

MEMORANDUM

November 5, 2015

TO: Public Safety Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Bill 39-15, Offenses – Purchase of Prostitution - Prohibited

Bill 39-15, Offenses – Purchase of Prostitution - Prohibited, sponsored by Lead Sponsors Councilmembers Huckler and Rice and Co-Sponsors Councilmembers Navarro, Riemer, Berliner, Elrich, Katz, and Council Vice President Floreen, was introduced on September 29, 2015. A public hearing was held on October 20.

Background

Bill 39-15 would make purchasing prostitution a violation of County law. Although selling or buying prostitution would violate the current State Criminal Law prohibiting solicitation of prostitution, Bill 39-15 would add an alternative enforcement mechanism for the police to combat human trafficking in the County. A person is often forced to work as a prostitute by human traffickers at a young age. The Bill would authorize a police officer to issue either a civil or criminal citation to the customer for purchasing prostitution in the County. A civil citation would be prosecuted by the County Attorney's Office and could result in a maximum fine of \$500 for a first violation and \$750 for subsequent violations. A criminal citation would be prosecuted by the State's Attorney and could result in both a fine up to \$1000 and up to six months in jail. The Bill would be enforceable only against the customer. The Office of the County Attorney found no legal impediment to its enactment. See ©4-8.

Public Hearing

All 5 speakers supported the Bill. Assistant Chief of Police Russell Hamill, speaking on behalf of the Executive, supported the Bill as a necessary alternative method of enforcement to combat human trafficking in the County. See ©9. Debra Bright Harris, President, Montgomery County Commission for Women (©10-11), supported the Bill and suggested that the fines collected be earmarked for a human trafficking victim's fund. Jeannette Feldner, Co-President of the National Organization for Women's Montgomery County Chapter (©12), Catherine Couch, Justice and Advocacy Council of Montgomery County (©13), and Woody Brosnan, Safe Silver Spring (©14-15) each supported the Bill as a useful tool to reduce demand for prostitution in the County.

Issues

1. What is the fiscal and economic impact of the Bill?

OMB estimated that no additional appropriation of funds would be necessary to implement the Bill. The County would receive additional revenue from fines collected, but it would not have a significant effect on County revenues. Finance estimated that the Bill would not have a significant effect on the County's economy. See ©17-21.

2. Is this Bill necessary?

Although a person who purchases prostitution in the County can be prosecuted for solicitation of prostitution under the Maryland Criminal Law, we understand that the State's Attorney has, by policy, not prosecuted cases against customers. Bill 39-15 would add an alternative enforcement tool for the police to use to reduce demand for prostitution. The police report that many of the prostitutes working in the County are victims of human trafficking who are forced to enter the sex trade. Therefore, focusing penalties on customers may reduce demand and make human trafficking less profitable. **Council staff recommendation:** enact the Bill as an alternative enforcement method against human trafficking.

3. Should the Bill earmark the fines for victims of human trafficking?

Budget decisions are made by the Council on an annual basis during the budget process by looking at revenues and the needs of each Department and Office. Even if the Bill earmarked these fines for a special fund, the Council could override the Bill during the budget process. Funding for victim's rights should be considered along with every other part of the budget during the Council's annual budget process. **Council staff recommendation:** do not earmark the fines.

4. Should the Bill contain a purpose clause?

Lead Sponsor, Councilmember Hucker, plans to introduce an amendment to add a purpose clause. See Hucker Amendment 1 at ©16. Since the purpose clause refers to human trafficking, the amendment also adds a definition of human trafficking taken from Federal law.

5. Should the definition of purchase include the receipt of something of value in addition to money?

Lead Sponsor, Councilmember Hucker, plans to introduce an amendment that would modify the definition of "purchase" to clarify that it includes an offer to pay money "or something of value." See Hucker Amendment 1 at ©16.

This packet contains:	<u>Circle #</u>
Bill 39-15	1
Legislative Request Report	3
County Attorney Bill Review Memo	4
Testimony	
Assistant Chief Hamill	9
Debra Bright Harris	10
Jeannette Feldner	12
Catherine Couch	13
Woody Brosnan	14
Hucker Amendment 1	16
Fiscal and Economic Impact Statement	17

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Bill No. 39-15
Concerning: Offenses – Purchase of
Prostitution – Prohibited
Revised: 10-20-15 Draft No. 6
Introduced: September 29, 2015
Expires: March 29, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Hucker and Rice
Co-sponsor: Councilmembers Navarro, Riemer, Berliner, Elrich, Katz, and Council Vice President
Floreen

AN ACT to:

- (1) prohibit the purchase of prostitution;
- (2) establish enforcement procedures and penalties; and
- (3) generally amend County law relating to offenses.

By adding

Montgomery County Code
Chapter 32, Offenses – Purchase of Prostitution
Section 32-23A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec 1. Sections 32-23A is added as follows:**

2 **32-23A. Purchase of prostitution.**

3 **(a) Definitions.**

4 In this Section, the following terms have the meanings indicated:

5 Prostitution means the performance of a sexual act, sexual contact, or
6 vaginal intercourse for hire.

7 Purchase means to offer or agree to pay money to another person in
8 return for a service.

9 Sexual act has the meaning stated in Md. Criminal Law Art. §3-301, as
10 amended.

11 Sexual contact has the meaning stated in Md. Criminal Law Art. §3-
12 301, as amended.

13 Vaginal intercourse has the meaning stated in Md. Criminal Law Art.
14 §3-301, as amended.

15 **(b) Prohibition.** A person must not purchase prostitution in the County.

16 **(c) Enforcement; penalties.**

17 **(1)** A police officer may issue a civil citation or a criminal citation
18 to a person whom the officer reasonably believes has violated
19 this Section.

20 **(2)** A violation of this Section is a Class A violation.

21 *Approved:*

22 _____
George Leventhal, President, County Council

_____ Date

23 *Approved:*

24 _____
Isiah Leggett, County Executive

_____ Date

LEGISLATIVE REQUEST REPORT

Bill 39-15

Offenses – Purchasing Prostitution - Established

DESCRIPTION: Bill 39-15 would prohibit purchasing prostitution. The Bill would also establish enforcement procedures and penalties.

PROBLEM: Police need alternative enforcement mechanisms to eliminate human trafficking in the County.

GOALS AND OBJECTIVES: Eliminate human trafficking in the County.

COORDINATION: Montgomery County Police.

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Robert H. Drummer, Senior Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: Class A Violation.



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: J. Thomas Manger, Chief of Police

VIA: Edward B. Lattner, Chief, Division of Government Operations *EBJ*
County Attorney's Office

FROM: David E. Stevenson *DES/EBJ*
Associate County Attorney

DATE: October 9, 2015

RE: Bill 39-15, "Offenses – Purchase of Prostitution – Prohibited"
Comments by the County Attorney's Office

I have read and reviewed the content of Bill 39-15, and I see no legal issues..

Bill 39-15 proposes to add a new Section 23A to Chapter 32, Article I, "Offenses," of the Montgomery County Code. The new Section 32-23A that Bill 39-15 proposes to add to the County Code will make the "purchase" of prostitution-type services a civil and criminal violation of County law. And by making the "purchase of prostitution" a County offense, Bill 39-15 will make the citation and adjudicatory enforcement procedures of Section 1-18 of the County Code applicable to the prosecution of criminal and civil violations against persons who offer or agree to pay money to another person for prostitution-type sexual services. Thus, Bill 39-15 will supplement the existing framework of State criminal laws, by adding an alternative enforcement mechanism for law enforcement agencies to employ in combatting human trafficking that occurs in the County.

Compared to state law.

A person's act of "purchasing" (offering or agreeing to pay money to another person) for prostitution-type services is already a violation of a State criminal statute. Under current State law, a person may not knowingly engage in an "assignment" ("the making of an engagement for prostitution"). Knowingly engaging in an "assignment" is a violation of Section 11-306 (a) (1) of the Criminal Law Article of the Maryland Code. And a person who seeks and obtains prostitution-type services from another person has engaged in an "assignment." Attorney Grievance Commission v. Marcalus, 414 Md. 501, 518-19 (2010). Additionally, under current

J. Thomas Manger, Chief of Police
October 9, 2015
Page 2

State law, a person may not knowingly procure or solicit an act of prostitution from another person. This is a violation of Section 11-306 (a) (5) of the Criminal Law Article of the Maryland Code. Under State law, a person who violates Section 11-306 (a) of the Criminal Law Article is guilty of a misdemeanor, and is subject to imprisonment for up to one year, a fine of up to \$500, or both imprisonment and the fine.

Although a prosecution of a person who "purchases prostitution" can be initiated under Section 11-306 (a) of the Criminal Law Article by the arrest of the "purchaser," or by the filing of a criminal charging document against the "purchaser" in the District Court, Section 4-101 of the Criminal Procedure Article, titled "Charge by Citation," does not authorize the issuance of a citation to the "purchaser" of prostitution. So, under current law, and unless Bill 39-15 is enacted, law enforcement officers cannot issue a citation to a person who "purchases prostitution," charging the purchaser/solicitor/assignor with a violation of law.

While the language of proposed Section 32-23A of the County Code is more "plain English" than the language of Section 11-306 (a) of the Criminal Law Article, if Bill 39-15 is enacted, new Section 32-23A of the County Code will prohibit the same conduct (in the form of "purchasing prostitution") as Section 11-306 (a) already prohibits (in the form of an "assignment" for, or the "procurement/solicitation" of, prostitution).

Analysis

The content of Bill 39-15 is "constitutional," and "legal." Under the Express Powers Act, the County may enact local laws on any matter covered by the express powers granted by the Act. See Section 10-202 (a) of the Local Government Article of the Maryland Code. And, under the Express Powers Act, the County Council may enact any County law that "may aid in maintaining the peace, good government, health, and welfare of the county." Section 10-206 (a) (2) of the Local Government Article. This power to legislate for the general welfare of the county is a delegation of the State's "police power," and the "police power" is a broad and expansive legislative power. County Council v. Investors Funding, 270 Md. 403, 411-415 (1973). The only restriction on the County's police power is that the Council cannot enact a law that conflicts with a State general public law. Rockville Grosvenor, Inc. v. Montgomery County, 289 Md. 74, 96 (1980).

Conflict

In order for the County to be in conflict with State law, the local law must prohibit an activity which is expressly permitted by State law, or permit an activity which is expressly prohibited by State law. Some element of irreconcilability or legal inconsistency is required, such that both the State and the local laws cannot be applied together. City of Baltimore v. Sitnick, 254 Md. 303, 317 (1969). There are no such conflicts between the existing State law and

J. Thomas Manger, Chief of Police
October 9, 2015
Page 3

the County law proposed by Bill 39-15. A mere lack of uniformity in detail does not create a legal inconsistency or conflict. Ibid.

Moreover, where a State statute prohibits certain conduct, a local law may be enacted to prohibit the same conduct. And the local law may even enlarge upon the scope of the conduct that is considered criminal, and provide for more severe penalties for the conduct prohibited by the State law. The enlargement of the scope of prohibited criminal activity, and the provision of different penalties, does not render local legislation enacted under “concurrent power” in conflict with the existing State statute. Rossberg v. State, 111 Md. 394, 414-18 (1909).

In a situation such as ours, where there is a State law regulating a field (but the State has not preempted the field), and a charter county wishes to enact a law in the same regulatory field, the State and the charter county have concurrent powers to address the same subject matter. City of Baltimore v. Sitnick, 254 Md. 303, 311-12 (1969) (Baltimore City may enact a minimum wage that is higher than the State’s minimum wage). Where, as in the case of the regulation of prostitution-type conduct, the State has not preempted the entire field, a charter county may enact supplemental local legislation in that field. Id. 254 Md. at 317. The fact that a local law enlarges upon the provisions of a statute creates no conflict between the local law and the statute. Ibid.

There are three differences between the existing State statute, and the proposed County law. One difference is that the proposed County law would authorize a criminal penalty of up to six months in jail (as opposed to one year in jail), and a fine of up to \$1,000 (rather than a maximum of \$500). The second difference is that the County law would authorize a civil penalty of up to \$500 for a first violation, and up to \$750 for subsequent violations. The existing State law doesn’t authorize civil penalties. The third difference has already been highlighted. The proposed County law will allow law enforcement officers to issue citations to persons who “purchase prostitution.”

There is, however, no conflict between the provisions of Bill 39-15, and the content of the current State statute prohibiting persons from soliciting acts of prostitution, and from engaging in assignments for acts of prostitution. The fact that Bill 39-15 will allow the issuance of citations for “purchasing prostitution,” when the parallel State law cannot be enforced in this fashion, the fact that proposed Section 32-23A will authorize a higher criminal fine, and the fact that Section 32-23A will authorize civil penalties (when the parallel State law does not) are differences between the two laws. But these differences are not “conflicts.” although the proposed County law will authorize the imposition of civil penalties (while the existing State law does not), imposing a civil penalty for “purchasing prostitution” does not “permit an activity which is prohibited by State law.” Providing for a different type of penalty for a prostitution-type offense is not “permitting” the offense. Bill 39-15’s authorization of civil penalties doesn’t constitute a conflict with State law.

Finally, the fact that Section 11-306 (a) prohibits “knowing” participation in “assignments,” and “solicitations,” whereas the word “knowingly” does not expressly appear in the text of proposed Section 32-23A of the County Code does not present a conflict between the existing State law and the proposed County law, or represent a material difference between the substantive provisions of the two laws. Although Bill 39-15 does not make use of the word “knowingly,” the manner in which the terms “purchase” and “prostitution” are defined in the proposed County law includes the concept of a “knowing” participation in an act of prostitution. A violation of proposed Section 32-23A requires an offer or agreement to pay money to another person in return for the performance of a sexual act, sexual contact, or vaginal intercourse, which service is offered for hire. A person who presents an offer, or enters into an agreement, which is prohibited by Bill 39-15, clearly does so “knowing” that the person is engaging in an assignment for prostitution, or is soliciting an act of prostitution. The substantive provisions of the two laws will be virtually identical.

These differences between the terms of the existing State statute, and the provisions of the proposed County law do not present conflicts between the State law and the proposed County law. The proposed County law to prohibit the “purchase of prostitution” simply supplements (within Montgomery County) the provisions of State law that already prohibit human trafficking.

Preemption

The County is not expressly preempted by State law from enacting a law that addresses the subject matter of human trafficking, because Section 11-302 of the Criminal Law Article states: “A person charged with a crime under this subtitle [the Prostitution and Related Crimes Subtitle] may also be prosecuted and sentenced for violating any other applicable law.” Any “other applicable law” includes a law enacted by a charter county. So, the Legislature has expressly permitted charter counties to enact laws dealing with human trafficking. In view of Section 11-302, it is also clear that the State has not impliedly preempted local legislation in this subject area by completely occupying the field of the regulation of human trafficking.

Conclusion

The content of Bill 39-15 is consistent with the provisions of the State’s laws regulating human trafficking. And I do not see the enactment of Bill 39-15 as significantly increasing the County’s liability exposure to false arrest and malicious prosecution claims. In my view, there is no need to propose any substantive amendment to the content of Bill 39-15. Bill 39-15 should be enacted in its current form.

The content of proposed Section 32-23A of the County Code are not vague or ambiguous. The proposed County law contains words that are commonly used. It uses no legal or technical terms which would make it difficult to understand. Any person of common intelligence

J. Thomas Manger, Chief of Police
October 9, 2015
Page 5

who reads the law should be aware of what actions are prohibited.

cc: Bonnie Kirkland, Assistant CAO
Marc P. Hansen, County Attorney
Robert Drummer, Senior Legislative Attorney

15-004055
Bill 39-15 analysis (EBL)

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE ISIAH LEGGETT
ON BILL 39-15, OFFENSES – PURCHASE OF PROSTITUTION – PROHIBITION**

October 20, 2015

Good afternoon Council President Leventhal and members of the Council. My name is Russell Hamill. I am the Assistant Chief of Police, Investigations, Investigative Services Bureau. I am here today testifying on behalf of the County Executive regarding Bill 39-15, Offenses – Purchase of Prostitution – Prohibition. Prostitution is a supply and demand business that has traditionally been combated through enforcement on the supply side of the crime.

As education and awareness of human trafficking grows, it has become clear that an enforcement strategy focused solely on prostitutes is insufficient to address the issue. In some prostitution cases, the suspects are actually victims of human trafficking.

In 2009, The Montgomery County Police Department’s Vice and Intelligence Unit began to address the demand side of prostitution - customers - in order to target those who prey on the victims of human trafficking.

Through their enforcement efforts, the Vice and Intelligence Unit has learned that nearly 80% of the prostitutes they encounter have traveled to Montgomery County from outside Maryland, DC and Virginia. Through interviews with prostitutes, the Vice and Intelligence Unit has learned that Montgomery County is an attractive market for prostitutes due to the affluent customer base with large amounts of disposable income.

This legislation provides an alternate enforcement option for the police to address on-going issues in Montgomery County related to prostitution and human trafficking by creating a provision to County Law which allows for the issuance of a civil citation for violations.

Bill 39-15 focuses on the demand side of prostitution, allowing officers to issue a civil or criminal citation to those who solicit prostitution. This will reduce the amount of time and paper work required to apply for a statement of charges on an offender and provide an alternative means of enforcement outside the area of criminal prosecution.

In conclusion, the County Executive and Montgomery County Police support this legislation as a method to streamline enforcement efforts directed at the demand side of prostitution and human trafficking. Thank you for the opportunity to testify today and your favorable consideration of this bill.



3

COMMISSION FOR WOMEN

Isiah Leggett
County Executive

Debra Bright Harris
President

October 19, 2015

Councilperson George Leventhal, President, Montgomery County Council and
Members of the Montgomery County Council
Council Office Building – 6th floor
100 Maryland Avenue
Rockville, MD 20850

Re: Bill 39-15 Offenses—Prohibition of Prostitution—Prohibited

Dear Councilman Leventhal and Members of the Montgomery County Council:

On behalf of the Montgomery County Commission for Women, I am pleased to write a letter in support of Bill-39-15. The mandate of the Commission is to advise the County Executive, the County Council, the public, and agencies of the county, state and federal governments on issues concerning women in Montgomery County. (Montgomery County Code Sec. 27 – 29). We have been advancing women's rights in Montgomery County since 1972.

One of the Commission's primary responsibilities is to improve women's lives by identifying inequalities in laws, policies, practices, and procedures and recommending and promoting remedies. We believe that Bill 39-15 is a partial remedy to inequalities in our county that put some women's health and safety at risk. As you may already be aware, many sex workers in Montgomery County are victims of human trafficking. Human sex trafficking is when someone is forced, deceived, or coerced into partaking in commercial sex acts. Victims of human trafficking face egregious physical, mental, and sexual abuse. Unfortunately, due to the high concentration of wealth and demand in Montgomery County, human sex trafficking has become a significant issue here that must be addressed.

Bill 39-15 is a simple bill: It has the potential to deter demand by allowing law enforcement to impose and enforce penalties on those who are already in violation of existing state law. Our police officers would have the power to issue civil citations to sex purchasers. These citations create both financial and social deterrents to the solicitation of prostitution. Similar policies have produced positive outcomes in other jurisdictions. For example, San Francisco and Cook County, Illinois, have implemented similar measures. Such a decline in demand would force many sex traffickers out of Montgomery County, improving the lives of some of our most vulnerable residents.

There are many forms of human trafficking, sex trafficking being just one. **We believe that Bill 39-15 will not eradicate human sex trafficking in Montgomery County altogether. Rather, it may act as a deterrent to consumers, and show traffickers that we are willing to take action.** Our county should not be a hospitable place for human trafficking.

The Commission supports the intent and spirit of this innovative bill. We ask that the sponsor and Council consider including the following into the bill:



COMMISSION FOR WOMEN

Isiah Leggett
County Executive

Debra Bright Harris
President

October 19, 2015

1. Since this bill aims to reduce human trafficking in the county, it is important to include a definition of human trafficking in the bill. A definition also raises additional awareness about what human trafficking is and the links it has to prostitution.
2. Verbiage that indicates that fees from this bill will be used to establish a human trafficking victim's fund. This bill presents a wonderful opportunity to assist victims using funds generated by consumers. It is my understanding that the County already has a crime victim's fund. However, it is also our understanding that creating a new fund would be easier than including a "set aside" in the current fund.

We commend Councilmember Hucker and Councilmember Rice and all of the co-sponsors of this legislation. We thank the Council for their consideration of this legislation and ask for their support in passing Bill 39-15 with our suggestions.

Sincerely,

Debra Bright Harris
President, Montgomery County Commission for Women



Oral Testimony in Support of Bill 39-15

October 20, 2015

Thank you, Councilmember Hucker, for sponsoring Bill 39-15, and thank you, Councilmembers, for hearing my testimony in support of this bill.

I am Jeannette Feldner, Co-President of the National Organization for Women’s Montgomery County Chapter. I also serve on the County Human Trafficking Task Force representing MCNOW. I am here today representing both the Maryland state and Montgomery County Chapters of NOW and their members.

We know that Marylanders are against human trafficking, with counties and localities working with national law enforcement and with national and local citizens groups.

Prosecution under current prostitution laws disproportionately impacts women and other victims, many of whom are victims of human trafficking.

The National Human Trafficking Resource Center has been keeping statistics since 2007, and the majority of human trafficking victims are forced into the sex trade. Contrary to stereotypes, victims of human trafficking are not just immigrants or low-income groups. Human trafficking victims are from of all racial groups and from the range of economic classes. So, all our children are at some risk of being victimized, which mandates that we attack the problem in as many ways as possible.

Bill 39-15 addresses the demand side of the economic equation, with the goal of curbing the demand for prostitution because the more the demand, the more likely human traffickers will recruit and force women and girls into prostitution. Under current prostitution laws, the “johns” – the customers – pretty much get off scot-free. This bill would impose stiff consequences for the people who are paying for prostitution – which benefits human traffickers who are victimizing women, men and children – by imposing costly fines and by allowing law enforcement personnel to charge these customers as criminals.

The purpose of this legislation is to help eliminate human trafficking in Montgomery County. As always, we hope that legislation of this sort will pass here and then spread to other counties and throughout the region.

Montgomery County needs this legislation, which will give law enforcement another tool against human trafficking. We urge your positive vote in support of Bill 39-15.

National Organization for Women
Maryland State and Montgomery County Chapters
PO Box 2301, Rockville, MD 20847-2301
301-368-1917 • info@mcmdnow.org

5

**Testimony Submitted to Montgomery County Council
October 20, 2015**

**Catherine Couch, Co-Chair
Justice and Advocacy Council of Montgomery County**

Thank you for the opportunity to testify today. My name is Catherine Couch. I am the Co-chair of the Justice and Advocacy Council of Montgomery County. The Justice and Advocacy Council functions as an advocacy voice of the Catholic Archdiocese of Washington.

Our advocacy efforts are based on the tenets of Catholic Social teaching which include the sacredness of life, the dignity of the human person, the responsibility to care for others, a preferential option for the poor and vulnerable as well as the need to act in solidarity, recognizing that we are all part of one human family.

The Catholic Church is deeply concerned with preventing human trafficking of all kinds whether it is in the form of prostitution, forced labor or domestic servitude.

On July 9-10, 2015 the United States Conference of Catholic Bishops, Catholic Charities DC, Catholic Charities USA and the Catholic University of America School of Social Work hosted a two day conference entitled Answering Pope Francis's Call: An American Catholic Response to Modern-Day Slavery.

The goal of this conference was to educate attendees about the condition, prevalence and impact of human trafficking and to begin the process of developing a cohesive response to the growing problem of human trafficking. The response includes both strategies to prevent trafficking and best practices for providing intervention and assistance to victims.

As a strategy for preventing human trafficking, the J&A is pleased to support Bill 39-15 making the purchase of prostitution a violation of County law and providing an enforcement mechanism for the police to combat human trafficking in the County.

We are particularly pleased that the penalties in this bill are directed to those seeking to purchase prostitution rather than to the individuals performing the sexual acts. Many of the individuals providing prostitution services are women, girls and boys who are the victims of human trafficking.

In addressing the issue of prostitution, the County also needs to continue to strengthen the safety network to reduce poverty, increase training opportunities that provide employable skills and seek to eliminate human trafficking in the County in any form.

We commend the Council for considering Bill 39-15 and urge its passage into law.

Thank you.

Testimony of Safe Silver Spring in support of Bill 39-15

I am Woody Brosnan, vice chair of Safe Silver Spring. The mission of Safe Silver Spring is to develop strategies, partnerships and goals to keep Silver Spring a community where people can live, work, travel, shop and play safely.

Our monthly forums and newsletters are intended to educate the public about issues of safety in their community. And we have advocated for increasing the size of the police force, strict gun safety laws, tougher laws against domestic violence, police body cameras, juvenile justice reform, school resource officers and funding for after-school and vocational programming.

Safe Silver Spring generally supports giving law enforcement agencies additional tools to target offenders so long as they are constitutional.

Human traffickers prey on minors fleeing poverty and violence from Central America to Asia to Baltimore and suburbia. But they wouldn't have a market except for the buyers.

It may seem paradoxical to advocate for a bill that allows a citation and fine for a crime that could bring a jail sentence. But as we all know buyers seldom face jail.

Frankly, the data on arrests for prostitution and human trafficking is so inadequate to be embarrassing. It wasn't until 2013 that the FBI began collecting data on prostitution and human trafficking for its Uniformed Crime Reports.

But using that data, it was found in Massachusetts in 2013 police arrested 642 women for prostitution offenses compared to 278 men arrested.

Police and prosecutors complain they lack the resources to mount and prosecute sting operations that involve both buyer and seller. But it is not just a lack of resources that can deter prosecution of buyers. Advocates for victims of human sex trafficking say victims can have a legitimate fear about the trauma and risk of testifying in such cases.

But some departments have capitalized on the use of web sites like Backpage.com for sting operations that have resulted in large numbers of arrests and fines.

Since 2011, Cook County Sheriff Thomas Dart has helped organize nine “National Day of Johns Arrests” involving a coalition of 70 jurisdictions. According to Dart, this effort has led to the arrest of 2,900 johns.

This year, in a pre-Super Bowl sweep lasting two weeks, there were 570 arrests for sex solicitation by 37 law enforcement agencies in 17 states, resulting in more than \$340,000 in fines.

We hope passage of this bill in Montgomery County will lead to online and street level sting operations targeting large numbers of buyers. The county also should mount a public awareness campaign to warn buyers that they could face hefty fines.

Montgomery County frequently leads the state on issues so Safe Silver Spring hopes county action would lead the General Assembly to consider its own measures to target buyers with increased fines and penalties.

Thank you for giving Safe Silver Spring this time to testify on this important issue.

Hucker Amendment 1

Add the following after line 2:

(a) **Findings.**

- (1) Due to its location on the I-95 corridor, low crime rate, and high disposable income, Montgomery County has become a prime location for human trafficking;
- (2) a significant number of prostitutes working in Montgomery County are victims of human trafficking; and
- (3) the United States Department of Justice has found strong evidence to support a demand-reduction approach to combatting human trafficking.

(b) **Definitions.**

In this Section, the following terms have the meanings indicated:

Human trafficking means the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

* * *

Purchase means to offer or agree to pay money or something of value to another person in return for a service.



ROCKVILLE, MARYLAND

MEMORANDUM

October 22, 2015

TO: George Leventhal, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: FEIS for Bill 39-15, Offenses – Purchase of Prostitution - Prohibition

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Tom Manger, Chief, Department of Police
Alex Espinosa, Office of Management and Budget
Richard Harris, Office of Management and Budget
Felicia Zhang, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Council Bill 39-15 & Offenses – Purchase of Prostitution - Prohibition

1. Legislative Summary.

Bill 39-15 would make purchasing prostitution a violation of County law. Although selling or buying prostitution would violate the current State Criminal Law prohibiting solicitation of prostitution, this legislation would add an alternative enforcement mechanism for police to combat human trafficking in the County. Bill 39-15 would authorize a police officer to issue either a civil or criminal citation to the customer for purchasing prostitution in the County. The fines for civil citations range from \$500 for a first violation, \$750 for subsequent violations, and the fine for a criminal citation is up to \$1,000 and up to six months in jail.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Changes to County revenue would be directly related to the number of citations issued and paid per year. Currently the Vice & Intelligence Unit charges approximately 30 "customers" per year. Between the civil and criminal citation this would result in approximately \$15,000 - \$30,000 / year based on current enforcement activity. Expenditures are likely to remain consistent as these cases do not typically incur overtime, and while the citation method is quicker than the formal charging process, it is not likely to result in a significant reduction of expenditures.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

As described in #2, Bill 39-15 would result in approximately \$15,000-30,000 in year one from paid citations. The total estimated revenue for years two through six ranges from \$75,000 to \$150,000, for a six year cost of \$90,000 to \$180,000. There is no estimated increase in expenditures.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

N/A

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Bill 35-15 does not authorize future spending; however, if enforcement efforts decrease due to a reduction of prostitution demand then revenues would fall accordingly.

6. An estimate of the staff time needed to implement the bill.

There would be little staff time on MCPD's part to implement the bill other than training during normal in-service or online training modules. The training for Bill 39-15 would last about a half hour for approximately 1,200 officers, totaling 600 hours.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Bill 39-15 will help MCPD staff conduct quicker and more efficient enforcement so the impact on other duties will be minimal to none.

8. An estimate of costs when an additional appropriation is needed.

No additional appropriation is needed to implement Bill 39-15.

9. A description of any variable that could affect revenue and cost estimates.

The variable that may impact revenues would be connected to what defendants are actually sentenced to for a fine. If judges deem a \$100 fine as appropriate, then the calculations assumed in #2 would be impacted as they assume maximum penalties. There are no variables assumed that impact expenditures at this point.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

The range of revenues is difficult to project because it is unknown how the judiciary will react to these charges and what amount of fines will be imposed.

11. If a bill is likely to have no fiscal impact, why that is the case.

The fiscal impact is likely to occur on the revenue side as stated in #2 and #3.

12. Other fiscal impacts or comments.

None

13. The following contributed to and concurred with this analysis:

Capt. Dinesh Patil / MCPD / SID

Richard H. Harris, OMB


Jennifer A. Hughes, Director
Office of Management and Budget

10/22/15
Date

Economic Impact Statement
Bill 39-15, Offenses – Purchase of Prostitution - Prohibited

Background:

This legislation would make purchasing prostitution a violation of County law. Bill 39-15 adds Section 32-23A to Chapter 32 of the County Code by defining prostitution, defining the purchase of prostitution, prohibits the purchase of prostitution, and authorizes a police officer to issue a civil citation or criminal citation to a person who violates Section 32-23A. Bill 39-15 would be enforceable only against the customer. The civil citation as prosecuted by the County Attorney's Office would result in a maximum fine of \$500 for the first violation and \$750 for subsequent violations. Criminal violations would be prosecuted by the State's Attorney. Therefore, the economic impact would only apply to prosecutions by the County Attorney's Office.

1. The sources of information, assumptions, and methodologies used.

Source of information and data: Special Investigation Division (SID), Montgomery County Police. SID charged approximately thirty (30) customers last fiscal year for solicitation of prostitution. Even though the number varies from year to year, Finance assumes that the number of customers charged last fiscal year represents a historical annual average of first violations and that there are no subsequent customer violations.

2. A description of any variable that could affect the economic impact estimates.

The variable that could affect the economic impact estimate is the number of customers charged under Bill 39-15. As stated in paragraph #1, Finance assumes that the data provided by SID from last fiscal year represent an annual average. Second, the economic impact statement assumes that there are no subsequent customer violations. Therefore, with a fine of \$500 per violation, no subsequent violations, and thirty customers, the total income loss to all customers is \$15,000.

3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

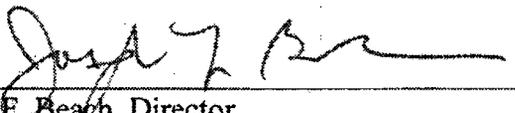
Bill 39-15 would have no significant economic impact on total personal income, employment, and savings in the County. With an income loss of only \$15,000 from 30 customers attributed to the fine, the economic impact is insignificant compared to the County's total personal income of \$74.0 billion in calendar year 2013 (Source: Bureau of Economic Analysis, U.S. Department of Commerce).

4. If a Bill is likely to have no economic impact, why is that the case?

See paragraph #3.

Economic Impact Statement
Bill 39-15, Offenses – Purchase of Prostitution - Prohibited

5. **The following contributed to or concurred with this analysis:** David Platt, Mary Casciotti, and Rob Hagedoorn, Finance;



Joseph E. Beach, Director
Department of Finance

10-19-15
Date