

Legislative Analysis



FORFEITURE: NUISANCE ABATEMENT REVISIONS

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House Bill 5230 (reported from committee as Substitute H-3)

Sponsor: Rep. Phil M. Cavanagh

Committee: Criminal Justice

First Analysis (4-15-14)

BRIEF SUMMARY: House Bill 5230 would declare the following as a nuisance: a dangerous building, and a building, vehicle, boat, aircraft, or other place where human trafficking or the unlawful use of a firearm or dangerous weapon is conducted. The bill also would make revisions to the seizure and forfeiture provisions pertaining to nuisances.

FISCAL IMPACT: It is not known how many orders or injunctions will be granted and violated, and it is not known how many persons will continue to use buildings/places that have been ordered to be closed. Imprisonment in the county jail would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Increases in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

One of the recommendations of the Michigan Commission on Human Trafficking was to include human trafficking violations in the list of activities that could trigger nuisance abatement actions. Under nuisance abatement laws, local governments can compel property owners to clear debris, repair buildings, and stop illegal activities involving gambling, drugs, and prostitution. If the property owner fails to comply, a court can issue an order allowing property used in the nuisance to be seized and forfeited. A building, such as a home or business, can be padlocked for up to a year and the contents removed and sold. Distribution of the proceeds of a sale are established in statute, but generally speaking, go to the seizing entity to cover the costs of removing and selling the forfeited items and maintaining the padlocked building, with the balance going to any party having a lien on the property and anything remaining to the state General Fund.

The Commission recommended that human trafficking, which includes the commercial sex trade and forced labor, be added as a condition for which a nuisance complaint could be filed. Many victims of human trafficking suffer economic abuse in addition to physical and emotional abuse. When rescued or after an escape, they often are in need of medical care, housing, and/or education, yet have few resources or belongings to begin a new life. Therefore, the Commission recommend that courts be allowed to direct some of the proceeds of nuisance forfeiture sales from human trafficking-related nuisance abatements to victims. Legislation has been offered to address these recommendations and more.

THE CONTENT OF THE BILL:

House Bill 5230 amends Chapter 38 of the Revised Judicature Act, entitled "Public Nuisances." Under current law, property used as a public nuisance may be seized and forfeited by local units of government. The bill would:

- Expand what constitutes a "nuisance" to include:
 - A building, vehicle, boat, aircraft, or place that is used for conduct related to human trafficking.
 - A building, vehicle, boat, aircraft, or place that is used to facilitate armed violence in connection with the unlawful use of firearm or other dangerous weapon.
 - A dangerous building that is used to commit an unlawful act. "*Dangerous building*" would mean a building or structure damaged by fire, wind, or flood, or that is dilapidated and becomes an attractive nuisance to children or a harbor for vagrants or criminals, or enables persons to commit a nuisance or an unlawful or immoral act on the premises.

[Currently, the act specifies that a building, vehicle, boat, aircraft, or place is a nuisance if it is used for the purpose of gambling or prostitution-related activities; unlawful manufacture, sale, or transport of a controlled substance; unlawful manufacture, transporting, sale, or furnishing of alcoholic liquors or beverages; or animal fighting.]

- Increase the maximum fine for violating a court order or injunction for nuisance abatement from \$1,000 to \$5,000. The current maximum term of imprisonment of six months in the county jail would remain unchanged.
- Increase from 30 days to 90 days the time period for filing a nuisance complaint after the act, violation, or condition constituting a nuisance occurred.
- Allow, rather than require, an order of abatement to order the removal and sale of all furniture, fixtures, and contents and closing of the building for one year.
- Allow, in an order of abatement, the court to include any other equitable relief the court considers necessary.
- Allow a city, village, or township attorney for the city, village, or township in which a nuisance is located to also maintain an action for equitable relief in a nuisance complaint.
- Revise the distribution of proceeds from the sale of items seized. The act requires that after the sale of any furniture, fixtures, contents, vehicle, boat, or aircraft, the proceeds must first be used to reimburse the seizing entity for the expenses of keeping the property and the costs of the sale. Next, any liens must be repaid

according to established priorities, followed by the balance going to the state general fund.

Instead, under the bill, after reimbursing the seizing entity, liens and secured interests would be paid. Next, prosecution costs, including reasonable attorney fees for services necessitated as determined by the court, would be paid. However, if the nuisance being abated involved human trafficking, an amount due to the victim (as determined by the court) would have to be paid before the prosecution costs. Lastly, any remaining balance would be credited to the state General Fund.

For the purpose of determining the amount due to a victim, the court would consider the loss suffered as the proximate result of the conduct (and could use as guidance provisions in the William Van Regenmorter Crime Victim's Rights Act.)

- Revise the distribution of proceeds from the sale of *personal property* to require the balance of proceeds of the sale of personal property (as provided in Section 3830), if any, after paying the costs of the action and the abatement, to be paid to qualified secured parties and lien holders and then toward the costs incurred in the prosecution of the action, including reasonable attorney fees, with any remaining balance paid to persons entitled as ordered by the court, or if applicable, to victims of human trafficking as described above. (Section 3830 entitles the seizing entity to charge and receive fees for removing and selling the movable property and to receive a reasonable sum for closing the building or place and keeping it closed.)

MCL 600.3801 et al.

BACKGROUND INFORMATION:

The bill is part of a multi-bill package of legislation addressing various issues surrounding human trafficking, most of which incorporate recommendations of the Michigan Commission of Human Trafficking. The Commission's report can be found at http://www.michigan.gov/documents/ag/2013_Human_Trafficking_Commission_Report_439218_7.pdf

ARGUMENTS:

For:

Local governments use the nuisance abatement law, a civil process, to improve the quality of neighborhoods. Businesses and owners of private property conducting illegal activities involving gambling, drugs, prostitution, blind pigs, and animal fighting can be compelled to stop the illegal activity or face having their buildings padlocked and the contents seized and sold at auction. Vehicles associated with the unlawful activity can be seized and sold, as well.

Considering that human trafficking is a huge money maker for criminal enterprises and one of the fastest growing criminal enterprises, prosecutors say they need additional tools to stop its proliferation and to protect the public. Making human trafficking a *per se* activity for triggering a nuisance complaint is such a tool. Human trafficking criminal cases can be very long, difficult, and expensive to build and prosecute. The ability to use a civil option to disrupt this illegal activity could be a very effective tool.

For:

Currently, only the state attorney general, a county prosecutor, or resident can make a nuisance complaint. The bill would revise the law to also allow a city, village, or township attorney to maintain an action for equitable relief as part of their official duties. The bill also increases the maximum fine for noncompliance with an order to abate the nuisance from \$1,000 to \$5,000; the first increase since the fine was placed in statute in 1963.

For:

Currently, if a court issues an order of abatement, the order must direct the removal of all furniture and contents of the building, as well as the removal of any vehicle, boat, or aircraft found to be a nuisance. Instead, the bill would give discretion to the court regarding ordering the removal of the personal property and would add that the court could order any other equitable relief considered necessary to compel abatement. Thus, under the bill, a court could order conditions less onerous than padlocking the building and taking and selling all the contents. The goal of the nuisance abatement law is to stop illegal activity. If this can be accomplished through other measures, it is a win for the neighborhood and less egregious to the business or property owner.

For:

Advocates say victims of human trafficking are often left destitute, making it difficult to start life anew once free of their controllers. The bill creates a way to get some funds to victims. If personal property involved in a human trafficking-related nuisance was seized and sold, a portion of the proceeds left after other required payments were made would be directed to any victims of that nuisance. It is fair that those whose sufferings contributed to the profit realized by the perpetrators should share in the proceeds of the sale of objects connected to the nuisance violation.

Against:

Critics say that there are two main problems with the bill: first, it isn't just adding human trafficking to the list of activities that trigger a nuisance action. Though promoted as part of the human trafficking legislation, the bill also adds a dangerous building used to commit unlawful acts and premises connected with gun violence or other dangerous weapons. This leads to the second problem—the bill is expanding the circumstances under which private property can be seized and sold at auction, regardless of whether or not the owner was ever convicted of, or even charged with, a crime.

News articles and editorials over the past few years, as well as advocacy groups, have called on state lawmakers to curtail property seizures unless there is a conviction. As

most forfeiture laws stand now, even if a person is acquitted or charges dropped or never brought, the person must pay fees to reclaim the property. This is extremely burdensome to low-income individuals who may not be able to afford to redeem a home, a vehicle, or other property.

Worse, some say civil forfeiture laws act as an incentive for over-policing because most of the forfeiture revenue goes to law enforcement to enhance law enforcement efforts. According to the Institute for Justice in its Asset Forfeiture Report *Policing for Profit*, total forfeiture revenue reported in 2008 for Michigan was just shy of \$150 million.

In one example of over-policing, a 2009 *Detroit News* article recounts one woman's experience of having to pay \$1400 to reclaim her car after it was impounded on suspicion the vehicle had been used to further prostitution. Her "crime"? After work, she had dropped a coworker off at a bank, then returned shortly to pick the coworker up. While waiting for her return, the coworker had been observed making eye contact with passing motorists and was arrested for solicitation. The charges were later dropped, but the woman still had to pay the fees, plus an additional expense to repair damages to her car when it was towed. In another well-publicized incident, dozens of attendees at an event held in a Detroit art gallery had their vehicles impounded because the art gallery furnished alcohol without a license, in effect operating a "blind pig" (one of the listed unlawful activities that trigger a nuisance complaint). Though the attendees were innocent of criminal conduct, each had to pay hundreds of dollars to reclaim their vehicles.

Response:

Under the nuisance abatement forfeiture law, the taking of personal property and any resultant sale is done by court order, so there are some protections (the incidents related above may have been done under a different forfeiture statute). Nuisance abatement forfeiture remains as an important tool to curb unlawful activities and improve public safety because it is cheaper and faster to execute than a protracted criminal prosecution.

It is also fitting to include dangerous buildings and properties associated with gun violence. For instance, an owner of a dilapidated house or one that has been damaged by fire can be more quickly compelled to fix up the house or tear it down if it is being used for illegal drug activity, squatters have moved in, or it presents a danger to children because of the enticement to go "exploring" or to play on the premises.

As to including the gun violence as a triggering event, prosecutors say they need more tools to compel business owners whose properties are associated with gun-related incidents to adopt practices that would enable the business to stay open yet make the neighborhood safer. For instance, under the revisions proposed by the bill, a business owner could, as part of the abatement order, be required to add additional outside lighting or metal detectors at the door. This is far less onerous than padlocking the business for a year and selling off all the tables, chairs, and other fixtures, as current law requires. Plus, including unlawful use of firearms or other dangerous weapons in the list of what constitutes a nuisance fits in the general purpose of nuisance laws – to make neighborhoods safer.

POSITIONS:

A representative of the Wayne County Prosecutor's Office testified in support of the bill. (3-19-14)

A representative of the Genesee County Prosecutor's Office and the Prosecuting Attorneys Association of Michigan testified in support of the bill. (3-19-14)

The Oakland County Sheriff's Office indicated support for the bill. (3-19-14)

The Michigan Catholic Conference indicated support for the bill. (3-19-14)

The ACLU-Michigan testified in opposition to the bill. (3-19-14)

The Property Management Association of Michigan indicated opposition to the bill. (3-26-14)

The Michigan Housing Council indicated opposition to the bill as introduced. (3-26-14)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.