases. DHR reports that the services required under the bill are already being provided by current program activities.

The bill's changes affecting the Police Training Commission could be handled with existing budgeted resources.

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### **Additional Information**

**Prior Introductions:** HB 1473 of 2005, which sought to prohibit human trafficking in Maryland, was withdrawn after a hearing before the House Judiciary Committee.

**Cross File:** SB 630 (Senator Forehand) – Judicial Proceedings.

**Information Source(s):** Department of Public Safety and Correctional Services, Department of State Police, Department of Human Resources, Department of Legislative Services

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