

HOUSE BILL No. 4219

February 15, 2017, Introduced by Rep. Kahle and referred to the Committee on Law and Justice.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 451c (MCL 750.451c), as added by 2014 PA 334.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 451c. (1) This section applies only if the violation
2 described in subsection (2) was committed as a direct result of the
3 individual being a victim of a human trafficking violation.

4 (2) When an individual ~~who has not been convicted previously~~
5 ~~of a violation of section 448, 449, 450, or 462 or a local~~
6 ~~ordinance substantially corresponding to section 448, 449, 450, or~~
7 ~~462~~ pleads guilty to, or is found guilty of, a violation of section
8 448, 449, 450, or 462 or a local ordinance substantially
9 corresponding to section 448, 449, 450, or 462, the court, without
10 entering a judgment of guilt and with the consent of the accused
11 and of the prosecuting attorney, may defer further proceedings and

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place the accused on probation as provided in this section.

However, before deferring proceedings under this subsection, the court ~~[shall] shall do all of the following:~~

~~—— (a) Contact the department of state police and determine whether, according to the records of the department of state police, the accused has previously been convicted of a violation of section 448, 449, 450, or 462 or a local ordinance substantially corresponding to section 448, 449, 450, or 462 or has previously availed himself or herself of this section.~~

~~—— (b) If the search of the records under subdivision (a) reveals an arrest for an assaultive crime but no disposition, the court shall contact the arresting agency and the court that had jurisdiction over the violation to determine the disposition of that arrest for purposes of this section.~~

~~—— (c) Determine~~ **DETERMINE** whether the accused has met the conditions described in subsection (1) as follows:

(A) ~~(i)~~ The accused bears the burden of proving to the court by a preponderance of the evidence that the violation was a direct result of his or her being a victim of human trafficking.

(B) ~~(ii)~~ To prove that he or she is a victim of human trafficking, the accused shall state under oath that he or she meets the conditions described in subsection (1) with facts supporting his or her claim that the violation was a direct result of being a victim of human trafficking.

(3) Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided in this chapter.

1 (4) An order of probation entered under subsection (2) may
2 include any condition of probation authorized under section 3 of
3 chapter XI of the code of criminal procedure, 1927 PA 175, MCL
4 771.3, including, but not limited to, requiring the accused to
5 participate in a mandatory counseling program. The court may order
6 the accused to pay the reasonable costs of the mandatory counseling
7 program. The court also may order the accused to participate in a
8 drug treatment court under chapter 10A of the revised judicature
9 act of 1961, 1961 PA 236, MCL 600.1060 to 600.1084. The court may
10 order the defendant to be imprisoned for not more than 93 days at a
11 time or at intervals, which may be consecutive or nonconsecutive
12 and within the period of probation, as the court determines.
13 However, the period of imprisonment ~~shall~~**MUST** not exceed the
14 maximum period of imprisonment authorized for the offense if the
15 maximum period is less than 93 days. The court may permit day
16 parole as authorized under 1962 PA 60, MCL 801.251 to 801.258. The
17 court may permit a work or school release from jail.

18 (5) The court shall enter an adjudication of guilt and proceed
19 as otherwise provided in this chapter if any of the following
20 circumstances exist:

21 (a) The accused commits a violation of section 448, 449, 450,
22 or 462 or a local ordinance substantially corresponding to section
23 448, 449, 450, or 462 during the period of probation.

24 (b) The accused violates an order of the court that he or she
25 receive counseling regarding his or her violent behavior.

26 (c) The accused violates an order of the court that he or she
27 have no contact with a named individual.

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1 (6) Upon fulfillment of the terms and conditions, the court
2 shall discharge the person and dismiss the proceedings against the
3 person. Discharge and dismissal under this section ~~shall~~**MUST** be
4 without adjudication of guilt and is not a conviction for purposes
5 of this section or for purposes of disqualifications or
6 disabilities imposed by law upon conviction of a crime. ~~[There shall~~
7 ~~be only 1 discharge and dismissal under this section with respect~~
8 ~~to any individual.]~~

9 (7) All court proceedings under this section ~~shall~~**MUST** be
10 open to the public. Except as provided in subsection (8), if the
11 record of proceedings as to the defendant is deferred under this
12 section, the record of proceedings during the period of deferral
13 ~~shall~~**MUST** be closed to public inspection.

14 (8) Unless the court enters a judgment of guilt under this
15 section, the department of state police shall retain a nonpublic
16 record of the arrest, court proceedings, and disposition of the
17 criminal charge under this section. However, the nonpublic record
18 ~~shall~~**MUST** be open to the following individuals and entities for
19 the purposes noted:

20 (a) The courts of this state, law enforcement personnel, the
21 department of corrections, and prosecuting attorneys for use only
22 in the performance of their duties or to determine whether an
23 employee of the court, law enforcement agency, department of
24 corrections, or prosecutor's office has violated his or her
25 conditions of employment or whether an applicant meets criteria for
26 employment with the court, law enforcement agency, department of
27 corrections, or prosecutor's office.

1 (b) ~~The courts of this state, law enforcement personnel, and~~
2 ~~prosecuting~~ **PROSECUTING** attorneys for ~~showing that a defendant in a~~
3 ~~criminal action for a violation of section 448, 449, 450, or 462 or~~
4 ~~a local ordinance substantially corresponding to section 448, 449,~~
5 ~~450, or 462 has already once availed himself or herself of this~~
6 ~~section.~~ **INFORMING CONSENT UNDER SUBSECTION (2) .**

7 (c) The department of **HEALTH AND** human services for enforcing
8 child protection laws and vulnerable adult protection laws or
9 ascertaining the preemployment criminal history of any individual
10 who will be engaged in the enforcement of child protection laws or
11 vulnerable adult protection laws.

12 (9) As used in this section, "human trafficking violation"
13 means a violation of chapter LXVIIA.

14 Enacting section 1. This amendatory act takes effect 90 days
15 after the date it is enacted into law.