

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 865

(Senator Lee, *et al.*)

Judicial Proceedings

Criminal Law - Solicitation for Prostitution - Fine

This bill alters the penalty for two prostitution-related offenses under § 11-306 of the Criminal Law Article and requires that penalties collected by the District Court for convictions of knowingly procuring or soliciting, or offering to procure or solicit, for prostitution or assignation must be remitted to the Governor's Office of Crime Control and Prevention (GOCCP). GOCCP may only use money received from those collected penalties for the purpose of funding services for victims of human trafficking.

Fiscal Summary

State Effect: Minimal increase in general fund revenues, with a minimal amount of general fund revenues diverted to GOCCP for specified purposes. Minimal decrease in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) due to the bill's penalty provisions, partially offset by a minimal increase in general fund expenditures by GOCCP to fund services for victims of human trafficking.

Local Effect: Minimal decrease in local incarceration expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, the penalties for the offenses listed under § 11-306 of the Criminal Law Article are as featured in **Exhibit 1**.

Exhibit 1
Penalties for Violations of § 11-306 of the Criminal Law Article under the Bill

Offense	Current Penalty	Penalty under the Bill
Knowingly engage in prostitution or assignation by any means	Imprisonment for up to one year and/or a maximum fine of \$500	Imprisonment for up to six months and/or a maximum fine of \$500
Knowingly keep, set up, occupy, maintain, or operate a building, structure, or conveyance for prostitution or assignation	Imprisonment for up to one year and/or a maximum fine of \$500	Same
Knowingly allow a building, structure, or conveyance owned or under the person's control to be used for prostitution or assignation	Imprisonment for up to one year and/or a maximum fine of \$500	Same
Knowingly allow or agree to allow a person into a building, structure, or conveyance for prostitution or assignation	Imprisonment for up to one year and/or a maximum fine of \$500	Same
Knowingly procure or solicit, or offer to procure or solicit, for prostitution or assignation*	Imprisonment for up to one year and/or a maximum fine of \$500	Imprisonment for up to one year and/or a maximum fine of \$1,000

*Penalties collected in the District Court for this offense are remitted to GOCCP.

Source: Department of Legislative Services

Current Law: Under § 11-306 of the Criminal Law Article, a person may not knowingly (1) engage in prostitution or assignation by any means; (2) keep, set up, occupy, maintain, or operate a building, structure, or conveyance for prostitution or assignation; (3) allow a building, structure, or conveyance owned or under the person's control to be used for prostitution or assignation; (4) allow or agree to allow a person into a building, structure, or conveyance for prostitution or assignation; or (5) procure or solicit, or offer to procure or solicit, for prostitution or assignation. A person who violates any of those prohibitions

is guilty of prostitution, a misdemeanor punishable by imprisonment for up to one year and/or a \$500 maximum fine.

Chapter 357 of 2015 established that in a prosecution for a charge relating to prostitution under § 11-306 of the Criminal Law Article, it is an affirmative defense of duress if the defendant committed the act as a result of being a victim of an act committed by another person who was charged with violating the prohibition against human trafficking under federal law or § 11-303 of the Criminal Law Article. A defendant is prohibited from asserting the affirmative defense unless the defendant notifies the State's Attorney of the defendant's intention to assert the defense at least 10 days prior to trial.

Background: Chapter 91 of 2015 established the Workgroup to Study Safe Harbor Policy for Youth Victims of Human Trafficking. The workgroup was required to report its findings and recommendations to the Governor and the General Assembly by December 1, 2015. One of the recommendations in the workgroup's final report was to separate solicitation for prostitution out of § 11-306 of the Criminal Law Article and increase the fine for solicitation for prostitution.

State Revenues: General fund revenues increase minimally from fines imposed in the District Court due to the bill's increase in the monetary penalty for the offense of solicitation for prostitution, and a minimal amount of general fund revenues (those fines collected for violations of that offense) are diverted to GOCCP.

According to the Judiciary, \$23,925 in fines were issued for offenses under § 11-306 of the Criminal Law Article in the District Court during fiscal 2015. However, because all of the offenses under § 11-306 have the same offense code, information is not available on the amount of fines imposed in the District Court for violations of the State's prohibition on procuring or soliciting or offering to procure or solicit for prostitution or assignation, which under the bill must be remitted to GOCCP.

For illustrative purpose only, assuming that fines collected in fiscal 2015 are representative of fines collected in any given year, and assuming that one-third of the fines were imposed for procuring or soliciting for prostitution, \$7,925 is remitted to GOCCP each year to be spent on services for victims of human trafficking. This illustration does not account for increases in collected fines due to the bill's changes in the penalty for the offense of solicitation for prostitution.

State Expenditures: General fund expenditures for DPSCS decrease minimally due to the bill's decrease in the maximum incarceration penalty for engaging in prostitution, partially offset by a minimal increase in general fund expenditures by GOCCP to fund services for victims of human trafficking. GOCCP can administer the funds with existing staff.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Local incarceration expenditures decrease minimally due to the bill's reduction of an existing incarceration penalty.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Comments: Although not specifically addressed in the bill, this analysis assumes that the fine revenues that must be diverted to GOCCP are fully expended for the specific purpose identified in the bill. To the extent unexpended funds remain at the end of each fiscal year, they revert to the general fund as required by § 7-302 of the State Finance and Procurement Article. This analysis assumes that these fine revenues are treated as general funds, as the bill does not direct those revenues to a special fund within GOCCP.

Also, this fiscal and policy note assumes that the fine revenues that must be remitted to GOCCP are done so under the authority of the new § 11-306(d)(2) of the Criminal Law Article that is created by the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 1089 (Delegate Morales, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Governor's Office of Crime Control and Prevention, State's Attorneys' Association, Maryland State Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Office of the Public Defender, Department of State Police, Department of Legislative Services

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