



BILL NO: HB 871
TITLE: Criminal Law – Human Trafficking & Prostitution Offenses
COMMITTEE: Judiciary
HEARING DATE: March 6, 2019 at 1pm
POSITION: SUPPORT

Summary. – The University of Maryland SAFE Center urges a favorable report to HB871. This legislation will provide the foundation for identifying survivors, as well as investigating and prosecuting human traffickers.

About the University of Maryland SAFE Center. -- The University of Maryland SUPPORT, ADVOCACY, FREEDOM, AND EMPOWERMENT (SAFE) Center for Human Trafficking Survivors (“SAFE Center”) provides survivor-centered and trauma-informed services that empower trafficking survivors to heal and reclaim their lives. As an initiative of the University of Maryland Strategic Partnership: MPowering the State, the SAFE Center supports survivors of sex and/or labor trafficking of all nationalities, ages, and genders through bilingual case management, mental health, economic empowerment, legal, and crisis intervention services. The SAFE Center also aims to prevent trafficking and better serve survivors through research and policy advocacy.

Testimony. -- The SAFE Center has identified specific opportunities to improve Maryland’s human trafficking-related statutes based on over a decade of local and national anti-trafficking experiences, consultation with state-based and federal partners, as well as time spent engaging with stakeholders across the state. These opportunities have been translated into the legislative changes to § 11-303 and related statutes delineated in HB871.

This well-balanced legislation is based on the experience of the The SAFE Center. Reflected below are changes vital to the needs of, and requested by, law enforcement, prosecutors, victim advocates, and other stakeholders. These improvements are vital to supporting the important work of these partners and ensuring Maryland is a leader in ending human trafficking.

- Overview and Rationale for Changes -

I. Clarification of Felony Provisions

Section 11-303 includes felony charges for human trafficking under subsections (b)(1) and (b)(2) if the prosecutor is able to establish either (1) that the victim was a minor at the time of the offense or (2) that the offender used “force, threat, coercion, or fraud” to compel the victim’s action. In general, this corresponds with other states’ and Federal laws. However, the structure and formatting of Section 11-303 makes the misdemeanor/felony distinction unclear; moreover, the felony penalty is not connected directly to the acts outlined as illegal under the misdemeanor portion of the statute. In this bill, the current statute’s sections relating to acts meriting felony convictions have been clarified.

Current: Under subsection 11-303(a), a misdemeanor human trafficking conviction may be supported by five distinct factual predicates. Under subsection (b)(1) of the statute, any of these five predicates may also support a felony human trafficking conviction when the criminal acts are committed against a minor. Under subsection (b)(2) of the statute, a trafficker’s use of force, fraud,

threat or coercion can also support a felony trafficking conviction, regardless of the victim’s age. However, subsection (b)(2) does not include the factual predicates laid out in section (a) or subsection (b)(1). The statute’s current structure and internal inconsistencies have led to its underutilization, particularly when it comes to adult felony prosecutions.

Change: Subsection (b)(2) has been redrafted to incorporate the acts enumerated in section (a) and subsection (b)(1). With this change, the commission of any of these acts with force, fraud, threat or coercion will also supports a felony human trafficking conviction. Additionally, the existing language relating to forced marriage has been relocated—in its current form—to a separate new statute titled “Forced Marriage.”

II. Clarifying Exclusion of Mistake of Age Defense to Child Trafficking

Current: Trafficking a minor is a felony under subsection 11-303(b)(1). Subsection 11-303(f) specifically excludes lack of knowledge of a victim’s age as a defense to a felony charge under subsection 11-303(b)(1). During recent trials, defendants have successfully argued that the limitation in subsection 11-303(f) does not currently apply to attempted human trafficking under (b)(1), the related crimes enumerated in subsection 11-303(e), or abduction of a child under 16 per section 11-305.

Change: Subsection 11-303(f) and section 11-305 have been amended to clarify that lack of knowledge of a victim’s ages is not a defense to these crimes.

III. Separating but Not Changing Prostitution Charges for Data Collection

Prostitution, solicitation, and house of prostitution in section 11-306 have been separated into three distinct statutes to allow for more accurate data collection on arrests and prosecutions.

Current: Section 11-306 currently includes multiple criminal acts—including solicitation, prostitution, and keeping a house of prostitution.

Change: The acts enumerated in the current statute have been separated into three discrete statutes while maintaining the same penalty and structure.

IV. Making Human Trafficking a Crime Against the Person

Current: Section 11-303 currently resides in the “Prostitution and Related Crimes” Subtitle of the “Indecency and Obscenity” Title.

Change: The unchanged text of §11-303 has been moved to a new Subtitle “Human Trafficking” within the “Other Crimes Against the Persons” Title. The statute has been renamed “Sex Trafficking” to accurately reflect its applicability.



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V. Making Felony Trafficking a Crime of Violence

Pursuant to section 7-301 of the Correctional Services Article, after serving 25% of sentenced time a convicted trafficker is eligible for parole. Recognition as a crime of violence under section 14-101 will increase this to 50% before parole eligibility. Felony human trafficking is a crime of violence. Numerous national studies note that victims of trafficking often suffer rape, robbery, kidnapping and murder.¹ In the same study, 90% of domestic victims asserted that the trafficker threatened them with violence. Similarly, a study in 2004 found that homicide was the leading cause of premature death of women engaging in commercial sex.² Prosecutors in Maryland note a similar trend in violence against adult and child victims of sex trafficking.

Current: The definition of “crime of violence” in section 14-101 does not include human trafficking.

Change: The felony provisions of current section 11-303/proposed section 2-1102 have been added to the “crime of violence” definition in section 14-101.

Conclusion. – Based on the foregoing reasons, the SAFE Center urges a favorable report for HB871.

¹ See Janice G. Raymond & Donna M. Hughes, *Sex Trafficking of Women in the United States: International and Domestic Trends*, DOJ 57-65 (Apr. 17, 2001), <https://www.ncjrs.gov/pdffiles1/nij/grants/187774.pdf>. See Also Dorchen A. Leidholdt, *Human Trafficking and Domestic Violence: A Primer for Judges*, 52 JUDGES’ J. 16 (2013); REPORT OF THE TASK FORCE ON TRAFFICKING OF WOMEN AND GIRLS 26 (2014), <https://www.apa.org/pi/women/programs/trafficking/report.pdf>.

² John J. Potterat et al., *Mortality in a Long-Term Open Cohort of Prostitute Women*, 159 Am. J. Epidemiology 778, 783 (2004).

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