House
Legislative
Analysis
Section

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PROHIBIT SALE OR PURCHASE OF PEOPLE

House Bill 5568 (Substitute H-2)
House Bill 5569 (Substitute H-2)
First Analysis (4-19-00)

Sponsor: Rep. Janet Kukuk
Committee: Criminal Law and Corrections

THE APPARENT PROBLEM:

On March 15, 2000, in Clinton Township, a man was arrested for attempting to sell his 10-month-old daughter for $10,000 (with another $50,000 to be paid later). Although he was arrested and charged with child abandonment, those charges were later dismissed because the father's actions did not meet the criteria necessary to prove that crime. In fact, it appears that the only crime that he can likely be charged with is violation of the state's adoption laws. To the surprise of many, in spite of the man's alleged intent to sell his child, there appears to be no specific law prohibiting or providing punishment for such an action. Many people believe that this is an oversight that needs to be corrected, and legislation has been introduced to clearly and specifically prohibit and punish the sale or purchase of another person.

THE CONTENT OF THE BILLS:

House Bill 5568 would amend the Michigan Penal Code (MCL 750.136c) to add a section of law to prohibit the sale or purchase of any person, regardless of the individual's age or relationship to the seller or purchaser. More specifically, it would be a felony to transfer or attempt to transfer legal or physical custody of an individual to another person for money or other valuable consideration, except as otherwise permitted by law. It would also be illegal to acquire or attempt to acquire legal or physical custody of an individual by payment of money or other valuable consideration, except as otherwise provided by law. Violation of the bill's provisions would be punishable by imprisonment for up to 20 years, a fine of up to $100,000, or both.

House Bill 5569 would amend the Code of Criminal Procedure's (MCL 777.16g) statutory sentencing guidelines to include the buying or selling of an individual. The crime would be a class B crime against a person with a 20-year statutory maximum. The bill would not take effect unless House Bill 5568 were also enacted.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, to the extent that the bills would increase felony convictions or lengths of stay, they could increase state or local costs of incarceration. In addition, to the extent that House Bill 5568 led to increased collection of penal fines, it could increase fine revenues going to local libraries. (4-18-00)

ARGUMENTS:

For:

The bill is a response to what is clearly a loophole in current law. While both the state and federal constitutions prohibit slavery and involuntary servitude, there is no law which prohibits or provides a penalty for the sale or purchase of another person. According to testimony before the Criminal Law and Correction Committee, prosecutors have been unable to prosecute the man who was arrested for attempting to sell his daughter because there is no law that specifically prohibits his actions. At present, the most that he could be charged with is a 90-day misdemeanor for violation of the state's adoption laws. Clearly, a 90-day sentence is woefully insufficient for a crime of this nature. It is unbelievable that current law doesn't bar the purchase or sale of human beings. The bills will fix this obvious loophole, quickly and clearly prohibiting and punishing the sale or purchase of people so that no one else will either be tempted to commit or escape punishment for such a crime.

Against:

The bills could interfere with some exchanges of custody involving money or other consideration that are not generally viewed as objectionable. For example, babysitting and day care involve instances where the physical custody of a child is transferred (albeit temporarily) for money. Another instance could occur when an individual is drafted into the armed services; the armed services takes non-voluntary

physical custody of an individual, in return for which he or she receives a salary.

Response:

House Bill 5568's provisions apply only to situations where the transfer of legal or physical custody is not otherwise permitted by law. In the case of adoptions, foster parenting, and many other situations, there are specific laws detailing the allowable payments for these transfers of custody. Payments that are outside of those laws would not be "permitted" and would likely violate the bill's prohibitions. The same would presumably be true of the military draft, since, if the draft were reinstated it would likely be under the authority of federal law. Day care situations, which are subject to both state and federal regulation, would also likely fall under the "otherwise permitted by law" exception. However, if the day-care provider was in violation of these regulations or if the number of children involved was insufficient to meet the minimum criteria to fall within the scope of these regulations those participating in such a transfer could conceivably be subject to prosecution under the bills. In addition, unregulated babysitting situations could also be seen as violating the bill's provisions. However, it is extremely unlikely that such a case would ever be brought forward or that any prosecutor would wish to attempt to prosecute either the parents or the babysitter in such a case.

POSITIONS:

Planned Parenthood Affiliates of Michigan supports the bills. (4-18-00)

The Prosecuting Attorneys Association of Michigan supports the bills. (4-18-00)

The Family Independence Agency supports the bills. (4-18-00)

The Michigan Catholic Conference supports the bills. (4-18-00)

Analyst: W. Flory

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