

SUBSTITUTE FOR  
HOUSE BILL NO. 5012

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 451 (MCL 750.451), as amended by 2002 PA 44.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 451. (1) Except as otherwise provided in this section, a  
2 person convicted of violating section 448, 449, 449a, 450, or 462  
3 is guilty of a misdemeanor punishable by imprisonment for not more  
4 than 93 days or a fine of not more than \$500.00, or both.

5           (2) A person 16 years of age or older who is convicted of  
6 violating section 448, 449, 449a, 450, or 462 and who has 1 prior  
7 conviction is guilty of a misdemeanor punishable by imprisonment  
8 for not more than 1 year or a fine of not more than \$1,000.00, or  
9 both.

10           (3) A person convicted of violating section 448, 449, 449a,  
11 450, or 462 and who has 2 or more prior convictions is guilty of a

1 felony punishable by imprisonment for not more than 2 years ~~or~~ a  
2 fine of not more than \$2,000.00, or both.

3 (4) If the prosecuting attorney intends to seek an enhanced  
4 sentence based upon the defendant having 1 or more prior  
5 convictions, the prosecuting attorney shall include on the  
6 complaint and information a statement listing the prior conviction  
7 or convictions. The existence of the defendant's prior conviction  
8 or convictions shall be determined by the court, without a jury, at  
9 sentencing or at a separate hearing for that purpose before  
10 sentencing. The existence of a prior conviction may be established  
11 by any evidence relevant for that purpose, including, but not  
12 limited to, 1 or more of the following:

- 13 (a) A copy of the judgment of conviction.  
14 (b) A transcript of a prior trial, plea-taking, or sentencing.  
15 (c) Information contained in a presentence report.  
16 (d) The defendant's statement.

17 (5) **IN ANY PROSECUTION OF A PERSON UNDER 18 YEARS OF AGE FOR**  
18 **AN OFFENSE PUNISHABLE UNDER THIS SECTION, IT SHALL BE PRESUMED THAT**  
19 **THE PERSON UNDER 18 YEARS OF AGE WAS COERCED INTO CHILD SEXUALLY**  
20 **ABUSIVE ACTIVITY OR COMMERCIAL SEXUAL ACTIVITY IN VIOLATION OF**  
21 **SECTION 462G OR OTHERWISE FORCED OR COERCED INTO COMMITTING THAT**  
22 **OFFENSE BY ANOTHER PERSON ENGAGED IN HUMAN TRAFFICKING IN VIOLATION**  
23 **OF SECTIONS 462A TO 462J. A PERSON UNDER 18 YEARS OF AGE DESCRIBED**  
24 **IN THIS SUBSECTION IS SUBJECT TO THE TEMPORARY PROTECTIVE CUSTODY**  
25 **PROVISIONS OF SECTION 14 OF CHAPTER XIIA OF THE PROBATE CODE OF**  
26 **1939, 1939 PA 288, MCL 712A.14, AND THE STATE MAY PETITION THE**  
27 **COURT TO FIND THE PERSON UNDER 18 YEARS OF AGE TO BE DEPENDENT AND**

1 IN DANGER OF SUBSTANTIAL PHYSICAL OR PSYCHOLOGICAL HARM UNDER  
2 SECTION 2(B)(3) OF CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939  
3 PA 288, MCL 712A.2. A PERSON UNDER 18 YEARS OF AGE WHO FAILS TO  
4 SUBSTANTIALLY COMPLY WITH COURT-ORDERED SERVICES UNDER SECTION  
5 2(B)(3) OF CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939 PA 288,  
6 MCL 712A.2, IS NOT ELIGIBLE FOR THE PRESUMPTION UNDER THIS SECTION.

7 (6) EXCLUDING ANY REASONABLE PERIOD OF DETENTION FOR  
8 INVESTIGATION PURPOSES, A LAW ENFORCEMENT OFFICER WHO TAKES A  
9 PERSON UNDER 18 YEARS OF AGE INTO CUSTODY FOR A SUSPECTED VIOLATION  
10 OF SECTION 448, 449, OR 450 OR OF THIS SECTION SHALL IMMEDIATELY  
11 REPORT TO THE DEPARTMENT OF HUMAN SERVICES A SUSPECTED VIOLATION OF  
12 HUMAN TRAFFICKING INVOLVING A PERSON UNDER 18 YEARS OF AGE IN  
13 VIOLATION OF SECTIONS 462A TO 462J.

14 (7) THE DEPARTMENT OF HUMAN SERVICES SHALL BEGIN AN  
15 INVESTIGATION OF A HUMAN TRAFFICKING VIOLATION REPORTED TO THE  
16 DEPARTMENT OF HUMAN SERVICES UNDER SUBSECTION (6) WITHIN 24 HOURS  
17 AFTER THE REPORT IS MADE TO THE DEPARTMENT OF HUMAN SERVICES, AS  
18 PROVIDED IN SECTION 8 OF THE CHILD PROTECTION LAW, 1975 PA 238, MCL  
19 722.628. THE INVESTIGATION SHALL INCLUDE A DETERMINATION AS TO  
20 WHETHER THE PERSON UNDER 18 YEARS OF AGE IS DEPENDENT AND IN DANGER  
21 OF SUBSTANTIAL PHYSICAL OR PSYCHOLOGICAL HARM UNDER SECTION 2(B)(3)  
22 OF CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL  
23 712A.2.

24 (8) ~~(5)~~—As used in this section, "prior conviction" means a  
25 violation of section 448, 449, 449a, 450, or 462 or a violation of  
26 a law of another state or of a political subdivision of this state  
27 or another state substantially corresponding to section 448, 449,

1 449a, 450, or 462.

2 Enacting section 1. This amendatory act does not take effect  
3 unless House Bill No. 5026 of the 97th Legislature is enacted into  
4 law.