

Virginia State Crime Commission

Human Trafficking and Juvenile Prostitution

2014

Human Trafficking and Juvenile Prostitution

Executive Summary

Senate Bill 373, patroned by Senator John Edwards, and House Bill 486, patroned by Delegate Timothy Hugo, were introduced during the Regular Session of the 2015 General Assembly. Senate Bill 373 focused on creating new felonies for human trafficking, while House Bill 486 sought to require reporting of suspected cases of child human trafficking and designate child protective services as the responsible agency for these types of cases. Both bills were left in House Courts of Justice’s Criminal Law Subcommittee and sent to the Crime Commission for review.

Since 2006, the Crime Commission, the General Assembly, and other state agencies, have examined the topic of human trafficking on numerous occasions. Currently, there is no version of a model “Human Trafficking Act” in the Code of Virginia, as was proposed in Senate Bill 373 in 2014. The various changes enacted by the General Assembly in recent years to correct identified statutory deficiencies applicable to human trafficking cases make many provisions of Senate Bill 373 redundant and unnecessary. Additionally, some of the new criminal offenses proposed in the bill use terms that are so broad that they would inadvertently criminalize conduct that should not be made illegal.

In general, many of the problems with prosecuting human trafficking cases in Virginia are not due to Virginia’s laws, but are the result of the fact that witnesses are often uncooperative with law enforcement. In instances involving juvenile prostitution, law enforcement and many professionals believe that if there is no mechanism to keep the victims within the judicial system, they often refuse to seek and get the treatment that they need. One statutory deficiency identified by law enforcement in Virginia is that it is difficult to prosecute a pimp who is recruiting minors for purposes of prostitution, if he is arrested before any other criminal activity takes place. This deficiency could be remedied through the creation of a criminal statute, similar to Virginia’s existing gang recruitment statute.

There was federal legislation passed in September 2014, similar in nature to the provisions in House Bill 486, which was introduced during the Regular Session of the 2014 General Assembly. The new federal law will presumably require the Virginia Department of Social Services to evaluate how to implement several new federal requirements, including reporting requirements and the mandate to develop plans with law enforcement and the juvenile justice system for foster children. To that extent, it may be premature to enact House Bill 486, without a more complete understanding of what state-wide policy changes will need to be made by the Virginia Department of Social Services. House Bill 486 also contains provisions requiring local Child Protective Services agencies to conduct investigations of human trafficking. Doing this may inadvertently lead to police investigations being hindered, especially if Child Protective Services is designated as the lead agency in investigating human trafficking cases.

Based upon a review of the two bills, and information gathered from law enforcement officers, prosecutors, and advocates who have been focusing on human trafficking and prostitution in

Virginia, a number of policy options related to human trafficking and juvenile prostitution were considered by the Crime Commission at their October and December meetings:

Policy Option 1: Should Virginia enact a comprehensive Human Trafficking Act, with newly created felonies, similar to the Act proposed by Senate Bill 373?

Policy Option 2: Should local CPS become involved in investigations where juveniles are believed to be victims of human trafficking, as mandated by House Bill 486?

Policy Option 3: Should a heightened penalty for pandering or procuring prostitutes be created, when minors are involved?

Policy Option 4: Should a new recruitment for purposes of prostitution statute be created, modeled after Virginia's gang recruitment statute (§ 18.2-46.3)?

Policy Option 5: Should manual stimulation of the genitals be incorporated into the prostitution statute?

Policy Option 6: Should a juvenile, charged with prostitution, be allowed to have their case dismissed, and become subject to a CHINS petition, if the juvenile expresses a willingness to participate in specialized services?

The Crime Commission made no motion and took no action on Policy Options 1, 2 and 6. In regards to Policy Option 6, it was observed that juvenile and domestic relations district courts already have the authority to do this, if the judge deems such a disposition to be appropriate in a given case. The Crime Commission unanimously voted to approve Policy Option 5; however, no legislation was subsequently introduced during the 2015 General Assembly Session.

Policy Options 3 and 4 were introduced by Delegate Rob Bell in House Bill 2040 during the 2015 Regular Session of the Virginia General Assembly. This bill was later amended in the House Courts of Justice Committee, with both the proposal to heighten the penalty for pandering or pimping juveniles (Policy Option 3) and the proposal to create a new recruitment for purposes of prostitution statute (Policy Option 4) removed from the bill. The final version of House Bill 2040, as signed into law by the Governor, amended Va. Code § 18.2-355, by increasing the penalty from a Class 4 felony to a Class 3 felony for the crime of taking a minor to a place for purposes of prostitution.

However, both Policy Options 3 and 4 were incorporated into Senate Bill 1188, introduced by Senator Mark Obenshain, when that bill was amended in the Senate Courts of Justice Committee. They were also incorporated into House Bill 1964, introduced by Delegate Timothy Hugo, when that bill was amended in the House Courts of Justice Committee. Both bills were signed into law by the Governor. As of July 1, 2015, anyone who pimps or panders a juvenile will be guilty of a Class 3 felony, and on that date, a new criminal offense, commercial sex trafficking in violation of Va. Code § 18.2-357.1, will go into effect, making it a separate crime to encourage or solicit a person to work as a prostitute.

Background

Senate Bill 373 (SB 373), patroned by Senator John Edwards, and House Bill 486 (HB 486), patroned by Delegates Timothy Hugo and Ronald Villanueva, were introduced during the Regular

Session of the 2014 General Assembly. Both bills were left in the House Courts of Justice Criminal Law Subcommittee, and a request was sent to the Crime Commission for review. The general subject matter of both bills was an attempt to improve the handling and prosecution of human trafficking cases in Virginia.

Senate Bill 373: Analysis of Proposed New Criminal Offenses

Senate Bill 373 would add several new sections to the Code of Virginia to address human trafficking, create new felonies for trafficking in persons for forced labor or sexual servitude, add the new felonies as predicate acts to racketeering activities and to the multi-jurisdictional grand jury statute, and allow forfeitures for convictions of the new felonies.¹ Almost all of the new felonies proposed by SB 373 are already covered by existing crimes in Virginia. For example, the bill makes it a crime to “use coercion to compel an individual to provide forced labor or services.” Coercion is defined as including “use of force against, abduction of, or physical restraint of, an individual.” However, anyone who violates the proposed new felony in this manner would of necessity be guilty of abduction, as it is an element of the new offense.² Depending upon the particular facts involved in a case, a defendant who abducts a victim with the intent to make him provide forced labor for the defendant’s own benefit, might well be guilty of a Class 2 felony under existing law, which is a far more severe penalty than the proposed Class 4 felony proposed by SB 373.³ As another example, the crime of extortion, as currently defined in the Code, would apply to many of the proposed new felonies. Extortion includes situations where a person “knowingly destroys, conceals, removes, confiscates, withholds or threatens to withhold, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document.”⁴ This existing language is essentially identical in meaning to a portion of the proposed new definition of “coercion”—“the destruction or taking of or threatened destruction or taking of an individual’s passport, immigration document, or other governmental identification, or other property.”⁵

To the extent that the proposed new crimes in SB 373 are not covered by existing law, they are written so broadly as to include innocent, non-malicious conduct that should not be made criminal. For example, another portion of the proposed definition for the term “coercion” in SB 373 is “the abuse or threatened abuse of the law or legal process.” This provision could have the potential to criminalize all manner of everyday business conduct, such as disputes between a contractor and subcontractor. A contractor loudly shouting his intention to sue a subcontractor into bankruptcy if his crew does not start work immediately, is most likely a “threatened abuse of the law or legal process,” and could run afoul of the new statute.

Senate Bill 373: Considerations with Enacting a Model Human Trafficking Act

There are various policy arguments that can be made both in favor of, and against, enacting a specialized Human Trafficking Act, such as the Uniform Act on Prevention of and Remedies for Human Trafficking, which was drafted by the National Conference of Commissioners on Uniform State Laws in 2013, and which served as a basis for much of the language in SB 373.⁶ Arguments in favor of enacting such an Act include:

- Passing a Human Trafficking Act helps bring public attention to the very real problems of human trafficking;
- Currently, it is extremely difficult to obtain accurate figures as to the amount of human trafficking that occurs in Virginia, so having a specific Code section could lead to better tracking of this activity;
- The more statutes that punish this reprehensible criminal behavior, the better; and,

- Having a Human Trafficking Act makes it easier for law enforcement to make arrests and bring a specific charge against traffickers, instead of obtaining warrants for a number of different offenses, e.g., abduction and pandering.

Arguments against passing a Human Trafficking Act include:

- All the crimes that are included in the Act are adequately covered by existing statutes, which are clearly written, have extensive case law, and are very familiar to prosecutors;
- Whenever a new statute is enacted that is not based on existing Virginia statutory language, there is a risk that it could be struck down, or interpreted in a very narrow manner;
- Virginia generally has not favored creating duplicative statutory offenses; i.e., if an activity is already a crime, there is no need to criminalize it a second time;
- If a crime is specifically covered in a Human Trafficking Act, and carries a lower penalty than an existing statute, defense counsel will argue that the lower penalty must be applied;
- Most versions of Human Trafficking Acts employ confusing cross-references, with the definition of one term depending upon the definition of two other terms, each of which may refer back to the original definition; and,
- Almost all of the Human Trafficking Acts use new terms that have not previously been defined in Title 18.2 or in Virginia case law, and are worded overly broadly.

House Bill 486 Analysis

While HB 486 seeks to improve prosecution of human trafficking, it attempts to accomplish this through the social services system. The bill would:

- Require those individuals who are required to report suspected child abuse or neglect to also report suspected cases of child human trafficking;
- Designate local departments of Child Protective Services (CPS) to be the public agency responsible for receiving and responding to reports of suspected human trafficking of children;
- Require CPS to report annually on its activities concerning investigation of reports of suspected human trafficking of children and services provided to children; and,
- Require making CPS a lead in investigating human trafficking cases. (This requirement could interfere with law enforcement investigations).

It is important to note that the Virginia Department of Social Services (DSS) is subject to a new federal law, the “Preventing Sex Trafficking and Strengthening Families Act,”⁷ which includes reporting requirements and the mandate to develop plans with law enforcement and juvenile justice systems for foster children. It is not clear at this time how these new requirements will change or expand the duties of DSS regarding human trafficking, since it was recently passed on September 29, 2014.

Legislative Efforts in Virginia

Human trafficking is often referred to as a form of modern day slavery and has been defined by Congress in the “Trafficking Victims Protection Act” of 2000 to embody sex trafficking, where commercial sex acts are induced by force, fraud, or coercion, or by minors; or the placement of persons by use of force, fraud, or coercion for the purpose of subjection into involuntary servitude, peonage, debt bondage, or slavery.⁸

Virginia has likewise recognized the seriousness of this form of criminal enterprise. On multiple occasions since 2006, both the General Assembly and various state agencies have considered the problems of human trafficking, and have taken several steps to address this criminal activity.

In 2006, the General Assembly passed the first of its more recent measures in response to an identified problem related to human trafficking that was not adequately covered by existing laws. Language was added to the extortion statute so that threatening to report a person “as being illegally present in the United States” for purposes of extorting money or pecuniary benefit was made a crime.⁹

Later in 2006, the Crime Commission studied the issue of human trafficking and reviewed the human trafficking bills that had been introduced during the 2006 Regular Session. As a result of this study, Virginia’s extortion statute Va. Code § 18.2-59, was additionally modified in 2007 to include threats of confiscating or withholding passports, immigration documents, or other government identification documents.¹⁰ The General Assembly also created the *Commission on the Prevention of Human Trafficking* in 2007.¹¹ However, the Human Trafficking Commission’s work did not lead to the enactment of any new legislation.¹²

In 2009, the abduction statute, Va. Code § 18.2-47, was expanded to include a trafficking subsection, which applies to persons seized, taken, or transported for forced labor or services.¹³

In 2010, the Crime Commission was requested to examine several issues related to human trafficking. House Joint Resolution 97 directed the Crime Commission to examine human trafficking in the context of prostitution-related offenses and indecent liberties.¹⁴ No recommendations were made by Crime Commission members as a result of this study.¹⁵

Both the Department of Criminal Justice Services (DCJS) and the Attorney General’s Office were required, in 2011, to advise law enforcement on how to identify and prosecute human trafficking cases under the existing common law and criminal statutes of the Commonwealth.¹⁶ Also in 2011, DSS was statutorily required to develop a plan which would provide services including identifying victims of human trafficking, providing assistance to obtain existing benefits, and providing medical and mental health services.¹⁷

Legislation passed in 2012 required the Department of Education, in collaboration with DSS, to provide awareness and training information for local school division staff concerning human trafficking, to include strategies for the prevention of the trafficking of children.¹⁸ The General Assembly also passed a law in 2012 requiring certain business owners to post signs containing information about a human trafficking hotline.¹⁹ Additionally in 2012, the taking and detaining of persons for purposes of prostitution, and receiving funds for prostitution, were made predicate offenses for purposes of Virginia’s criminal gang statute.²⁰

In 2013, several more changes were made to Virginia’s laws to address human trafficking. An amendment to Va. Code § 15.2-1724 was enacted to allow law enforcement to enforce abduction

violations outside of their jurisdictional limits.²¹ Va. Code § 19.2-215.1 was amended to allow multi-jurisdictional grand juries to investigate receiving monies for procuring a person in violation of Va. Code § 18.2-356.²² And, the crime of soliciting prostitution, Va. Code § 18.2-346, was amended to make it a Class 5 felony to solicit a minor, less than 16 years old, and a Class 6 felony to solicit a minor 16 or older.²³

Also in 2013, under the direction of the Secretary of Public Safety, DCJS created a work group to review current practices for dealing with human trafficking and to develop new strategies. Recommendations included:

- Coordinate human trafficking enforcement statewide;
- Capture or track statistics about human trafficking in Virginia;
- Ensure access to services for victims; and,
- Educate professional groups and equip those groups to identify, investigate, and prosecute cases.²⁴

At the same time, the Crime Commission studied the human trafficking-related issues of forced prostitution, decriminalization of juvenile prostitution and expungement of prostitution convictions and charges. No recommendations were made by Crime Commission members as a result of this study.²⁵

Difficulties with Human Trafficking Cases

In most instances, human trafficking does not involve kidnapping a person off the streets through an act of violence. Usually, the victim is lured based on promises of money, affection, or a better life. In cases of sex trafficking, these victims often develop loyalty to their pimps due to fear, dependency, or an emotional attachment, roughly analogous to Stockholm syndrome.²⁶ Because of the intense loyalty the victims display towards their abusers/pimps, and a related fear of the pimp, law enforcement and the legal system, or both, victims do not trust law enforcement or service providers. Therefore, if not placed in some form of custody, victims are frequently reported as trying to contact their pimp after an arrest, and resuming prostitution. A number of law enforcement officials and service providers have noted it is often better to keep criminal charges “over their head” to keep prostitution victims within the judicial system, so that they have access to assessment and treatment options. Safe harbor provisions, or decriminalizing prostitution for minors, are problematic because they can function as a recruitment tool, with the pimp telling the person he is trying to recruit that “you can’t even get arrested for this.” In a perverse way, safe harbor provisions may also serve as a disincentive for prostitutes to obtain treatment and can impede efforts to bring pimps to justice.

At the October Crime Commission meeting, members heard a presentation on human trafficking and juvenile prostitution from a detective of the Northern Virginia Human Trafficking Task Force (NVHTTF) regarding recent data and case examples. According to the presentation, the National Human Trafficking Resource Center keeps track of all phone calls, text messages, and online tips and emails sent to them related to human trafficking. There were a total of 35,889 messages and tips received nation-wide in 2013. Of that number, 742 phone calls, 37 online tips, 26 emails, and 5 text messages originated from individuals in Virginia.

The NVHTTF reported that from October 1, 2013, to October 17, 2014, they had received 156 leads. In turn, this led to 261 victims being identified, 13% of whom were juveniles; 108 victims being recovered and offered services; and 76 suspects identified. Seventeen percent of all the leads received were gang-related. Focusing on the 53 leads received between July 1, 2014, to October 17, 2014, 23 of the cases are pending further investigation; 7 are ongoing as a federal investigation; 11 are ongoing as an investigation being carried out by a different law enforcement unit; 10 were tracked as Intel, and 1 case was unfounded.

Examining all of the known data concerning identified victims, the NVHTTF reported that the vast majority, 77% (102 out of 133) were from the United States; the second most common geographic area of origin was Central America, with 9% (12 out of 133); and China was the third most common, with 7% (9 out of 133). The vast majority of female victims were in the age range of 15 to 17, while the age range of male victims was evenly distributed across all ages. The known data on identified trafficking suspects revealed that 53% (18 out of 34) were from the United States; the second most common geographic area of origin for suspects was Central America, with 24% (8 out of 34). The remainder of the suspects were evenly distributed from a variety of countries, including Qatar, Peru, Bolivia, Bulgaria, Canada, Croatia and Germany.

A recent case that was investigated by the NVHTTF provides an illustrative example of how human trafficking rings can be effectively combated by law enforcement. The Underground Gangster Crips, a known and nationally recognized set of the Crips, operates primarily in Virginia, with approximately 15 documented members. Amongst their criminal enterprises is prostitution. In November of 2011, a proactive review of police reports, a child protective services report, and a report made by a concerned parent, led the NVHTTF to begin interviews. Victim #1 was cooperative and identified several co-conspirators. Victim #2 was uncooperative and would not provide information. The investigators began compiling historical data going back to 2009 concerning the Underground Gangster Crips. Meanwhile, Victim #2 provided some Facebook messages between herself and Victim #1, which led to a search warrant for Victim #1's Facebook account. As the evidence was slowly gathered, a fuller picture of how the prostitution operation was organized and run. For out-calls, a gang member would escort the juvenile to the door of the "john," and inspect the apartment to ensure that it was not an undercover policeman who had made the solicitation. The money was paid in advance, and the gang member would wait outside the door while the sex act was performed. For in-calls, all arriving "johns" were screened to ensure they were not undercover policemen. They were then taken through the rear sliding glass door in the basement of a townhouse that served as a brothel. The gang members would advertise their prostitutes through various methods, including word of mouth, door to door solicitations for sexual services, and advertisements on the Internet. At the conclusion of the NVHTTF investigation, indictments were brought in federal court. Five of the gang members were convicted, with three receiving 120 months incarceration, one receiving 276 months, and the ring-leader receiving 480 months.

Discussions with law enforcement and prosecutors have revealed a number of statutory changes that could be made to help combat human trafficking in Virginia:

- While a heightened penalty was created for soliciting prostitution from a minor in 2013, there is no corresponding heightened penalty for pandering or procuring minors for purposes of prostitution. These crimes should also carry a heavier penalty if juveniles are involved.
- If a pimp is discovered to be recruiting juveniles for prostitution, but is interrupted or arrested before he can successfully recruit anyone, it is very difficult to prosecute him. A separate prostitution recruitment statute should be enacted.

Summary

The General Assembly, the Virginia State Crime Commission, and various other state agencies have examined the topic of human trafficking on a regular basis since 2006. While no version of a model “Human Trafficking Act” has been enacted by the General Assembly, various statutory changes have been made in instances where deficiencies were identified in Virginia’s statutes, thus making some of the key provisions of SB 373 redundant.

Recent federal legislation, the “Prevent Sex Trafficking and Strengthening Families Act,” similar in subject matter to HB 486, was enacted this past September. The Virginia Department of Social Services presumably will be evaluating how to implement any new requirements generated by the “Preventing Sex Trafficking and Strengthening Families Act.” To some extent, it would be premature to enact HB 486, until there is a more complete understanding of how Virginia’s responsibilities will be affected by new federal requirements. Requiring local CPS agencies to conduct investigations of human trafficking and to coordinate with local law enforcement, as is mandated by HB 486, may inadvertently lead to police investigations being hindered. In many instances, law enforcement has more training and experience in conducting investigations which have an organized criminal gang component, including the use of confidential informants. Difficulties with human trafficking cases include uncooperative witnesses, due to the misplaced loyalty many prostitutes feel towards their pimps or abusers, and the difficulties in prosecuting a person who is discovered to be recruiting minors for purposes of prostitution, but is arrested before any other criminal acts take place.

Based upon a review of the two bills, and information gathered from law enforcement officers, prosecutors, and advocates who have been focusing on human trafficking and prostitution in Virginia, a number of policy options related to human trafficking and juvenile prostitution were considered by the Crime Commission at their October and December meetings:

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¹ S.B. 373, 2014 Gen. Assemb., Reg. Sess. (Va. 2014).

² The crime of abduction is found, and penalties are given, in Va. Code §§ 18.2-47 and 18.2-48. VA. CODE ANN. §§ 18.2-47, 18.2-48 (2014).

³ Anyone who abducts a person with the intent to extort pecuniary benefit is guilty of a Class 2 felony. VA. CODE ANN. § 18.2-48 (i) (2014).

⁴ VA. CODE ANN. § 18.2-59 (2014).

⁵ S.B. 373, 2014 Gen. Assemb., Reg. Sess. (Va. 2014).

⁶ Unif. Act on Prevention of & Remedies for Human Trafficking (2013).

⁷ Public Law No. 113-183, retrieved from <https://www.congress.gov/bill/113th-congress/house-bill/4980>.

⁸ 22 U.S.C.S. § 7102 (LexisNexis 2014).

⁹ 2006 Va. Acts. ch. 313.

¹⁰ 2007 Va. Acts. ch. 547.

¹¹ 2007 Va. Acts. ch. 525.

¹² The Commission's report can be accessed at:

<http://leg2.state.va.us/DLS/h&sdocs.nsf/5c7ff392dd0ce64d85256ec400674ecb/687970da61a7b6e28525744b005c34fd?OpenDocument>.

¹³ 2009 Va. Acts. ch. 662.

¹⁴ H.J. Res. 97 Va. General Assemb. (2010).

¹⁵ VA. STATE CRIME COMM'N, INDECENT LIBERTIES AND PROSTITUTION-RELATED OFFENSES INVOLVING CHILDREN, H. DOC. 8 (2011).

¹⁶ 2011 Va. Acts, ch. 719.

¹⁷ 2011 Va. Acts, ch. 258.

¹⁸ 2012 Va. Acts, ch. 317, 370.

¹⁹ 2012 Va. Acts, ch. 630.

²⁰ 2012 Va. Acts, ch. 364.

²¹ 2012 Va. Acts, ch. 428.

²² 2012 Va. Acts, ch. 8.

²³ 2012 Va. Acts, ch. 417, 467. Prior to this change, solicitation of prostitution was a misdemeanor, irrespective of the prostitute's age.

²⁴ Va. Dep't of Criminal Justice Servs., Laying the Foundation for Virginia's Response to Human Trafficking, 15-28 (2013).

²⁵ VA. STATE CRIME COMM'N, FORCED PROSTITUTION (2014), RD181, P. 44. Retrieved from <http://vscc.virginia.gov/Forced%20Prost%20Report.pdf>.

²⁶ “Similar to trafficking victims, child and adolescent victims of prostitution can develop Stockholm syndrome. Children and adolescents pressured into prostitution form an attachment to the offender despite the history of abuse and violence. Consequently, prostituted children may develop a perverse bond with their captor that is difficult to fracture, effectively reinforcing the hold perpetrators have over victims.” (Citations omitted). Bang, B., Baker, P.L., Carpinteri, A., & VanHasselt, V.B. (2014). *Commercial sexual exploitation of children*. New York: Springer, at page 20; *See also*, Natalie Kitroeff, *Stockholm Syndrome in the Pimp-Victim Relationship*, N.Y. TIMES, May 3, 2012, retrieved from <http://kristof.blogs.nytimes.com/2012/05/03/stockholm-syndrome-in-the-pimp-victim-relationship/>.

²⁷ S.B. 1188, 2015 Va. Acts, ch. 691; H.B. 1964, 2015 Va. Acts, ch. 690.