



**House
Legislative
Analysis
Section**

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REVISE PROSTITUTION PENALTIES

**House Bill 4325 (Substitute H-2)
Sponsor: Rep. Clark Bisbee**

**House Bill 5032 (Substitute H-2)
Sponsor: Rep. Virg Bernero**

**House Bill 5033 (Substitute H-2)
Sponsor: Rep. Mike Kowall**

**House Bill 5449 (Substitute H-3)
Sponsor: Rep. Judson Gilbert II**

Committee: Criminal Justice

First Analysis (11-29-01)

House Bills 4325, 5032, 5033 and 5449 (11-29-01)

THE APPARENT PROBLEM:

In the spring of 2001, the Lansing Police Department uncovered a prostitution ring that involved over 20 girls ranging in age from 13 to 17 years of age. The ring operated in several areas of the state, including mid-Michigan and Detroit, and may have reached as far as Texas. According to news reports, several of the girls were pregnant, and many had one or more venereal diseases. In one article, a 13-year-old girl was reported to have told investigators that she had taken part in up to 30 sexual acts in one night (*Lansing State Journal*, March 8, 2001).

The discovery of the prostitution ring, along with the realization of the terrible impact on the young girls involved, has brought an outcry for lawmakers, law enforcement officials, and social service agencies to take steps to address this problem of adults preying on young girls. One focus has been to examine current laws regarding prostitution. Scrutiny of current state law identified one unintentional gap. Currently, the age of consent for sex is 16 years of age. However, current law regarding prostitution prohibits such behavior only for persons 17 years and older. Therefore, the law inadvertently "allows" 16-year-olds to engage in prostitution.

In a separate but related matter, Jackson County officials report that another difficulty in prosecuting prostitution charges is that current laws do not provide for convictions of local prostitution ordinances to be used in determining if a defendant has any prior convictions. A defendant with one or more prior convictions is subject to increased

penalties. Reportedly, to avoid an enhanced sentence for repeat violations, many prostitutes who have been cited under local ordinances relocate to other cities.

Further, some feel that the current prohibitions for soliciting or inducing a child under 16 to have sex are an ineffective deterrent because the penalties – a first offense is a misdemeanor with up to one year imprisonment - are too lenient. (The criminal sexual conduct statutes, which carry stiffer penalties, prohibit any sexual contact with a child under 13 years of age; for children between 13 and 16 years of age, a CSC charge is generally brought when force or duress is involved or when the perpetrator is a family member or has authority over the child.) Also, current law does not provide for prosecution of individuals who solicit undercover law enforcement officers posing as minors. Legislation has been offered to address these issues.

THE CONTENT OF THE BILLS:

The bills would revise several prostitution-related provisions to lower the age threshold for which prostitution would be a crime, increase the penalty for first offense prostitution violations, increase penalties for soliciting a child to engage in immoral or sexual acts, and include a conviction for a prostitution-related violation of a local ordinance or another state's law or local ordinance when determining if a violation is a second or subsequent

offense. The bills would take effect March 1, 2002. Specifically, the bills would do the following:

House Bill 4325. The bill would amend the Michigan Penal Code (MCL 750.451) to include violations of local prostitution ordinances in the definition of prior convictions, increase the penalty for a first offense, and clarify the penalties for repeat prostitution offenses. Currently, a first time offense for soliciting, aiding and abetting prostitution, admitting a person to a place for the purpose of prostitution, or engaging or offering to engage the services of a prostitute is a misdemeanor punishable by 90 days imprisonment, a fine of up to \$100, or both. A second violation is also a misdemeanor and is punishable by up to one year of imprisonment, a fine of up to \$500, or both. A third or subsequent offense is a felony and is punishable by imprisonment for up to two years. The bill would maintain the same penalty structure for second or subsequent offenses, but would increase the penalty for a first offense from 90 days imprisonment to 93 days imprisonment, a \$100 fine, or both. The bill would also apply these penalties to a violation of Section 462 of the code. (As amended by House Bill 5449, Section 462 would prohibit a person from employing, receiving, detaining, or allowing a person under 16 years of age in a house of prostitution.)

If a defendant had a prior conviction of the above prostitution-related offenses, a prosecuting attorney seeking an enhanced sentence would have to include a list of the prior convictions on the complaint. Responsibility for determining the existence of a defendant's prior convictions would lie with the court (without a jury) either at sentencing or at a hearing for that purpose held prior to sentencing. Evidence to establish a prior conviction could include, but would not be limited to, a copy of the judgment of conviction; a transcript of a prior trial, plea-taking, or sentencing; information contained in a presentence report; or the defendant's statement.

Under the bill, a prior conviction would be defined as a conviction for soliciting, aiding and abetting prostitution, admitting a person to a place for the purpose of prostitution, or engaging or offering to engage the services of a prostitute (which applies only to male defendants). The bill would also include a violation of Section 462 of the code in the definition of prior conviction. "Prior conviction" would also include a conviction for a violation of any substantially similar local ordinance, a law of another state, or a local ordinance of another state.

The bill is tie-barred to House Bill 5449.

House Bill 5449. The bill would amend several provisions of the Michigan Penal Code (MCL 750.145b et al.) to lower the age threshold for certain prostitution-related crimes and to increase the penalty for soliciting a minor. Currently, a person 17 years of age or older who solicits or accosts another to commit prostitution or lewdness, who admits or offers to admit a person into a place (structure, house, building, or vehicle) for the purpose of prostitution or lewdness, or who aids or abets another person to commit prostitution or lewdness is guilty of a misdemeanor for a first or second offense and a felony for a third or subsequent offense. The bill would lower the age threshold to 16 years of age or older.

Accosting, enticing, or soliciting a child under the age of 16 years of age with the intent to force the child to commit an immoral act, engage in sexual intercourse, or other acts of indecency, is a misdemeanor punishable by one year imprisonment for a first offense and is a felony for a second or subsequent offense. The bill would increase the penalty for second and subsequent violations to imprisonment for not more than 10 years or a fine of not more than \$10,000, or both. (House Bill 5032 would increase the penalty for a first offense.) The bill would contain identical provisions as House Bill 4325 pertaining to cases in which a prosecutor sought an enhanced penalty for a repeat violation. "Prior conviction" would mean a violation of the prohibition of accosting or soliciting a child under 16 years of age and would include a violation of a law or a local ordinance of another state that substantially corresponds to this violation. (Under Michigan law, a local governmental unit can only adopt ordinances for misdemeanor crimes punishable by imprisonment of 93 days or less.)

Current law also makes it a misdemeanor offense to employ, receive, detain, or allow – for purposes other than for prostitution - a female under 17 years of age in a house of prostitution. The bill would instead prohibit a person from employing, receiving, detaining, or allowing a person under 16 years of age to remain in a house of prostitution. (Thus, the bill would lower the age threshold and the prohibition would pertain to both underage males and females.) Further, the bill would specify that a violation of the prohibition would be punishable as provided in Section 451 of the code. (Section 451 would be amended by House Bill 4325.)

House Bill 5032. Currently, it is a misdemeanor offense to accost, entice, or solicit a child less than 16 years of age with the intent to induce or force that

child (or encourage the child) to commit an immoral act, to submit to an act of sexual intercourse or act of gross indecency, or to engage in any other act of depravity or delinquency. The bill would amend the Michigan Penal Code (750.145a) to specify that these behaviors would also be prohibited regardless of whether the person knew the individual was a child or knew the actual age of the child, or involved an individual that the person believed was a child less than 16 years of age, or any child less than 16 years of age. Further, the bill would make a first violation of this crime a felony punishable by up to four years imprisonment (instead of one year or less in a county jail) or a fine of not more than \$2,000, or both.

House Bill 5033 would amend the Code of Criminal Procedure (MCL 777.16g) to specify that a first offense for soliciting a child to commit an immoral act would be a Class F felony with a four-year maximum sentence of imprisonment. A second or subsequent offense would be a Class D felony with a maximum sentence of imprisonment of ten years (increased from four). The bill also contains several technical corrections to citations that pertain to the maximum terms of imprisonment for first-, second-, and third-degree child abuse.

The bill is tie-barred to House Bill 5032.

BACKGROUND INFORMATION:

In response to the *Lansing State Journal* articles detailing the extent of the prostitution ring that used young girls, Rep. Virg Bernero of Lansing formed the Teen Crisis Task Force. The task force comprises members of various social service agencies, churches, community mental health officials, state agencies, and law enforcement officials. The group's four subcommittees are currently exploring issues such as truancy, prostitution-related laws, prevention initiatives, and shelters and proper services for children involved in prostitution and hope to report recommendations by early next year.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have the following impact:

House Bill 4325. Depending on how the bill affected charging practices and numbers of convictions, it could increase state and local correctional costs, and could increase the amount of penal fine revenue going to local libraries. The bill's record keeping requirements (increasing the penalty to a 93-day

misdemeanor would trigger fingerprinting and record keeping requirements) could also increase costs for the Department of State Police. (11-27-01)

House Bill 5032. There are no data available on the numbers of offenders who would be newly subject to felony penalties under the bill. However, depending on how the bill affected charging practices and the numbers of convictions obtained, the bill could increase costs to state and local correctional systems. Further, to the extent that the bill increased collections of state penal fines, it would increase the amount of revenue going to local libraries as required by the state constitution. (11-26-01)

House Bill 5033 would not have a state or local fiscal impact. (11-26-01)

House Bill 5449 would have an indeterminate fiscal impact on the state and local units of government depending on how it affected adult convictions and juvenile adjudications. Since the misdemeanors under the bill could be punished with incarceration or fines or both, penal fine revenues going to local libraries could increase. (11-26-01)

ARGUMENTS:

For:

The discovery of the Lansing prostitution ring involving girls between 13 and 17 did more than just shock people's sensibilities; it underscored weaknesses in current law and in services available to at-risk teens and their families. There are many factors as to why young girls become involved in something as dangerous and risky to their health as prostitution. Some were runaways, some came from troubled homes, and some were from low-income families. Some had a history of truancy or previous unlawful behaviors. Some were too young for teen shelters or ineligible for certain existing programs. Therefore, the answers will require a multi-disciplinary approach to determine how services to these teens can be improved. However, addressing weaknesses in state law could have a significant impact on reducing the numbers of teenagers and adults involved in prostitution. The bills represent good public policy and should be supported.

For:

A loophole in the law inadvertently makes it "legal" for a 16-year-old to engage in prostitution. Currently, a person 16 or older can legally consent to sexual intercourse. However, the prostitution laws pertain only to persons 17 years of age and older.

House Bill 5449 would close the loophole by lowering the age for which prostitution is a crime to any person 16 years or older.

For:

Criminal sexual conduct laws make those who force children to have sex face stiff penalties, including life in prison for CSC in the first degree. However, adults who seek out and pay for sex with young girls and boys currently face only a misdemeanor charge with up to one year imprisonment and a \$100 fine for a first offense. Reportedly, there is an increase in demand for young children because of a perceived belief that the younger the child, the less risk for the adult to contract a disease. Little concern is shown by these adults for the child's risk of contracting a life threatening or life long disease. Nor is there much concern for the long-term emotional, physical, and psychological impact that prostitution has on a child's development.

House Bill 5032 would increase the penalty from a misdemeanor to a four- year felony for a first offense for soliciting a child under 16. A conviction could also result in a fine up to \$2,000. The bill would also provide a mechanism for law enforcement officials to conduct sting operations with undercover officers. Currently, a person can only be prosecuted for soliciting sex with a person who is actually 17 or older. The bill would allow for prosecuting a person who solicited another that he or she believed was under 16; this is similar to provisions pertaining to computer crimes against children.

The bill would also make a person strictly liable for soliciting sex with an underage individual regardless of whether he or she knew the actual age of the child. It is not unusual for young prostitutes to use clothing or makeup to look older. This change in language acknowledges that a child engaged in prostitution is the real victim of the crime, and therefore puts the burden on the adult to avoid sex with children.

Further, House Bill 5449 would increase the penalty for a repeat conviction of soliciting a child for sex from a 4-year felony to a 10-year felony and would increase the fine to up to \$10,000. In determining whether a defendant is subject to the enhanced penalties, a conviction from another state (either a similar state law or a local ordinance) could be considered. The bill would include notification requirements that a prosecutor would have to follow when seeking an enhanced penalty.

Increasing the penalty for a crime does not always act as a deterrent because many crimes are done in the

heat of the moment or when under the influence of controlled substances. Therefore, the person committing the crime is not necessarily weighing his or her actions against the possible sanctions. However, seeking the services of a prostitute is not a crime of passion, but a pre-planned and thought-out course of action – and even more so when an adult seeks out a child for sex. A clear message needs to be sent to adults that targeting children for sex is not an option. It is hoped that raising the penalties will send such a message.

For:

It is also important to address the problem of adult prostitutes. Though there are some who believe that prostitution should be legalized and regulated through licensure or other measures, the fact remains that in Michigan, under current law, prostitution is illegal. Therefore, current laws need to be enforced and tightened when necessary to discourage prostitution. House Bill 4325 would tighten laws pertaining to adult prostitution in several ways. First, the bill would make prostitution a 93-day misdemeanor for a first offense. Under current law, a 93-day misdemeanor triggers certain mandatory fingerprinting and record keeping requirements, including requiring fingerprinting for an arrest on a local ordinance that corresponds to a state law for which the maximum penalty is 93 days. Since many prostitutes are arrested under local ordinances, a fingerprint record would have to be taken and information would then be included in the state criminal history data base and a copy of the fingerprints sent to the FBI for inclusion in the national crime data base. Doing so will make it easier to track convicted prostitutes as they move from area to area or state to state.

Secondly, the bill would allow convictions of prostitution-related local ordinances to be used by prosecutors when seeking enhanced penalties for repeat offenders. Currently, a prosecutor can only give an enhanced penalty to repeat offenders if prosecuted under state law. If the previous convictions were under local ordinances, he or she cannot be charged with a repeat offense.

Together, the bill's amendments will enable better tracking of individuals convicted for prostitution and more enhanced penalties for repeat offenders. Not only will this provide a greater deterrence for engaging in prostitution, it also may result in more offenders being placed in substance abuse programs or counseling programs. The result may well be that more individuals could be rehabilitated and able to

find a way off the streets and into legitimate enterprises.

POSITIONS:

The Ingham County Prosecutor testified in support of the bill package. (11-27-01)

The Michigan Department of State Police supports House Bills 4325, 5032, and 5033. (11-28-01)

The City of Jackson supports House Bill 4325. (11-26-01)

The Lansing Police Department supports House Bill 5032. (11-28-01)

Analyst: S. Stutzky

■ 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.