

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 459  
Judiciary

(Delegate Cain, *et al.*)

Judicial Proceedings

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**Criminal Law - Victims of Human Trafficking - Affirmative Defense**

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This bill establishes an affirmative defense in a prosecution for a specified list of offenses if the defendant committed an act as a result of being a victim of an act of another in violation of the State’s prohibitions on sex trafficking and forced marriage or federal human trafficking laws. The bill repeals provisions relating to existing affirmative defenses available in prosecutions for prostitution-related offenses. However, the bill may not be construed to substantively alter the existing affirmative defenses as those provisions existed prior to the bill’s October 1, 2020 effective date.

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**Fiscal Summary**

**State Effect:** The bill is not anticipated to materially affect State finances or operations.

**Local Effect:** The bill is not anticipated to materially affect local government finances or operations.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The affirmative defense can be used in a prosecution for 24 specified offenses, including possessing or administering a controlled dangerous substance, misdemeanor theft, and prostitution-related offenses.

A defendant may not assert 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.

**Current Law:** In a prosecution under §§ 11-303 (engaging in prostitution), 11-306 (procuring or soliciting prostitution) or 11-307 (using a building, structure, or conveyance for prostitution) 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 in violation of the State's prohibitions on sex trafficking and forced marriage or federal human trafficking laws. 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.

### *Sex Trafficking of an Adult (In General)*

Under the prohibition on sex trafficking, a person may not knowingly:

- take or cause another to be taken to any place for prostitution;
- place, cause to be placed, or harbor another in any place for prostitution;
- persuade, induce, entice, or encourage another to be taken to or placed in any place for prostitution;
- receive consideration to procure for or place in a house of prostitution or elsewhere another with the intent of causing the other to engage in prostitution or assignation;
- engage in a device, scheme, or continuing course of conduct intended to cause another to believe that if the other did not take part in a sexually explicit performance, the other or a third person would suffer physical restraint or serious harm; or
- destroy, conceal, remove, confiscate, or possess an actual or purported passport, immigration document, or government identification document of another while otherwise violating or attempting to commit these acts.

In general, a person who commits sex trafficking involving an adult victim is guilty of a misdemeanor and subject to imprisonment for up to 10 years and/or a maximum fine of \$5,000. While a misdemeanor generally carries a 1-year statute of limitations, the misdemeanor offense of human trafficking is subject to prosecution at any time.

### *Sex Trafficking of a Minor or Use of Force*

A person who commits sex trafficking involving a victim who is a minor (defined as an individual younger than age 18) or the use of or intent to use force, threat, coercion, or fraud is guilty of a felony and subject to imprisonment for up to 25 years and/or a maximum fine of \$15,000. In a prosecution for sex trafficking of a minor, it is not a defense that the defendant did not know the age of the victim.

The penalties for sex trafficking also apply to a person who knowingly benefits financially from a sex trafficking venture or knowingly aids, abets, or conspires in the commission of sex trafficking.

*Forced Marriage*

A person may not knowingly (1) take or detain another person with the intent to use force, threat, coercion, or fraud to compel the other person to marry any person; (2) receive a financial benefit or thing of value in relation to a violation of this prohibition; and (3) aid, abet, or conspire with another in violation of this prohibition.

The District Court has concurrent jurisdiction with the circuit courts over the crimes of felony sex trafficking and forced marriage.

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**Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - February 7, 2020  
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