



Senate Fiscal Agency
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**BILL ANALYSIS**

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Senate Bill 585 (as enacted)
Sponsor: Senator Mike Nofs
Senate Committee: Families, Seniors and Human Services
House Committee: Criminal Justice

PUBLIC ACT 334 of 2014

Date Completed: 2-6-15

CONTENT

The bill added Section 451c to Chapter 67 (Prostitution) of the Michigan Penal Code to do the following:

- **Allow a court to defer further proceedings and place a person who pleads guilty to, or is found guilty of, certain prostitution offenses on probation without judgment of guilt, provided the offense was committed as a direct result of the individual being a victim of a human trafficking violation.**
- **Require the court to satisfy certain conditions before deferring the proceedings.**
- **Specify that an order of probation may require the accused to undergo counseling or participate in a drug treatment court.**
- **Allow a court to enter an adjudication of guilt and continue proceedings upon violation of a term or condition of probation, and require the court to do so upon other violations.**
- **Require a court to discharge the person and dismiss the proceedings upon satisfaction of the terms and conditions of probation.**
- **Limit access to and use of court and State Police records as they pertain to the accused.**

The bill took effect January 14, 2015.

The Penal Code provides that a person 16 years old or older who commits any of the following offenses is guilty of a misdemeanor punishable by up to 93 days in prison or a fine of up to \$500, or both:

- Soliciting, accosting, or inviting another person in a public place, building, or vehicle to commit prostitution (Section 448).
- Receiving or offering to receive a person into a vehicle, building, or place for the purpose of committing prostitution (Section 449).
- Aiding or abetting another person to commit either of the above offenses or to engage or offer to engage the services of another person for the purpose of prostitution by the payment of money or other consideration (Section 450).
- Taking to, or employing, detaining, or allowing a person 16 years of age or less to remain in a place of prostitution for purposes other than prostitution (Section 462).

Under the bill, when an individual who has not been convicted previously of a violation of Section 448, 449, 450, or 462, or a local ordinance that substantially corresponds to any of those sections, pleads guilty to, or is found guilty of such a violation, the court, without entering a judgment of guilt and with the consent of the accused and the prosecuting attorney,

may defer further proceedings and place the accused on probation. The bill's provisions only apply if the violation was committed as a direct result of the individual being a victim of a human trafficking violation (i.e., a violation of Chapter 67A).

Before deferring proceedings, the court must do the following:

- Contact the Department of State Police and determine whether, according to the records of the Department, the accused has been convicted of a violation of Section 448, 449, 450, or 462, or a substantially corresponding local ordinance, or has previously availed himself or herself of probation and deferred proceedings.
- If the search of the records reveals an arrest for an assaultive crime but no disposition, contact the arresting agency and the court that had jurisdiction over the violation to determine the disposition of that arrest.
- Determine whether the accused committed the violation as a direct result of the accused being a victim of a human trafficking violation.

The accused must bear the burden of proving to the court by a preponderance of the evidence that the violation was a direct result of his or her being a victim of human trafficking. To prove that he or she is a victim of human trafficking, the accused must state under oath that he or she committed the violation as a direct result of being a victim of human trafficking with facts supporting his or her claim.

An order of probation may include any condition of probation authorized under Section 3 of Chapter 11 (Probation) of the Code of Criminal Procedure, including a requirement that the accused participate in a mandatory counseling program. The court may order the accused to pay the reasonable costs of the mandatory counseling program and may order the accused to participate in a drug treatment court under Section 10a of the Revised Judicature Act. The court also may order the defendant to be imprisoned for not more than 93 days at a time or at intervals, which may be consecutive or nonconsecutive and within the period of probation, as the court determines. The period of imprisonment must not exceed the maximum period of imprisonment authorized for the offense if the maximum period is less than 93 days. The court may allow day parole, or a work or school release from jail.

The court may enter an adjudication of guilt and proceed as otherwise provided in Chapter 67 upon a violation of a term or condition of probation. The court must enter an adjudication of guilt and proceed as otherwise provided in Chapter 67 if any of the following circumstances exist: a) the accused commits a violation of Section 448, 449, 450, or 462, or a substantially corresponding local ordinance, during the period of probation, b) the accused violates an order of the court that he or she receive counseling regarding his or her violent behavior, or c) the accused violates an order of the court that he or she have no contact with a named individual.

Upon fulfillment of the terms and conditions, the court must discharge the person and dismiss the proceedings. Discharge and dismissal must be without adjudication of guilt and is not a conviction for purposes of Section 451c, or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Only one discharge and dismissal is permitted with respect to any individual under Section 451c.

All court proceedings under Section 451c must be open to the public. If the record of proceedings as to the defendant is deferred, the record of proceedings during the period of deferral must be closed to public inspection. Unless the court enters a judgment of guilt, the Department of State Police must retain a nonpublic record of the arrest, court proceedings, and disposition of the criminal charge. The nonpublic record must be open to following individuals and entities for the purposes noted:

- Courts of this State, law enforcement personnel, the Department of Corrections, and prosecuting attorneys for use only in the performance of their duties or to determine

whether an employee of the court, law enforcement agency, Department of Corrections, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, law enforcement agency, Department of Corrections, or prosecutor's office.

- Courts of this State, law enforcement personnel, and prosecuting attorneys for showing that a defendant in a criminal action for violation of Section 448, 449, 450, or 462, or a substantially corresponding ordinance, has already once availed himself or herself of Section 451c.
- The Department of Human Services for enforcing child protection laws and vulnerable adult protection laws or ascertaining the preemployment criminal history of any individual who will be engaged in the enforcement of those laws.

MCL 750.451c

BACKGROUND

Human Trafficking

Human trafficking under Michigan law is a class of criminal offenses involving the recruitment, transportation, or provision of a person for the purposes of forced labor or services (labor trafficking), or commercial sex acts (sex trafficking). Despite media and news reports portraying human trafficking as a foreign or out-of-state concern, these crimes are reported in this State with some frequency. Michigan is believed to be a destination for foreign and domestic human trafficking for several reasons.¹ The State's border crossings into Canada allow traffickers convenient entry into the United States. Likewise, the interstate system that runs through Michigan allows traffickers to bring their victims from other states. In addition, the financial hardships suffered by economically depressed areas such as Flint and Detroit make enforcement of the laws pertaining to human trafficking difficult.

Sex Trafficking & the Legal Response in Michigan

Under Federal law, sex trafficking occurs when a commercial sex act is induced by fraud, force, or coercion, or when the person induced to perform such an act is under the age of 18 years.² Sex trafficking affects all demographic areas; however, women and girls are more often victims of sex trafficking. Michigan and Federal law recognizes that traffickers use various methods to defraud, intimidate, and otherwise harm their victims. These include confinement, physical and psychological abuse, forced abortions, sexual assault, and debt bondage, as well as threats of deportation, threats of criminal prosecution, and other acts of extortion. Sex trafficking is found in a number of industries (legal or otherwise), including pimp-controlled prostitution, strip clubs, commercial front brothels, and domestic work.³

It is unclear how prevalent sex trafficking is in Michigan. The National Human Trafficking Resource Center has tracked hotline phone calls and other inquiries on a state-by-state and national basis since 2007. Although some prosecution and incarceration information is available, it is not known to what extent these data reflect the actual incidence of sex trafficking in this State. Because it is believed to be a serious problem, many states (including Michigan) and the Federal government have passed laws banning human trafficking and many

¹ "An Overview of Human Trafficking in the U.S. and Michigan", p. 3, Senate Fiscal Agency *State Notes: Topics of Legislative Interest*, Spring 2014.

² Federal law makes a distinction between sex trafficking and labor trafficking. Michigan law generally does not.

³ Polaris Project, *Human Trafficking Trends in the U.S.: National Human Trafficking Resource Center 2007-2012*, 15, retrieved 4-14-2014, <http://www.polarisproject.org/resources/hotline-statistics>.

other legislative efforts are pending throughout the country.⁴ In Michigan, the Legislature, the Governor, and the Attorney General collaborated to form the Michigan Commission on Human Trafficking, a group composed of law enforcement officers, legislators, human trafficking activist organizations, and academics for the purpose of assessing the threat of human trafficking and developing a strategy to combat it. The Commission's 2013 report set forth a number of findings, strategies, and legislative recommendations to reduce human trafficking in this State.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill could result in fewer misdemeanor and felony convictions for the affected offenses, by allowing for individual to serve probation to defer any further penalties. The potential for fewer jail and/or prison dispositions could result in a minor reduction in costs of incarceration for State and local government.

Fiscal Analyst: Frances Carley
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⁴ For a more detailed discussion of the prevalence of trafficking in Michigan and the United States, as well as State and national laws and legislative efforts to end human trafficking, see the Senate Fiscal Agency article cited in note 1.

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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.