

Act No. 338
Public Acts of 2016
Approved by the Governor
December 14, 2016
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016**

Introduced by Rep. Jenkins

ENROLLED HOUSE BILL No. 5544

AN ACT to amend 1931 PA 328, entitled “An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at criminal trials; to provide for liability for damages; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act,” 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:

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

(2) A person 16 years of age or older who is convicted of violating section 448, 449, 449a(1), 450, or 462 and who has 1 prior conviction is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

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

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

(5) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall 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, 1 or more of the following:

(a) A copy of the judgment of conviction.

- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

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

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

(8) The department of health and human services shall begin an investigation of a human trafficking violation reported to the department of health and human services under subsection (7) within 24 hours after the report is made to the department of health and human services, as provided in section 8 of the child protection law, 1975 PA 238, MCL 722.628. The investigation shall include a determination as to whether the person under 18 years of age is dependent and in danger of substantial physical or psychological harm under section 2(b)(3) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

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

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

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

(b) If the violation results in bodily injury to an individual or results in an individual being engaged in commercial sexual activity, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$15,000.00, or both.

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

(d) If the violation involves kidnapping or attempted kidnapping, criminal sexual conduct in the first degree or attempted criminal sexual conduct in the first degree, or an attempt to kill or the death of an individual, the person is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than \$50,000.00, or both.

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

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

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

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

(6) In addition to any mandatory restitution applicable under section 16 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.766, the court may order a person convicted of violating this section to pay restitution to the victim in the manner provided in section 16b of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.766b, and to reimburse any governmental entity for its expenses incurred in relation to the violation in the same manner that expenses may be ordered to be reimbursed under section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor