

Legislative Analysis



PROSTITUTION: REMOVE GENDER REFERENCES

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House Bill 5231 (reported from committee as Substitute H-1)
Sponsor: Rep. Joseph Graves

House Bill 5232 (reported from committee as Substitute H-1)
Sponsor: Rep. Nancy E. Jenkins
Committee: Criminal Justice

First Analysis (2-10-14)

BRIEF SUMMARY: House Bill 5231 would remove gender-specific references in several prostitution-related provisions and increase the fine for operating a house of prostitution.

House Bill 5232 would revise the sentencing guidelines to change the crime class of *pandering and accepting the earnings of a prostitute* from a Class G to a Class B felony, and remove gender-specific references in prostitution-related offenses.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on state and local correctional systems. Information is not available on the number of persons that might be convicted under the new provisions. New felony convictions could result in increased costs related to state prisons, county jails, and/or state probation supervision. New misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,600 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,600 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

Michigan's prostitution laws date from the 1930s and still reflect the views, and the language, of that time – that prostitution is the act of a *male* seeking sex from a *female* for pay or other compensation. One recommendation of the 2013 Report on Human Trafficking by the Michigan Commission on Human Trafficking is that the gender-specific references in the prostitution statutes be revised to be gender neutral and that archaic language be updated to reflect modern usage. Legislation has been offered to make such revisions.

THE CONTENT OF THE BILLS:

House Bill 5231 would amend the Michigan Penal Code (750.452 et al). Numerous prostitution-related provisions prohibit certain conduct towards females, with some

prohibiting conduct by males towards females or towards their own wives. Such gender-specific references would be eliminated and other revisions made as follows:

Section 452: Currently, keeping, maintaining, or operating a house of prostitution (or aiding or abetting another to do so) is a felony punishable by imprisonment for not more than five years or a fine of not more than \$2,500. The bill would increase the maximum fine to \$5,000 and allow a court to impose both incarceration and a fine.

Section 455: Currently, it is a 20-year felony to pander a female for the purposes of prostitution. The bill would remove the references to a female and apply the prohibitions to conduct targeting males or females. [*Pandering* includes procuring an inmate for a house of prostitution or using promise, threat, or violence or persuasion, inducement, or enticement to engage another person in a variety of prostitution-related conduct.]

Section 456: Currently, it is a 20-year felony for a man to place or leave his wife by force, fraud, intimidation, or threat in a house of prostitution or to lead a life of prostitution. The bill would instead apply the provision to any person engaging in the prohibited conduct towards a spouse.

Section 457: Currently, it is a 20-year felony to knowingly accept, receive, or appropriate money or a valuable thing without consideration from a woman engaged in prostitution. The bill would apply the provision to conduct involving any person.

Section 458: It is a felony punishable by at least two years but not more than 20 to attempt to detain a female in a house of prostitution because of debts she has (or is said to have) contracted while living in the house. The bill would apply the provision to such conduct against any person.

Section 459: Transporting, or aiding or abetting transporting, a female for the purpose of prostitution or to induce or compel that female into prostitution is a 20-year felony. The bill would change all references to a "female" to "any person."

Section 460: The bill would update language specifying it is not a defense to a prosecution for a violation of Chapter LXVII (Prostitution) that any part of that violation was committed outside Michigan. Currently, this provision applies to some, but not all, of the prostitution statutes.

House Bill 5232 amends the Code of Criminal Procedure (MCL 777.16w) to change the crime class of *pandering and accepting the earnings of a prostitute* from a Class G felony to a Class B felony. The bill would also remove references to a "female" contained in two other prostitution-related provisions and instead apply them to a "person." The bill is tie-barred to House Bill 5231, meaning that it could not take effect unless House Bill 5231 is also enacted into law.

BACKGROUND INFORMATION:

An informative brochure on Human Trafficking developed by the Department of Attorney General is available at:

http://www.michigan.gov/documents/ag/Human_Trafficking_Brochure_380106_7.pdf

In addition, information on Human Trafficking can also be found at the Michigan Human Trafficking Task Force website – <http://www.humantrafficking.msu.edu/>; the Polaris Project website – www.polarisproject.org; and the U.S. Justice Department – www.justice.gov/crt/about/crm/htpu.php, among other informative sites.

The full "2013 Report on Human Trafficking" by the Michigan Commission on Human Trafficking can be found at:
www.michigan.gov/documents/ag/2013_Human_Trafficking_Commission_Report_439218_7.pdf.

ARGUMENTS:

For:

The bills are part of the larger package of legislation addressing the issue of human trafficking; the legislation based on the findings and recommendations of the Michigan Commission on Human Trafficking made its final report to the governor and Legislature in 2013. Among the findings of the Commission is that the prostitution statutes still reflect the views and language usage of the 1930s when they were initially enacted. House Bill 5131 updates the language and makes all the references gender neutral. This is an important change so that every victim and every perpetrator of prostitution receives justice.

For:

House Bill 5132, in addition to revising several provisions to be gender neutral, changes the crime class for pandering and accepting the earnings of a prostitution from a Class G to a Class B felony. This revision puts these two offenses in the same crime class as other prostitution-related felonies for which the maximum term of imprisonment is 20 years. The crime class determines the sentencing grid that is used to calculate an appropriate sentencing range. Thus, depending on the elements of a particular offense and the offender's prior record, the change to a higher crime class may increase the time some offenders spend in prison.

POSITIONS:

A representative of the Office of Attorney General testified in support of the bills. (2-5-14)

The Michigan Catholic Conference indicated support for the bill. (2-5-14)

The Michigan State Council of Junior Leagues indicated support for the bill. (2-5-14)

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■ 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.