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Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**SFA**

BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

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House Bill 4325 (Substitute H-2 as passed by the House)  
House Bill 5033 (Substitute H-2 as passed by the House)  
House Bill 5449 (Substitute H-3 as passed by the House)  
Sponsor: Representative Clark Bisbee (House Bill 4325)  
Representative Mike Kowall (House Bill 5033)  
Representative Judson Gilbert II (House Bill 5449)  
House Committee: Criminal Justice  
Senate Committee: Judiciary

Date Completed: 2-6-02

### **CONTENT**

**House Bill 4325 (H-2) would amend the Michigan Penal Code to do all of the following:**

- Increase the maximum sentence for certain prostitution-related misdemeanors.**
- Include as prior convictions, for the purpose of enhanced penalties for repeat violations of prostitution-related offenses, violations of a law of another state or of a political subdivision of this State or another state substantially corresponding to violations in Michigan law.**
- Reduce from 17 years to 16 years the age at which certain prostitution-related violations apply to offenders.**

**House Bill 5033 (H-2) would amend the Code of Criminal Procedure to add a sentencing guidelines designation for accosting, enticing, or soliciting a child to commit an immoral act, and to revise the sentencing guidelines designation for a subsequent offense of accosting children for immoral purposes.**

**House Bill 5449 (H-3) would amend the Michigan Penal Code to do all of the following:**

- Increase the penalty for a second or subsequent conviction of soliciting or accosting a child for immoral purposes.**
- Reduce from 17 years to 16 years the age at which certain prostitution-related violations apply to offenders.**
- Extend to males a current prohibition against employing or allowing females under 18 in a house of prostitution, and reduce that age to under 17.**

All three bills would take effect on March 1, 2002. House Bill 4325 (H-2) is tie-barred to House Bill 5449. House Bill 5033 (H-2) is tie-barred to House Bill 5032. (House Bill 5032, as passed by the House, would amend the Penal Code to increase the penalty for accosting, enticing, or soliciting a child for immoral purposes and specify that the violation would apply regardless of whether the offender knew that the individual was a child or knew the actual age of the child.)

### **House Bill 4325 (H-2)**

### Increased Misdemeanor Penalty

Soliciting and accosting to commit prostitution or an immoral act, admitting a person to a place for purposes of prostitution, engaging services for purposes of prostitution, lewdness, or assignation, and aiding and abetting another to solicit for prostitution or to admit a person to a place for purposes of prostitution, are misdemeanors punishable by up to 90 days' imprisonment, a maximum fine of \$100, or both. Under the bill, the maximum term of imprisonment for those violations would be 93 days. (These offenses are referred to below as "prostitution-related" offenses.)

The bill also would extend that penalty to the offense of taking a minor (a female younger than 18, or, under House Bill 5449 (H-3), a male or female under 17) to a house of prostitution or employing, detaining, or allowing a minor in a house of prostitution. Currently, this offense is a misdemeanor without a specified penalty (which makes it subject to imprisonment for up to 90 days and/or a maximum fine of \$100).

### Prior Convictions

A second prostitution-related offense is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$500, and a third or subsequent offense is a felony punishable by up to two years' imprisonment. Under the bill, the current penalty for a second offense would apply if an offender had a "prior conviction", and the current penalty for a third or subsequent offense would apply if the offender had two or more prior convictions. "Prior conviction" would mean a prostitution-related offense (or a violation involving taking a minor to, or employing, detaining, or allowing a minor in, a house of prostitution) or a violation of law of another state or of a political subdivision of this State or another state substantially corresponding to the violations of Michigan law.

The bill also would extend these enhanced penalties to offenses involving taking a minor to, or employing, detaining, or allowing a minor in, a house of prostitution. Currently, the Code does not prescribe enhanced penalties for repeat convictions of this offense.

If a prosecuting attorney intended to seek an enhanced sentence based on the defendant's having one or more prior convictions, the prosecutor would have to include on the complaint and information a statement listing the prior conviction or convictions. The existence of a prior conviction would have to 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 could be established by any evidence relevant for that purpose, including a copy of the judgment of conviction; a transcript of a prior trial, plea-taking, or sentencing; information contained in a presentence report; or the defendant's statement.

### Age Reduction

Under the Code, the enhanced penalties for subsequent violations apply to a person 17 years of age or older who is convicted of one of the prostitution-related offenses and has a prior conviction or convictions. Under the bill, those penalties would apply to a person 16 years of age or older.

### **House Bill 5033 (H-2)**

The bill would add to the sentencing guidelines soliciting a child to commit an immoral act (MCL 750.145a). The offense would be designated a Class F felony against a person, with a statutory maximum sentence of four years' imprisonment. (Currently, that violation is a misdemeanor

punishable by up to one year's imprisonment. House Bill 5032 (H-2), as passed by the House, would make the offense a felony punishable by up to four years' imprisonment and/or a maximum fine of \$2,000.)

In addition, the bill would revise the sentencing guidelines designation for a second offense of accosting children for immoral purposes (MCL 750.145b). Currently, that violation is a Class F felony against a person, with a statutory maximum sentence of four years' imprisonment. Under the bill, it would be a Class D felony against a person, with a statutory maximum sentence of 10 years' imprisonment, as proposed by House Bill 5449 (H-3).

### **House Bill 5449 (H-3)**

#### **Increased Penalty**

Under the Michigan Penal Code, a person convicted of accosting, enticing, or soliciting a child for immoral purposes a second or subsequent time is guilty of a felony with no specified penalty (which makes it subject to imprisonment for up to four years and/or a maximum fine of \$2,000). Under the bill, that penalty would be up to 10 years' imprisonment and/or a maximum fine of \$10,000.

If a prosecuting attorney intended to seek an enhanced sentence based on the defendant's having one or more prior convictions, the prosecutor would have to include on the complaint and information a statement listing the prior conviction or convictions. The existence of a prior conviction would have to 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 could be established by any evidence relevant for that purpose, including a copy of the judgment of conviction; a transcript of a prior trial, plea-taking, or sentencing; information contained in a presentence report; or the defendant's statement.

#### **Age Reduction/Gender Inclusion**

Currently, the following offenses apply when the offender is 17 years of age or older:

- Accosting, soliciting, or inviting another person in a public place, or in or from a building or vehicle, to commit prostitution or to do any other lewd or immoral act.
- Receiving, admitting, or offering to receive or admit a person into a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation or knowingly permitting a person to remain in a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation.
- Aiding, assisting, or abetting another person to commit either of the offenses listed above.

Under the bill, those crimes would apply to an offender who was 16 years of age or older.

The Code also prohibits a person from taking or conveying to, or employing, receiving, detaining, or allowing in a house of prostitution, house of ill-fame, bawdy-house, house of assignation, or any house or place for the resort of prostitutes or other disorderly people, a female who is 17 or younger. Under the bill, that violation would apply to any person 16 years of age or less.

MCL 750.451 (H.B. 4325)  
777.16g (H.B. 5033)  
750.145b et al. (H.B. 5449)

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bills would have an indeterminate impact on State and local government.

There are currently no statewide data to indicate how many offenders a year are convicted of prostitution-related misdemeanors. According to the Department of Corrections 1999 Statistical Report, 58 offenders were convicted of prostitution-related felonies. By extending the maximum term of imprisonment for a first offense from 90 to 93 days, the bills would increase incarceration costs of local units, which vary by county from \$27 to \$65 per day. Also, to the extent that they would increase the pool of possible offenders by lowering the age threshold for prosecution from 17 to 16, the bills could potentially increase criminal justice costs. In addition, the bills would increase costs by allowing previous convictions from other local jurisdictions and states to be used to determine whether someone is a repeat offender. This would likely increase the number of offenders receiving longer sentences due to prior convictions. Each third-time offender convicted under these provisions would receive up to one additional year's imprisonment and would be subject to time in a State prison rather than a local jail, at an average annual State cost of \$25,000 per year.

According to the Department of Corrections Statistical Report, no offenders were convicted of or serving time for accosting or soliciting children for immoral purposes in 1999. Under the bills (including House Bill 5032), the longest minimum sentence an offender could receive for a first offense would increase from one year to 30 months. A first-time offender also would be eligible for incarceration in a State prison rather than a county jail. The longest minimum sentence an offender could receive for a subsequent offense would increase from 30 months to 76 months. The State would incur the cost of probation, estimated to be \$4.38 per day, as well as the cost of incarceration at an average annual cost of \$25,000. Nevertheless, if past years are representative of the future, this bill would not create increased State incarceration costs.

Fiscal Analyst: Bethany Wicksall