

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5012

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 451 (MCL 750.451), as amended by 2002 PA 44.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 451. (1) Except as otherwise provided in this section, a
2 person convicted of violating section 448, 449, ~~449a,~~**449A(1)**, 450,
3 or 462 is guilty of a misdemeanor punishable by imprisonment for
4 not more than 93 days or a fine of not more than \$500.00, or both.

5 (2) A person 16 years of age or older who is convicted of
6 violating section 448, 449, ~~449a,~~**449A(1)**, 450, or 462 and who has
7 1 prior conviction is guilty of a misdemeanor punishable by
8 imprisonment for not more than 1 year or a fine of not more than
9 \$1,000.00, or both.

1 (3) A person convicted of violating section 448, 449, ~~449a~~
2 ~~449A(1)~~, 450, or 462 and who has 2 or more prior convictions is
3 guilty of a felony punishable by imprisonment for not more than 2
4 years ~~—~~or a fine of not more than \$2,000.00, or both.

5 **(4) A PERSON CONVICTED OF VIOLATING SECTION 449A(2) IS GUILTY**
6 **OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR**
7 **A FINE OF NOT MORE THAN \$10,000.00, OR BOTH.**

8 (5) ~~(4)~~—If the prosecuting attorney intends to seek an
9 enhanced sentence based upon the defendant having 1 or more prior
10 convictions, the prosecuting attorney shall include on the
11 complaint and information a statement listing the prior conviction
12 or convictions. The existence of the defendant's prior conviction
13 or convictions shall be determined by the court, without a jury, at
14 sentencing or at a separate hearing for that purpose before
15 sentencing. The existence of a prior conviction may be established
16 by any evidence relevant for that purpose, including, but not
17 limited to, 1 or more of the following:

- 18 (a) A copy of the judgment of conviction.
19 (b) A transcript of a prior trial, plea-taking, or sentencing.
20 (c) Information contained in a presentence report.
21 (d) The defendant's statement.

22 **(6) IN ANY PROSECUTION OF A PERSON UNDER 18 YEARS OF AGE FOR**
23 **AN OFFENSE PUNISHABLE UNDER THIS SECTION, IT SHALL BE PRESUMED THAT**
24 **THE PERSON UNDER 18 YEARS OF AGE WAS COERCED INTO CHILD SEXUALLY**
25 **ABUSIVE ACTIVITY OR COMMERCIAL SEXUAL ACTIVITY IN VIOLATION OF**
26 **SECTION 462E OR OTHERWISE FORCED OR COERCED INTO COMMITTING THAT**
27 **OFFENSE BY ANOTHER PERSON ENGAGED IN HUMAN TRAFFICKING IN VIOLATION**

1 OF SECTIONS 462A TO 462H. THE PROSECUTION MAY OVERCOME THIS
2 PRESUMPTION BY PROVING BEYOND A REASONABLE DOUBT THAT THE PERSON
3 WAS NOT FORCED OR COERCED INTO COMMITTING THE OFFENSE. THE STATE
4 MAY PETITION THE COURT TO FIND THE PERSON UNDER 18 YEARS OF AGE TO
5 BE DEPENDENT AND IN DANGER OF SUBSTANTIAL PHYSICAL OR PSYCHOLOGICAL
6 HARM UNDER SECTION 2(B)(3) OF CHAPTER XIIIA OF THE PROBATE CODE OF
7 1939, 1939 PA 288, MCL 712A.2. A PERSON UNDER 18 YEARS OF AGE WHO
8 FAILS TO SUBSTANTIALLY COMPLY WITH COURT-ORDERED SERVICES UNDER
9 SECTION 2(B)(3) OF CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939
10 PA 288, MCL 712A.2, IS NOT ELIGIBLE FOR THE PRESUMPTION UNDER THIS
11 SECTION.

12 (7) EXCLUDING ANY REASONABLE PERIOD OF DETENTION FOR
13 INVESTIGATION PURPOSES, A LAW ENFORCEMENT OFFICER WHO ENCOUNTERS A
14 PERSON UNDER 18 YEARS OF AGE ENGAGING IN ANY CONDUCT THAT WOULD BE
15 A VIOLATION OF SECTION 448, 449, 450, OR 462, OR A LOCAL ORDINANCE
16 SUBSTANTIALLY CORRESPONDING TO SECTION 448, 449, 450, OR 462, IF
17 ENGAGED IN BY A PERSON 16 YEARS OF AGE OR OVER SHALL IMMEDIATELY
18 REPORT TO THE DEPARTMENT OF HUMAN SERVICES A SUSPECTED VIOLATION OF
19 HUMAN TRAFFICKING INVOLVING A PERSON UNDER 18 YEARS OF AGE IN
20 VIOLATION OF SECTIONS 462A TO 462H.

21 (8) THE DEPARTMENT OF HUMAN SERVICES SHALL BEGIN AN
22 INVESTIGATION OF A HUMAN TRAFFICKING VIOLATION REPORTED TO THE
23 DEPARTMENT OF HUMAN SERVICES UNDER SUBSECTION (7) WITHIN 24 HOURS
24 AFTER THE REPORT IS MADE TO THE DEPARTMENT OF HUMAN SERVICES, AS
25 PROVIDED IN SECTION 8 OF THE CHILD PROTECTION LAW, 1975 PA 238, MCL
26 722.628. THE INVESTIGATION SHALL INCLUDE A DETERMINATION AS TO
27 WHETHER THE PERSON UNDER 18 YEARS OF AGE IS DEPENDENT AND IN DANGER

1 OF SUBSTANTIAL PHYSICAL OR PSYCHOLOGICAL HARM UNDER SECTION 2(B)(3)
2 OF CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL
3 712A.2.

4 (9) ~~(5)~~As used in this section, "prior conviction" means a
5 violation of section 448, 449, ~~449a, 449A(1)~~, 450, or 462 or a
6 violation of a law of another state or of a political subdivision
7 of this state or another state substantially corresponding to
8 section 448, 449, ~~449a, 449A(1)~~, 450, or 462.

9 Enacting section 1. This amendatory act takes effect 90 days
10 after the date it is enacted into law.

11 Enacting section 2. This amendatory act does not take effect
12 unless all of the following bills of the 97th Legislature are
13 enacted into law:

- 14 (a) Senate Bill No. 205.
15 (b) House Bill No. 5026.
16 (c) House Bill No. 5234.