



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 585 (Substitute S-5 as passed by the Senate)
Senate Bill 586 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Mike Nofs (S.B. 585)
Senator Tory Rocca (S.B. 586)
Committee: Families, Seniors and Human Services

Date Completed: 8-7-14

CONTENT

Senate Bill 585 (S-5) would amend the Michigan Penal Code to do the following:

- Increase from 16 years old to 18 the age at which someone can be guilty of a prostitution offense under specific sections of the Code.
- Provide that if a person under 18 were found engaging in conduct that would be a prostitution-related offense under those sections, it would have to be presumed that he or she was coerced into child sexually abusive activity or commercial sexual activity or otherwise forced to commit that violation by someone engaged in human trafficking.
- Provide that such a person would be subject to the temporary protective custody provisions of the juvenile code.
- Allow the State to petition a court to find that a person described above was a dependent juvenile in need of service.
- Prohibit local units of government from enacting or enforcing an ordinance regarding prostitution crimes that set a lower minimum age than the age established in the Code.

Senate Bill 586 (S-2) would amend the juvenile code to extend family court jurisdiction to proceedings concerning a juvenile under 18 who was dependent and in danger of substantial physical or psychological harm.

The bills are tie-barred to each other.

Senate Bill 585 (S-5)

The Penal Code provides that a person 16 years old or older who commits any of the following offenses is guilty of a misdemeanor punishable by up to 93 days in prison or a fine of up to \$500, or both:

- Soliciting, accosting, or inviting another person in a public place, building, or vehicle to commit prostitution (Section 448).
- Receiving or offering to receive a person into a vehicle, building, or place for the purpose of committing prostitution (Section 449).
- Aiding or abetting another person to commit either of the above offenses (Section 450).
- Taking to, or employing, detaining, or allowing a person 16 years of age or less to remain in a place of prostitution for purposes other than prostitution (Section 462).

The bill would increase the minimum age for these offenses from 16 to 18 years old.

Under Section 451, a person convicted of violating Section 448, 449, 450, or 462, or a substantially corresponding law, is guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$500. If the person is 16 or older and has a prior conviction under any of those sections or Section 449a, the person is guilty of a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000. A person who has two or more prior convictions is guilty of a felony punishable by imprisonment for up to two years and/or a maximum fine of \$2,000. (Section 449a prohibits a male from engaging or offering to engage the services of a female, who is not his wife, for the purposes of prostitution.) In the provision for a person with one prior conviction, the bill would increase the age from 16 to 18.

Under the bill, if a person under 18 years of age were found to have engaged in any conduct that would be a violation of Section 448, 449, 450, or 462, or a substantially corresponding local ordinance, it would have to be presumed that the person was coerced into child sexually abusive activity or commercial sexual activity in violation of Section 462g, or was otherwise forced or coerced into committing the offense by another person engaged in human trafficking in violation of Sections 462a to 462j. (Sections 462a to 462j pertain to various human trafficking offenses.)

Such a person would be subject to the temporary custody provisions of Section 14a of the juvenile code and the State could petition the court to find that person to be a dependent juvenile in need of service under Section 2(b)(3) of juvenile code (which Senate Bill 586 (S-2) would amend as described below). (Section 14a allows an officer to take a child into protective custody without a warrant if necessary to protect his or her health and safety.)

Also, the bill would prohibit a local unit of government from enacting or enforcing an ordinance that proscribed the conduct addressed in Section 448, 449, or 450 if the ordinance established a lower minimum age for the violator than the age established in those sections. ("Local unit of government" would mean a city, village, township, community college, college, or university.)

Senate Bill 586 (S-2)

The juvenile code establishes the jurisdiction of family court (the Family Division of Circuit Court). Under the bill, jurisdiction would be extended to proceedings concerning a juvenile under 18 years found within the county who was dependent and in danger of substantial physical or psychological harm. A juvenile could be found dependent if any of the following occurred:

- The juvenile was homeless or not domiciled with a parent or other legally responsible person.
- The juvenile had repeatedly run away from home and was beyond the control of a parent or legally responsible person.
- The juvenile allegedly engaged in activity that, if engaged in by an individual 18 or older, would be commercial sexual activity, or a delinquent act that was the result of force, coercion, fraud, or manipulation exercised by a parent or other adult.
- The juvenile's custodial parent or legally responsible person had died or become permanently incapacitated and no appropriate parent or legally responsible person was willing and able to care for the juvenile.

MCL 750.448 et al. (S.B. 585)
712A.2 (S.B. 586)

BACKGROUND

Human Trafficking

Human trafficking under Michigan law is a class of criminal offenses involving the recruitment, transportation, or provision of a person for the purposes of forced labor or services (labor trafficking), or commercial sex acts (sex trafficking). Despite media and news reports portraying human trafficking as a foreign or out-of-state concern, these crimes are reported in this State with some frequency. Michigan is believed to be a destination for foreign and domestic human trafficking for several reasons.¹ The State's border crossings into Canada allow traffickers convenient entry into the United States. Likewise, the interstate system that runs through Michigan allows traffickers to bring their victims from other states. In addition, the financial hardships suffered by economically depressed areas such as Flint and Detroit make enforcement of the laws pertaining to human trafficking difficult.

Sex Trafficking & the Legal Response in Michigan

Under Federal law, sex trafficking occurs when a commercial sex act is induced by fraud, force, or coercion, or when the person induced to perform such an act is under the age of 18 years.² Sex trafficking affects all demographic areas; however, women and girls are more often victims of sex trafficking. Michigan and Federal law recognizes that traffickers use various methods to defraud, intimidate, and otherwise harm their victims. These include confinement, physical and psychological abuse, forced abortions, sexual assault, and debt bondage, as well as threats of deportation, threats of criminal prosecution, and other acts of extortion. Sex trafficking is found in a number of industries (legal or otherwise), including pimp-controlled prostitution, strip clubs, commercial front brothels, and domestic work.³

It is unclear how prevalent sex trafficking is in Michigan. The National Human Trafficking Resource Center has tracked hotline phone calls and other inquiries on a state-by-state and national basis since 2007. Although some prosecution and incarceration information is available, it is not known to what extent these data reflect the actual incidence of sex trafficking in this State. Because it is believed to be a serious problem, many states (including Michigan) and the Federal government have passed laws banning human trafficking and many other legislative efforts are pending throughout the country.⁴ In Michigan, the Legislature, the Governor, and the Attorney General collaborated to form the Michigan Commission on Human Trafficking, a group composed of law enforcement officers, legislators, human trafficking activist organizations, and academics for the purpose of assessing the threat of human trafficking and developing a strategy to combat it. The Commission's 2013 report set forth a number of findings, strategies, and legislative recommendations to reduce human trafficking in this State.

Legislative Analyst: Jeff Mann

¹ "An Overview of Human Trafficking in the U.S. and Michigan", p. 3, Senate Fiscal Agency *State Notes: Topics of Legislative Interest*, Spring 2014.

² Federal law makes a distinction between sex trafficking and labor trafficking. Michigan law generally does not. In Michigan, it is illegal to subject another to forced labor or services, and services include commercial sexual activity or sexually explicit performances. Under both Federal and Michigan law, inducing a person to perform a commercial sex act alone does not constitute a human trafficking offense unless the victim is under the age of 18. If the person is 18 years old or older, fraud, coercion, or force must be involved.

³ Polaris Project, *Human Trafficking Trends in the U.S.: National Human Trafficking Resource Center 2007-2012*, 15, retrieved 4-14-2014, <http://www.polarisproject.org/resources/hotline-statistics>.

⁴ For a more detailed discussion of the prevalence of trafficking in Michigan and the United States, as well as State and national laws and legislative efforts to end human trafficking, see the Senate Fiscal Agency article cited in note 1.

FISCAL IMPACT

Senate Bill 585 (S-5)

The bill could result in fewer misdemeanor and felony convictions for the affected offenses, by raising the minimum age of individuals who may be charged with prostitution-related offenses from 16 to 18 years. Fewer convictions would result in a minor reduction in costs of incarceration and/or community supervision for State and local government. An individual younger than 18 years of age who otherwise might have been charged with a crime instead could be a dependent juvenile under the jurisdiction of the family court, which could result in an increase in costs to the State and local government.

Senate Bill 586 (S-2)

The bill could result in increased costs of care in the Department of Humans Services budget and local units of government, if the courts designated a significant number of juveniles as dependent, as defined in the bill. The courts could place the juveniles in a foster care placement, including temporary foster care and independent living. The Child Care Fund, which pays for services to court wards and is funded through a 50-50 cost share between the State and counties, would provide the primary source of funding for any potential services. Any potential cost increase would be shared by both entities.

The bill also could cause an increase in administrative costs for the family court as petitions of juvenile dependency were heard if a juvenile were suspected of involvement with human trafficking.

Fiscal Analyst: Frances Carley
John Maxwell

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.