

Legislative Analysis



HUMAN TRAFFICKING: SOLICITING SEX FROM A MINOR

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 205 (Reported from House Committee as S-2 without amendment)

Sponsor: Sen. Judy K. Emmons

Senate Bill 206 (Reported from House Committee as S-2 without amendment)

Sponsor: Sen. Tonya Schuitmaker

Senate Bill 602 (Reported from House Committee as Substitute H-2)

Sponsor: Sen. Joe Hune

House Committee: Criminal Justice

Senate Committee: Families, Seniors and Human Services

First Analysis (9-19-14)

BRIEF SUMMARY: Taken together, the bills would do the following:

- ❖ Make it a 5-year felony to solicit a person under 18 years of age for prostitution and include the penalty in the sentencing guidelines.
- ❖ Make the crime of soliciting a person for prostitution gender neutral.
- ❖ Include the crime of soliciting a person under 18 for prostitution as a Tier I sexual offense requiring registration as a sex offender.
- ❖ Include the crime of recruiting a minor for the commercial sex trade as a Tier II sexual offense requiring registration as a sex offender.

FISCAL IMPACT: Senate Bills 205-206 would have an indeterminate impact on state and local units of government as discussed in more detail later in the analysis.

THE APPARENT PROBLEM:

One recommendation of the 2013 Report on Human Trafficking by the Michigan Commission on Human Trafficking was that local demand for commercial sex be reduced by increasing the criminal penalties faced by "johns" (those who solicit another person for sex), especially for those who target minors. The Commission noted in its findings that the current penalty is the same whether a person solicits sex from an adult or a minor ages 16 and 17 years of age—a 93-day misdemeanor for a first offense and/or a fine of no more than \$500. (Soliciting sex from a minor under 16 years of age is a four-year felony under a separate provision in law.)

According to the Report, increasing the penalty for exploiting vulnerable children would "make Michigan a less hospitable environment for the 'johns' who drive in-state demand for commercial sexual services." Virtually identical legislation to address this concern has been considered in both the House and Senate. Similarly, including on the state's sex

offender registry those who recruit, lure, or entrap minors for the commercial sex trade may also act as a deterrent, thus making children less desirable as targets for pimps and others involved in the commercial sex aspect of human trafficking.

THE CONTENT OF THE BILLS:

The bills increase the penalty for soliciting a minor for prostitution, update gender-specific language to apply the prohibition more broadly, and make paying for sex with a minor or involving a minor in the commercial sex trade as offenses requiring registry as a sex offender. Senate Bills 206 and 602 are tie-barred to Senate Bill 205 and all would take effect 90 days after enactment. The bills are virtually identical to House Bills 4209, 4210, and 5241 as passed by the House.

Senate Bill 205 would amend the Michigan Penal Code (MCL 750.449a, 750.450, and 750.451). The bill would make it a felony punishable by imprisonment for not more than five years and/or a fine of not more than \$10,000 to solicit, accost, or invite – by the payment in money or other forms of consideration – another person who is less than 18 years of age and who is not one's spouse to commit prostitution, lewdness, or assignation. ("Assignation" is an older term that generally refers to a meeting, or appointment, in secret – usually between two lovers.)

In addition, the act currently makes it a 93-day misdemeanor for an individual to engage or offer to engage the services of a female, who is not his wife, for the purpose of prostitution, lewdness, or assignation by the payment in money or other forms of consideration. The bill would make the provision gender-neutral by instead referring to the services of *another person, not his or her spouse*.

Senate Bill 206 would amend the Code of Criminal Procedure (MCL 777.16w) to specify that soliciting a person under 18 years of age to commit prostitution would be a Class E felony against a person with a five-year maximum term of imprisonment.

Senate Bill 602 would amend the Sex Offenders Registration Act (MCL 28.722) to include certain sex-related crimes in the list of offenses requiring a person to register as a sex offender. A violation of Section 449a(2) of the Michigan Penal Code would be added to the list of crimes constituting a Tier I offense. A Tier I offender must register in person once a year for 15 years, with some exceptions. [A second offense of Section 449a(2) or any other Tier I offense would count as a Tier II offense.]

A violation of Section 462e(a) of the penal code would be added to the list of crimes constituting a Tier II offense. A Tier II offender must register in person twice a year for 25 years. [Section 462e(a), as revised by House Bill 5234, prohibits recruiting, enticing, harboring, transporting, providing, or obtaining by any means a minor for commercial sexual activity, regardless of whether the person knows the age of the minor.]

HOUSE COMMITTEE ACTION:

The H-2 Substitute of Senate Bill 602 added a violation of Section 462e(a) as a Tier II offense.

BACKGROUND INFORMATION:

An informative brochure on Human Trafficking developed by the Department of Attorney General is available at:

http://www.michigan.gov/documents/ag/Human_Trafficking_Brochure_380106_7.pdf

In addition, information on Human Trafficking can also be found at the Michigan Human Trafficking Task Force website – <http://www.humantrafficking.msu.edu/>; the Polaris Project website – www.polarisproject.org; and the U.S. Justice Department – www.justice.gov/crt/about/crm/htpu.php, among other informative sites.

The full "2013 Report on Human Trafficking" by the (temporary) Michigan Commission on Human Trafficking can be found at:

www.michigan.gov/documents/ag/2013_Human_Trafficking_Commission_Report_439218_7.pdf .

FISCAL INFORMATION:

Senate Bill 602 would have no fiscal impact on state or local units of government.

Senate Bills 205-206 would have an indeterminate fiscal impact on state and local units of government. To the extent that the bills result in a greater number of convictions, they could increase costs on state and local correctional systems. Information is not available on the number of persons that might be convicted under the provisions of the bills. New felony convictions could result in increased costs related to state prisons, county jails, and/or state probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,600 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,600 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

ARGUMENTS:

For:

The bills are part of the larger package of legislation addressing the issue of human trafficking based on the findings and recommendations of the Michigan Commission on Human Trafficking in its final report to the governor and Legislature in 2013. Among the findings of the Commission is that a "john" (one who solicits another person for sex) is subject to the same criminal penalty whether propositioning an adult or a minor. Thus, the Commission recommended in its report that the penalties for soliciting children be increased. As introduced, Senate Bills 205 and 206 (and House Bills 4209 and 4210) increased the penalty only for children who had reached the age of consent but were still younger than the age of majority (that is, 16- and 17-year olds). Current versions of the bills apply the increased penalty to soliciting all children under the age of 18 years old. It is believed that increasing the penalty for a first offense to a five-year felony will have a deterrent effect and thus mitigate the attractiveness for pimps or johns to use children in the commercial sex trade.

For:

Senate Bill 602 would further dampen the demand by "johns" for young girls or boys by making a conviction for soliciting sex from a child one of the crimes requiring a person to register as a Tier I sex offender. Registering as a sex offender can have long-lasting implications, such as affecting a person's ability to work in certain licensed professions or other occupations and restricting where the person may live. A Tier I offense requires registration for 15 years; a second offense, or conviction of any listed Tier I offense, would require the person to register for 25 years as a Tier II offender. According to a research study by the organization Demand Abolition, some 88 percent of men interviewed said that placement on a sex offender registry would deter them from buying sex. Thus, it is hoped that this change in law will make those seeking the services of a prostitute to at least refuse the services of an individual who cannot verify that he or she is an adult.

In addition, the bill makes it a Tier II offense to recruit, entice, harbor, transport, provide, or obtain by any means a minor for commercial sexual activity, regardless of whether the person knows the age of the minor. This provision is aimed at pimps and their associates who lure girls and boys into the commercial sex trade.

For instance, as human trafficking has become big business and more organized, some use the services of younger acquaintances to "act" as boyfriends to young girls, only to "flip" into them prostitution at a later time. Others in the network may drive the girls or boys to "appointments" or transport them in larger groups in vans or trucks to out-of-town locations where a large conference or sporting event is taking place. Still others may act like "wardens" in a house to ensure no one escapes when not "working". House Bill 5234 would increase criminal penalties for such conduct, and Senate Bill 602 would add an additional deterrent by requiring those convicted to register as a sex offender for at least 25 years. A second offense would subject the person to lifetime registration.

POSITIONS:

A representative of the state Attorney General testified in support of the bills. (9-11-14)

The Michigan Catholic Conference indicated support for the bills. (9-11-14)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ 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.