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House Bill 4219 (as enrolled)

Sponsor: Representative Bronna Kahle House Committee: Law and Justice

Senate Committee: Families, Seniors and Human Services

Date Completed: 5-23-17

RATIONALE

Human trafficking is considered by many to be a form of modern-day slavery. Traffickers often use violence, threats, deception, debt bondage, coercion, and other forms of manipulative tactics to force people to engage in commercial sex, or to provide labor or services against their will.¹ Between January 2008 and June 2010, the U.S. Department of Justice recorded 2,515 incidents of human trafficking in the United States.²

In 2006, in order to address the issue, Michigan enacted legislation banning human trafficking. The law was amended in 2010, and again in 2014. The 2014 legislative package contained provisions designed to provide greater protections for minor human trafficking victims; create stronger tools to hold traffickers accountable; and allow victims' convictions to be set aside. Specifically, for a person accused of a prostitution-related offense who is a victim of human trafficking, the legislation created a "discharge and dismissal" program that provides for a one-time deferment of the sentence while he or she undergoes probation. If the accused meets all conditions of probation (e.g., participation in mental health or substance abuse counseling), the charges are dismissed. However, this program is available only to those who do not have any prior prostitution-related convictions.

Evidently, many people believe that the law as currently written does not offer enough protections to victims since many human trafficking victims have previous prostitution-related convictions and are not eligible for the discharge and deferment program. Therefore, it has been suggested that the law be changed so all victims of human trafficking, including those with prior convictions, are eligible for the discharge and dismissal program.

CONTENT

The bill would amend the Michigan Penal Code to remove the restriction under which a person may be eligible for deferral and dismissal of charges for a prostitution-related offense that he or she committed as a victim of human trafficking, only if the individual has no prior convictions for such an offense.

Under Section 451c of the Code, when an individual who has not been convicted previously of prostitution pleads guilty to, or is found guilty of, a prostitution-related offense, the court, without entering a judgment of guilt and with the consent of the accused and of the prosecuting attorney, may defer further proceedings and place the accused on probation. Before deferring proceedings, the court must do the following:

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¹ Polaris Project, "The Facts", retrieved 5-17-2017, https://polarisproject.org/facts.

² State of Michigan Attorney General, "Human Trafficking: Fact Sheet", retrieved 5-16-2017, http://www.michigan.gov/ag/0,4534,7-164-60857_60858---,00.html.

- -- Contact the Department of State Police and determine whether, according to its records, the accused has previously been convicted of a prostitution-related offense.
- -- If the search of the records reveals an arrest for an assaultive crime but no disposition, contact the arresting agency and the court that had jurisdiction over the violation to determine the disposition of that arrest.

The bill would delete the requirement that the individual has not been previously convicted of a prostitution-related offense, and the requirement that the court take the actions described above. Under the bill, the court would be required to determine only whether the accused had met the following conditions, as currently required:

- -- The accused bears the burden of proving to the court by a preponderance of its evidence that the violation was a direct result of his or her being a victim of human trafficking.
- -- The accused shall state under oath that he or she is a victim of human trafficking with facts supporting his or her claim that the violation was a direct result of being a victim of human trafficking.

Under Section 451c, if the accused violates a term of probation, the court may enter a judgment of guilt. For specific violations, the court must enter a judgment of guilt. If the accused fulfills the terms and conditions of probation, the court must discharge the person and dismiss the proceedings against him or her.

There may be only one discharge and dismissal under Section 451c with respect to any individual. The bill would delete that provision.

Unless the court enters a judgment of guilt, the Department of State Police must retain a nonpublic record of an arrest, court proceedings, and disposition of the criminal charge under Section 451c. The nonpublic record must be open to the courts, law enforcement personnel, the Department of Corrections, and prosecuting attorneys for use in the performance of their official duties and for employment-related purposes. The Department of Health and Human Services also may have access to the nonpublic record for the purpose of enforcing child protection laws and vulnerable adult protection laws, and for employment-related purposes.

In addition, the Code allows the courts, law enforcement personnel, and prosecuting attorneys access to the nonpublic record for the purpose of showing that a defendant has already once availed himself or herself of Section 451c.

The bill would delete the provision allowing access for that purpose. The bill would allow prosecuting attorneys to have access to the nonpublic record for informing consent.

The bill would take effect 90 days after its enactment.

(The prostitution-related offenses that these provisions apply to are violations of Sections 448, 449, 450, and 462 of the Penal Code, which prohibit the following:

- -- Soliciting, accosting, or inviting another person in a public place, building, or vehicle to commit prostitution.
- -- Receiving or offering to receive a person into a vehicle, building, or place for the purpose of committing prostitution.
- -- Aiding or abetting another person to commit either of the above offenses or to engage or offer to engage the services of another person for the purpose of prostitution by the payment of money or other consideration.
- -- Taking to, or employing, detaining, or allowing a person 16 years of age or less to remain in a place of prostitution for purposes other than prostitution.)

MCL 750.451c

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BACKGROUND

In 2006, Michigan enacted Chapter 67A of the Michigan Penal Code. Chapter 67A prohibits recruiting, enticing, harboring, transporting, or obtaining a minor for commercial sexual activity, or a person for forced labor or services or debt bondage (MCL 750.462a-750.462e). The 2010 amendments prohibited providing or obtaining the labor or services of another person through force, fraud, or coercion, and prohibited recruiting, harboring, transporting, providing, or obtaining a person for labor or services for the purpose of holding that person in involuntary servitude or debt bondage (MCL 750.462j). (Although this section was repealed effective January 14, 2015, the prohibitions were re-enacted.)

In 2014, Chapter 67A was overhauled as a result of a 21-bill package designed to provide a safe harbor to victims and create stronger tools to hold traffickers accountable. Public Acts 324 through 344 of 2014 include measures to do the following:

- -- Presume that a minor engaging in human prostitution is a victim of human trafficking.
- -- Establish probate court jurisdiction for minor victims of human trafficking.
- -- Allow victims to clear their criminal record of crimes they were forced to commit by their traffickers.
- -- Provide adult victims safe harbor through diversion programs to avoid prostitution convictions.
- -- Make it a felony to engage a minor for purposes of prostitution.
- -- Lengthen the statute of limitations for bringing charges against traffickers.
- -- Strengthen penalties for human trafficking offenses.
- -- Increase the fine for operating a place of prostitution.
- -- Create the Michigan Commission on Human Trafficking within the Department of Attorney General.
- -- Create the Michigan Human Trafficking Health Advisory Board within the Department of Community Health (now under the Department of Health and Human Services).
- -- Broaden the scope of damages available to human trafficking victims in civil suits against violators
- -- Allow victims eligible for Medicaid to receive medical assistance benefits to treat injuries sustained a result of trafficking.
- -- Require the promulgation of new training requirements regarding human trafficking that apply to most medical professionals.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would expand protections for victims of human trafficking. The human trafficking legislation enacted in 2014 prevents victims with criminal records from receiving the help they need. Currently, the law gives courts flexibility in allowing an adult arrested for a prostitution-related offense to participate in a deferred sentencing program if he or she is determined to be a victim of human trafficking. However, this option is available only to those without prior prostitution-related convictions, and since many victims have previous convictions, they are ineligible to take advantage of the "discharge and dismissal" program. Updating the deferred sentencing law would protect more human trafficking victims from criminal prosecution. The amendments would ensure that victims of human trafficking are treated as victims and not as criminals.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill could have a positive fiscal impact on the State and local government. Fewer misdemeanor and felony convictions could reduce resource demands on court systems, community supervision,

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jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any decrease in prison intakes, in the short term, the marginal savings to State government would be approximately \$3,764 per prisoner per year. Any associated decrease in fine revenue would reduce funding to public libraries.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.