

UNLIMITED DISCHARGE & DISMISSAL OF PROSTITUTION CHARGES: ALLOW FOR VICTIM OF HUMAN TRAFFICKING

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House Bill 4219 (reported from committee w/o amendment)

Sponsor: Rep. Bronna Kahle

Committee: Law and Justice

Complete to 3-21-17

SUMMARY:

Generally speaking, the bill provides a means to vacate a prostitution-related offense that a victim of human trafficking was forced to commit, even the individual had a prior conviction for such an offense.

Currently, victims of human trafficking are eligible for a one-time deferred sentence on charges for certain prostitution-related offenses that the victim was forced to commit, with the charges dismissed at the end of probation if all the conditions of probation have been complied with. This only applies if the individual had no previous convictions for a prostitution-related offense.

House Bill 4219 amends Chapter LXVIIA of the Michigan Penal Code, entitled "Human Trafficking," to remove the restriction that a person may be eligible only if there were no prior convictions for Sections 448, 449, 450, or 462 or a substantially corresponding local ordinance if the accused were a victim of human trafficking and had been forced to commit such acts.

Under a discharge and dismissal, if the accused meets statutory eligibility criteria, a court may defer proceedings and place an individual on probation (with consent of the accused and of the prosecuting attorney). If the person violates the terms of the probation (such as committing another prostitution-related offense), the court has the discretion to enter an adjudication of guilt. If probation is successfully completed, the court must discharge the person and dismiss the proceedings.

A discharge and dismissal does not constitute a conviction. However, a nonpublic record of the proceedings is maintained by the Michigan Department of State Police; access to the records is limited only to certain authorized persons and only for the purposes specified in statute. The bill deletes language specifically granting authority to the state courts, law enforcement personnel, and prosecuting attorneys to access the records for the purpose of showing that a defendant had a previous violation of Sections 448, 449, 450, or 462 or a similar local ordinance but retains language allowing access to the information by these entities for use in the performance of their duties. In addition, the bill adds language granting prosecuting attorneys access to the nonpublic records for informing consent to the deferral of the proceedings.

(Section 448 of the Penal Code pertains to soliciting a prostitute. Section 449 makes it a criminal offense to admit a minor into a place of prostitution. Section 450 pertains to a person at least 16 years old who aids and abets another to violate Sections 448 and/or 449. Section 462 makes it an offense to take, employ, or detain a person less than 16 years of age in a house of prostitution but for a purpose other than prostitution. Eligibility criteria for a deferral and dismissal of the charges under this provision require a court to determine whether the accused has proved by a preponderance of the evidence that the violation was a result of being a victim of human trafficking and has stated under oath that the violation was committed as a direct result of being a victim of a human trafficking violation, with facts supporting the claim that the violation was a direct result of being a victim of human trafficking.)

The bill takes effect 90 days after enactment.

MCL 750.451c

FISCAL IMPACT:

Depending on the number of people that would have cases discharged and dismissed, the bill would result in a decrease in costs for the state and for local units of government. Reduced felony charges would result in reduced costs related to the state correctional system and reduced misdemeanor charges would result in reduced costs related to county jails and/or local misdemeanor probation supervision. In fiscal year 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,500 per supervised offender in the same year. The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how the provisions of the bill affected caseloads and related administrative costs. There could also be a decrease in penal fine revenues which would decrease funding for local libraries, which are the constitutionally-designated recipients of those revenues.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

