

Legislative Analysis



VICTIMS OF HUMAN TRAFFICKING: ALLOW TO EXPUNGE PROSTITUTION CONVICTIONS

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House Bill 5025 (Reported from committee without amendment)

**Sponsor: Rep. Kurt Heise
Committee: Criminal Justice**

First Analysis (1-28-14)

BRIEF SUMMARY: The bill would allow a victim of human trafficking to expunge multiple convictions under the prostitution statutes and would also exempt the victim from registration as a sex offender if an expunged conviction was for a crime requiring registration.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the judiciary system. The fiscal impact would be related to increased caseloads for some courts, and would depend on the number of applications the courts receive for orders to set aside convictions.

The bill would not have a significant impact on the Michigan State Police.

THE APPARENT PROBLEM:

As human trafficking continues to be one of the fastest growing criminal enterprises, the number of its victims also grows. As efforts by advocates against human trafficking successfully rescue girls and boys, men and women, from captivity in the sex trade, observers say it is clear that much needs to be done to enable these people to heal and move on to productive lives.

In particular, many forced or coerced into the sex trade have been convicted multiple times of prostitution-related offenses. Though Michigan law allows one felony or one misdemeanor to be set aside (expunged), this is not available to someone with multiple criminal convictions. Having a criminal record is associated with a greater risk of homelessness, unemployment, ineligibility for student aid to attend college, and ineligibility to enter certain career fields. All of the aforementioned also puts a person at greater risk of recidivism, whether for a new type of crime or a new prostitution-related crime.

In order to enable victims of human traffickers to move beyond their pasts and forge new futures, there is a nationwide trend for states to amend their expungement laws to allow these people to clear their records, even if they have multiple convictions for certain sex-related offenses.

THE CONTENT OF THE BILL:

House Bill 5025, which is part of the broader package of legislation addressing the issue of human trafficking, would amend Public Act 213 of 1965, which establishes the criteria for expungement of certain criminal convictions. Currently, a person may apply to have one felony or one misdemeanor conviction set aside (expunged) if the person has no other convictions. An exception is made for a person who has no more than two misdemeanor convictions for minor offenses committed as a youth. Certain crimes, such as rape or murder, are not allowed to be set aside.

Under the bill, a person 16 years of age or older convicted of certain prostitution-related crimes could have one or more of those convictions set aside if the offense or offenses were committed while the person was a victim of a human trafficking violation and the offense or offenses were committed only because of the person's status as a victim of that human trafficking violation.

An application for expungement could be filed at any time following the date of the conviction for a violation of Sec. 448 (soliciting, accosting, or enticing prostitution), Sec. 449 (admitting another to a place of prostitution), and/or Sec. 450 (aiding, assisting, or abetting prostitution) of the Michigan Penal Code.

The application would have to include, in addition to other information required under PA 213, a statement that the person was a victim of a human trafficking violation and that the conviction or convictions sought to be set aside were committed while a victim of human trafficking and because of being a victim of a human trafficking violation.

If the conviction set aside as detailed above was for a listed offense under the Sex Offenders Registration Act, the applicant would not be considered to have been convicted of that offense for purposes of registering under that act.

"Human trafficking" is defined to mean a violation of Chapter LXVIIA, entitled "Human Trafficking," of the Michigan Penal Code.

ARGUMENTS:

For:

The bill includes many important provisions that will enable people forced or coerced into the sex trade by human traffickers to clear their records and have a fresh start in life. Importantly, a person rescued from human trafficking could immediately apply for expungement, not have to wait the five years as is required for other eligible offenses. Since the victims often have multiple convictions before being successfully rescued or being able to successfully escape, the bill will enable them to wipe all eligible prostitution-related offenses off their records. However, the bill would not apply to prostitution-related offenses not associated with human trafficking. And expunging multiple convictions would only apply to specific prostitution-related convictions, not to

convictions for other types of crimes that a victim of human trafficking may have on his or her record.

For some, the bill may enable them to totally clear their records. For others, it will clear some of the most stigmatizing of convictions, thus still improving their chances of being able to find housing and employment.

In addition, although the three prostitution-related offenses do not automatically require a person to register as a sex offender, the Sex Offender Registry Act does contain a "catch-all" clause that allows a judge to order a person convicted of any offense that is related to sexual activity to be on the Registry – both the public registry and the one maintained for law enforcement purposes. The bill would spare these individuals the further humiliation and negative impacts of being a registered sex offender.

The bill acknowledges the degree to which victims of human trafficking are forced to participate in the sex trade through brainwashing, starvation, sleep deprivation, physical and emotional abuse, and even repeated rapes. Many go back to their pimps after an arrest for prostitution for fear of retaliation against family members or that they will be hunted and killed. Thus, the bill is not picking out one type of criminal or one type of criminal offense over another and offering more benevolent treatment, but rather is reflecting the different circumstances that may compel someone to engage in this particular offense when they otherwise would not have.

POSITIONS:

A representative of the Office of Attorney General indicated support for the bill. (1-22-14)

A representative of the State Bar of Michigan indicated support for the bills. (1-22-14)

A representative of the Michigan Catholic Conference indicated support for the bill. (1-22-14)

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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.