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House Bill 5233 (Substitute S-1 as reported by the Committee of the Whole)  
House Bill 5234 (Substitute H-1 as reported without amendment)  
House Bill 5235 (Substitute H-1 as reported without amendment)  
House Bill 5236 (Substitute S-1 as reported by the Committee of the Whole)  
House Bill 5237 (as reported without amendment)  
Sponsor: Representative Klint Kesto (H.B. 5233)  
Representative Nancy E. Jenkins (H.B. 5234)  
Representative Marcia Hovey-Wright (H.B. 5235)  
Representative Edward McBroom (H.B. 5236)  
Representative Phil M. Cavanagh (H.B. 5237)

House Committee: Criminal Justice

Senate Committee: Families, Seniors and Human Services

## **CONTENT**

House Bill 5234 (H-1) would revise Chapter 67A of the Michigan Penal Code, which pertains to human trafficking offenses, to revise current offenses and penalties. The bill also would repeal and reenact the provisions of a section that prohibits certain conduct and prescribes penalties. In addition, the bill specifies the following:

- A person who attempted, conspired, or solicited another to violate Chapter 67A would be subject to the same penalty as a person who committed the violation.
- The testimony of a victim would not be required in a prosecution under Chapter 67A; however, if a victim testified, that testimony would not need to be corroborated.
- In a prosecution under Chapter 67A, the victim's resistance to the actor, or lack of resistance, would not be relevant.

The Code prohibits a person from knowingly subjecting or attempting to subject another person to forced labor or services by doing or threatening to do any of the following: cause physical harm to another; physically restrain another; abuse the law or legal process; destroy, conceal, remove, confiscate, or possess an actual or purported passport or other immigration document, or other government identification document, of another person; or use blackmail, cause financial harm to, or exert financial control over another. A violation is a felony punishable by up to 10 years' imprisonment; up to 15 years' imprisonment if the violation causes physical injury to another; or imprisonment for life or any term of years if the violation causes the death of another. The bill would delete these provisions.

The Code also prohibits a person from knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means, a minor knowing that he or she will be used for child sexually abusive activity. A violation is a felony punishable by up to 20 years' imprisonment. The bill would delete these provisions.

In addition, the Code prohibits a person from knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means, another person knowing that he or she will be subjected to forced labor or services; or benefitting financially or receiving anything of value from participating in a venture that has engaged in an act described in Chapter 67A. A violation is a felony punishable by up to 10 years' imprisonment; up to 15 years'

imprisonment if the violation causes physical injury to another; or imprisonment for life or any term of years if the violation causes the death of another. The bill would delete these provisions.

The bill would prohibit a person from knowingly: a) recruiting, enticing, harboring, transporting, providing, or obtaining an individual for forced labor or services; b) recruiting, enticing, harboring, transporting, providing, or obtaining an individual by any means, knowing that individual would be subjected to forced labor or services or debt bondage; c) benefiting financially or receiving anything of value from participation in an enterprise that had engaged in an act prohibited by Chapter 67A. ("Enterprise" would be defined as it is in the Code's chapter on racketeering.)

A person who committed any of the above offenses would be guilty of a felony. Except as follows, the penalty would be up to 10 years in prison or a maximum fine of \$10,000, or both. If the violation resulted in bodily injury, it would be punishable by up to 15 years in prison or a maximum fine of \$15,000, or both. The offense would be punishable by up to 20 years in prison or a maximum fine of \$20,000, or both, if it resulted in serious bodily injury. If the violation involved kidnapping or attempted kidnapping, first-degree criminal sexual conduct (CSC) or attempted first-degree CSC, or an attempt to kill or the death of an individual, the penalty would be imprisonment for life or any term of years or a maximum fine of \$50,000, or both.

The bill also would prohibit a person from 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 knew the age of the minor. A violation would be a felony punishable by up to 20 years in prison or a maximum fine of \$20,000, or both.

In addition to rewriting the current prohibitions and penalties, the bill would re-enact provisions in Section 462j of the Code, which the bill would repeal.

The bill also would repeal Sections 462i, which prescribes a penalty of imprisonment for life or any term of years if a violation of Chapter 67A involves kidnapping or attempted kidnapping, CSC or attempted CSC, or an attempt to kill.

House Bill 5235 (H-1) would amend the Code of Criminal Procedure to include in the sentencing guidelines the offenses proposed by House Bill 5234 (H-1), as follows:

- Human trafficking violation: Class D crime against a person, statutory maximum of 10 years.
- Human trafficking violation resulting in bodily injury: Class C crime against a person, statutory maximum of 15 years.
- Human trafficking violation resulting in serious bodily injury: Class B crime against a person, statutory maximum of 20 years.
- Human trafficking violation involving death or the commission of certain felonies: Class A crime against a person, statutory maximum of life imprisonment.
- Attempting, conspiring, or soliciting another to violate Chapter 67A of the Penal Code: variable class crime against a person, variable statutory maximum.

The bill would require the offense category, offense variable level, and prior record variable level based on the underlying offense to be determined for a violation of Section 462f(3) of the Penal Code (attempting, conspiring, or soliciting another to violate Chapter 67A).

House Bill 5233 (S-1) would amend Chapter 47 of the Revised Judicature Act, which provides for the seizure and forfeiture of proceeds or substituted proceeds of a crime, to extend the chapter to additional offenses and make other changes.

In the case of a crime that was a violation of Chapter 67A of the Penal Code, the bill specifies that all property that was proceeds, substituted proceeds, or an instrumentality of the crime, or contributed directly and materially to the commission of the crime, was used to conceal the crime, escape from the scene of a crime, or conceal the identity of one or more of the individuals who committed the crime, would be subject to seizure and forfeiture.

The Act provides that property is not subject to seizure or forfeiture if the owner of the property did not have prior knowledge of, or consent to the commission of, the crime. Under the bill, this would apply if the lack of prior knowledge were not result of the owner's willful blindness (as House Bill 5236 (S-1) would define that term).

The forfeiture of the substituted proceeds of a crime is limited to the value of the proceeds of the crime in addition to the amount by which any restitution or damages owed to the victim of the crime exceeds the value of the proceeds of the crime. Under the bill, the forfeiture of substituted proceeds also would include the amount by which any reasonable expenses of the forfeiture proceedings and sale, including expenses for maintaining custody of the property, as well as advertising and prosecution costs, exceeded the value of the proceeds of the crime.

The Act requires the seizing agency or the Attorney General, prosecuting attorney, or city or township attorney to give notice to specified parties within seven days of seizing or filing a lien notice on personal or real property. The bill would increase this notice period to 28 days.

Under the bill, title to all property subject to forfeiture under the Act would vest in the plaintiff upon commission of the conduct giving rise to forfeiture, together with proceeds of the property after it vested. Any subsequent property transfer that occurred before the final disposition of the forfeiture proceeding would be void against the plaintiff unless the transferee claimed and established all of the following:

- The transferee had an interest of record in the property.
- The transferee purchased the property in good faith and for fair value.
- The property interest was acquired without notice of the forfeiture proceedings or the facts that gave rise to it.

Currently, a person who did not have prior knowledge of, or consent to the commission of, the crime, may move the court to return the property or discharge a lien, and the court must hear the motion within 30 days. The bill would extend this to a transferee described above, and would require the court to hear a motion within 28 days. At the hearing, the Attorney General or prosecuting attorney must establish that there was probable cause to believe that the property is subject to forfeiture, and that the person filing the motion had prior knowledge of, or consented to, the commission of the crime. Under the bill, alternatively, the Attorney General or prosecutor would have to establish that the person filing the motion acquired his or her interest by a transfer that would be void as described above. The bill specifies that prior written notice of illegal use of the property to the interest holder would constitute prima facie evidence of knowledge of the crime.

Personal property seized under the Act must be returned to the owner, or a lien filed against real property or a motor vehicle must be discharged, within seven days after a warrant is not issued against a person for the commission of the crime within seven days after the property is seized or the lien is filed. The bill would increase the latter seven-day period to 28 days. Before the expiration of this 28-day period, the Attorney General, prosecuting attorney, or city or township attorney could petition the court ex parte for an additional period of up to 28 days to complete the investigation and issue charges or return the property. The court would have to grant an extension upon a showing of good cause.

Currently, if property subject to forfeiture has a value of less than \$100,000, the State or the local government seeking forfeiture must give notice of the seizure or the filing of a lien to specified people within seven days after a person is convicted of a crime. Within seven days after receiving the notice, a person claiming an interest in the property may file a claim with the State or local unit expressing his or her interest in it. The bill would increase these seven-day periods to 28 days. The bill also would allow a person to express his or her objection to forfeiture. The objection would have to be written, verified, signed by the claimant, and include a description of the property.

Currently, if property subject to forfeiture has a total value of more than \$100,000, the Attorney General, prosecuting attorney, or city or township attorney must institute a civil action for forfeiture within seven days after a person is convicted of a crime. The bill would extend this to real property and would increase the time for filing an action to 28 days. At the proceeding for forfeiture, the Attorney General, prosecutor, or city or township attorney must prove certain things by a preponderance of the evidence. Under the bill, if a person other than a person convicted of the crime, claimed an ownership or security interest in the property, the plaintiff would have to prove by a preponderance of the evidence that the transfer occurred after the criminal conduct that gave rise to the forfeiture. If the plaintiff carried the burden of proof, the burden would shift to the claimant to prove by a preponderance of the evidence that the transfer was not void.

In addition, if any property included in an order for forfeiture could not be located or had been sold to a bona fide purchaser for value, were placed beyond the jurisdiction of the court, were substantially diminished in value by the defendant's conduct, or were commingled with other property that could not be divided without difficulty or undue injury to innocent people, the bill would allow the court to order forfeiture of any other reachable property of the owner up to the value of the unreachable property. This would apply only against an owner who also was the person convicted of the crime underlying the forfeiture action.

House Bill 5236 (S-1) would amend the definition of "crime" in Chapter 47 of the Revised Judicature Act to include violations of the following sections of the Michigan Penal Code: Section 110a (home invasion in the first, second, or third degree); Section 459 (transporting a female for prostitution); Section 520b (first-degree CSC); Section 520c (second-degree CSC); Section 520d (third-degree CSC); and Section 520g (assault with intent to commit CSC).

Also, in the definition, the bill would cite Chapter 67A of the Penal Code as MCL 750.462a to 750.462h, rather than MCL 750.462a to 750.462j (as House Bill 5234 (H-1) would repeal Section 462j).

In addition, the bill would define "willful blindness" as "the intentional disregard of objective fact that would lead a reasonable person to conclude that the property was derived from unlawful activity or would be used for an unlawful purpose".

House Bill 5237 would amend the Crime Victim's Rights Act to cite Chapter 67A of the Penal Code as MCL 750.462a to 750.462h, rather than MCL 750.462a to 750.462j, in a provision that requires a court, when sentencing a defendant convicted of an offense described in Chapter 67A, to order restitution for the full amount of loss suffered by the victim. This provision also permits the court to order the defendant to pay lost income; the cost of transportation, temporary housing, and child care expenses; and attorney fees.

House Bills 5233 (S-1), 5235 (H-1), 5236 (S-1), and 5237 are tie-barred to House Bill 5234. All of the bills would take effect 90 days after their enactment.

MCL 600.4701 et al. (H.B. 5233)  
750.156 et al. (H.B. 5234)  
777.16w (H.B. 5235)

Legislative Analyst: Jeff Mann

600.4701 (H.B. 5236)  
780.766b (H.B. 5237)

### **FISCAL IMPACT**

House Bill 5233 (S-1) would have no fiscal impact on State or local government.

House Bills 5234 (H-1) and 5235 (H-1) would revise the description of felony violations associated with human trafficking and enhance the associated penalties. For any additional felony sentences for convictions under the bills, in the short term, the marginal cost to State government would be approximately \$4,100 per additional prisoner per year. Over the long term, the marginal cost to State government would be approximately \$31,100 per additional prisoner per year. The revisions and enhancements would increase cost to local courts and police to the extent that these bills resulted in a greater number of violations and increased caseload.

House Bills 5236 (S-1) and 5237 would have no fiscal impact on State or local government.

Date Completed: 10-1-14

Fiscal Analyst: 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.