

VACATING PROSTITUTION CHARGE FOR VICTIMS OF HUMAN TRAFFICKING

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House Bill 4219 as enacted

Public Act 34 of 2017

Sponsor: Rep. Bronna Kahle

House Committee: Law and Justice

Senate Committee: Families, Seniors and Human Services

Complete to 7-31-17

BRIEF 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 if the individual had a prior conviction for such an offense or previously had a similar offense deferred and discharged.

FISCAL IMPACT: Depending on the number of people who 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.

THE APPARENT PROBLEM:

For those trafficked in the commercial sex trade as a result of force, fraud, or coercion, it can be a very difficult path to rebuild a life, according to advocates who work with survivors of the commercial sex trade. Many have multiple arrests and convictions for prostitution-related offenses that can make it difficult to find employment, housing, or qualify for student loans.

In 2014, Public Act 334 was enacted to enable survivors charged with certain prostitution-related offenses to be eligible for what is known as a discharge and dismissal—a chance to be placed on probation with the prostitution charge dropped if probation is successfully completed. However, eligibility is restricted to only those individuals who do not have a previous conviction or convictions for such offenses. A previous conviction for prostitution makes an individual ineligible for the program, and the person is only eligible for one charge to be deferred and then dismissed under the new law. The Michigan Human Trafficking Commission has recommended that eligibility for a discharge and dismissal

under PA 334 be changed to make it easier for survivors of human trafficking to clean up criminal records for crimes they were forced to commit.

THE CONTENT OF THE BILL:

Currently, victims of human trafficking are eligible for a deferred sentence on a charge for certain prostitution-related offenses (described below) that the victim was forced to commit as a direct result of being a victim of a human trafficking violation, 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 one of the listed prostitution-related offenses. Further, a person is only eligible for one discharge and dismissal under this provision of law.

House Bill 4219 amends Section 451c of Chapter LXVIIA of the Michigan Penal Code, entitled "Human Trafficking," to remove the restriction that a person is eligible for a discharge and dismissal under the section 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 a human trafficking violation and had been forced to commit such acts. The bill also removes the restriction that a person is eligible for only one discharge and dismissal under this provision.

Under a discharge and dismissal as provided by Section 451c, 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.

In addition to the changes previously discussed, the bill deletes language specifically granting authority to the state courts, law enforcement personnel, and prosecuting attorneys to access a nonpublic record for the purpose of showing that a defendant had a previous violation of Sections 448, 449, 450, or 462 or a similar local ordinance. The bill retains language allowing access to the information by these entities for use in the performance of their duties or to determine if an employee has violated a condition of employment or if an applicant meets employment criteria with any of the listed entities. The bill also 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 Section 451c 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 August 21, 2017.

MCL 750.451c

ARGUMENTS:

For:

Getting free from a trafficker is just the beginning. The path to restoring one's health, self-esteem, and moving forward can be very difficult, according to advocates who work with survivors of the commercial sex trade. A major impediment to moving forward is having a criminal record that can make it difficult to find employment or even housing. Expungement is one option for past crimes, but what about when a victim is freed from a trafficker as a result of a new arrest for prostitution? Advocates feel that these victims should be eligible for a discharge and dismissal, where a conviction can be deferred and the charges dropped if the victim successfully completes the terms of probation. Probation can include such things as mental health counseling and substance abuse counseling. As many traffickers control their victims through getting them hooked on controlled substances, access to such services can increase the chance for recovery and the ability to have a normal life again. Advocates say that the psychological trauma experienced by victims of human trafficking make it difficult for many to break through the fear of and dependence on the trafficker; it is not unusual for victims to go back one or more times before being able to make a final break. That is one reason why the opportunity to have a prostitution-related charge deferred and later dismissed should not be a one-time only offer.

The bill addresses the issue by removing language in current law that limits eligibility for victims of human traffickers only to those who have no previous convictions for prostitution-related offenses, and by removing the "only one per person" limitation. Since many victims have previous records, and many need more than one try to break free from their traffickers, many otherwise deserving individuals who could benefit from the intensive probation conditions under a discharge and dismissal are locked out. A victim would still have to prove that the offense was committed as a direct result of being a victim of a trafficker.

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