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BILL



ANALYSIS

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House Bill 4219 (as passed by the House)
Sponsor: Representative Bronna Kahle
House Committee: Law and Justice
Senate Committee: Families, Seniors and Human Services

Date Completed: 5-2-17

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:

- 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

Legislative Analyst: Nathan Leaman

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, 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 Bergen

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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.