

# Legislative Analysis

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## KIDNAPPING, PROSTITUTION: YOUNG VICTIMS

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**House Bill 4021 (reported from committee as Substitute H-2)**  
**Sponsor: Rep. George T. Derany**

**House Bill 5012 (reported from committee as Substitute H-2)**  
**Sponsor: Rep. Eileen Kowall**

**House Bill 5026 reported without amendment**  
**Sponsor: Rep. Kurt Heise**

**Committee: Criminal Justice**  
**First Analysis (12-3-13)**

**BRIEF SUMMARY:** House Bill 4021 would include *engaging in child sexually abusive activity with a minor* in the list of acts that constitute kidnapping. House Bill 5012 would create a presumption that a person under 18 years of age prosecuted for prostitution is a victim of human trafficking, is subject to the temporary protective custody provisions of the juvenile code, and is eligible for services that are provided to dependent minors subjected to abuse and neglect. House Bill 5026 would establish criteria under which a juvenile up to age 18 may be found to be a dependent minor and includes minors alleged to have engaged in prostitution. House Bills 5012 and 5026 are tie-barred to each other, meaning that a single bill could not take effect unless the other bill is also enacted.

**FISCAL IMPACT:** The bills would result in an indeterminate fiscal impact to several state agencies as discussed in greater detail later in the analysis.

### **THE APPARENT PROBLEM:**

Human Trafficking is considered to be modern-day slavery. "Force, fraud, and/coercion" are the hallmarks of human trafficking, whether used to force or coerce someone into the sex trade, domestic servitude, or labor trafficking. Human trafficking is said to be on the rise worldwide. At least 300 cases have been documented in the past two years in Michigan, according to the 2013 Report to the Governor and Legislature by the Michigan Commission on Human Trafficking, though most experts believe this number to be far short of what is likely happening in the state. Just this summer, a federal crackdown on child prostitution led to the rescue of 10 juvenile victims and arrest of 18 procurers (or pimps) in Detroit alone (the most procurer arrests and second most juvenile recoveries in the nationwide operation). The Department of Attorney General has already secured five human trafficking convictions.

Michigan law prohibits human trafficking, and legislation to enhance penalties have been enacted in recent years. However, critics say, all too often the victims get swept up along with the perpetrators and frequently are also penalized by the criminal justice system instead of being treated for what they are – victims. This is said to be especially true of

children who are tricked and/or coerced into the sex trade. For example, according to committee testimony, a 16-year-old girl who had gone missing from her family had been brought to a hotel in Michigan by a man who sold her for sex on BackPage, a classified advertising website. Her aunt, who had been searching for her, saw the listing and called the police. Even though the aunt identified the girl as a victim, the police handcuffed the girl and put her in detention. This type of treatment further victimizes the victims.

Instead, advocates say, the law needs to change to identify victims and to provide needed services to help them overcome trauma, be reunited with family, have medical needs addressed, and help them to rebuild their lives. One of the findings and related recommendation of the Commission involves the recruitment and forced participation of minors in the sex trades. Recently, the Department of Human Services has developed a *Human Trafficking of Children Protocol* that adopts a victim-centered approach, providing a coordinated investigative team approach and delivery of specialized services to the child victim and appropriate family members. Two bills that are part of a much larger legislative package addressing human trafficking have been offered to create a process by which children forced or duped into the sex trade will be treated as victims and diverted to receiving services from the DHS instead of being turned over to the criminal justice system.

In a separate but related matter, legislation in 2006 revised the kidnapping statute to create a separate crime of unlawful restraint, with different elements than the crime of kidnapping and a lesser penalty, in order to cover some gaps in the law. Unfortunately, the revision has apparently created other gaps involving activity against children which need attention. Legislation has also been offered to address this concern.

### ***THE CONTENT OF THE BILLS:***

#### **House Bill 4021**

Currently, an individual commits the crime of kidnapping if he or she knowingly restrains another with the intent to hold the person for ransom or reward, as a shield or hostage, to commit a criminal sexual conduct offense (e.g., rape), and/or involuntary servitude.

House Bill 4021 would amend the Michigan Penal Code (MCL 750.349) to include the following in the above list of what constitutes kidnapping:

-- Engaging in child sexually abusive activity, as that term is defined in Section 145c of the code, with that person, if that person is a minor.

The bill would also revise one of the listed offenses to instead specify engaging in criminal sexual penetration or criminal sexual contact prohibited under Chapter LXXVI with that person. The title of Chapter LXXVI is "Rape." (Underlining denotes addition.)

Kidnapping is a felony punishable by imprisonment for life or any term of years and/or a maximum fine of \$50,000.

"Restrain" is defined in the kidnapping statute as restricting a person's movement or confining the person so as to interfere with that person's liberty without that person's consent or without legal authority. The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts.

(Section 145c defines "child sexually abusive activity" as a child engaging in a listed sexual act. "Child sexually abusive material" means any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.)

#### **House Bill 5012**

The Michigan Penal Code establishes penalties for the crime of prostitution, including enhanced penalties for repeat violations. House Bill 5012 would amend the code (MCL 750.451) to require, in any prosecution of a person under 18 years of age for an offense punishable under the prostitution prohibitions, that it be presumed the person had been coerced into child sexually abusive activity or commercial sexual activity in violation of the code's prohibition on such conduct or otherwise forced or coerced into committing that offense by another person engaged in human trafficking in violation of the 2006 Human Trafficking statute (Sections 462a to 462j).

The person under 18 years of age would be subject to the temporary protective custody provisions under the juvenile code. In addition, the state could petition the court to find the minor to be a dependent juvenile in need of services. However, a dependent minor who failed to substantially comply with court-ordered services would not be eligible for this presumption.

Excluding any reasonable period of detention for investigation purposes, a law enforcement officer who took a person under 18 years of age into custody for a suspected violation of engaging in prostitution would have to immediately report to the Department of Human Services a suspected violation of human trafficking involving a person under 18 years of age in violation of the Human Trafficking statute.

Further, the Department of Human Services would have to begin an investigation of a reported human trafficking violation within 24 hours after the report is made to the department, as provided in Section 8 of the Child Protection Law. The investigation would have to include a determination as to whether the person under 18 years of age is dependent and in danger of substantial physical or psychological harm under Section 2(b)(3) of the juvenile code (as amended by House Bill 5026).

### **House Bill 5026**

The juvenile code grants authority to the family division of circuit court over juveniles under 18 years of age under certain circumstances. House Bill 5026 would amend Section 2 of the juvenile code within the Probate Code (MCL 712A.2) to extend the court's authority to juveniles up to 18 years of age who are dependent and in danger of substantial physical or psychological harm. The juvenile may be found dependent when the juvenile is:

- Homeless or not living with a parent or other legally responsible person;
- Has repeatedly run away from home and is beyond control of a parent or other legally responsible person;
- Is alleged to have committed a commercial sexual activity (as defined in the Michigan Penal Code, MCL 750.462a) or a delinquent act that is the result of force, fraud, coercion, or manipulation exercised by a parent or other adult;  
**and/or**
- The custodial parent or legally responsible person has died or has become permanently incapacitated and no appropriate parent or legally responsible person is willing and able to provide care for the juvenile.

(Section 462a of the Michigan Penal Code defines "commercial sexual activity" to include an act of sexual penetration or sexual contact for which anything of value is given or received by any person, or any conduct prohibited under the child sexually abusive activity or materials statute. "Sexual penetration" and "sexual contact" are defined in Section 520a of the code.)

### ***BACKGROUND INFORMATION:***

An informative brochure on Human Trafficking developed by the Department of Attorney General is available at:

[http://www.michigan.gov/documents/ag/Human\\_Trafficking\\_Brochure\\_380106\\_7.pdf](http://www.michigan.gov/documents/ag/Human_Trafficking_Brochure_380106_7.pdf)

In addition, information on Human Trafficking can also be found at the Michigan Human Trafficking Task Force website – <http://www.humantrafficking.msu.edu/> – and the Polaris Project website – [www.polarisproject.org](http://www.polarisproject.org).

### ***FISCAL INFORMATION:***

#### ***Impact on the Department of Corrections***

To the extent that House Bill 4021 results in a greater number of convictions, it could increase costs on state and local correctional systems. Information is not available on the number of persons that might be convicted under these provisions. New felony convictions could result in increased costs related to state prisons, county jails, and/or state probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,500 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,000

per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

***Impact on the Judiciary***

House Bill 5012 would have an indeterminate fiscal impact on the judiciary system if there is an increase in the number of youth that the state requests the court to find to be dependent youths in need of services. The bill's new requirement could cause an increase in administrative workload for the courts, depending on the number of relevant cases they handle.

House Bill 5026 would have an indeterminate fiscal impact on the judiciary system if there is an increase in the number of youth that would fall under the Probate Court's jurisdiction. If there is an increase, there would be an increase in the administrative workload for the probate courts.

***Impact on the Department of Human Services***

House Bill 5012 could increase costs to the state and to county child care funds by an uncertain amount. The increase would only occur to the degree that this bill increases the number of youth the state requests that the court finds to be a dependent youth in need of services. The number of youth and the types of services those youth would participate in are uncertain at this time.

***ARGUMENTS:***

***For:***

House Bill 4021 will expand the element of kidnapping to include *restraining a child for child sexually abusive activity*. The impetus came from several Wayne County cases. In one case, a neighborhood ice cream truck driver got permission from some parents to take children on his rounds. He took some of the children to his home where he tied them up, put them in cages, hog-tied some on poles, and then took pictures of the children for his own pleasure. Because he did not penetrate, prosecutors could only charge him with unlawful confinement, a lesser penalty and one not fitting the predatory nature of his actions. Thus, the bill will provide a more appropriate penalty for those who would prey on children for their own or others' sexual gratification, and close at least one gap in the law created when the kidnapping statute was revised in 2006.

***For:***

House Bills 5012 and 5026 work in tandem to divert children up to age 18 arrested or detained for prostitution from the criminal justice system and to the social service system for appropriate services by creating a rebuttable presumption that the children are victims of human trafficking. This is not a "soft on crime" measure, say advocates, but recognition of the forces at play that victimize these children against their wills. To remain eligible for the diversion, a child or young person would have to substantially comply with any court-ordered treatment, services, or programs. Thus, the bills provide a "carrot and stick" approach to encourage these traumatized individuals to continue with

beneficial services that can restore them to a productive life rather than bolting once they realize there won't be criminal penalties. The threat of prosecution for noncompliance will also mitigate the opportunity for pimps to encourage their young victims to just run away and come back to the stable with impunity.

***Response:***

The bills do not address how a person who was trafficked into the sex trade as a child, but who now has now reached 18 years of age, will be treated. Reportedly, it is not uncommon for a child to be abducted or otherwise coerced into the sex trade as young as 11 years of age, and to continue to be sold for sex until well into adulthood. These women and men may be especially traumatized and unable to free themselves due to the young age when first victimized and the length of time of their victimization.

Further, it is unclear how "substantially compliant" with court orders a youthful victim of human trafficking will need to be in order to take advantage of the bill's diversion to social services instead of criminal prosecution. After all, many of these children were runaways or neglected or abused children. They may have a very deep mistrust of authority figures that has been made worse by their victimization at the hands of human traffickers. They may also suffer from Stockholm Syndrome or be under threat of harm to their families if they escape; thus, they may be unusually motivated to return to their pimps and abusers. Will such psychological or behavioral tendencies be considered when determining "substantially compliant?" Or will a single refusal of cooperation or return to a pimp be sufficient to trigger criminal prosecution?

***POSITIONS:***

A representative of the Michigan Catholic Conference testified in support of the bills. (11-13-13)

A representative of the Human Trafficking Clinic at the University of Michigan Law School testified in support of the bill. (11-13-13)

A representative of the Wayne County Prosecutor's Office testified in support of House Bill 4021. (11-13-13)

The Genesee County Prosecutor testified in support of House Bill 5012. (11-13-13)

A representative of the Michigan Association of Chiefs of Police testified in support of the House Bill 5012. (11-13-13)

A representative of the Department of Attorney General testified in support of House Bill 5026. (11-13-13)

The Michigan State Council of Junior Leagues indicated support for the bills. (11-13-13)

The Michigan State Police indicated support for House Bills 4021 and 5012. (11-13-13)

The Michigan Domestic and Sexual Violence Prevention and Treatment Board indicated support for House Bill 4021. (11-13-13)

The Michigan Sheriffs' Association indicated support for House Bill 5012. (11-13-13)

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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.