

HOUSE BILL No. 5012

September 26, 2013, Introduced by Reps. Kowall, Heise, Jenkins, Graves, Zorn, Pagel, O'Brien, Denby, Jacobsen, Lori, Rendon, Tlaib and Cavanagh and referred to the Committee on Criminal Justice.

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.

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

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

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

19 **(5) IN ANY PROSECUTION OF A MINOR FOR AN OFFENSE PUNISHABLE**
20 **UNDER THIS SECTION, IT SHALL BE PRESUMED THAT THE MINOR WAS COERCED**
21 **INTO CHILD SEXUALLY ABUSIVE ACTIVITY OR COMMERCIAL SEXUAL ACTIVITY**
22 **IN VIOLATION OF SECTION 462G OR OTHERWISE FORCED OR COERCED INTO**
23 **COMMITTING THAT OFFENSE BY ANOTHER PERSON ENGAGED IN HUMAN**
24 **TRAFFICKING IN VIOLATION OF SECTIONS 462A TO 462J. A MINOR**
25 **DESCRIBED IN THIS SUBSECTION IS SUBJECT TO THE TEMPORARY PROTECTIVE**
26 **CUSTODY PROVISIONS OF SECTION 14 OF CHAPTER XIIIA OF THE PROBATE**
27 **CODE OF 1939, 1939 PA 288, MCL 712A.14, AND THE STATE MAY PETITION**

1 THE COURT TO FIND THE MINOR TO BE A DEPENDENT JUVENILE IN NEED OF
2 SERVICES UNDER SECTION 2B(3) OF CHAPTER XIIA OF THE PROBATE CODE OF
3 1939, 1939 PA 288, MCL 712A.2B. A DEPENDENT MINOR WHO FAILS TO
4 SUBSTANTIALLY COMPLY WITH COURT-ORDERED SERVICES UNDER SECTION
5 2B(3) OF CHAPTER XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL
6 712A.2B, IS NOT ELIGIBLE FOR THE PRESUMPTION UNDER THIS SECTION.

7 (6) A LAW ENFORCEMENT OFFICER WHO TAKES A PERSON UNDER 18
8 YEARS OF AGE INTO CUSTODY FOR A SUSPECTED VIOLATION OF SECTION 448,
9 449, OR 450 OR OF THIS SECTION SHALL NOTIFY THE DEPARTMENT OF HUMAN
10 SERVICES OF A SUSPECTED VIOLATION OF HUMAN TRAFFICKING INVOLVING A
11 MINOR IN VIOLATION OF SECTIONS 462A TO 462J.

12 (7) ~~(5)~~—As used in this section, "prior conviction" means a
13 violation of section 448, 449, 449a, 450, or 462 or a violation of
14 a law of another state or of a political subdivision of this state
15 or another state substantially corresponding to section 448, 449,
16 449a, 450, or 462.

17 Enacting section 1. This amendatory act does not take effect
18 unless Senate Bill No. ____ or House Bill No. ____ (request no.
19 03433'13) of the 97th Legislature is enacted into law.