



## **Forced Prostitution- Expungement of Charges HB 1541 and SB 1273**

September 3, 2013

### **Overview**



- Study Authorization
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- Policy Considerations

## Study Authorization



- House Bill 1541 and Senate Bill 1273 were introduced by Delegate Vivian Watts and Senator Adam Ebbin, respectively, during the Regular Session of the 2013 General Assembly.
- Both bills would allow for the expungement of prostitution charges if the person was abducted for the purposes of prostitution.
- Both bills were left in the House Courts of Justice Committee Criminal Law Sub-Committee, and a request was sent to the Crime Commission for review.

## Background



- Although both HB 1541 and SB 1273 were identical when they were introduced, SB 1273 was substantially amended in the Senate Courts of Justice Committee.
- In its final form, SB 1273 would only apply to minors who were abducted when they were under the age of 16.
- HB 1541 would apply to anyone who had been abducted for purposes of prostitution, but they would also have to show that they were “induced to engage in prostitution through the use of force, intimidation or deception.”

## Background



- SB 1273 would only apply to offenses of prostitution that occurred before the petitioner had turned 21 years old.
- HB 1541 would not place this age limit on a petitioner's ability to seek expungement of prostitution charges or convictions.

## Background



- HB 1541 also contains an additional provision not related to expungement, which is not present in the final version of SB 1273.
- HB 1541 would create an affirmative defense to prostitution:
  - The defendant would have to prove that he was abducted for the purposes of prostitution in violation of Va. Code § 18.2-48; and,
  - He would have to prove that he was induced to engage in prostitution through the use of force, intimidation or deception.

## Legal Analysis



- In Virginia, the expungement of police and court records related to a criminal charge is limited, by declared public policy, to instances where a citizen is “innocent,” or has been “absolutely pardoned for crimes for which they have been unjustly convicted,” per Va. Code § 19.2-392.1.
- Virginia’s appellate courts have repeatedly held that expungement is limited to instances where a person is actually innocent, and therefore cannot be used when a person has received a deferred disposition, even if he was ultimately found “not guilty.” Gregg v. Commonwealth, 227 Va. 504 (1984).
- This focus upon innocence makes Virginia’s expungement statute different from those found in most states.

## Legal Analysis



- Currently, under Va. Code § 19.2-392.2, a person who has been found guilty of a crime cannot seek an expungement unless he has received an absolute pardon or has been granted a writ of actual innocence.
- To allow for the expungement of an actual conviction, therefore, would be a significant change to Virginia’s laws.
- An additional policy question is how prosecutors would respond to such petitions, if they involved very old cases.
  - Prostitution is a misdemeanor offense, and many offices do not keep files for misdemeanor cases for extended periods of time.

## Legal Analysis



- Virginia currently recognizes the common law affirmative defense of duress.
- As applied in Virginia, the defendant must show that he committed the criminal offense only because of a threat of death or serious injury. Sam v. Commonwealth, 13 Va. App. 312 (1991).
  - The threat can be against either the defendant, or members of the defendant’s family.
  - The threat of harm does not have to be immediate, but must be at least imminent.

## Legal Analysis



- However, the defendant must reasonably believe that performing the criminal conduct was the only opportunity to avoid the imminent threat.
- If the defendant had the opportunity to avoid committing the crime, and could also avoid the threatened harm, he cannot assert the defense of duress. Pancoast v. Commonwealth, 2 Va. App. 28 (1986).

## Legal Analysis



- The proposed affirmative defense to prostitution in HB 1541 is substantively different from the existing common law defense.
- The defendant must show that he was abducted, which could be a difficult impediment to the use of this defense.
- The defense, as written, is silent as to whether the threat must be immediate or imminent; it also does not require that the defendant had no reasonable opportunity to avoid committing the crime.

## Virginia Data



- Staff requested the total number of arrests for prostitution-related offenses for CY08-CY12.
- Over this 5 year period, there were nearly 4,000 prostitution-related arrests made in the Commonwealth.
  - Approximately 1,694 arrests were for prostitution directly in violation of Va. Code § 18.2-346(A).
  - Approximately 883 arrests were for solicitation in violation of § 18.2-346 (B).
  - An additional 342 arrests were made, but it was unclear if they were for prostitution or solicitation.
    - Source: Va. State Police, Computerized Criminal History System

# Virginia Data



- Juveniles are rarely arrested for prostitution or prostitution related offenses. There were only 2 arrests from CY08-CY12.
  - Source: Va. State Police, Computerized Criminal History System
- Staff also requested the total number of charges and convictions for Va. Code § 18.2-346(A) in general, circuit and J&DR courts from FY09-FY13.

# Virginia Data



## Va. Code § 18.2-346(A)- Charges and Convictions

Court	Fiscal Year Charge Concluded				
	FY09	FY10	FY11	FY12	FY13 <sup>†</sup>
<b>General District Court*- Charges</b>	503	613	599	488	630
<b>General District Court**- Convictions</b>	376	424	368	330	421
<b>Circuit Court***- Charges</b>	5	6	2	5	3
<b>Circuit Court- Convictions</b>	1	3	0	6	1
<b>J&amp;DR****- Charges</b>	1	3	0	0	1
<b>J&amp;DR- Convictions</b>	0	1	0	0	1

<sup>†</sup> Data do not include charges that were still pending at the end of FY2013. \* The total number of charges and convictions in general district court are the minimum number as there were additional charges and convictions that were classified as Va. Code 18.2-346 in general and not by subsection (A) or (B). \*\* Source: Sup. Court of Va.- General District Court Case Mgt. System. \*\*\* Source: Sup. Court of Va.- Circuit Court Mgt. System. Does not include cases from Fairfax or Alexandria. Prince William joined the system in FY2009 and Va. Beach left the system in FY2009. \*\*\*\* Source: Sup. Court of Va.- J&DR Court Case Mgt. System. Data only includes adults whose charges were handled in J&DR Court. Data prepared by Virginia Criminal Sentencing Commission.

# Virginia Data



- Very few juvenile petitions were filed against juveniles for prostitution- related offenses.

# Virginia Data- Juvenile Intakes



## Total Juveniles with Prostitution Petitioned Intakes, FY09-FY13

Type of Offense	FY09	FY10	FY11	FY12	FY13
§ 18.2-346(A)- Prostitution	3	3	5	2	4
§ 18.2-346(B)- Solicitation of prostitution	1	0	1	0	2
§ 18.2-348- Aiding/assisting in procurement	0	0	0	0	1
§ 18.2-347- Maintain or frequent a bawdy place	0	0	2	0	3
§ 18.2-356(i)- Receive money for procurement/placing person to engage in sex	0	0	0	0	2
<b>TOTAL INTAKES</b>	<b>4</b>	<b>3</b>	<b>8</b>	<b>2</b>	<b>12</b>

Source: Virginia Department of Juvenile Justice

## Policy Considerations



- **Policy Consideration 1:**
  - Should expungement be specifically authorized in cases where the defendant was not found guilty of prostitution, but was not actually innocent, or would otherwise not qualify under the existing statute?
    - If yes, should expungement be limited to juveniles and young adults, per SB 1273, or be available to anyone?
    - Should it be limited to those who can prove they were abducted?

## Policy Considerations



- **Policy Consideration 2:**
  - Should expungement be allowed in instances where the defendant was actually convicted of the crime of prostitution?
    - If yes, should expungement be limited to juveniles and young adults, per SB 1273, or be available to anyone?
    - Should it be limited to those who can prove they were abducted?

## Policy Considerations



- **Policy Consideration 3:**
  - Should a new affirmative defense to prostitution be created, applicable to situations where the defendant was abducted for purposes of prostitution, and was induced to engage in prostitution through the use of force, intimidation or deception?



## Discussion