

Legislative Analysis



IMMUNITY FOR LAW ENFORCEMENT FOR PROSTITUTION-RELATED OFFENSES: EXCEPTION

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4355 (reported from committee as H-1)
Sponsor: Rep. Gary Glenn

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 275 (reported from House committee as H-1)
Sponsor: Sen. Judy K. Emmons

Committee: Law and Justice
Complete to 6-19-17

(Enacted as Public Acts 194 and 195 of 2017)

SUMMARY:

House Bill 4355 would add a new Section 451b to the Michigan Penal Code to specify that the immunity currently provided to a law enforcement officer from prosecution for certain prostitution-related offenses while in the performance of duties as a law enforcement officer under Section 451a of the Code does not apply if the officer engages in sexual penetration as that term is defined in Section 520a while in the course of duties.

(Section 520a defines "sexual penetration" to mean sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.)

Senate Bill 275 would amend Section 451a of the Michigan Penal Code to specify that ***except as provided in Section 451b***, Sections 448, 449, 449a, 451, *and 459*, which prohibit conduct relating to prostitution, do not apply to a law enforcement officer while in the performance of *the officer's* duties as a law enforcement officer. Italicized and underlined text denotes language added by the bill.

House Bill 4355 and Senate Bill 275 are tie-barred to each other, meaning that neither can take effect unless both are enacted into law. Both bills would take effect 90 days after enactment.

[In general, Section 448 prohibits soliciting, accosting, or inviting a person to commit prostitution.

Section 449 prohibits a person from admitting another person into a place (including a vehicle) for the purpose of prostitution.

Section 449a prohibits a person engaging the services of another for the purpose of prostitution or lewdness for money or other consideration (the penalty is higher if the person being engaged is less than 18 years of age).

Section 451 contains the penalties for violations of Sections 448, 449, and 449a and provides for enhanced penalties for repeat violations as well as a presumption that in the prosecution of a person less than 18 years of age, the violation may be a result of human trafficking.

Section 459 specifies that it is a 20-year felony to knowingly transport or aid in the transport of any person for the purpose of prostitution, or to knowingly sell travel services that include or facilitate travel for the purpose of engaging in prostitution or an act that would constitute a violation of Chapter LXVIIA (Human Trafficking).]

FISCAL IMPACT:

If the bills result in law enforcement officers losing immunity and being charged with prostitution-related offenses, costs to state and local correctional systems would increase, based on the number of additional convictions and incarcerations. New felony convictions would result in increased costs related to state prisons, county jails, and/or state probation supervision. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision.

The average cost of prison incarceration in a state facility is roughly \$36,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,500 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

BRIEF DISCUSSION OF THE ISSUES:

There is a little known provision in Michigan law that exempts law enforcement officers from certain prostitution-related criminal charges while in the performance of their duties, such as undercover stings. Though the original intent of the statute has been forgotten, many are certain that it was never intended to act as a shield for officers "behaving badly." Reportedly, only one officer has ever raised the exemption as a defense to a criminal charge, and the claim was denied by the judge.

However, according to advocates who provide assistance to victims of human trafficking, it is not uncommon for men to pose as law enforcement officers and use this provision to intimidate women and men trapped in the commercial sex trade to engage in various sex acts with them. If the law were changed, these imposters would lose the ability to pressure a trafficked individual for sex while claiming immunity from punishment for themselves. Further, some feel the exemption needs to be revised because it implies impropriety will go unpunished if "on the job." Under the bills, officers will still be able to do their jobs, even undercover work. Apparently, Michigan is the only state with this kind of law still on the books. Proponents say it is time to follow the lead of the rest of the nation.

POSITIONS:

The Michigan State Police indicated support for House Bill 4355. (6-13-17)

The Michigan Catholic Conference indicated support for both bills. (5-23-17)

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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.