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House Bill 5025 (Substitute H-1 as passed by the House)
Sponsor: Representative Kurt Heise
House Committee: Criminal Justice
Senate Committee: Families, Seniors and Human Services

Date Completed: 5-14-14

CONTENT

The bill would amend Public Act 213 of 1965, which provides for the setting aside of criminal convictions, to allow a victim of human trafficking to have a conviction set aside under certain conditions.

The Act allows a person who is convicted of an offense to file an application with the convicting court for an order setting aside the conviction (unless it is for a felony punishable by up to life imprisonment, an offense involving child sexually abusive activity or material, use of the internet or a computer to commit certain offenses, second- or third-degree criminal sexual conduct, or assault with intent to commit criminal sexual conduct). A person with more than one conviction may not apply for a set-aside, and an application may not be filed until at least five years after the sentencing or five years after the completion of a prison term, whichever is later.

Under the bill, a person could apply to have a conviction for a violation of Section 448, 449, or 450 of the Michigan Penal Code set aside if he or she committed the offense as a direct result of his or her being a victim of a human trafficking violation. A person could file the application at any time following the date of the conviction, and could apply to have more than one conviction set aside.

(Section 448 of the Penal Code pertains to soliciting another to commit prostitution. Section 449 relates to admitting another into a building or vehicle to commit prostitution. Section 450 relates to aiding or abetting another in committing an act prohibited under Section 448 or 449.)

The Act requires an application to contain certain information and statements. If a person were applying to have one or more convictions set aside under the bill, the application also would have to include a statement that the applicant committed the offense as a direct result of his or her being a victim of a human trafficking violation and statement of facts that supported his or her contention that the conviction was a direct result of his or her being a victim of human trafficking.

The Act also requires an applicant to submit a copy of the application, two sets of fingerprints, and a \$50 fee to the State Police. A copy of the application also must be served on the prosecuting attorney who prosecuted the crime and the Attorney General, who must be given an opportunity to contest the application.

In most cases, upon the hearing of an application, the court may require the filing of affidavits and taking of other evidence. Under the bill, if the applicant proved to the court by

a preponderance of the evidence that the conviction was a direct result of his or her being a victim of human trafficking, and the court determined that the circumstances and behavior of the applicant from the date of the conviction to the filing of the application warranted setting aside the conviction, and that setting aside the conviction was consistent with the public welfare, the court could order the conviction set aside.

Currently, if the conviction set aside is for a listed offense under the Sex Offenders Registration Act, the applicant is considered to have been convicted of that offense for purposes of that Act. Under the bill, this would not apply to a conviction set aside for a victim of human trafficking.

The bill would define "human trafficking" as a violation of Chapter 67A of the Michigan Penal Code. (That chapter pertains to human trafficking, and prohibits forced labor or services through threats, physical harm or restraint, abuse of law, blackmail, and other methods, and the use of a minor for sexually abusive activity.)

MCL 780.621 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have no fiscal impact on State government. The fiscal cost to local government would be from any additional resources required by the court to process any applications for conviction expungement.

Fiscal Analyst: John Maxwell

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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.