

Legislative Analysis



HUMAN TRAFFICKING

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5542 as reported without amendment
Sponsor: Rep. Laura Cox

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5543 as reported without amendment
Sponsor: Rep. Gary Howell

House Bill 5544 as reported without amendment
Sponsor: Rep. Nancy E. Jenkins

Committee: Criminal Justice
Complete to 5-12-16

(Public Acts 336-338 of 2016)

SUMMARY:

House Bill 5542 would allow a victim of human trafficking to petition a court to expunge one or more convictions under local ordinances corresponding to the prostitution statutes.

House Bill 5543 would require a court to set aside the juvenile adjudications of a victim of human trafficking for statutory and local ordinance-related prostitution offenses.

House Bill 5544 would extend the Safe Harbor Law to include prosecutions of violations of local ordinances substantially corresponding to the prostitution statutes. The bill would also make a violation of certain Human Trafficking offenses a 15-year felony if the violation resulted in an individual being engaged in commercial sexual activity.

Each bill would take effect 90 days after enactment. A more detailed description follows:

House Bill 5542

House Bill 5542 amends Public Act 213 of 1965, which establishes the criteria for expungement of certain criminal convictions (MCL 780.621). Generally speaking, if a person has one felony conviction and no more than two misdemeanor convictions, the person may petition to set aside (expunge) the felony conviction. A person convicted of no more than two misdemeanor offenses may petition to have one or both of the misdemeanor offenses set aside.

However, Public Act 335 of 2014 amended the expungement act to allow a person 16 years of age or older convicted of certain prostitution-related crimes to have one or more of those convictions set aside if the offense or offenses were committed while the person was a victim of a human trafficking violation and the offense or offenses were committed only because of the person's status as a victim of that human trafficking violation. PA 335 applies to convictions for a violation of Sec. 448 (soliciting, accosting, or enticing prostitution); Sec. 449 (admitting another to a place of prostitution); and/or Sec. 450

(aiding, assisting, or abetting prostitution) of the Michigan Penal Code. If the person proves by a preponderance of the evidence that the conviction was a direct result of being a victim of human trafficking, the court may enter an order setting aside the conviction, if the court determines that the circumstances and behavior of the person warrants setting aside the conviction or convictions and that doing so is consistent with the public welfare.

The bill would allow a person who was a victim of human trafficking to also petition to set aside one or more convictions under a local ordinance that substantially corresponds to a prostitution statute listed above.

"Human trafficking" is currently defined in the act to mean a violation of Chapter LXVIIA, entitled "Human Trafficking," of the Michigan Penal Code.

Further, a person convicted of fourth-degree criminal sexual conduct *after* January 12, 2015, is not eligible to have the conviction set aside. The bill would also exclude a conviction occurring *on* that date from eligibility for expunction.

In addition, the following provisions that currently apply to set-asides of convictions of the prostitution statutes for victims of human trafficking would apply also to set-asides of convictions under substantially corresponding local ordinances:

- An application for expungement could be filed at any time following the date of the conviction.
- The application would have to include, in addition to other information required under PA 213, a statement that the person committed the offense as a direct result of being a victim of a human trafficking violation, together with a statement of the facts supporting that contention.
- Under Section 2 of the act, if the conviction being set aside is for a listed offense under the Sex Offenders Registration Act, only applicants for expungement under the general provisions (not the provision pertaining to victims of human trafficking petitioning to set aside a prostitution-related conviction) would be considered to have been convicted of that offense for purposes of registering under that act. (The three prostitution-related offenses described above do not automatically require a person to register as a sex offender; however, a judge has the discretion to order registration under a "catch-all" provision of the SORA.)

House Bill 5543

The bill amends Chapter XIIA of the Probate Code, known as the Juvenile Code (MCL 712A.18e). Unlike adults or juveniles tried as adults in adult court, who are *convicted* when found guilty of an offense, juveniles tried as juveniles in the Family Division of Circuit Court are found *responsible*, and the process is referred to as an *adjudication*. Currently, a court has discretion to set aside (expunge) certain juvenile adjudications. However, the court is required to set aside an adjudication for joyriding (a violation of Section 413 of the Michigan Penal Code) if the person files an application with the court and otherwise meets the requirements for a set-aside.

House Bill 5543 would also require the court to set aside an adjudication for a violation of Sec. 448 (soliciting, accosting, or enticing prostitution); Sec. 449 (admitting another to a place of prostitution); and/or Sec. 450 (aiding, assisting, or abetting prostitution) of the Michigan Penal Code or a local ordinance substantially corresponding to those offenses. This would only apply if the person committed the offense as a direct result of being a victim of a human trafficking violation.

House Bill 5544

The Safe Harbor Law, part of the 2014 Human Trafficking legislative package, created a presumption that a person under 18 years of age prosecuted for prostitution is a victim of human trafficking, is subject to the temporary protective custody provisions of the juvenile code, and is eligible for services that are provided to dependent minors subjected to abuse and neglect.

House Bill 5544 would amend the Michigan Penal Code to apply the Safe Harbor Law to an offense punishable under a local ordinance that substantially corresponds to Sec. 448 (soliciting, accosting, or enticing prostitution); Sec. 449 (admitting another to a place of prostitution); Sec. 449a(1) (engaging another for prostitution); Sec. 450 (aiding, assisting, or abetting prostitution); and/or Sec. 462 (employs, detains, or allows person under 16 years of age to remain in a house of prostitution). (MCL 750.451 and 750.462f)

The Human Trafficking Act prohibits, among other things, knowingly recruiting, enticing, harboring, transporting, providing, or obtaining an individual for forced labor or services (Sec. 462b); an individual for the purpose of holding the individual in debt bondage (Sec. 462c); and an individual by any means, knowing that the individual will be subjected to forced labor or services or debt bondage (Sec. 462d).

The bill would increase the penalty for a violation that results in an individual being engaged in commercial sexual activity. Currently, a violation is punishable by up to 10 years imprisonment and/or a fine of not more than \$10,000. Under the bill, the penalty would be a felony punishable by imprisonment for not more than 15 years and/or a fine of not more than \$15,000 (the same penalty currently in place for a violation that results in bodily injury to an individual).

FISCAL IMPACT:

HB 5542:

The bill would have no fiscal impact on state government, but would impact local units of government. The fiscal impact would be related to increased caseloads for courts and the additional resources required to process applications for conviction expungement.

HB 5543:

The bill would have no fiscal impact on state government, but would impact local units of government. The fiscal impact would be related to increased caseloads for courts and the additional resources required to process applications for setting aside adjudications.

HB 5544:

The bill could increase costs on the state's correctional system. Information is not available on the number of persons that might be convicted under the provisions of the bill. New felony convictions could result in increased costs related to state prisons and state probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,200 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,600 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

House Bill 5544 could increase costs to the DHHS and to county child care funds by an indeterminate amount. Any amount of additional cost would depend upon whether the bill increases the number of youth that are determined to be a dependent youth in need of services by the courts and, thus, eligible for care and treatment in the juvenile justice system. Since the number of the potential additional youth is unknown, it is not possible to determine the amount of any increase in costs.

BRIEF DISCUSSION OF THE ISSUES:

It has been a little over a year since the provisions of the multi-bill, bi-partisan Human Trafficking package took effect. Already greater awareness of the force, coercion, and fraud used to entice and entrap people into forced labor and the commercial sex trade coupled with changes to criminal statutes have enabled some prosecutions to go forward and victims to get the help they need to rebuild their lives. A recent review of the impacts of the legislation by the Michigan Human Trafficking Commission has led to several new recommendations to further strengthen the law.

Included in those recommendations is the need to expand the ability of adult and youth victims of the commercial sex trade to have prostitution-related offenses under local ordinances expunged from their criminal records. The original legislation allows an unlimited number of prostitution-related offenses to be set aside if the person can demonstrate that he or she was a victim of a human trafficking at the time of the offense. However, the legislation failed to include convictions or juvenile adjudications under local ordinances. Thus, only convictions for a violation of state prostitution-related statutes may be set aside. The bills address this concern.

The bill package also expands the Safe Harbor Law, which creates a rebuttable presumption that a minor who engages in prostitution-related offenses is doing so only under force, fraud, or coercion by a trafficker, so as to include violations of local ordinances. The change in law will enable more minors (those 17 and younger) to be steered into the juvenile justice system rather than the adult system. This will also increase the number of minors able to receive appropriate services offered by the Department of Human Services.

House Bill 5544 would also increase the penalty for trafficking persons into the commercial sex trade. Before the 2014 legislation, this offense carried a maximum of 20 years

imprisonment but the 2014 bill package lowered the maximum to 10 years. The bill would increase the maximum by 5 years to be the same as human trafficking that results in bodily injury to an individual. Many forced into the commercial sex trade experience physical injuries throughout their ordeal, but also experience psychological harm. Thus, it is fitting to increase the maximum term of imprisonment to give prosecutors and judges greater flexibility to fashion a penalty befitting a particular case.

Human trafficking is a complicated crime and the impact on victims and on society as a whole is just beginning to be documented and studied. The fraud, deception, and coercion can take different forms. But the crime does happen. For example, in February of this year three people in Western Michigan pleaded guilty in federal court to charges of sex trafficking of two girls, ages 15 and 16. The primary focus of the bill package is on the impact to victims, who often need years to even comprehend their own victimization. When they are ready, the bills will enable them to expunge criminal records related to prostitution from when they were under the control and influence of traffickers. This will enable more to move forward with their lives, regain self-esteem and self-sufficiency, find employment and housing, go to school, and be productive members of society once again.

POSITIONS:

A representative of the Michigan State Council of Junior Leagues testified in support of the bills. (4-26-16)

The Genesee County Prosecuting Attorney testified in support of the bills. (4-26-16)

A representative of the Office of Attorney General testified in support of the bills. (4-26-16)

The Criminal Defense Attorneys of Michigan indicated support for the bills. (4-26-16)

The Michigan State University Anti-Trafficking Legal Advocacy Society indicated support for the bills. (4-26-16)

The Michigan Catholic Conference indicated support for the bills. (4-26- & 5-3-16)

The Michigan Coalition to End Domestic & Sexual Violence indicated support for the bills. (5-3-16)

The Michigan Domestic & Sexual Violence Prevention and Treatment Board indicated support for the bills. (5-3-16)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.