

HOUSE BILL NO. 4215

February 11, 2021, Introduced by Reps. Mueller and LaGrand 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 **for obtaining the**
3 **services of a prostitute**, 449, 449a(1), 450, or 462 is guilty of a
4 misdemeanor punishable by imprisonment for not more than 93 days or
5 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 **for obtaining the services of a prostitute,**
3 449, 449a(1), 450, or 462 and who has 1 prior conviction is guilty
4 of a misdemeanor punishable by imprisonment for not more than 1
5 year or a fine of not more than \$1,000.00, or both.

6 (3) A person convicted of violating section 448 **for obtaining**
7 **the services of a prostitute,** 449, 449a(1), 450, or 462 and who has
8 2 or more prior convictions is guilty of a felony punishable by
9 imprisonment for not more than 2 years or a fine of not more than
10 \$2,000.00, or both.

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

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

- 24 (a) A copy of the judgment of conviction.
25 (b) A transcript of a prior trial, plea-taking, or sentencing.
26 (c) Information contained in a presentence report.
27 (d) The defendant's statement.

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

1 substantially corresponding to an offense punishable under this
2 section, it ~~shall~~**must** be presumed that the person under 18 years
3 of age was coerced into child sexually abusive activity or
4 commercial sexual activity in violation of section 462e or
5 otherwise forced or coerced into committing that offense by another
6 person engaged in human trafficking in violation of sections 462a
7 to 462h. The prosecution may overcome this presumption by proving
8 beyond a reasonable doubt that the person was not forced or coerced
9 into committing the offense. The state may petition the court to
10 find the person under 18 years of age to be dependent and in danger
11 of substantial physical or psychological harm under section 2(b)(3)
12 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL
13 712A.2. A person under 18 years of age who fails to substantially
14 comply with court-ordered services under section 2(b)(3) of chapter
15 XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is not
16 eligible for the presumption under this 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) Except as otherwise provided in this section, a person**
8 **convicted of violating section 448 for engaging in prostitution is**
9 **guilty of a misdemeanor punishable by a fine of not more than**
10 **\$50.00.**

11 **(10) A person 16 years of age or older who is convicted of**
12 **violating section 448 for engaging in prostitution and who has 1**
13 **prior conviction under section 448 for engaging in prostitution is**
14 **guilty of a misdemeanor punishable by imprisonment for not more**
15 **than 93 days or a fine of not more than \$250.00, or both.**

16 **(11) A person convicted of violating section 448 for engaging**
17 **in prostitution and who has 2 or more prior convictions under**
18 **section 448 for engaging in prostitution is guilty of a misdemeanor**
19 **punishable by imprisonment for not more than 1 year or a fine of**
20 **not more than \$500.00, or both.**

21 **(12) If the court imposes a sentence of probation for a**
22 **violation of section 448 for obtaining the services of a**
23 **prostitute, the court may require the person to complete sex**
24 **addiction therapy as a condition of his or her sentence of**
25 **probation.**

26 **(13) For a violation of section 448 for engaging in**
27 **prostitution, the court may evaluate whether the person is**
28 **appropriate for placement in and eligible to participate in either**
29 **a drug court under chapter 10A of the revised judicature act of**

1 1961, 1961 PA 236, MCL 600.1060 to 600.1088, or a mental health
2 court under chapter 10B of the revised judicature act of 1961, 1961
3 PA 236, MCL 600.1090 to 600.1099a.

4 (14) ~~(9)~~—As used in this section, "prior conviction" means a
5 violation of section 448, 449, 449a(1), 450, or 462 or a violation
6 of a law of another state or of a political subdivision of this
7 state or another state substantially corresponding to section 448,
8 449, 449a(1), 450, or 462.

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