

**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, 450, or 462
3 is guilty of a misdemeanor punishable by imprisonment for not more
4 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, 450, or 462 and who has 1 prior
7 conviction is guilty of a misdemeanor punishable by imprisonment
8 for not more than 1 year or a fine of not more than \$1,000.00, or
9 both.

10 (3) A person convicted of violating section 448, 449, 449a,

1 450, or 462 and who has 2 or more prior convictions is guilty of a
2 felony punishable by imprisonment for not more than 2 years —or a
3 fine of not more than \$2,000.00, or both.

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

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

18 (5) **IN ANY PROSECUTION OF A PERSON UNDER 18 YEARS OF AGE FOR**
19 **AN OFFENSE PUNISHABLE UNDER THIS SECTION, IT SHALL BE PRESUMED THAT**
20 **THE PERSON UNDER 18 YEARS OF AGE WAS COERCED INTO CHILD SEXUALLY**
21 **ABUSIVE ACTIVITY OR COMMERCIAL SEXUAL ACTIVITY IN VIOLATION OF**
22 **SECTION 462E OR OTHERWISE FORCED OR COERCED INTO COMMITTING THAT**
23 **OFFENSE BY ANOTHER PERSON ENGAGED IN HUMAN TRAFFICKING IN VIOLATION**
24 **OF SECTIONS 462A TO 462H. THE PROSECUTION MAY OVERCOME THIS**
25 **PRESUMPTION BY PROVING BEYOND A REASONABLE DOUBT THAT THE PERSON**
26 **WAS NOT FORCED OR COERCED INTO COMMITTING THE OFFENSE. THE STATE**
27 **MAY PETITION THE COURT TO FIND THE PERSON UNDER 18 YEARS OF AGE TO**

1 BE DEPENDENT AND IN DANGER OF SUBSTANTIAL PHYSICAL OR PSYCHOLOGICAL
2 HARM UNDER SECTION 2(B)(3) OF CHAPTER XIIIA OF THE PROBATE CODE OF
3 1939, 1939 PA 288, MCL 712A.2. A PERSON UNDER 18 YEARS OF AGE WHO
4 FAILS TO SUBSTANTIALLY COMPLY WITH COURT-ORDERED SERVICES UNDER
5 SECTION 2(B)(3) OF CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939
6 PA 288, MCL 712A.2, IS NOT ELIGIBLE FOR THE PRESUMPTION UNDER THIS
7 SECTION.

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

17 (7) THE DEPARTMENT OF HUMAN SERVICES SHALL BEGIN AN
18 INVESTIGATION OF A HUMAN TRAFFICKING VIOLATION REPORTED TO THE
19 DEPARTMENT OF HUMAN SERVICES UNDER SUBSECTION (6) WITHIN 24 HOURS
20 AFTER THE REPORT IS MADE TO THE DEPARTMENT OF HUMAN SERVICES, AS
21 PROVIDED IN SECTION 8 OF THE CHILD PROTECTION LAW, 1975 PA 238, MCL
22 722.628. THE INVESTIGATION SHALL INCLUDE A DETERMINATION AS TO
23 WHETHER THE PERSON UNDER 18 YEARS OF AGE IS DEPENDENT AND IN DANGER
24 OF SUBSTANTIAL PHYSICAL OR PSYCHOLOGICAL HARM UNDER SECTION 2(B)(3)
25 OF CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL
26 712A.2.

27 (8) ~~(5)~~—As used in this section, "prior conviction" means a

1 violation of section 448, 449, 449a, 450, or 462 or a violation of
2 a law of another state or of a political subdivision of this state
3 or another state substantially corresponding to section 448, 449,
4 449a, 450, or 462.

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

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

10 (a) House Bill No. 5026.

11 (b) House Bill No. 5234.