



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

House Bills 5575 and 5576 (as passed by the House) House Bill 5577 (Substitute H-1 as passed by the House) House Bill 5578 (Substitute H-1 as passed by the House)

House Bill 5579 (as passed by the House)

Sponsor: Representative Dudley Spade (H.B. 5575)

Representative Richard LeBlanc (H.B. 5576) Representative Vicki Barnett (H.B. 5577) Representative Shanelle Jackson (H.B. 5578) Representative Lee Gonzales (H.B. 5579)

House Committee: Judiciary Senate Committee: Judiciary

Date Completed: 3-23-10

## **CONTENT**

<u>House Bill 5575</u> would amend Chapter 67A (Human Trafficking) of the Michigan Penal Code to prohibit a person from knowingly providing or obtaining the labor or services of another person by force, fraud, or coercion; or knowingly recruiting, harboring, transporting, providing, or obtaining a person for labor or services in order to hold him or her in involuntary servitude or debt bondage.

<u>House Bill 5576</u> would amend the sentencing guidelines in the Code of Criminal Procedure to include the offenses proposed by House Bill 5575.

<u>House Bill 5577 (H-1)</u> would amend the Michigan Penal Code to include a violation of Chapter 67A as a racketeering offense.

<u>House Bill 5578 (H-1)</u> would amend the Revised Judicature Act to include human trafficking and terrorism offenses among the crimes for which property is subject to seizure and forfeiture.

House Bill 5579 would amend the Crime Victim's Rights Act to require a court to order restitution when sentencing a person for a human trafficking offense.

All of the bills are tie-barred to each other.

# **House Bill 5575**

Chapter 67A of the Michigan Penal Code establishes penalties for various offenses involving forced labor, including the use of a minor for child sexually abusive activity.

The bill also would prohibit a person from knowingly doing either of the following:

Page 1 of 4 hb5575-5579/0910

- -- Providing or obtaining the labor or services of another person by force, fraud, or coercion.
- -- Recruiting, harboring, transporting, providing, or obtaining a person for labor or services for the purpose of holding him or her in involuntary servitude or debt bondage.

Each offense would be a felony and, except as described below, would be punishable by imprisonment for up to 10 years, a maximum fine of \$10,000, or both.

If the violation involved the forced labor or trafficking of a minor (an individual less than 18 years old), a commercial sex act, or serious physical harm to any person, the penalty would be imprisonment for up to 20 years, a maximum fine of \$20,000, or both.

If the violation involved the death of any person, the penalty would be imprisonment for life or any term of years, a maximum fine of \$50,000, or both.

The court would have to order the offender to pay restitution to the victim in the manner provided in the Crime Victim's Rights Act (under House Bill 5579), and to reimburse any governmental entity for its expenses incurred as a result of the violation, as provided in a section of the Code of Criminal Procedure. (Under MCL 769.1f, a court may order a person to reimburse the State or a local unit for expenses incurred in relation to an offense. The expenses may include salaries, wages, and other compensation of law enforcement, fire department, emergency medical service, and prosecution personnel; the cost of medical supplies; and the cost of extradition.)

The court could order a prison term imposed under the bill to be served consecutively to a term imposed for the commission of any other crime, including any other violation of law arising out of the same transaction.

"Involuntary servitude" would include a state of providing labor or services entered into or maintained by means of fraud, force, or coercion. "Debt bondage" would include the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or services of a person under his or her control as a security for a debt, if the value of the services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of the services are not respectively limited and defined.

"Force" would include physical violence or actual physical restraint or confinement, but injury would not be required. "Fraud" would include a false or deceptive offer of employment or marriage.

"Coercion" would include any of the following:

- -- A threat to harm or physically restrain any person.
- -- The creation of any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in harm to or physical restraint against any person.
- -- The confiscation of documents without regard to whether they are fraudulent or fraudulently obtained.
- -- The abuse or threatened abuse of the legal system, including threats of arrest or deportation without regard to whether the person being threatened is subject to arrest or deportation under State or Federal laws.

"Serious physical harm" would mean any physical harm that seriously impairs a person's health or physical well-being.

"Commercial sex act" would mean any of the following:

Page 2 of 4 hb5575-5579/0910

- -- Any act of sexual penetration or sexual contact for which anything of value is given to, or is received by, any person.
- -- Any sexually explicit performance for which anything of value is given to, or received by, any person.
- -- A violation of Section 145c(2) or (3) involving any child sexually abusive activity or material.

(The bill refers to sexual penetration or sexual contact as defined in Section 520a of the Penal Code, which defines terms used in criminal sexual conduct prohibitions. The bill refers to a sexually explicit performance as defined in Public Act 33 of 1978, which prohibits disseminating, exhibiting, or displaying sexually explicit material to minors. Section 145c(2) of the Code prescribes a penalty for causing, inducing, or coercing a child to engage in child sexually abusive activity for the purpose of producing child sexually abusive material. Section 145c(3) prescribes a penalty for distributing or promoting such activity or material.)

#### **House Bill 5576**

The bill would include the felonies proposed by House Bill 5575 in the sentencing guidelines. Each offense would be categorized as a felony against a person.

If a violation did not involve a minor, a commercial sex act, serious physical harm, or death, it would be a Class D felony with a statutory maximum sentence of 10 years.

If a violation involved a minor, a commercial sex act, or serious physical harm, it would be a Class B felony with a statutory maximum of 20 years.

A violation that resulted in death would be a Class A felony with a statutory maximum of life.

#### House Bill 5577 (H-1)

The Michigan Penal Code prohibits a person from engaging in certain activities through a "pattern of racketeering activity" (at least two incidents of racketeering that have interrelated characteristics and amount to or pose a threat of continuing criminal activity). "Racketeering" means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain, involving any of the violations specified in the Code. The bill would include a violation of Chapter 67A.

# House Bill 5578 (H-1)

Under Chapter 47 of the Revised Judicature Act, property that is the proceeds or instrumentality of a crime is subject to seizure by, and forfeiture to, a local unit of government or the State. The bill would amend the definition of "crime" to include a violation of Chapter 67A or Chapter 83-A of the Michigan Penal Code. (Chapter 83-A is titled the "Michigan Anti-Terrorism Act".)

#### **House Bill 5579**

Section 16 of the Crime Victim's Rights Act requires a sentencing court to order restitution to a victim or a victim's estate. Restitution may include reimbursement for lost or damaged property; payment for medical services and devices, physical or psychological care or therapy, homemaking and child-care expenses, and funeral expenses; and reimbursement for lost income.

Page 3 of 4 hb5575-5579/0910

The bill would require the court, when sentencing a defendant convicted of an offense described in Chapter 67A of the Penal Code, to order restitution for the full amount of loss suffered by the victim. In addition to restitution ordered under Section 16, the court could order the defendant to pay all of the following:

- -- Lost income, calculated by the method that would result in the largest amount (based on three methods described in the bill).
- -- The cost of transportation, temporary housing, and child care expenses incurred by the victim because of the offense.
- -- Attorney fees and other costs and expenses incurred by the victim because of the offense, including lost wages, child care, transportation, and parking expenses related to assisting the investigation and attending court proceedings.
- -- Any other loss suffered by the victim as a proximate result of the offense.

Proposed MCL 750.462j (H.B. 5575) MCL 777.16w (H.B. 5576) 750.159g (H.B. 5577) 600.4701 (H.B. 5578) Proposed MCL 780.766b (H.B. 5579)

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

# House Bills 5575, 5576, & 5577 (H-1)

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. To the extent that more offenders could be sentenced to prison or jail terms, State and local expenditures would increase. An offender convicted of the Class A offenses under the bills would receive a sentencing guidelines minimum sentence range of 21-35 months to 270 months - life. An offender convicted of the Class B offenses under the bills would receive a sentencing guidelines minimum sentence range of 0-18 months to 117-160 months, with a statutory maximum of 20 years. An offender convicted of the Class D offenses under the bills would receive a sentencing guidelines minimum sentence range of 0-6 months to 43-76 months, with a statutory maximum of 10 years. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue would benefit public libraries.

# House Bill 5578 (H-1)

The bill would have an indeterminate impact on the State and local units of government depending on the value of forfeited property.

#### **House Bill 5579**

The bill would have an indeterminate impact on the State and local units of government regarding enforcement.

Fiscal Analyst: Bill Bowerman Matthew Grabowski

# S0910\s5575sa

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.