

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 1199 (Substitute S-1 as passed by the Senate)
House Bill 5568 (as enrolled)
Sponsor: Senator Ken DeBeaussiaert (Senate Bill 1199)
Representative Janet Kukuk (House Bill 5568)
Senate Committee: Judiciary
House Committee: Criminal Law and Corrections

PUBLIC ACT 205 of 2000

Date Completed: 8-4-00

RATIONALE

In March 2000, in Clinton Township in Macomb County, a man was arrested for attempting to sell his 10-month-old daughter for \$60,000 to undercover police officers posing as a childless couple. Although the man was arrested and charged with child abandonment, those charges later were dismissed because the prosecutor could not prove that he abandoned his daughter with the intent of harming her. In fact, it appeared that the only crime that he could be charged with was violating the State's adoption laws. To the surprise of many, in spite of the man's alleged intent to sell his child, there appeared to be no specific law prohibiting or providing punishment for that action. Many people believe that the sale or purchase of another individual should be specifically outlawed under State law.

CONTENT

Senate Bill 1199 (S-1) would amend the Code of Criminal Procedure to add to the sentencing guidelines the felony of buying or selling an individual, which was added to the Michigan Penal Code by House Bill 5568. The offense would be categorized as a Class B felony against a person, with a statutory maximum sentence of 20 years' imprisonment. The bill includes an effective date of September 1, 2000, and is tie-barred to House Bill 5568.

House Bill 5568 amended the Michigan Penal Code to prohibit a person from transferring or attempting to transfer the legal or physical custody of an individual to another person for money or other valuable consideration, except as otherwise permitted by law. A person also may not acquire or attempt to acquire the legal or physical custody of an individual for payment of money or other valuable consideration to another person, except as otherwise permitted by law. A violation of the bill is a felony, punishable by

up to 20 years' imprisonment, a maximum fine of \$100,000, or both.

The bill will take effect on September 1, 2000.
MCL 777.16g (S.B. 1199)
750.136c (H.B. 5568)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills are a response to what has clearly been a loophole in the law. While both the State and Federal Constitutions prohibit slavery and involuntary servitude, there has been no State statute that prohibits or provides a penalty for the sale or purchase of another person; and the Federal antislavery laws reportedly have been interpreted to apply only when connected to labor. According to media reports, prosecutors have been unable to prosecute the man who was arrested for attempting to sell his daughter because there was no law that specifically prohibited his actions. Apparently, the most that he could be charged with was a 90-day misdemeanor for violation of the State's adoption laws. A 90-day sentence is woefully inadequate for a crime of this nature. The bills will correct this obvious loophole, by clearly prohibiting and punishing the sale or purchase of people so that no one else can escape punishment for such a crime.

Furthermore, because House Bill 5568 applies only to situations in which the transfer of legal or physical custody is not otherwise permitted by law, it will not interfere with legitimate exchanges of custody involving money or other consideration, such as day care or foster parenting.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 1199 (S-1) and House Bill 5568 would have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many people could be convicted of buying or selling another individual. The minimum sentencing range for a Class B felony is between 0-18 months and 117-160 months. Assuming that two people a year were convicted of this offense and were sentenced to and served a minimum term of 160 months, given an average annual cost of incarceration of \$22,000, the annual cost of incarceration would be \$587,000.

Fiscal Analyst: K. Firestone

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.