

DISCHARGE & DISMISSAL OF PROSTITUTION CHARGES FOR VICTIM OF HUMAN TRAFFICKING

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House Bill 4219 as reported from committee
Sponsor: Rep. Bronna Kahle
Committee: Law and Justice
Complete to 3-22-17

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.

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.

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. Thus, the Michigan Human Trafficking Commission has recommended that some laws be changed to make it easier for survivors of human trafficking to clean up criminal records for crimes they were forced to commit.

Legislation has already been enacted that enables survivors to expunge prostitution-related convictions, a recommendation of the Commission. The Commission also recommends that a human trafficking victim charged with certain prostitution-related offenses be eligible for what is known as a discharge and dismissal—a chance to be placed on probation with the prostitution charges dropped if probation is successfully completed—even if the individual has a previous conviction or convictions for such offenses. Currently, a previous conviction for prostitution makes them ineligible for the program.

THE CONTENT OF THE BILL:

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.

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

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 the 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.

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. Since many victims have previous records, many otherwise deserving individuals who could benefit from the intensive probation conditions under a discharge and dismissal are locked out. A victim would still only be eligible to have one prostitution-related conviction deferred and dismissed, and would still have to prove that the offense was committed as a direct result of being a victim of a trafficker.

POSITIONS:

A representative of the Southern Michigan Human Trafficking Task Force testified in support of the bill. (3-7-17)

A representative of the Department of Attorney General testified in support of the bill. (3-7-17)

The American Association of University Women indicated support for the bill. (3-7-17)

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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.