

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 292

(Senator Waldstreicher, *et al.*)

Judicial Proceedings

Judiciary

Criminal Law - Victims of Child Sex Trafficking and Human Trafficking - Safe Harbor and Service Response

This bill (1) alters procedures that a law enforcement officer and court must follow when there is reason to believe a child who has been detained is a victim of “sex trafficking” or a “victim of human trafficking”; (2) prohibits the criminal prosecution of or a juvenile proceeding against a minor for a “qualifying offense,” a “violation” (specified offenses for which a citation may be issued), or an offense under § 3-1102 of the Criminal Law Article (sex trafficking) if the minor committed the underlying act as a direct result of “sex trafficking”; and (3) adds offenses to the list of qualifying offenses for which a person may file a motion to vacate judgment if the person’s participation was a direct result of being a victim of human trafficking.

Fiscal Summary

State Effect: The bill’s changes can be handled with existing budgeted resources and are not otherwise anticipated to materially affect State finances or operations.

Local Effect: The bill’s changes can be handled with existing budgeted resources and are not otherwise anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Law Enforcement Officers – Procedures and Requirements Regarding a Suspected Child Victim of Sex Trafficking or Human Trafficking

Under current law, in addition to compliance with requirements regarding the reporting of child abuse and neglect, a law enforcement officer who has reason to believe that a child who has been detained is a victim of sex trafficking must notify any appropriate regional navigator for the jurisdiction where the child was taken into custody or where the child is a resident that the child is a suspected victim of sex trafficking.

The bill extends the notification requirement to suspected victims of human trafficking and specifies that the notification must be made as soon as practicable so the regional navigator can coordinate a service response. The bill also requires (as soon as practicable), the law enforcement officer to (1) report to the local child welfare agency that the child is a suspected victim of sex trafficking or human trafficking and (2) release the child to the child's parents, guardian, or custodian if it is safe and appropriate to do so, or to the local child welfare agency if there is reason to believe that the child's safety will be at risk if the child is returned to the parent, guardian, or custodian.

Under current law, a law enforcement officer or other person authorized by the court may take a child into custody if the officer/person has reasonable grounds to believe that the child is in immediate danger from the child's surroundings and that the child's removal is necessary for the child's protection.

Under the bill, a law enforcement officer who takes a child who is a suspected victim of sex trafficking or human trafficking into custody under this provision may not detain the child in a juvenile detention facility if the reason for detaining the child is a suspected violation of a qualifying offense or § 3-1102 of the Criminal Law Article.

Court Procedures – Required Determinations and Dismissals

The bill also establishes that at any time after a petition alleging that a child has committed a qualifying offense, a violation, or an offense under § 3-1102 of the Criminal Law Article has been filed with the juvenile court, the court, on its own motion or on motion of the child's counsel or the State's Attorney, must (1) make a specified determination (described below); (2) stay all proceedings until the determination is made; and (3) refer the child to a regional navigator and notify the Department of Human Services (DHS). The court must schedule a hearing within 15 days after a motion is filed and may, on good cause shown, extend the time for the hearing by an additional 15 days.

The court must determine – by evidence presented on the record and by a preponderance of the evidence – whether the child (1) is a victim of sex trafficking or human trafficking and (2) committed the qualifying offense, violation, or offense under § 3-1102 of the Criminal Law Article as a direct result of being a victim of sex trafficking or human trafficking. If the court finds that the child is a victim of sex trafficking or human trafficking and committed the underlying act as a direct result of being such a victim, the court must dismiss the charge for any qualifying offense, violation, or offense under § 3-1102 of the Criminal Law Article.

Qualifying Offenses

Under § 8-302 of the Criminal Procedure Article, a “qualifying offense” is defined as:

- unnatural or perverted sexual practice;
- possessing or administering a controlled dangerous substance;
- possessing or purchasing a noncontrolled substance;
- possessing or distributing controlled paraphernalia;
- fourth-degree burglary;
- malicious destruction of property in the lesser degree;
- a trespass offense;
- misdemeanor theft;
- misdemeanor obtaining property or services by bad check;
- possession or use of a fraudulent government identification document;
- public assistance fraud;
- false statement to a law enforcement officer or public official;
- disturbing the public peace and disorderly conduct;
- indecent exposure;
- prostitution under § 11-303 of the Criminal Law Article;
- driving with a suspended registration;
- failure to display registration;
- driving without a license;
- failure to display license to police;
- possession of a suspended license;
- driving while privilege is canceled, suspended, refused, or revoked;
- owner failure to maintain security on a vehicle;
- driving while uninsured; or
- prostitution or loitering as prohibited under local law.

The bill adds the offenses of unauthorized use of a motor vehicle under § 14-102 of the Transportation Article and soliciting or offering to solicit prostitution or assignation under § 11-306 of the Criminal Law Article to the list of qualifying offenses under this statute.

Under current law, a person convicted of a qualifying offense may file a motion to vacate the judgment if the person's participation in the offense was a direct result of being a victim of human trafficking. Specific procedural requirements apply to these motions, and a conviction that has been vacated under these provisions may not be considered a conviction for any purpose. Pursuant to Chapters 126 and 127 of 2020, a person who was convicted of a crime and has the conviction vacated under § 8-302 of the Criminal Procedure Article is eligible to file a petition to expunge records regarding the vacated conviction under § 10-105(a)(13) of the Criminal Procedure Article.

Select Definitions (Applicable to, but Unchanged by the Bill)

Under § 5-701 of the Family Law Article, “sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act.

Under § 5-704.4 of the Family Law Article, a “regional navigator” is a provider of services designated by a grantee of the Safe Harbor Regional Navigator Grant Program, which was established to support services for youth victims of sex trafficking.

Under § 3-8A-01 of the Courts Article (involving juvenile delinquency proceedings for children younger than age 18), a “violation” includes specified offenses applicable only to minors or to those younger than age 21, including (1) the use or possession of cannabis; (2) certain alcoholic beverage violations; (3) possession of *Salvia divinorum* by an individual younger than age 21; (4) table game and video lottery terminal violations by an individual younger than age 21; and (5) drinking or possessing an alcoholic beverage on school premises by an individual younger than age 18.

Under § 8-302 of the Criminal Procedure Article “victim of human trafficking” means a person who has been subjected to an act of another committed in violation of Title 3, Subtitle 11 of the Criminal Law Article (sex trafficking and marriage trafficking) or specified federal human trafficking crimes.

Additional Comments: According to the *FY 2022 Data Resource Guide*, of the 10,782 complaints received by the Department of Juvenile Services in fiscal 2022, 31.4% (3,386) resulted in a formal petition to the court. Information is not readily available on (1) how many of these petitions involved a qualifying offense, a violation, or an offense under § 3-1102 of the Criminal Law Article and (2) presented factors and issues indicating that the child was a victim of human trafficking or sex trafficking.

DHS must annually report to the Governor and the General Assembly on the number of reports of child sex trafficking made in the State in the preceding year; the outcome or disposition of reports of child sex trafficking made in the State in the preceding year; and the number of referrals made to regional navigators in the preceding year. According to its most recent report, during calendar 2021, Child Protective Services (CPS) investigated 94 reports of alleged child sex trafficking. Of these reports, 32 were indicated (a finding that there is credible evidence, which has not been satisfactorily refuted, that physical or sexual abuse, or neglect did occur), 15 were unsubstantiated (a finding that there is an insufficient amount of evidence to support a finding of indicated or ruled out), and 47 were ruled out (a finding that physical or sexual abuse, or neglect did not occur). Law enforcement and local departments of social services made 91 referrals to regional navigators during calendar 2021.

According to the University of Maryland SAFE Center for Human Trafficking Survivors, between June 2013 and April 2020, over 671 reports of suspected child sex trafficking were reported to and screened in by CPS units in Maryland's 24 local departments of social services agencies. The center also reports that 110 youths were arrested for prostitution and commercialized vice in Maryland between 2010 and 2020, including 33 arrests of individuals ages 15 or younger.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 833 and SB 768 of 2022.

Designated Cross File: HB 297 (Delegate Bartlett, *et al.*) - Judiciary.

Information Source(s): Harford and Montgomery counties; City of College Park; Governor's Office of Crime Prevention, Youth, and Victim Services; 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 Human Services; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; University of Maryland SAFE Center; Department of Legislative Services

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