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House Bill 5012 (Substitute S-3 as reported by the Committee of the Whole)
House Bill 5026 (Substitute S-1 as reported)
Sponsor: Representative Eileen Kowall (H.B. 5012)
Representative Kurt Heise (H.B. 5026)
House Committee: Criminal Justice
Senate Committee: Families, Seniors and Human Services

CONTENT

House Bill 5012 (S-3) would amend Section 451 of the Michigan Penal Code to provide that, in a prosecution of a person under 18 years of age for a prostitution offense under Section 448, 449, 449a, 450, or 462 of the Code, it would be presumed that the person was coerced into child sexually abusive activity or commercial sexual activity, or otherwise forced or coerced into committing that offense by another person engaged in human trafficking in violation of Chapter 62A. The prosecution could overcome this presumption by proving beyond a reasonable doubt that the person was not forced or coerced into committing the offense.

The bill also would allow the State to petition the court to find the person under 18 years of age to be dependent and in danger of substantial physical or psychological harm under the juvenile code. If the person failed to comply with court-ordered services under the juvenile code, he or she would not be eligible for the proposed presumption.

The bill specifies that a law enforcement officer who encountered a person under 18 years of age engaging in conduct prohibited under Section 448, 449, 449a, 450, or 462 of the Penal Code, or a substantially corresponding local ordinance, if engaged in by a person 16 years of age or over, would have to report immediately to the Department of Human Services (DHS) a suspected human trafficking violation involving a person under 18, excluding any reasonable period of detention for investigation purposes.

The DHS would have to begin an investigation of a human trafficking violation reported to it within 24 hours after the report was made. The investigation would have to include a determination as to whether the person under 18 was dependent and in danger of substantial physical or psychological harm.

In addition, where Section 451 refers to Section 449a, the bill would refer instead to 449a(1). The bill specifies that a person who was convicted of violating Section 449a(2) would be guilty of a felony punishable by up to five years' imprisonment or a fine of not more than \$10,000, or both. (Section 449a currently makes it a misdemeanor for a person to engage the services of another for the purpose of prostitution. Under Senate Bill 205, this provision would be in Section 449a(1). Senate Bill 205 would add subsection (2) to prohibit the solicitation of a person under the age of 18 for prostitution.)

House Bill 5026 (S-1) would amend the juvenile code to grant jurisdiction to the Family Division of Circuit Court in proceedings concerning a juvenile if her or she were dependent and in danger of substantial physical or psychological harm. A juvenile could be found to be dependent if any of the following occurred:

- The juvenile was homeless or not domiciled with a parent or other legally responsible adult.
- The juvenile repeatedly ran away from home and was beyond the control of a parent or legally responsible adult.
- The juvenile was alleged to have committed commercial sexual activity or a delinquent act that was the result of force, fraud, coercion, or manipulation exercised by a parent or other adult.
- The juvenile's custodial parent or legally responsible adult had died or become permanently incapacitated and no appropriate person was willing and able to provide care for the juvenile.

The bills are tie-barred to each other and would take effect 90 days after their enactment. House Bill 5012 (S-3) also is tie-barred to Senate Bill 205, which would amend Section 449a, as described above, and House Bill 5234, which would amend human trafficking provisions of the Penal Code.

MCL 750.451 (H.B. 5012)
712A.2 (H.B. 5026)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bill 5012 (S-3): To the extent that the bill would reduce the number of individuals under the age of 18 who are charged with violations involving commercial sexual activity, there could be an offsetting fiscal effects on the local court systems. If fewer individuals were being prosecuted, but more individuals were the subject of a petition for protection, the fiscal impact could balance out on local court systems.

Additionally, the bill would add a felony penalty associated with soliciting a person who is under 18 years of age, as proposed by Senate Bill 205. For any additional felony sentence for a conviction under the bills, in the short term, the marginal cost to State government would be approximately \$4,100 per additional prisoner per year. Over the long term, the marginal cost to State government would be approximately \$31,100 per additional prisoner per year. The revisions and enhancements would increase cost to local courts and police to the extent that these bills resulted in a greater number of violations and increased caseload.

House Bill 5012 (S-3) also would result in an indeterminate fiscal impact on the Department of Human Services budget and local units of government. Actual costs would be affected by several factors, such as the number of minor victims of human trafficking who would be identified and the number of individuals who would be placed under court or State supervision. If any of the cases were funded through the Child Care Fund or the State Ward Board and Care Fund, the costs of care would be split 50-50 between the State and counties.

House Bill 5026 (S-1): To the extent that a greater number of individuals would fall under the family court's jurisdiction, there could be an increase in the caseload of local court systems. Any increase in caseload could result in an increase in the administrative costs to the courts. There would be no fiscal impact on State government.

Date Completed: 10-2-14

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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.