

Senate Fiscal Agency
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SFA



BILL ANALYSIS

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Senate Bill 180 (as enrolled)
 Senate Bill 1029 (as enrolled)
 House Bill 4325 (as enrolled)
 House Bill 5033 (as enrolled)
 House Bill 5449 (as enrolled)

PUBLIC ACT 43 of 2002
PUBLIC ACT 46 of 2002
PUBLIC ACT 44 of 2002
PUBLIC ACT 47 of 2002
PUBLIC ACT 45 of 2002

Sponsor: Senator Bill Schuette (Senate Bill 180)
 Senator Thaddeus G. McCotter (Senate Bill 1029)
 Representative Clark Bisbee (House Bill 4325)
 Representative Mike Kowall (House Bill 5033)
 Representative Judson Gilbert II (House Bill 5449)

Senate Committee: Judiciary
 House Committee: Criminal Justice

Date Completed: 8-7-02

RATIONALE

Early in 2001, the Lansing Police Department uncovered a prostitution ring that apparently involved girls ranging from 12 to 17 years of age. Evidently, the ring operated in several parts of the State, including the mid-Michigan and Detroit areas, and may have reached out-of-state as far as Texas. After the discovery of this operation, scrutiny of State laws pertaining to prostitution identified a potential gap in the enforcement of various prostitution-related offenses. The age for consenting to sexual relations in Michigan is 16, but several provisions proscribing certain behavior relating to prostitution applied only to people 17 and older. Consequently, the law could have been viewed as allowing 16-year-olds to engage in prostitution.

provision for enhanced penalties for subsequent offenses. As a result, if someone was convicted under a local ordinance, and subsequently was convicted for another offense under the Penal Code, the local conviction was not counted for sentencing purposes under the Code. The Penal Code's enhanced penalty provision also did not include violations committed in another state. Further, the maximum penalty for a first offense was 90 days' imprisonment. Since fingerprints do not have to be taken upon arrest for an offense at that penalty level, there was concern that prior convictions might not have been uncovered.

Also, the discovery of the child prostitution ring in Lansing brought to public light a concern that the penalties for accosting or soliciting a child for purposes of prostitution might be insufficient. A first offense was a misdemeanor subject to a maximum of one year's imprisonment.

It was suggested that the Penal Code be amended to address all of these concerns.

CONTENT

Senate Bills 180 and 1029 and House Bill 4325 amended the Michigan Penal Code to do all of the following:

In addition, the Michigan Penal Code includes graduated penalties for various prostitution-related offenses that apply more severe punishment for repeat violations. Reportedly, some cities have local ordinances prohibiting the same type of conduct as the Penal Code's prostitution offenses, but the Code did not include local ordinance violations in its

- **Apply certain prostitution-related violations to offenders 16 and older, rather than 17 and older.**
- **Extend to males a prohibition against employing or allowing females under 18 in a house of prostitution, and reduce that age to under 17.**
- **Increase the maximum penalties for certain prostitution-related offenses.**

- **Include as prior convictions, for the purpose of sentencing enhancement, violations of a law of another state or of a political subdivision of this State or another state.**

House Bill 5033 amended the Code of Criminal Procedure to add a sentencing guidelines designation for accosting, enticing, or soliciting a child to commit an immoral act, and to revise the sentencing guidelines designation for a subsequent offense of accosting children for immoral purposes (consistent with revisions enacted by House Bill 5449).

House Bill 5449 amended the Michigan Penal Code to do all of the following:

- **Increase the penalty for accosting, enticing, or soliciting a child for immoral purposes.**
- **Apply the violation regardless of whether the offender knows that the individual is a child or knows the actual age of the child, and if the offender believes the individual to be a child.**
- **Increase the penalty for a second or subsequent conviction of that offense.**
- **Extend the offense of accosting or soliciting in a public place to an offender who is 16 years old.**

The bills all took effect on June 1, 2002. Senate Bills 180 and 1029 and House Bills 4325 and 5449 were all tie-barred to each other. House Bill 5033 was tie-barred to House Bill 5449.

Senate Bill 180 & House Bill 4325

Senate Bill 180 and House Bill 4325 amended the same section of the Penal Code.

Soliciting and accosting to commit prostitution or an immoral act, admitting a person to a place for purposes of prostitution, engaging services for purposes of prostitution, lewdness, or assignation, and aiding and abetting another to solicit for prostitution or to admit a person to a place for purposes of prostitution, are misdemeanors. Previously, these misdemeanors were punishable by up to 90 days' imprisonment, a maximum fine of \$100, or both. Under House Bill 4325, the maximum term of imprisonment is 93 days

and the maximum fine is \$500. (These offenses are referred to below as "prostitution-related" offenses.)

House Bill 4325 also extended that penalty to the offense of taking a minor (previously, a female younger than 18, but, under Senate Bill 1029, a male or female under 17) to a house of prostitution or employing, detaining, or allowing a minor in a house of prostitution. Previously, that offense was subject to imprisonment for up to 90 days and/or a maximum fine of \$100.

A second prostitution-related offense is a misdemeanor and a third or subsequent offense is a felony. Previously, the misdemeanor was punishable by up to one year's imprisonment, a maximum fine of \$500, or both, and the felony was punishable by up to two years' imprisonment. Under House Bill 4325, the maximum fine for the misdemeanor is \$1,000 and the felony is punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both. Under Senate Bill 180 and House Bill 4325, the penalty for a second offense applies if an offender has a "prior conviction" and the penalty for a third or subsequent offense applies if the offender has two or more prior convictions. (The bills define "prior conviction" as a conviction for a prostitution-related offense or a violation involving a minor in a house of prostitution, or a violation of a law of another state or a political subdivision of this State or another state substantially corresponding to Michigan law.)

Under the bills, if a prosecuting attorney intends to seek an enhanced sentence based on the defendant's having one or more prior convictions, he or she must include on the complaint and information a statement listing the prior conviction or convictions. The existence of a prior conviction or convictions must be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, one or more of the following:

- A copy of the judgment of conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence

- report.
-- The defendant's statement.

Senate Bill 1029

The bill reduced from 17 years to 16 years the age at which certain prostitution-related violations apply to offenders. The bill also extended to males a current prohibition against employing or allowing females under 18 in a house of prostitution, and reduced that age to under 17.

Previously, the following offenses applied when the offender was 17 years of age or older:

- Receiving, admitting, or offering to receive or admit a person into a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation.
- Knowingly permitting a person to remain in a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation.
- Aiding, assisting, or abetting another person to commit either of the offenses listed above.

Under the bill, those crimes apply to an offender who is 16 or older.

The Code also previously prohibited a person from taking or conveying to, or employing, receiving, detaining, or allowing a female who was 17 or younger in a house of prostitution, house of ill-fame, bawdy-house, house of assignation, or any house or place for the resort of prostitutes or other disorderly people. The offense was a misdemeanor with no specified penalty (which means that it was punishable by up to 90 days' imprisonment and/or a maximum fine of \$100). Under the bill, that violation applies when the victim is a male or female 16 years of age or less. The offense remains a misdemeanor and is punishable by the same penalty that applies to other prostitution-related offenses (up to 93 days' imprisonment and/or a maximum fine of \$500, or enhanced penalties for repeat offenses, as specified in House Bill 4325).

House Bill 5033

The bill added to the sentencing guidelines soliciting a child to commit an immoral act (MCL 750.145a). The offense is designated a

Class F felony against a person, with a statutory maximum sentence of four years' imprisonment. (Previously, that violation was a misdemeanor punishable by up to one year's imprisonment. House Bill 5449 elevated the offense to a felony.)

In addition, the bill revised the sentencing guidelines designation for a subsequent offense of accosting a child for immoral purposes (MCL 750.145b). Previously, that violation was a Class F felony against a person, with a statutory maximum sentence of four years' imprisonment. Under the bill, it is a Class D felony against a person with a statutory maximum sentence of 10 years' imprisonment (consistent with House Bill 5449). The bill also refers to a violation with a prior conviction rather than to a subsequent offense.

House Bill 5449

The Penal Code prohibits a person from accosting, enticing, or soliciting an individual under 16 years old with intent to induce or force the child to commit an immoral act, submit to an act of sexual intercourse or gross indecency or any other act of depravity or delinquency, or to suggest any of those acts to such a child. Under the bill, a violation occurs regardless of whether the offender knows the individual is a child or knows the actual age of the child, and also applies when the offender solicits an individual whom he or she believes is a child. Previously, the offense was a misdemeanor punishable by up to one year's imprisonment. Under the bill, it is a felony punishable by up to four years' imprisonment, a maximum fine of \$4,000, or both.

Previously, a person convicted of this offense a second or subsequent time was guilty of a felony with no specified penalty (which made it subject to imprisonment for up to four years and/or a maximum fine of \$2,000). Under the bill, the penalty is up to 10 years' imprisonment, a maximum fine of \$10,000, or both.

Previously, the crime of accosting, soliciting, or inviting another person in a public place, or in or from a building or vehicle, to commit prostitution or do a lewd or immoral act, applied when the offender was 17 or older. Under the bill, the crime applies to an offender

who is 16 or older and is punishable as provided for other prostitution-related offenses in House Bill 4325.

MCL 750.451 (S.B. 180)
750.449 et al. (S.B. 1029)
750.451 (H.B. 4325)
777.16g (H.B. 5033)
750.145a et al. (H.B. 5449)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

There are many factors as to why young girls or boys become involved in something as dangerous as prostitution, and the solution to this problem likely will require a multidisciplinary approach involving education, social services, and public health efforts. The discovery of the Lansing child prostitution ring in 2001, however, underscored weaknesses in the criminal law. Addressing these deficiencies should have a significant impact on reducing prostitution in Michigan communities.

The law inadvertently appeared to allow a 16-year-old to engage in prostitution, because a person 16 or older can legally consent to sexual intercourse in Michigan, but the prostitution laws explicitly applied only to offenders 17 and older. Senate Bill 1029 closed that loophole by extending various prostitution-related offenses to any person who is 16 or older.

In addition, while criminal sexual conduct (CSC) laws prescribe stiff penalties, including life in prison for first-degree CSC, for those who force children to have sex, adults who seek out and pay for sex with young girls or boys faced only a misdemeanor charge with a maximum penalty of one year's imprisonment and a \$100 fine for a first offense. House Bill 5449 increased a first offense of soliciting a child for sex from a one-year misdemeanor to a felony with a maximum prison term of four years, a fine of up to \$4,000, or both. The penalty for a repeat conviction was increased to a 10-year maximum term and a \$10,000 maximum fine.

House Bill 5449 also provides a mechanism for

law enforcement officials to conduct sting operations with undercover officers. Previously, an offender could be prosecuted for soliciting a minor only if the person solicited actually was younger than 16. The bill allows the prosecution of someone who solicits a person whom he or she *believes* is under 16; this is similar to provisions pertaining to the use of a computer to commit a crime against a child. Under the bill, then, a person may be prosecuted for soliciting an undercover law enforcement officer who poses as a child. The bill also subjects a person to the penalties for soliciting sex with an underage individual regardless of whether the offender knows the child's actual age. This will preclude a violator from claiming, as a defense, that he or she did not know that the person solicited was a minor.

Supporting Argument

Apparently, some repeat prostitution offenders were escaping the Penal Code's enhanced penalties for subsequent violations because they had previously been charged with a local ordinance violation rather than a Penal Code offense. Although an offender might have been subject to enhanced penalties under a city's ordinance when he or she had multiple violations in the same city, those convictions did not count as prior offenses when the person was convicted of an offense under the Penal Code. Since Senate Bill 180 and House Bill 4325 include violations of substantially corresponding local ordinances as prior convictions under the Penal Code, prosecutors may seek the enhanced penalties for offenders who have previously been convicted of local violations. In addition, House Bill 4325 includes violations committed in other states, thereby subjecting more repeat offenders to the Code's enhanced penalties for repeat violators.

House Bill 4325 also increased the misdemeanor penalty for a first-time violation of a prostitution-related offense from 90 days to 93 days' imprisonment. A 93-day penalty triggers mandatory fingerprinting and record-keeping requirements, which ensure a record of the first offense and more thorough enforcement of enhanced penalties for subsequent offenses. Increasing the misdemeanor penalty and including local and out-of-state violations in the definition of "prior conviction" should facilitate better tracking of individuals convicted of prostitution

offenses and result in more enhanced penalties for repeat offenders.

Opposing Argument

Expanding the number of people who are subject to longer sentences for repeat violations could result in more prostitution-related violators' serving greater jail or prison terms. The State's jails and prisons are crowded enough without filling them up with prostitutes, those who hire them, and those who aid and abet their activities.

Response: The greater likelihood of being subject to enhanced penalties, including a felony charge for a third or subsequent offense, should serve as a deterrent to committing the prostitution offenses. In addition, it is probably more desirable to have prostitutes, as well as those who employ them or seek their services, in jail and prison rather than on the streets.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have an indeterminate impact on State and local government.

There are currently 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 of imprisonment for a first offense from 90 to 93 days, the bills will increase incarceration costs of local units, which vary by county from \$27 to \$65 per day. Also, to the extent that they increase the pool of possible offenders by lowering the age threshold for prosecution from 17 to 16 and by extending to males the prohibition against employing or allowing females under 18 in a house of prostitution and reducing that age to under 17, the bills could potentially increase criminal justice costs. In addition, the bills will increase costs by allowing previous convictions from local jurisdictions and other states to be used to determine whether someone is a repeat offender. This will likely increase the number of offenders receiving longer sentences due to prior convictions. Each third-time offender convicted under these provisions will receive up to one additional year's imprisonment and will 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 Department of Corrections Statistical Report, no offenders were convicted of or serving time for accosting or soliciting children for immoral purposes in 1999. Under the bills, the longest minimum sentence an offender can receive for a first offense will increase from eight months to 30 months. A first-time offender also will be eligible for incarceration in a State prison rather than a county jail. The longest minimum sentence an offender can receive for a subsequent offense will increase from 30 months to 76 months. The State will incur the cost of probation, estimated to be \$4.38 per day, as well as the cost of incarceration at an average annual cost of \$25,000. Nevertheless, if past years are representative of the future, this amendment will not create increased State incarceration costs.

To the extent that the bills raise the maximum penal fines, they will provide increased revenues to public libraries.

Fiscal Analyst: Bethany Wicksall

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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.