

# HOUSE BILL NO. 5637

March 12, 2020, Introduced by Reps. Rendon, Kahle, Wendzel, Calley, Bollin, Glenn, Afendoulis, Whiteford, Bellino, Filler, Leutheuser, Allor, Farrington, Whitsett, Hammoud, Yaroach, Crawford, Alexander and Cambensy and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 451 (MCL 750.451), as amended by 2016 PA 338.

## 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.



1 (2) A person 16 years of age or older who is convicted of  
2 violating section 448, 449, 449a(1), 450, or 462 and who has 1  
3 prior conviction is guilty of a misdemeanor punishable by  
4 imprisonment for not more than 1 year or a fine of not more than  
5 \$1,000.00, or both.

6 (3) A person convicted of violating section 448, 449, 449a(1),  
7 450, or 462 and who has 2 or more prior convictions is guilty of a  
8 felony punishable by imprisonment for not more than 2 years or a  
9 fine of not more than \$2,000.00, or both.

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

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

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

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

25 (c) Information contained in a presentence report.

26 (d) The defendant's statement.

27 (6) In any prosecution of a person under 18 years of age for  
28 an offense punishable under this section or a local ordinance  
29 substantially corresponding to an offense punishable under this



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

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

26 (8) The department of health and human services shall begin an  
27 investigation of a human trafficking violation reported to the  
28 department of health and human services under subsection (7) within  
29 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~~**must** include  
3 a 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 Enacting section 1. This amendatory act takes effect 90 days  
13 after the date it is enacted into law.

