

DISCHARGE & DISMISSAL OF PROSTITUTION CHARGE: ALLOW FOR VICTIM OF HUMAN TRAFFICKING

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Senate Bill 585 (Substitute H-1)

(Enacted as Public Act 334 of 2014)

Sponsor: Sen. Mike Nofs

House Committee: Criminal Justice

Senate Committee: Judiciary

Complete to 10-2-14

A SUMMARY OF SENATE BILL 585 AS REPORTED BY COMMITTEE 10-1-14

Generally speaking, the bill would provide a means to vacate prostitution-related offenses that victims of human trafficking were forced to commit.

The bill would add a new section to Chapter LXVII (entitled "Prostitution") of the Michigan Penal Code (MCL 750.451c, as proposed). The new section only applies to a violation of Sections 448, 449, 450, or 462 (or a local ordinance substantially similar) committed as a direct result of the individual being a victim of human trafficking and would do the following:

- ❖ If the individual has not previously been convicted of, pled guilty to, or been found guilty of one of the specified violations, then a court would be allowed to defer proceedings without entering a judgment and place the individual on probation. This would require the consent of both the accused and the prosecutor.
- ❖ First, the court would have to:
 - Determine whether the accused has previously been convicted of one of the specified offenses or has previously received a discharge and dismissal under this provision.
 - Determine the disposition of an arrest for an assaultive crime in the individual's record for which there is no disposition (this is for purposes of the applicability of this provision to that individual).
 - Determine whether the accused has:
 - Proved by a preponderance of the evidence that the violation was a result of being a victim of human trafficking.
 - Stated under oath that the violation was committed as a direct result of being a victim of a human trafficking violation, with facts supporting the claim that the violation was a direct result of being a victim of human trafficking.
- ❖ If conditions of probation are violated, the court could enter an adjudication of guilt.

- ❖ In addition to conditions of probation currently allowed under law, the bill would allow a variety of probation conditions, including participation in a mandatory counseling program, paying costs of that program, participation in a drug treatment court, and no more than 93 days in jail (or not more than the maximum allowed for the underlying offense).
- ❖ A court must enter an adjudication of guilt and proceed as provided under Chapter LXVII if the accused:
 - Commits a violation of any of the specified offenses during the period of probation.
 - Violates a court order to receive counseling regarding the violent behavior.
 - Violates a court order to not have contact with a named individual.
- ❖ If the terms and conditions are fulfilled, the court must discharge the person and dismiss the proceedings. This would be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.
- ❖ There could only be one discharge and dismissal under this section with respect to any individual.
- ❖ The court proceedings would be open to the public, except the record of the proceedings would be closed to public inspection during the period of deferral.
- ❖ Unless a judgment of guilt were entered, the Department of State Police would retain a nonpublic record of the arrest, court proceeding, and disposition. However, the nonpublic record would be open to certain individuals and entities, as specified in the bill, but for only the purposes noted. These include state courts, law enforcement personnel, the Department of Corrections, and others, for such things as determining whether certain public employees have violated conditions of employment or determining if a person has already received a discharge and dismissal under this new section. In addition, the Department of Human Service could access the nonpublic record to enforce child protection laws and vulnerable adult protection laws or when doing preemployment criminal histories of individuals who will be engaged in the enforcement of child or vulnerable adult protection laws.

(Currently, Section 448 of the Penal Code pertains to soliciting a prostitute. Section 449 makes it a criminal offense to admit a minor into a place of prostitution. Section 450 pertains to a person at least 16 years old who aids and abets another to violate Sections 448 and/or 449. Section 462 makes it an offense to take, employ, or detain a person less than 16 years of age in a house of prostitution but for a purpose other than prostitution. Legislation within the larger Human Trafficking bill package will amend these sections to increase penalties for crimes involving minors and to make the language gender neutral, among other things.)

FISCAL IMPACT:

If an individual is a victim of human trafficking charged with a violation of one of several prostitution-related violations or local ordinances, but has not previously been convicted of that offense, the individual may be placed on probation instead of the court entering an adjudication of guilt and proceeding as otherwise provided for under the Michigan Penal Code. After successfully completing the terms of probation, the case may be discharged and dismissed, one time, without the court entering an adjudication of guilt. Under this scenario, the bill could result in fewer convictions which could result in decreased costs for state and/or local units of government and decreased penal fine revenues.

However, if the terms of probation include incarceration for not more than 93 days, or for not more than the period of incarceration authorized for the offense if the maximum period is less than 93 days, there could be increased costs for county jails and/or local misdemeanor probation supervision. If terms of probation include mandatory participation in drug treatment courts, the judiciary could experience increased costs depending on the increase in caseloads and related administrative costs. Any increases or decreases in penal fine revenues would affect funding for local libraries, which are the constitutionally-designated recipients of those revenues.

BACKGROUND INFORMATION:

Victims of human trafficking are often forced by their captors to engage in illegal conduct, especially offenses relating to prostitution. In its *2013 Report on Human Trafficking*, the Michigan Commission on Human Trafficking recommended that a path be provided to vacate prostitution-related offenses that victims were forced to commit. Michigan law currently allows for the one-time discharge and dismissal of charges for certain offenses if the defendant successfully completes probation. It has been suggested that victims of certain prostitution-related violations be eligible for a one-time deferred sentence with the charge being dismissed at the end of probation, if all the conditions of probation were complied with.

POSITIONS:

The Office of Attorney General indicated support for the bill. (10-1-14)

The Michigan Department of State Police indicated support for the bill. (10-1-14)

The Michigan Catholic Conference indicated support for the bill. (10-1-14)

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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.