

Legislative Analysis



HUMAN TRAFFICKING ACT REVISIONS

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House Bill 5234

Sponsor: Rep. Nancy E. Jenkins

House Bill 5235

Sponsor: Rep. Marcia Hovey-Wright

House Bill 5236

Sponsor: Rep. Edward McBroom

Committee: Criminal Justice

Complete to 2-11-14

A SUMMARY OF HOUSE BILLS 5234-5236 AS INTRODUCED 1-22-14

House Bill 5234 would make numerous revisions within the Human Trafficking Act for consistency between provisions, create a single penalty provision for violations of the act, and repeal provisions made obsolete by the revisions.

House Bill 5235 would place the penalties within the sentencing guidelines.

House Bill 5236 would make a technical change to an act referencing the sections repealed by House Bill 5234.

Following is a more detailed description of the bills.

House Bill 5234 would amend Chapter LXVIIA of the Michigan Penal Code (750.156 et al.), the Human Trafficking Act. The bill would make significant revisions to provisions within the act, revise definitions, consolidate penalties for violations, and repeal two sections made obsolete by the revisions. As revised, the Human Trafficking Act would prohibit a person from doing any of the following:

- ❖ Knowingly recruit, entice, harbor, transport, provide, or obtain:
 - An individual for forced labor or services (Sec. 462b).
 - An individual for the purpose of holding the individual in debt bondage (Sec. 462c).
 - An individual by any means, knowing that individual will be subjected to forced labor or services or debt bondage (Sec. 462d);
 - A minor by any means, knowing that the minor will be subjected to commercial sexual activity, regardless of whether the person knows the age of the minor (Sec. 462d).

- ❖ Knowingly benefit financially or receive anything of value from participation in an enterprise, as that term is defined in Section 159f, if the enterprise has engaged in an act proscribed under the Human Trafficking Act (Sec. 462d).
- ❖ Recruit, entice, harbor, transport, provide, or obtain by any means a minor for commercial sexual activity or for forced labor or services, regardless of whether the person knows the age of a minor (Sec. 462e).

Penalties. The bill would delete and replace current penalties with the following:

****** A violation of Sections 462b, 462c, or 462d would be a felony with the following maximum terms of imprisonments and/or maximum fines:

- 10-years and/or a fine of \$10,000.
- If bodily injury results – 15 years and/or \$15,000 fine.
- If a minor is involved, or serious injury to an individual – 20 years and/or \$20,000.
- If the violation involved death, kidnapping or 1st-degree criminal sexual conduct (or the attempt of either), or the attempt to kill the individual – life imprisonment or any term of years and/or \$50,000 fine.

****** A violation of Section 462e would be a felony punishable by up to 20 years imprisonment and/or a maximum fine of \$20,000.

****** A person who attempted, conspired, or solicited another to violate the Human Trafficking Act would be subject to the same penalty as a person who commits a violation. However, the bill would exempt conspiracy committed under the Human Trafficking Act from provisions of Chapter XXIV of the code, entitled "Conspiracy."

Further, a person could be charged with, convicted of, or punished for any other violation of law arising out of the same transaction as the violation of the Human Trafficking Act. A sentence imposed for a Human Trafficking Act violation could be ordered to be served consecutively to (meaning after) a term of imprisonment imposed for any other crime, including any other violation of law arising out of the same transaction.

Restitution. In addition to any mandatory restitution applicable under Section 16 of the William Van Regenmorter Crime Victim's Rights Act (CVRA), a court could order a person convicted of a human trafficking violation to pay restitution to the victim in the manner provided in Section 16b of the CVRA and to reimburse any governmental entity for its expenses incurred as a result of the violation as provided in Section 1f of Chapter IX of the Code of Criminal Procedure.

Victims of human trafficking. The testimony of a victim would not need to be corroborated in a prosecution under the Human Trafficking Act. In addition, the victim's resistance or lack of resistance to the actor would not be relevant in a prosecution under the Human Trafficking Act.

Repealer. The bill would repeal Sections 462i and 462j of the Human Trafficking Act. Section 462i provides a mandatory sentence of life or any term of years for kidnapping, CSC, the attempt to do either, or an attempt to kill. Section 462j contains prohibitions and penalties consolidated elsewhere in the act by the proposed revisions.

Definitions. The bill would revise and/or add numerous definitions, including "coercion," "commercial sexual activity," "debt bondage," "force," "forced labor or services," "fraud," "labor," and "serious bodily injury." Definitions for the terms "child sexually abusive activity," "extortion," "maintain," and "obtain" would be eliminated. Some of the eliminated terms would be incorporated into the definitions of other terms.

House Bill 5235 would amend the Code of Criminal Procedure (MCL 777.16w) to delete current sentencing guidelines for human trafficking-related violations and replace them with guidelines corresponding to the new penalty provisions of House Bill 5234 as follows:

Crime	Category	Class	Statutory Maximum
Human Trafficking	Person	D	10 years
Violation causing bodily injury	Person	C	15 years
Violation involving minor or results in serious bodily injury	Person	B	20 years
Violation involving death or commission of certain felonies	Person	A	Life
Obtaining minor for commercial sexual activity or for forced labor or services	Person	B	20 years
[MCL 750.462f(3)] Attempting, conspiring, or soliciting another to violate human trafficking laws	Person	B	Variable

****** For a violation of MCL 750.462f (3), the court would have to determine the offense category, offense variable level, and prior record variable level based on the underlying offense.

The bill is tie-barred to House Bill 5234.

House Bill 5236 would amend the Revised Judicature Act (MCL 600.4701). Section 4701 defines "crime" to mean committing, attempting to commit, conspiring to commit,

or soliciting another person to commit any of the listed offenses in connection with which the forfeiture of property is sought. Public Act 363 of 2010 included in the list of offenses a violation of Chapter LXVIIA (Human Trafficking) of the Michigan Penal Code, with a reference to a range of provisions from Section 462a to 462j. The bill would revise the reference to reflect the repealed sections under House Bill 5234, and is tie-barred to that bill.

FISCAL IMPACT:

A fiscal analysis is in process.

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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.