

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 585

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
(MCL 750.1 to 750.568) by adding section 451c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 451C. (1) THIS SECTION APPLIES ONLY IF THE VIOLATION
2 DESCRIBED IN SUBSECTION (2) WAS COMMITTED AS A DIRECT RESULT OF THE
3 INDIVIDUAL BEING A VICTIM OF A HUMAN TRAFFICKING VIOLATION.
4 (2) WHEN AN INDIVIDUAL WHO HAS NOT BEEN CONVICTED PREVIOUSLY
5 OF A VIOLATION OF SECTION 448, 449, 450, OR 462 OR A LOCAL
6 ORDINANCE SUBSTANTIALLY CORRESPONDING TO SECTION 448, 449, 450, OR
7 462 PLEADS GUILTY TO, OR IS FOUND GUILTY OF, A VIOLATION OF SECTION
8 448, 449, 450, OR 462 OR A LOCAL ORDINANCE SUBSTANTIALLY
9 CORRESPONDING TO SECTION 448, 449, 450, OR 462, THE COURT, WITHOUT
10 ENTERING A JUDGMENT OF GUILT AND WITH THE CONSENT OF THE ACCUSED

1 AND OF THE PROSECUTING ATTORNEY, MAY DEFER FURTHER PROCEEDINGS AND
2 PLACE THE ACCUSED ON PROBATION AS PROVIDED IN THIS SECTION.
3 HOWEVER, BEFORE DEFERRING PROCEEDINGS UNDER THIS SUBSECTION, THE
4 COURT SHALL DO ALL OF THE FOLLOWING:

5 (A) CONTACT THE DEPARTMENT OF STATE POLICE AND DETERMINE
6 WHETHER, ACCORDING TO THE RECORDS OF THE DEPARTMENT OF STATE
7 POLICE, THE ACCUSED HAS PREVIOUSLY BEEN CONVICTED OF A VIOLATION OF
8 SECTION 448, 449, 450, OR 462 OR A LOCAL ORDINANCE SUBSTANTIALLY
9 CORRESPONDING TO SECTION 448, 449, 450, OR 462 OR HAS PREVIOUSLY
10 AVAILED HIMSELF OR HERSELF OF THIS SECTION.

11 (B) IF THE SEARCH OF THE RECORDS UNDER SUBDIVISION (A) REVEALS
12 AN ARREST FOR AN ASSAULTIVE CRIME BUT NO DISPOSITION, THE COURT
13 SHALL CONTACT THE ARRESTING AGENCY AND THE COURT THAT HAD
14 JURISDICTION OVER THE VIOLATION TO DETERMINE THE DISPOSITION OF
15 THAT ARREST FOR PURPOSES OF THIS SECTION.

16 (C) DETERMINE WHETHER THE ACCUSED HAS MET THE CONDITIONS
17 DESCRIBED IN SUBSECTION (1) AS FOLLOWS:

18 (i) THE ACCUSED BEARS THE BURDEN OF PROVING TO THE COURT BY A
19 PREPONDERANCE OF THE EVIDENCE THAT THE VIOLATION WAS A DIRECT
20 RESULT OF HIS OR HER BEING A VICTIM OF HUMAN TRAFFICKING.

21 (ii) TO PROVE THAT HE OR SHE IS A VICTIM OF HUMAN TRAFFICKING,
22 THE ACCUSED SHALL STATE UNDER OATH THAT HE OR SHE MEETS THE
23 CONDITIONS DESCRIBED IN SUBSECTION (1) WITH FACTS SUPPORTING HIS OR
24 HER CLAIM THAT THE VIOLATION WAS A DIRECT RESULT OF BEING A VICTIM
25 OF HUMAN TRAFFICKING.

26 (3) UPON A VIOLATION OF A TERM OR CONDITION OF PROBATION, THE
27 COURT MAY ENTER AN ADJUDICATION OF GUILT AND PROCEED AS OTHERWISE

1 PROVIDED IN THIS CHAPTER.

2 (4) AN ORDER OF PROBATION ENTERED UNDER SUBSECTION (2) MAY
3 INCLUDE ANY CONDITION OF PROBATION AUTHORIZED UNDER SECTION 3 OF
4 CHAPTER XI OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL
5 771.3, INCLUDING, BUT NOT LIMITED TO, REQUIRING THE ACCUSED TO
6 PARTICIPATE IN A MANDATORY COUNSELING PROGRAM. THE COURT MAY ORDER
7 THE ACCUSED TO PAY THE REASONABLE COSTS OF THE MANDATORY COUNSELING
8 PROGRAM. THE COURT ALSO MAY ORDER THE ACCUSED TO PARTICIPATE IN A
9 DRUG TREATMENT COURT UNDER CHAPTER 10A OF THE REVISED JUDICATURE
10 ACT OF 1961, 1961 PA 236, MCL 600.1060 TO 600.1084. THE COURT MAY
11 ORDER THE DEFENDANT TO BE IMPRISONED FOR NOT MORE THAN 93 DAYS AT A
12 TIME OR AT INTERVALS, WHICH MAY BE CONSECUTIVE OR NONCONSECUTIVE
13 AND WITHIN THE PERIOD OF PROBATION, AS THE COURT DETERMINES.
14 HOWEVER, THE PERIOD OF IMPRISONMENT SHALL NOT EXCEED THE MAXIMUM
15 PERIOD OF IMPRISONMENT AUTHORIZED FOR THE OFFENSE IF THE MAXIMUM
16 PERIOD IS LESS THAN 93 DAYS. THE COURT MAY PERMIT DAY PAROLE AS
17 AUTHORIZED UNDER 1962 PA 60, MCL 801.251 TO 801.258. THE COURT MAY
18 PERMIT A WORK OR SCHOOL RELEASE FROM JAIL.

19 (5) THE COURT SHALL ENTER AN ADJUDICATION OF GUILT AND PROCEED
20 AS OTHERWISE PROVIDED IN THIS CHAPTER IF ANY OF THE FOLLOWING
21 CIRCUMSTANCES EXIST:

22 (A) THE ACCUSED COMMITS A VIOLATION OF SECTION 448, 449, 450,
23 OR 462 OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO SECTION
24 448, 449, 450, OR 462 DURING THE PERIOD OF PROBATION.

25 (B) THE ACCUSED VIOLATES AN ORDER OF THE COURT THAT HE OR SHE
26 RECEIVE COUNSELING REGARDING HIS OR HER VIOLENT BEHAVIOR.

27 (C) THE ACCUSED VIOLATES AN ORDER OF THE COURT THAT HE OR SHE

1 HAVE NO CONTACT WITH A NAMED INDIVIDUAL.

2 (6) UPON FULFILLMENT OF THE TERMS AND CONDITIONS, THE COURT
3 SHALL DISCHARGE THE PERSON AND DISMISS THE PROCEEDINGS AGAINST THE
4 PERSON. DISCHARGE AND DISMISSAL UNDER THIS SECTION SHALL BE WITHOUT
5 ADJUDICATION OF GUILT AND IS NOT A CONVICTION FOR PURPOSES OF THIS
6 SECTION OR FOR PURPOSES OF DISQUALIFICATIONS OR DISABILITIES
7 IMPOSED BY LAW UPON CONVICTION OF A CRIME. THERE SHALL BE ONLY 1
8 DISCHARGE AND DISMISSAL UNDER THIS SECTION WITH RESPECT TO ANY
9 INDIVIDUAL.

10 (7) ALL COURT PROCEEDINGS UNDER THIS SECTION SHALL BE OPEN TO
11 THE PUBLIC. EXCEPT AS PROVIDED IN SUBSECTION (8), IF THE RECORD OF
12 PROCEEDINGS AS TO THE DEFENDANT IS DEFERRED UNDER THIS SECTION, THE
13 RECORD OF PROCEEDINGS DURING THE PERIOD OF DEFERRAL SHALL BE CLOSED
14 TO PUBLIC INSPECTION.

15 (8) UNLESS THE COURT ENTERS A JUDGMENT OF GUILT UNDER THIS
16 SECTION, THE DEPARTMENT OF STATE POLICE SHALL RETAIN A NONPUBLIC
17 RECORD OF THE ARREST, COURT PROCEEDINGS, AND DISPOSITION OF THE
18 CRIMINAL CHARGE UNDER THIS SECTION. HOWEVER, THE NONPUBLIC RECORD
19 SHALL BE OPEN TO THE FOLLOWING INDIVIDUALS AND ENTITIES FOR THE
20 PURPOSES NOTED:

21 (A) THE COURTS OF THIS STATE, LAW ENFORCEMENT PERSONNEL, THE
22 DEPARTMENT OF CORRECTIONS, AND PROSECUTING ATTORNEYS FOR USE ONLY
23 IN THE PERFORMANCE OF THEIR DUTIES OR TO DETERMINE WHETHER AN
24 EMPLOYEE OF THE COURT, LAW ENFORCEMENT AGENCY, DEPARTMENT OF
25 CORRECTIONS, OR PROSECUTOR'S OFFICE HAS VIOLATED HIS OR HER
26 CONDITIONS OF EMPLOYMENT OR WHETHER AN APPLICANT MEETS CRITERIA FOR
27 EMPLOYMENT WITH THE COURT, LAW ENFORCEMENT AGENCY, DEPARTMENT OF

1 CORRECTIONS, OR PROSECUTOR'S OFFICE.

2 (B) THE COURTS OF THIS STATE, LAW ENFORCEMENT PERSONNEL, AND
3 PROSECUTING ATTORNEYS FOR SHOWING THAT A DEFENDANT IN A CRIMINAL
4 ACTION FOR A VIOLATION OF SECTION 448, 449, 450, OR 462 OR A LOCAL
5 ORDINANCE SUBSTANTIALLY CORRESPONDING TO SECTION 448, 449, 450, OR
6 462 HAS ALREADY ONCE AVAILED HIMSELF OR HERSELF OF THIS SECTION.

7 (C) THE DEPARTMENT OF HUMAN SERVICES FOR ENFORCING CHILD
8 PROTECTION LAWS AND VULNERABLE ADULT PROTECTION LAWS OR
9 ASCERTAINING THE PREEMPLOYMENT CRIMINAL HISTORY OF ANY INDIVIDUAL
10 WHO WILL BE ENGAGED IN THE ENFORCEMENT OF CHILD PROTECTION LAWS OR
11 VULNERABLE ADULT PROTECTION LAWS.

12 (9) AS USED IN THIS SECTION, "HUMAN TRAFFICKING VIOLATION"
13 MEANS A VIOLATION OF CHAPTER LXVIIIA.

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

16 Enacting section 2. This amendatory act does not take effect
17 unless House Bill No. 5234 of the 97th Legislature is enacted into
18 law.