

Legislative Analysis



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HUMAN TRAFFICKING

House Bill 4914 as introduced
Sponsor: Rep. Dudley Spade

House Bill 4915 as introduced
Sponsor: Rep. Joel Sheltrown

House Bill 4916 as amended
Sponsor: Rep. Marc Corriveau

House Bill 4917 (Substitute H-2)
Sponsor: Rep. Mary Valentine

House Bill 4918 as introduced
Sponsor: Rep. Robert Dean

Committee: Judiciary

First Analysis (2-27-08)

BRIEF SUMMARY: The bills would amend 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.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local units of government. A more detailed discussion follows later in the analysis.

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.

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 or forfeited by law enforcement agencies.

Legislation has been offered to address perceived gaps in the current state human trafficking laws.

THE CONTENT OF THE BILLS:

The bills would amend 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. House Bills 4915-4917 are tie-barred to House Bill 4914, meaning that none of those bills could take effect unless House Bill 4914 was also enacted. Specifically, the bills would do the following:

House Bill 4914

The bill would add 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 certain payments to a victim by a person convicted under the bill, and define terms. Under the bill, a person would be prohibited from:

- Knowingly providing or obtaining the labor or services of another person by force, fraud, or coercion. "Force" would include, but not be limited to, physical violence or actual physical restraint or confinement, but injury would be required. "Fraud" would include a false or deceptive offer of employment or marriage. "Coercion" would include, but not be 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" would include, but not be 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" would include a state of providing labor or services entered into or maintained by means of force, fraud, or coercion.

Both of the violations described above would be 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) or a commercial sex act, 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" would mean 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.

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

The bill would 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 would have to order a person convicted of violating the bill to pay restitution to the victim. In addition, the court would also have to order the person to pay one of the following to the victim:

- The fair and prevailing wage paid to those lawfully employed in that industry for that work, if the victim had not been paid for his or her work.
- If the victim had been paid at a rate below that of the prevailing wage paid those lawfully employed in that industry, the difference between the wages paid to the victim and that fair and prevailing wage.

House Bill 4915

The bill would amend the Code of Criminal Procedure (MCL 777.16w) to include the violations proposed by House Bill 4914 in the sentencing guidelines as follows:

Violation	Felony Class & Category	Statutory Maximum Sentence
Providing labor or services of another person by force, fraud, or coercion	D - Person	10 years
Providing labor or services of minor by force, fraud, or coercion	B - Person	20 years
Providing labor or services of another person by force, fraud, or coercion causing death or serious physical harm	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 or serious physical harm	A- Person	Life

House Bill 4916

The bill would amend 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 would amend this list to include a violation of Chapter 67A (Human Trafficking).

The bill would also delete a reference to Section 17766a of the Public Health Code concerning androgenic anabolic steroids. The section was repealed by Public Act 236 of 2001 because departmental rules already include certain androgenic anabolic steroids as a Schedule 3 drug and exclude other ones.

House Bill 4917

The bill would amend 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 would include in the list of offenses a violation of Chapter 67A (Human Trafficking) and Chapter 83A (Terrorism).

House Bill 4918

The bill would add 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 would also be imposed upon the defendant:

- 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.

FISCAL INFORMATION:

The bills' fiscal impact on state and local correctional systems would depend on how they affected the number and severity of felony sentences. To the extent that more felons were sentenced to prison or were sentenced to prison for longer terms, the bills could increase state costs of prison incarceration; the average appropriated cost per prisoner is approximately \$32,000 per year, a figure that includes various fixed administrative and operational costs. To the extent that more offenders were sentenced to probation, the state could incur increased supervision costs; the average annual cost of parole and

probation supervision is about \$2,000 per supervised offender. Any increase in jail sentences would be borne by the affected counties; jail costs vary by county. Any increase in penal fine collections could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

ARGUMENTS:

For:

The bill package would fill several gaps that the initial ban on human trafficking did not address and, with stiffer penalties, add a stronger deterrence. House Bill 4914 would broaden the scope of actions that constitute human trafficking, order offenders to pay restitution if applicable, and allow for sentences for multiple convictions arising out of the same transaction to be served consecutively. In particular, it would establish harsher penalties for those who would enslave children and those forcing individuals into the sex trade.

House Bill 4916 would expand the prohibition to apply to groups or organizations engaging in human trafficking and allow them to be prosecuted under the racketing 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.

House Bill 4917 would allow 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 to cover expense 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 4918 would add human trafficking to the list of crimes for which restitution, when applicable, would have to be ordered and clarifies that restitution be based on prevailing wages for the activity the person was forced to perform. The bill would also require certain costs to be imposed on a person convicted of human trafficking.

Against:

Some questions have been raised as to the need for the new crime categories and specific reference to human trafficking regarding restitution to victims. It is felt that current law may already be adequate to address those issues.

POSITIONS:

The Department of State Police indicated support for the bills. (2-20-08)

A representative of the Wayne County Prosecutor's Office testified in support of the bills. (2-20-08)

The Michigan Sheriff's Association indicated support for the bills. (2-20-08)

The Michigan Coalition Against Domestic and Sexual Violence indicated support for the bills. (2-20-08)

A representative of Adrian College indicated support for the bills. (2-20-08)

The Prosecuting Attorneys Association of Michigan supports the concept of the bill package. (2-20-08)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson

■ 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.