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## REVISE PROSTITUTION PENALTIES

House Bill 4325 as enrolled  
Public Act 44 of 2002  
Sponsor: Rep. Clark Bisbee

House Bill 5033 as enrolled  
Public Act 47 of 2002  
Sponsor: Rep. Mike Kowall

House Bill 5449 as enrolled  
Public Act 45 of 2002  
Sponsor: Rep. Judson Gilbert II

Senate Bill 180 as enrolled  
Public Act 43 of 2002  
Sponsor: Sen. Bill Schuette

Senate Bill 1029 as enrolled  
Public Act 46 of 2002  
Sponsor: Sen. Thaddeus G. McCotter

House Committee: Criminal Justice  
Senate Committee: Judiciary

Second Analysis (4-3-02)

### ***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

House Bills 4325, 5033, 5449, Senate Bills 180 and 1029 (4-3-02)

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 June 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, allow a fine to be added to the penalty for a third or subsequent violation, 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 increase the penalty for a first offense from 90 days imprisonment to 93 days imprisonment, a \$500 fine, or both. The bill would maintain the same penalty structure for second or subsequent offenses, but would increase the maximum fine for a second offense to \$1,000 and would allow a maximum fine of \$2,000 to be added to the penalty for a third or subsequent offense. The bill would also apply these penalties to a violation of Section 462 of the code. (As amended by Senate Bill 1029, 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, Senate Bill 180, and Senate Bill 1029.

Senate Bill 180. The bill would amend the same section of the Michigan Penal Code (MCL 750.451) as House Bill 4325. However, the changes proposed by Senate Bill 180 would not be as extensive as the prior bill. Senate Bill 180 would define "prior conviction" as a violation of Sections 448, 449, 449a, or 450 (House Bill 4325 includes a violation of Sec. 462). The bill would also require a prior conviction to be established at sentencing by an abstract of conviction or by an admission by the defendant. (Note: When two or more bills amending the same section of law are enacted, the provisions contained within the bill which has the later enactment date supercede or replace the provisions of the earlier act. If the bills have the same enactment date, as do Senate Bill 180 and House Bill 4325, the bill with the higher public act number will prevail. Therefore, the provisions of Enrolled Senate Bill 180, which became Public Act 43, will be superceded by the provisions of Enrolled House Bill 4325, which became Public Act 44.)

House Bill 5449. The bill would amend several sections of the Michigan Penal Code (MCL 750.145a, 145b, and 750.448). 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 code 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. A second or subsequent offense would remain a felony, but would now be punishable by imprisonment for not more than ten years or a fine of not more than \$10,000, or both.

In the same manner as prescribed under House Bill 4325, 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. "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 Section 145a or a law of another state that substantially corresponds to this violation.

Finally, it is prohibited under current law for a person 17 years of age or older to solicit, invite, or accost another in a public place or do the same in or from a building or vehicle by word, gesture, or any other means to commit prostitution or lewdness. A violation is a misdemeanor. The bill would lower the age threshold to 16 years of age or older, and would make the crime punishable as provided in Section 451 of the code. (Section 451 would be amended by House Bill 4325.)

The bill is tie-barred to Senate Bill 180, Senate Bill 1029, and House Bill 4325.

Senate Bill 1029. The bill would amend several provisions of the Michigan Penal Code (MCL 750.449, 750.450, and 750.462) to lower the age threshold for certain prostitution-related crimes. 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.

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 either of these prohibitions would be punishable as provided in Section 451 of the code. (Section 451 would be amended by House Bill 4325.)

The bill is tie-barred to House Bills 4325 and 5449 and Senate Bill 180.

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 5449.

### **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 during 2002.

Further, House Bill 5032, which was part of the original House-passed package of bills, was incorporated into the Senate-passed version of House Bill 5449, which became Public Act 45 of 2002.

### ***FISCAL IMPLICATIONS:***

According to the Senate Fiscal Agency, the bills would have an indeterminate impact on state and local government. Currently, there are no statewide data to indicate how many offenders a year are convicted of prostitution-related misdemeanors. According to the Department of Corrections 1999 Statistical Report, 58 offenders were convicted of prostitution-related felonies. By extending the maximum term or imprisonment for a first offense from 90 days to 93 days, the bills would increase incarceration costs of local units, which varies by county from \$27 to \$65 per day. Under Senate Bill 180 and House Bill 4325, first- and second-time offenders would receive misdemeanor sentences. Local units would incur the cost of probation and incarceration. Also, to the extent that they would increase the pool of possible offenders by lowering the age threshold for prosecution, the bills could potentially increase criminal justice costs.

In addition, the bills would increase costs by allowing previous convictions from other local jurisdictions and states to be used to determine whether someone was a repeat offender. This would likely increase the number of offenders receiving longer sentences due to prior convictions. Each third-time offender convicted under these provisions would receive up to one additional year's imprisonment and would be subject to time in a state prison rather than a local jail, at an average annual state cost of \$25,000 per year.

According to the DOC statistical report, no offenders were convicted of or serving time for accosting or soliciting children for immoral purposes in 1999. Under House Bill 5449, the longest minimum sentence an offender could receive for a first offense would increase from eight months to 30 months. A first-time offender also would be eligible for incarceration in a state prison rather than a county jail. The longest minimum sentence an offender could receive for a subsequent offense would increase from 30 months to 76 months. The state would incur the cost of probation, estimated to be \$4.38 per day, as well as incarceration, at an average annual cost of \$25,000. Nevertheless, if past years are representative of the future, the bill would not increase state incarceration costs. (2-11-02)

### ***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 or boys become involved in something as dangerous and risky to their health as prostitution. Some are runaways, some come from troubled homes, and some are from low-income families. Some have a history of truancy or previous unlawful behaviors. Some are 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. Senate Bill 1029 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 5449 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 \$4,000. 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 first offense of soliciting a child for sex from a 1-year misdemeanor to a felony offense with a maximum term of imprisonment of 4 years or a fine of up to \$4,000, or both. The penalty for a repeat conviction would be increased to a 10-year maximum term of imprisonment and the fine would increase to a maximum of \$10,000. In determining whether a defendant would be subject to the enhanced penalties, a conviction from another state 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.

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.