

HOUSE BILL No. 5544

April 12, 2016, Introduced by Rep. Jenkins and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 451 and 462f (MCL 750.451 and 750.462f), section 451 as amended by 2014 PA 336 and section 462f as amended by 2014 PA 329.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 451. (1) Except as otherwise provided in this section, a
2 person convicted of violating section 448, 449, 449a(1), 450, or
3 462 is guilty of a misdemeanor punishable by imprisonment for not
4 more than 93 days or a fine of not more than \$500.00, or both.

5 (2) A person 16 years of age or older who is convicted of
6 violating section 448, 449, 449a(1), 450, or 462 and who has 1
7 prior conviction is guilty of a misdemeanor punishable by

1 imprisonment for not more than 1 year or a fine of not more than
2 \$1,000.00, or both.

3 (3) A person convicted of violating section 448, 449, 449a(1),
4 450, or 462 and who has 2 or more prior convictions is guilty of a
5 felony punishable by imprisonment for not more than 2 years or a
6 fine of not more than \$2,000.00, or both.

7 (4) A person convicted of violating section 449a(2) is guilty
8 of a felony punishable by imprisonment for not more than 5 years or
9 a fine of not more than \$10,000.00, or both.

10 (5) If the prosecuting attorney intends to seek an enhanced
11 sentence based upon the defendant having 1 or more prior
12 convictions, the prosecuting attorney shall include on the
13 complaint and information a statement listing the prior conviction
14 or convictions. The existence of the defendant's prior conviction
15 or convictions shall be determined by the court, without a jury, at
16 sentencing or at a separate hearing for that purpose before
17 sentencing. The existence of a prior conviction may be established
18 by any evidence relevant for that purpose, including, but not
19 limited to, 1 or more of the following:

20 (a) A copy of the judgment of conviction.

21 (b) A transcript of a prior trial, plea-taking, or sentencing.

22 (c) Information contained in a presentence report.

23 (d) The defendant's statement.

24 (6) In any prosecution of a person under 18 years of age for
25 an offense punishable under this section **OR A LOCAL ORDINANCE**
26 **SUBSTANTIALLY CORRESPONDING TO AN OFFENSE PUNISHABLE UNDER THIS**
27 **SECTION**, it shall be presumed that the person under 18 years of age

1 was coerced into child sexually abusive activity or commercial
2 sexual activity in violation of section 462e or otherwise forced or
3 coerced into committing that offense by another person engaged in
4 human trafficking in violation of sections 462a to 462h. The
5 prosecution may overcome this presumption by proving beyond a
6 reasonable doubt that the person was not forced or coerced into
7 committing the offense. The state may petition the court to find
8 the person under 18 years of age to be dependent and in danger of
9 substantial physical or psychological harm under section 2(b)(3) of
10 chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.
11 A person under 18 years of age who fails to substantially comply
12 with court-ordered services under section 2(b)(3) of chapter XIIA
13 of the probate code of 1939, 1939 PA 288, MCL 712A.2, is not
14 eligible for the presumption under this section.

15 (7) Excluding any reasonable period of detention for
16 investigation purposes, a law enforcement officer who encounters a
17 person under 18 years of age engaging in any conduct that would be
18 a violation of section 448, 449, 450, or 462, or a local ordinance
19 substantially corresponding to section 448, 449, 450, or 462, if
20 engaged in by a person 16 years of age or over shall immediately
21 report to the department of **HEALTH AND** human services a suspected
22 violation of human trafficking involving a person under 18 years of
23 age in violation of sections 462a to 462h.

24 (8) The department of **HEALTH AND** human services shall begin an
25 investigation of a human trafficking violation reported to the
26 department of **HEALTH AND** human services under subsection (7) within
27 24 hours after the report is made to the department of **HEALTH AND**

1 human services, as provided in section 8 of the child protection
2 law, 1975 PA 238, MCL 722.628. The investigation shall include a
3 determination as to whether the person under 18 years of age is
4 dependent and in danger of substantial physical or psychological
5 harm under section 2(b)(3) of chapter XIIIA of the probate code of
6 1939, 1939 PA 288, MCL 712A.2.

7 (9) As used in this section, "prior conviction" means a
8 violation of section 448, 449, 449a(1), 450, or 462 or a violation
9 of a law of another state or of a political subdivision of this
10 state or another state substantially corresponding to section 448,
11 449, 449a(1), 450, or 462.

12 Sec. 462f. (1) Except as otherwise provided in this section, a
13 person who violates section 462b, 462c, or 462d is guilty of a
14 crime as follows:

15 (a) Except as provided in subdivisions (b), (c), and (d), the
16 person is guilty of a felony punishable by imprisonment for not
17 more than 10 years or a fine of not more than \$10,000.00, or both.

18 (b) If the violation results in bodily injury to an individual
19 **OR RESULTS IN AN INDIVIDUAL BEING ENGAGED IN COMMERCIAL SEXUAL**
20 **ACTIVITY**, the person is guilty of a felony punishable by
21 imprisonment for not more than 15 years or a fine of not more than
22 \$15,000.00, or both.

23 (c) If the violation results in serious bodily injury to an
24 individual, the person is guilty of a felony punishable by
25 imprisonment for not more than 20 years or a fine of not more than
26 \$20,000.00, or both.

27 (d) If the violation involves kidnapping or attempted

1 kidnapping, criminal sexual conduct in the first degree or
2 attempted criminal sexual conduct in the first degree, or an
3 attempt to kill or the death of an individual, the person is guilty
4 of a felony punishable by imprisonment for life or any term of
5 years or a fine of not more than \$50,000.00, or both.

6 (2) Except as otherwise provided in this section, a person who
7 violates section 462e is guilty of a felony punishable by
8 imprisonment for not more than 20 years or a fine of not more than
9 \$20,000.00, or both.

10 (3) A person who attempts, conspires, or solicits another to
11 violate this chapter is subject to the same penalty as a person who
12 commits a violation of this chapter.

13 (4) This section does not prohibit a person from being charged
14 with, convicted of, or punished for any other violation of law
15 arising out of the same transaction as the violation of this
16 section.

17 (5) The court may order a term of imprisonment imposed for
18 violating this section to be served consecutively to a term of
19 imprisonment imposed for the commission of any other crime,
20 including any other violation of law arising out of the same
21 transaction as the violation of this section.

22 (6) In addition to any mandatory restitution applicable under
23 section 16 of the William Van Regenmorter crime victim's rights
24 act, 1985 PA 87, MCL 780.766, the court may order a person
25 convicted of violating this section to pay restitution to the
26 victim in the manner provided in section 16b of the William Van
27 Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.766b,

1 and to reimburse any governmental entity for its expenses incurred
2 in relation to the violation in the same manner that expenses may
3 be ordered to be reimbursed under section 1f of chapter IX of the
4 code of criminal procedure, 1927 PA 175, MCL 769.1f.

5 Enacting section 1. This amendatory act takes effect 90 days
6 after the date it is enacted into law.