



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bills 5542, 5543, and 5544 (as passed by the House)

Sponsor: Representative Laura Cox (H.B. 5542)
Representative Gary Howell (H.B. 5543)
Representative Nancy E. Jenkins (H.B. 5544)

House Committee: Criminal Justice

Senate Committee: Judiciary

Date Completed: 9-1-16

CONTENT

House Bill 5542 would amend Public Act 213 of 1965, which governs the setting aside of criminal convictions, to allow someone to apply for the expunction of a conviction for violating a prostitution-related local ordinance that was substantially similar to a State law, as currently permitted if a person is convicted of violating the State law.

House Bill 5543 would amend the juvenile code to require the court to set aside a person's adjudication for a prostitution-related offense, if the person committed the offense as a result of being a victim of human trafficking.

House Bill 5544 would amend the Michigan Penal Code to do the following:

- Establish a presumption that a person under 18 who was prosecuted for violating a prostitution-related local ordinance substantially similar to a State law was coerced into child sexually abusive activity or commercial sexual activity or otherwise coerced by someone engaged in human trafficking, as currently presumed if someone under 18 is prosecuted for violating the State law.
- Apply a felony penalty to certain human-trafficking offenses that resulted in an individual being engaged in commercial sexual activity, as currently provided for such offenses that result in bodily injury to an individual.

Each of the bills would take effect 90 days after its enactment.

House Bill 5542

Under Public Act 213 of 1965, a person who is convicted of a violation of Section 448, 449, or 450 of the Michigan Penal Code may apply to have that conviction set aside if he or she committed the offense as a direct result of being a victim of a human trafficking violation. Under the bill, that provision also would apply to a person convicted of violating a local ordinance substantially corresponding to Section 448, 449, or 450.

(Sections 448, 449, and 450 apply to people who are at least 16 years of age. Section 448 prohibits soliciting, accosting, or enticing prostitution; Section 449 prohibits admitting another person to a place of prostitution; and Section 450 prohibits aiding, assisting, or abetting prostitution.)

Also, under the Act, a person convicted of fourth-degree criminal sexual conduct after January 12, 2015, may not apply to have the conviction set aside and a judge may not set aside the conviction. Under the bill, this would apply to a person convicted on or after that date.

House Bill 5543

Under the juvenile code, a person who has been adjudicated for certain offenses that would be crimes if committed by an adult may file an application with the adjudicating court to have the adjudication set aside. As a rule, the court is permitted, but not required, to set aside the adjudication. If the person was adjudicated for an offense commonly known as joyriding, and meets the requirements for expunction, the court is required to set aside the adjudication.

The bill also would require the court to set aside an adjudication for a violation of Section 448, 449, or 450 of the Penal Code or a substantially corresponding local ordinance if the person committed the offense as a direct result of being a victim of a human trafficking violation and met the requirements for having the adjudication expunged.

House Bill 5544

Presumption

Under the Penal Code, in any prosecution of a person under 18 for certain prostitution-related offenses, there is a rebuttable presumption that the person was coerced into child sexually abusive activity or commercial sexual activity or was otherwise forced into committing the offense by another person engaged in human trafficking. Under the bill, that presumption also would apply in a prosecution of a person under 18 for a substantially corresponding local ordinance.

(The presumption applies to a violation of any of the following:

- Section 448, 449, or 450, as described above.
- Section 449a(1), which prohibits a person from engaging or offering to engage the services of another person for the purpose of prostitution, lewdness, or assignation, for monetary payment or other forms of consideration.
- Section 462, which prohibits a person from taking, conveying, employing, receiving, detaining, or allowing a person who is 16 years old or younger to remain in a house of prostitution.)

Penalty

Under the Code, a violation of Section 462b, 462c, or 462d is a felony punishable by up to 10 years' imprisonment and/or a fine up to \$10,000. If the violation results in bodily injury to an individual, it is punishable by up to 15 years' imprisonment and/or a maximum fine of \$15,000. Under the bill, that penalty also would apply to a violation of Section 462b, 462c, or 462d that resulted in an individual being engaged in commercial sexual activity.

(Section 462b prohibits a person from knowingly recruiting, enticing, harboring, transporting, providing, or obtaining an individual for forced labor or services. Section 462c prohibits a person from knowingly recruiting, enticing, harboring, transporting, providing, or obtaining an individual for the purpose of holding him or her in debt bondage. Section 462d prohibits a person from knowingly doing either of the following:

- Recruiting, enticing, harboring, transporting, providing, or obtaining an individual by any means, knowing that he or she will be subjected to forced labor or services or debt bondage.

- Benefiting financially or receiving anything of value from participation in an enterprise, if the enterprise has engaged in an act proscribed under Chapter 67A (Human Trafficking) of the Code.)

MCL 780.621 (H.B. 5542)
712A.18e (H.B. 5543)
750.451 & 750.462f (H.B. 5544)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 5542

The bill would have no fiscal impact on the State and could have a negative fiscal impact on local units of government. An increase in expungement hearings could place incremental resource demands on local courts.

House Bill 5543

The bill would have no fiscal impact on the State and could have a negative fiscal impact on local units of government. An increase in hearings to set aside juvenile adjudications could place incremental resource demands on local courts.

House Bill 5544

The bill could have a negative fiscal impact on the State if it increased felony sentences. Longer felony sentences could lead to increased costs for correctional facilities. In the short term, the marginal cost to State government would be approximately \$3,764 per prisoner per year. In the long term, if the increased length of sentences increased the total prisoner population enough to require the Department of Corrections to open a housing unit or an entire facility, the marginal cost to State government would be approximately \$34,550 per prisoner per year. Any associated increase in fine revenue would be dedicated to public libraries.

There also could be an increase in cost to the State and local government to the extent that individuals would not be prosecuted under a local ordinance that is substantially similar to a State law to which the presumption applies. Since this could increase the number of individuals under temporary protective custody, there could be an increase in the need for juvenile services, which are funded through the Department of Health and Human Services and county governments.

Fiscal Analyst: Ryan Bergan
John Maxwell

S1516\5542sa

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.