

HUMAN TRAFFICKING

House Bill 5575 as enrolled
Public Act 360 of 2010
Sponsor: Rep. Dudley Spade

House Bill 5576 as enrolled
Public Act 361 of 2010
Sponsor: Rep. Richard LeBlanc

House Bill 5578 as enrolled
Public Act 363 of 2010
Sponsor: Rep. Shanelle Jackson

House Bill 5577 as enrolled
Public Act 362 of 2010
Sponsor: Rep. Vicki Barnett

House Bill 5579 as enrolled
Public Act 364 of 2010
Sponsor: Rep. Lee Gonzales

House Committee: Judiciary
Senate Committee: Judiciary (discharged)
Second Analysis (7-18-11)

BRIEF SUMMARY: The bills would amend various acts to create new crimes regarding human trafficking; include human trafficking, Internet computer crimes, and violations of the Identity Theft Protection Act as a predicate offense for a crime of racketeering; and to require persons convicted of a human trafficking offense to pay restitution to victims.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on state and local units of government. A more detailed discussion follows later in the analysis. (See *Fiscal Information*.)

THE APPARENT PROBLEM:

According to the federal Department of Justice (DOJ), human trafficking continues to be a significant problem, with an estimated 600,000 to 800,000 men, women, and children trafficked across international borders annually. Of these numbers, 70 percent are females and 50 percent are children. Though some are forced to work as domestics, or for businesses with low wages, most are forced into the commercial sex trade. Most of the individuals trafficked are Asian or Latin; however, the DOJ estimates that about 200,000 American children are at risk each year for being trafficked into the sex trade. And, human trafficking is happening in Michigan.

In 2006, a Michigan couple from Canton was convicted of enslaving a young girl brought into the country illegally from Cameroon. Subjected to beatings, threats, and sexual abuse, she was forced to perform domestic services and childcare for the couple's children without pay. The couple was prosecuted under federal law and sentenced to prison and ordered to pay restitution.

That year, Public Act 162 of 2006 was enacted to add Chapter 67A (Human Trafficking) to the Michigan Penal Code to prohibit a person from knowingly subjecting or attempting to subject another person to forced labor or services by certain actions. Though acknowledged to be an important piece of legislation, the act is not adequate to cover all situations of human trafficking. For instance, sex rings are often run by organized crime or business entities. Also, there seems to be a lack of clarity regarding whether restitution can be ordered by a state court for a victim of human trafficking. And, unlike many other crimes, property or money gained from the enslavement of others cannot be seized by law enforcement agencies and forfeited. Legislation has been offered to address perceived gaps in the current state human trafficking laws.

THE CONTENT OF THE BILLS:

The bills amended various acts to create new crimes regarding human trafficking, include human trafficking as a predicate offense for a crime of racketeering, and require persons convicted of a human trafficking offense to pay restitution to victims. The bills are tie-barred to each other, meaning that none could take effect unless all were enacted. The bill package took effect April 1, 2011.

Specifically, the bills do the following:

House Bill 5575 added a new section to Chapter 67A (Human Trafficking) of the Michigan Penal Code (MCL 750.462j) to prohibit two additional actions as crimes of human trafficking, establish penalties, require restitution to a victim by a person convicted under the bill, and define terms. Under the bill, a person is prohibited from:

- Knowingly providing or obtaining the labor or services of another person by force, fraud, or coercion.

["Force" includes, but is not limited to, physical violence or actual physical restraint or confinement, but injury is required. "Fraud" includes a false or deceptive offer of employment or marriage. "Coercion" includes, but is not limited to, threats of harm or physical restraint or schemes intended to cause a person to believe that failure to perform an act would result in harm to or physical restraint against any person; confiscation of documents regardless of whether the documents were fraudulent or fraudulently obtained; and the abuse or threatened abuse of the legal system (including threats of arrest or deportation)].

- Knowingly 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.

["Debt bondage" includes, but is not limited to, the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for a debt, if the value of those services as reasonably assessed were not applied toward the liquidation of the debt or the length and nature of those services were not respectively limited and defined. "Involuntary servitude"]

includes a state of providing labor or services entered into or maintained by means of force, fraud, or coercion.]

Each of the violations described above is a felony punishable by up to 10 years' imprisonment and/or a fine of not more than \$10,000.

If the violation involved the forced labor or trafficking of a minor (under 18 years of age), a commercial sex act, or serious physical harm to any person, the violation would be punishable by imprisonment of up to 20 years and/or a fine of not more than \$20,000.

[A "commercial sex act" means any act of sexual penetration or sexual contact or any sexually explicit performance for which anything of value was given to, or was received by, any person or a violation involving any child in sexually abusive activity or material. "Serious physical harm" is defined to mean any physical injury that seriously impaired a person's health or physical well-being, including (but not limited to) brain damage, skull or bone fracture, subdural hemorrhage or hematoma, a dislocation or sprain, internal injury, poisoning, a burn or scald, or a severe cut.]

If the violation involved death, the maximum term would be imprisonment for life or any terms of years and/or a fine of not more than \$50,000.

The bill does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction as the violation of the bill. A sentence could be ordered to be served consecutively to (instead of concurrently with) a term of imprisonment imposed for the commission of any other crime, including one arising out of the same transaction as the violation of the bill.

Further, a court is required to order a person convicted of violating the bill to pay restitution to the victim under provisions established by House Bill 5579. The person also must be ordered to reimburse any governmental entity for its expenses incurred as a result of the violation, in the manner provided in Section 1f of the Code of Criminal Procedure.

House Bill 5576 amended the Code of Criminal Procedure (MCL 777.16w) to include the violations proposed by House Bill 5575 in the sentencing guidelines as follows:

Violation	Felony Class & Category	Maximum Sentence
Providing, or obtaining, labor or services of another person by force, fraud, or coercion	D - Person	10 years
Providing, or obtaining, labor or services of minor by force, fraud, or coercion	B - Person	20 years
Providing, or obtaining, labor or services of another person by force, fraud, or coercion causing death	A - Person	Life
Recruiting or transporting person for labor or services	D - Person	10 years
Recruiting or transporting minor for labor or services	B - Person	20 years
Recruiting or transporting person for labor or services causing death	A - Person	Life

House Bill 5577 amended Chapter 25A of the Michigan Penal Code, entitled "Criminal Enterprises" (MCL 750.159g). Under the code, racketeering is defined as committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain that includes any of the listed criminal acts. The bill amended this list to include as a predicate offense for the crime of racketeering a violation of Chapter 67A (Human Trafficking), a felony violation of the Identity Theft Protection Act, and a violation of Section 145d.

(Section 145d prohibits use of the Internet, a computer, or a computer program, network, or system to communicate with any person for the purpose of committing, attempting to commit, conspiring to commit, or soliciting another to commit any of the following:

- When the victim or intended victim is a minor or believed to be a minor— involvement in child sexually abusive activity or material, kidnaping, first-, second-, third-, or fourth-degree criminal sexual conduct (CSC), or assault with intent to commit CSC, solicitation of a child for immoral purposes, recruitment or inducement of a minor to commit a felony, kidnaping of a child under the age of 14, or disseminating sexually explicit material to a minor.
- Stalking or aggravated stalking.
- An explosives offense listed in Chapter 33 of the code; causing a death by explosives; selling explosives to a minor; or intentionally reporting a crime relating to a bombing, attempted bombing, or threat to bomb, knowing that the report is false.)

House Bill 5578 amended the Revised Judicature Act (MCL 600.4701). The provision defines "crime" to mean committing, attempting to commit, conspiring to commit, or soliciting another person to commit any of the listed offenses in connection with which the forfeiture of property is sought. The bill included in the list of offenses a violation of Chapter 67A (Human Trafficking) and Chapter 83A (Terrorism).

House Bill 5579 added a new section to the William Van Regenmorter Crime Victim's Rights Act (MCL 780.766b) to require a court, when sentencing a defendant convicted of a violation of Chapter 67A of the Michigan Penal Code (Human Trafficking), to order restitution for the full amount of loss suffered by the victim. In addition, the following costs could also be imposed upon the defendant by the court:

- The victim's lost income, calculated as specified in the bill.
- The cost of transportation, temporary housing, and child care expenses incurred by the victim because of the offense.
- Attorney fees and other costs and expenses incurred by the victim because of the offense, including, but not limited to, costs and expenses relating to assisting the investigation of the offense and for attendance at related court proceedings that would include wages lost, child care, transportation, and parking.
- Any other loss suffered by the victim as a proximate result of the offense.

BACKGROUND INFORMATION:

For more information on human trafficking and resources available to victims in Michigan, see the State of Michigan Human Trafficking Task Force website: www.humantrafficking.msu.edu. To report a suspected case of human trafficking, call the National Human Trafficking Resource Center at 1-888-3737-888.

FISCAL INFORMATION:

The fiscal impact of **House Bills 5575-5577** on state and local correctional systems would depend on how they affected the number and severity of felony sentences. To the extent that the bill increases felony and/or misdemeanor convictions related to these substances, it would increase state and/or local incarceration costs. Local incarceration costs at local jails vary by county. The average cost of incarceration in a state prison is roughly \$34,000 per prisoner per year. However, the incremental cost of adding one or more prisoners to the system can vary significantly around this average depending on the availability of open beds. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,100 per supervised offender per year. Any increase in penal fine revenues resulting from the bills would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

House Bill 5578 would have a positive fiscal impact on state and local government as it would expand the forfeiture provision to human trafficking. Any property sold may be used for the payment of restitution, the claims of victims, outstanding liens, and expenses. The balance remaining may then be distributed to the unit or units of government involved in effecting the forfeiture. Seventy-five percent of the money received is to be used to enhance enforcement of the criminal laws and 25 percent of the money to implement the crime victim's rights act.

House Bill 5579 would have an indeterminate fiscal impact on the judicial branch. Any fiscal impact would be the result of increased administrative court costs in calculating and awarding restitution payments to the defendant.

ARGUMENTS:

For:

The bill package fills several gaps that the initial ban on human trafficking did not address and adds a stronger deterrence through stiffer penalties. House Bill 5575 broadens the scope of actions that constitute human trafficking, orders offenders to pay restitution if applicable, and allows for sentences for multiple convictions arising out of the same transaction to be served consecutively. In particular, it establishes harsher penalties for those who would enslave children and those forcing individuals into the sex trade.

House Bill 5577 expands the prohibition against racketeering to apply to groups or organizations engaging in human trafficking or I.D. theft and allows them to be prosecuted under the racketeering statute. This represents an important tool for prosecutors to use when organized crime or businesses are involved in running brothels,

prostitution rings, or forcing undocumented workers to work for little or no wages under fear of deportation or the use of physical punishment.

Further, identity theft is increasingly being committed by large, organized gangs of criminals, with profits sometimes being used to support terrorism. Some acts of identity theft greatly impact victims and so perpetrators deserve the harsher penalties available under the racketeering statute. Including violations of the Identity Theft Protection Act, as House Bill 5577 does, allows prosecutors more options in charging a violator so to adequately fit a punishment to the crime.

House Bill 5578 allows the property used to commit a crime of human trafficking, and the profits from the criminal activity, to be subject to the seizure and forfeiture laws. Under that statute, proceeds from the sale of property and money forfeited are used to satisfy liens, pay claims of victims, pay court-ordered restitution, and cover expenses incurred with the seizure and forfeiture. The remaining balance goes to the local governmental units involved in the forfeiture, with the money being used to enhance law enforcement efforts and implement the Crime Victim's Rights Act. It only seems right that profits made by enslaving others through fraud and violence be used to reimburse the victims of the crime and to fund law enforcement agencies.

House Bill 5579 adds human trafficking to the list of crimes for which restitution, when applicable, must be ordered by a court. In general, restitution pays for the period of disruption to a crime victim's life and enables the person to rebuild his or her life. Many victims of human trafficking, especially children, never had "lives" in the first place. Therefore, the money from restitution is needed to build a life denied by the years of servitude. The bill will greatly assist victims in rebuilding their lives by requiring full restitution of what the victim lost by the crime and allowing a court to also order an enhanced restitution based on the victim's lost wages, costs to the victim related to the crime, and assistance provided in the prosecution of the crime.

Against:

Some have questioned the need for the new crime categories and for a specific reference to human trafficking regarding restitution to victims. Some feel that current law is already adequate to address those issues. Further, news articles and editorials over the past few years have called on state lawmakers to curtail property seizures unless there is a conviction. Instead, House Bill 5578 would expand the forfeiture provisions to include crimes involving human trafficking. Seizure of property can be done solely upon arrest and charges being filed. Even if a person is acquitted or charges dismissed, he or she must pay fees to reclaim the property, which is burdensome for low-income individuals, who may not be able to afford to redeem a home, a vehicle, or other property. Some believe that a recent rise in seizures—which coincides with a decrease in state revenue-sharing and in property tax revenues—may be an attempt by local governments to shore up badly needed revenue.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.