

Legislative Analysis



HUMAN TRAFFICKING ACT REVISIONS

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House Bill 5234 (Substitute H-1)
Sponsor: Rep. Nancy E. Jenkins

House Bill 5239 (Substitute H-1)
Sponsor: Rep. Kenneth Kurtz

House Bill 5235 (Substitute H-1)
Sponsor: Rep. Marcia Hovey-Wright

House Bill 5241 (Substitute H-2)
Sponsor: Rep. John Kivela

House Bill 5236 (Substitute H-1)
Sponsor: Rep. Edward McBroom

Committee: Criminal Justice
Complete to 3-18-14

A SUMMARY OF HOUSE BILLS 5234-5236, 5239 AND 5241 AS REPORTED BY COMMITTEE 3-12-14

House Bill 5234 would make numerous revisions within the Human Trafficking Act for consistency between provisions, create a single penalty provision for violations of the act, and repeal provisions made obsolete by the revisions.

House Bill 5235 would place the penalties within the sentencing guidelines.

House Bill 5236 would make a technical change to an act referencing the sections repealed by House Bill 5234.

House Bill 5239 would require the Department of Human Services to report suspected or investigated cases of child abuse or neglect that indicate a violation of a human trafficking offense to a law enforcement agency.

House Bill 5241 would require registration as a sex offender for engaging the services of a minor for the purpose of prostitution or recruiting, transporting, or obtaining a minor for the commercial sex trade or for forced labor.

The bills are part of the larger package of legislation addressing the issue of human trafficking. All would take effect 90 days after enactment.

Following is a more detailed description of the bills.

House Bill 5234 would amend Chapter LXVIIA of the Michigan Penal Code (750.156 et al.), the Human Trafficking Act. The bill would make significant revisions to provisions within the act, revise definitions, consolidate penalties for violations, and repeal two sections made obsolete by the revisions. As revised, the Human Trafficking Act would prohibit a person from doing any of the following:

- ❖ Knowingly recruit, entice, harbor, transport, provide, or obtain:
 - An individual for forced labor or services (Sec. 462b).
 - An individual for the purpose of holding the individual in debt bondage (Sec. 462c).
 - An individual by any means, knowing that individual will be subjected to forced labor or services or debt bondage (Sec. 462d);
- ❖ Knowingly benefit financially or receive anything of value from participation in an enterprise, as that term is defined in Section 159f, if the enterprise has engaged in an act proscribed under the Human Trafficking Act (Sec. 462d).
- ❖ Recruit, entice, harbor, transport, provide, or obtain by any means a minor for commercial sexual activity or for forced labor or services, regardless of whether the person knows the age of a minor (Sec. 462e).

Penalties. The bill would delete and replace current penalties with the following:

** A violation of Section 462b, 462c, or 462d would be a felony with the following maximum terms of imprisonments and/or maximum fines:

- 10-years and/or a fine of \$10,000.
- If bodily injury results – 15 years and/or \$15,000 fine.
- If serious injury to an individual results – 20 years and/or \$20,000.
- If the violation involves kidnapping or 1st-degree criminal sexual conduct (or the attempt of either), or the attempt to kill the individual or death of the individual – life imprisonment or any term of years and/or \$50,000 fine.

** Except as otherwise provided, a violation of Section 462e would be a felony punishable by up to 20 years imprisonment and/or a maximum fine of \$20,000.

** A person who attempted, conspired, or solicited another to violate the Human Trafficking Act would be subject to the same penalty as a person who commits a violation. However, the bill would exempt *conspiracy* committed under the Human Trafficking Act from provisions of Chapter XXIV of the code, entitled "Conspiracy."

Further, a person could be charged with, convicted of, or punished for any other violation of law arising out of the same transaction as the violation of the Human Trafficking Act. A sentence imposed for a Human Trafficking Act violation could be ordered to be served consecutively to (meaning after) a term of imprisonment imposed for any other crime, including any other violation of law arising out of the same transaction.

Conspiracy. Chapter XXIV of the Michigan Penal Code, entitled "Conspiracy", prohibits conspiring to commit a criminal act and provides penalties for violations. Section 156 specifies that Chapter XXIV does not apply to agricultural products or livestock in

certain circumstances, or to the services of laborers or artisans who are formed into societies or organizations for the benefit and protection of their members.

The bill would add that Chapter XXIV would not apply to conspiracy committed under Chapter LXVIIA, the Human Trafficking Act. (The Human Trafficking Act provides penalties for conspiracy to violate the act.)

Restitution. In addition to any mandatory restitution applicable under Section 16 of the William Van Regenmorter Crime Victim's Rights Act (CVRA), a court could order a person convicted of a human trafficking violation to pay restitution to the victim in the manner provided in Section 16b of the CVRA and to reimburse any governmental entity for its expenses incurred as a result of the violation as provided in Section 1f of Chapter IX of the Code of Criminal Procedure.

Testimony of human trafficking victims. The testimony of a victim would not need be required in a prosecution under the Human Trafficking Act. However, if a victim testifies, that testimony need not be corroborated. In addition, the victim's resistance or lack of resistance to the actor would not be relevant in a prosecution under the Human Trafficking Act.

Repealer. The bill would repeal Sections 462i and 462j of the Human Trafficking Act. Section 462i provides a mandatory sentence of life or any term of years for kidnapping, CSC, the attempt to do either, or an attempt to kill. Section 462j contains prohibitions and penalties consolidated elsewhere in the act by the proposed revisions.

Definitions. The bill would revise and/or add numerous definitions, including "coercion," "commercial sexual activity," "debt bondage," "force," "forced labor or services," "fraud," "labor," and "serious bodily injury." Definitions for the terms "child sexually abusive activity," "extortion," "maintain," and "obtain" would be eliminated. Some of the eliminated terms would be incorporated into the definitions of other terms.

House Bill 5235 would amend the Code of Criminal Procedure (MCL 777.16w) to delete current sentencing guidelines for human trafficking-related violations and replace them with guidelines corresponding to the new penalty provisions of House Bill 5234 as follows:

Crime	Category	Class	Statutory Maximum
Human Trafficking	Person	D	10 years
Violation resulting in bodily injury	Person	C	15 years
Violation resulting in serious bodily injury	Person	B	20 years
Violation involving death or commission of certain felonies	Person	A	Life

Obtaining minor for commercial sexual activity or for forced labor or services	Person	B	20 years
[MCL 750.462f(3)] Attempting, conspiring, or soliciting another to violate human trafficking laws **	Person	B	Variable

** For a violation of MCL 750.462f (3), the court would have to determine the offense category, offense variable level, and prior record variable level based on the underlying offense.

The bill is tie-barred to House Bill 5234.

House Bill 5236 would amend the Revised Judicature Act (MCL 600.4701). Section 4701 defines "crime" to mean committing, attempting to commit, conspiring to commit, or soliciting another person to commit any of the listed offenses in connection with which the forfeiture of property is sought. Public Act 363 of 2010 included in the list of offenses a violation of Chapter LXVIIA (Human Trafficking) of the Michigan Penal Code, with a reference to a range of provisions from Section 462a to 462j. The bill would revise the reference to reflect the repealed sections under House Bill 5234, and is tie-barred to that bill.

House Bill 5239 would amend the Child Protection Law (MCL 722.623). Michigan law contains various provisions designed to protect children from abuse and neglect. The Child Protection Law requires certain professionals, such as physicians, social workers, and teachers, to report to the Department of Human Services (DHS) if they have reasonable cause to suspect child abuse or neglect. When a report is made, Child Protective Services (CPS) workers are responsible for determining whether to investigate and, if various criteria are met, conducting an investigation or reporting to a law enforcement agency.

Currently, a copy of the allegation or written report and the results of any investigation must be transmitted by the DHS to a law enforcement agency in the county in which the incident occurred if the allegation, written report, or subsequent investigation indicated an offense involving the manufacture of methamphetamine; 2nd-, 3rd-, or 4th-degree child abuse; child sexually abusive activity or material; or criminal sexual conduct by a person not responsible for the child's health and welfare.

The bill would include a violation of the Human Trafficking Act in the list of offenses for which transmittal of the information must be made to a law enforcement agency.

House Bill 5241 would amend the Sex Offenders Registration Act (28.722) to include certain sex-related crimes in the list of offenses requiring a person to register as a sex offender.

A violation of Section 449a(2) of the Michigan Penal Code would be added to the list of crimes constituting a Tier I offense. (A second offense of Section 449a(2) or any other Tier I offense would be a Tier II offense. Section 449a(2), as proposed by House Bill 4209, prohibits engaging or offering to engage the services of a person, who is less than 18 years of age and who is not the person's spouse, for the purpose of prostitution, lewdness, or assignation for money or other forms of consideration.)

A violation of Section 462e of the Michigan Penal Code would be added to the list of crimes constituting a Tier II offense. [Section 462e, as revised by House Bill 5234, prohibits recruiting, enticing, harboring, transporting, providing, or obtaining by any means a minor for commercial sexual activity or for forced labor or services, regardless of whether the person knows the age of a minor.]

FISCAL IMPACT:

House Bill 5239 should have a negligible fiscal impact on state and local units of government.

House Bill 5241 appears not to have a significant fiscal impact on the Michigan State Police.

A fiscal analysis regarding the impact of the bills on state and local corrections costs is in process.

BRIEF DISCUSSION OF THE ISSUES:

All of the bills, either directly or indirectly, incorporate recommendations made by the Michigan Commission on Human Trafficking or otherwise relate to the issue of human trafficking.

House Bill 5234 streamlines the human trafficking laws. The original Human Trafficking Act was enacted in 2006. Four years later, more sections were added to the act. However, the 2006 and 2010 legislation used different terminology, had different penalties for similar offenses, and contained other inconsistencies. The bill repeals two sections added in 2010, puts all the penalties in a single section, and updates definitions to reflect terminology used nationally in the fight against human trafficking, such as "commercial sexual activity."

The bill adds an exemption to the conspiracy statute; this is so that a person who conspires to commit a human trafficking crime will be punished under the Human Trafficking Act. A penalty would be based on the underlying crime. For instance, conspiracy to traffic minors will result in a harsher penalty than trafficking an adult.

The bill would not require the testimony of a human trafficking victim to be corroborated in a prosecution. According to advocates who provide services to human trafficking victims and law enforcement officers who prosecute traffickers, the extreme abuse endured by victims leaves them so traumatized and fearful that it is difficult, if not impossible, for them to come forward and testify. Even if one person in a "stable" (the group working under a pimp) comes forward, it is unlikely that any others in the group would be willing or able to verify that person's account. The sheer control of a pimp over the victims in the group (usually obtained by egregious physical, psychological, and/or sexual abuse and threats against loved ones) should not be allowed to be a shield against prosecution.

If the person is an immigrant, whether trafficked in the commercial sex trade, or forced to provide labor in agriculture, the food industry, or other industries, fears of deportation for self or family can make many reticent to come forward. Also, while under the control of the perpetrators, victims may have been forced to commit multiple criminal acts; many are afraid that their testimony could self-incriminate. Basically, if a victim tells his or her story, and the jury believes that testimony, the bill would remove any requirement for other corroborative evidence of that testimony to be presented; the testimony alone could be sufficient to convict the defendant. However, the bill would not prevent any party from calling the victim as a witness or prevent the defense from challenging the victim's testimony. The jury would still have to decide if proof beyond a reasonable doubt had been presented.

However, some still have concerns that the prosecution's burden of proof would be diminished, to the detriment of defendants, as anyone could accuse someone of a crime, such as rape, under the Human Trafficking Act and no evidence would have to be presented to support that claim. Simply put, the provision may open the door to convictions based on false allegations.

House Bill 5239 would ensure that allegations of child abuse and neglect that may be connected to human trafficking made to DHS by mandatory reporters are transmitted to a law enforcement agency for investigation. Since teachers, doctors, and other mandatory reporters are educated to recognize the signs and symptoms of human trafficking, more cases should get to the attention of the police and more children rescued.

House Bill 5241 would combat using minors in the commercial sex trade by requiring those who have sex with child prostitutes to register as a Tier I sexual offender and those who place children in prostitution in the commercial sex trade as a Tier II sexual offender. However, the bill would require anyone convicted of trafficking a minor for labor or services to also register as a Tier II offender. Tier II offenders must register for life. Thus, the bill has great potential to deter individuals from targeting minors for human trafficking and, if convicted of an offense, for tracking offenders after release from prison to catch any reoffenders.

Though not discussed during the committee testimony, many feel that the Sex Offender Registry is problematic in that it does not differentiate those with little to no risk for

reoffending from those who pose a serious risk. Therefore it is of little value. From that perspective, the bill is alarming. House Bill 5241 would put even a first offense of having sex with a minor prostitute on the Registry, even if the person did not know the individual was under 18 years old and even if they merely offered to have sex, but did not actually have sex. Seeing as the age of consent is 16, it is one thing to increase the maximum penalty for a violation to deter individuals from seeking out children exploited by traffickers, but another to require automatic registration as a sex offender. And what would count as consideration (for example, a meal or a small gift)? The bill also would make a non-sex crime a registered offense. There would be no discretion for a court to decide if registration was appropriate. For years, many have called for an overhaul of the sex registry laws to stop automatic registration based on the offense committed rather than the risk an offender poses. Adding more crimes, and even a non-sex crime, to the list continues to undercut the value that a registry based on risk could have in monitoring sex offenders in a manner to prevent or minimize recidivism.

POSITIONS:

A representative of the Office of Attorney General testified in support of the bills. (3-12-14)

The Michigan Catholic Conference indicated support for the bills. (3-12-14)

The Department of State Police indicated support for the bills. (3-12-14)

The Prosecuting Attorneys Association of Michigan indicated support for House Bill 5234. (3-12-14)

The Michigan Association of Health Plans indicated support for House Bills 5236 and 5239. (3-12-14)

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■ 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.