

Legislative Analysis



HUMAN TRAFFICKING REVISIONS

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

Senate Bill 584 (Substitute H-1)
Sponsor: Sen. Judy K. Emmons

Senate Bill 587 (Substitute H-1)
Sponsor: Sen. Vincent Gregory

Senate Bill 590 (Substitute H-1)
Senate Bill 592 (Substitute H-1)
Sponsor: Sen. John Proos

Senate Bill 593 (Substitute H-1)
Senate Bill 597 (Substitute H-1)
Sponsor: Sen. Rebekah Warren

House Committee: Criminal Justice
Senate Committee: Families, Seniors and Human Services

First Analysis (6-10-14)

BRIEF SUMMARY: The bills, which are part of a larger package of legislation addressing laws relating to human trafficking would do the following:

Senate Bill 584 would extend the statute of limitations for human certain trafficking crimes.

Senate Bill 587 would require minors suspected of being victims of human trafficking to undergo an assessment and provide appropriate counseling services to those who were victims of human trafficking.

Senate Bill 590 creates the Human Trafficking Victims Compensation Act, establishes liability for a person who commits human trafficking, entitles a victim to damages, and requires a claim to be filed within three years of the last human trafficking violation.

Senate Bill 592 would allow a victim of human trafficking, if otherwise eligible, to receive benefits under Medicaid for medical and psychological treatment related to being a victim of human trafficking.

Senate Bill 593 would require a child in foster care who was a victim of human trafficking to be placed where the child could receive mental health services, counseling, and other necessary or appropriate services.

Senate Bill 597 would require LARA to establish training standards for licensed and registered health professionals for identifying human trafficking victims.

The bills would take effect 90 days after enactment.

FISCAL IMPACT: The bills may have an indeterminate fiscal impact on state and local government, as discussed in more detail later in the analysis.

THE APPARENT PROBLEM:

Last year, a joint effort between the state attorney general, governor, and Legislature launched the Michigan Commission on Human Trafficking to study the issue and make recommendations. Among other issues, it became clear that data on the scope of human trafficking in Michigan was scarce, services to victims even scarcer, and that many law enforcement personnel and mental and physical health professionals, as well as the general public, lacked training and awareness of the issue to identify or effectively aid victims.

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, and 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.

A multi-bill package of legislation comprising House and Senate bills has been introduced to address various components of human trafficking and to adopt many of the recommendations of the Commission.

THE CONTENT OF THE BILLS:

Senate Bill 584

The bill would amend the list of crimes in the Code of Criminal Procedure (MCL 767.24) for which there is no time limit to file criminal charges so as to include a violation of Chapter LXVIIA of the Michigan Penal Code (Human Trafficking) that is punishable by imprisonment for life (i.e., offenses involving the death of another).

There would be a 25-year statute of limitations for a violation of the following, as amended by House Bill 5234:

- ❖ Enticing away a female who is under 16 years old for purposes of prostitution, concubinage, sexual intercourse, or marriage (Sec. 13).
- ❖ Knowingly recruiting, enticing, harboring, transporting, providing, or obtaining:
 - An individual for forced labor or services (Sec. 462b).
 - An individual for the purpose of holding the individual in debt bondage (Sec. 462c)
 - An individual by any means, knowing that individual will be subjected to forced labor or services or debt bondage (Sec. 462d).
- ❖ Knowingly benefitting financially or receiving anything of value from participation in an enterprise, as that term is defined in Section 159f, if the enterprise has engaged in an act proscribed under the Human Trafficking Act (Sec. 462d)

- ❖ Recruiting, enticing, harboring, transporting, providing, or obtaining by any means a minor for commercial sexual activity or for forced labor or services, regardless of whether the person knows the age of a minor (Sec. 462e)

The current statute of limitations for the crimes listed above is six years.

The bill is tie-barred to House Bill 5234.

Senate Bill 587

The Foster Care and Adoption Services Act (MCL 722.954c) requires a supervising agency to develop a medical passport for each child who comes under its care. The medical passport must contain all medical information required to be provided to foster parents, basic medical history, a record of all immunizations, and any other information concerning the child's physical or mental health. Under the bill, this would include information that the child could be a victim of human trafficking.

The bill would also require a mental health professional trained in children's psychological assessments perform an assessment or psychological evaluation of the child. (The assessment or evaluation is currently performed only for a child who has suffered sexual abuse, serious physical abuse, or mental illness.) Further, if the assessment or evaluation indicated that the child could have been a victim of human trafficking, the supervising agency would have to provide counseling services appropriate for minor victims of human trafficking; this would be in addition to any reunification, adoption, or other services.

Currently, the requirement for an assessment or evaluation applies only to a child who is made a state ward on or after March 31, 1998. The bill would delete this language.

Senate Bill 590

The bill would create the "Human Trafficking Victims Compensation Act" to provide that a person who violated Chapter LXVIIA (Human Trafficking) of the Michigan Penal Code would be liable to the victim for economic and noneconomic damages resulting from the violation, regardless of whether the damages were foreseeable to the violator, or whether the violator was charged with or convicted of the violation.

A victim would be entitled to damages to the extent he or she sustained the damages, regardless of whether the victim sustained physical injury as a result of the violation. An action to recover damages would have to be filed within three years of the last violation that was the subject of the action occurred. The damages for which a violator could be liable for would include, but not be limited to:

- Physical pain and suffering.
- Reasonable medical or psychological treatment expenses.
- Loss of earnings.
- Emotional damages.
- Damage to property.

- Other necessary and reasonable expenses incurred as a result of the violation.

The bill is tie-barred to House Bill 5234.

Senate Bill 592

The bill would add a new section to the Social Welfare Act (proposed 400.109m) to allow a victim of human trafficking to receive medical assistance benefits for medical and psychological treatment resulting from the person's status as a victim of that human trafficking violation. "Human trafficking violation" would mean a violation of Chapter LXVIIA of the Michigan Penal Code, entitled "Human Trafficking".

Senate Bill 593

The bill would add a new section to the Foster Care and Adoption Services Act (MCL 722.954e, proposed) to require a supervising agency to give special consideration – before determining placement of a child in its care – to information that a child may be the victim of human trafficking. If the child is found to be a victim, the agency must place the child in a setting that provides mental health services, counseling, or other specialized services necessary or appropriate for a victim of human trafficking.

Senate Bill 597

The bill would amend the Public Health Code (MCL 333.16148 & 333.17060) to require the Department of Licensing and Regulatory Affairs (LARA) to adopt rules that would include training standards for identifying victims of human trafficking for individuals licensed under Article 15 of the Code (Occupations), except those licensed under Part 188 (veterinarians). The bill also would require that rules promulgated by the task force on physician's assistants include training standards for identifying victims of human trafficking.

Both sets of rules would have to be adopted within two years of the enactment of the bill. The rules would apply for a license or registration renewal beginning with the first renewal cycle after the rules were promulgated and for an initial license or registration issued five or more years after the rules were promulgated.

Under the Code, boards are responsible for promulgating rules to establish standards for the education and licensure of health professionals. The bill would give that power to LARA, in consultation with the boards.

HOUSE COMMITTEE ACTION:

All the bills were amended to take effect 90 days after enactment. In addition, the following changes were made to the Senate-passed versions:

Senate Bill 584 (H-1) was amended to remove the statute of limitations for human trafficking crimes punishable by imprisonment for life, apply a 25-year SOL for the crimes listed in the bill, and tie-bar the bill to House Bill 5234 which amends the Human Trafficking statute.

Senate Bill 587 (H-1) corrected a citation.

Senate Bill 590 was tie-barred to House Bill 5234.

BACKGROUND INFORMATION:

For more information on human trafficking, see www.polarisproject.org and information provided by the U.S. Justice Department at 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 584 could increase costs on the state's correctional system, depending on the number of persons convicted under the provisions of the bill. New felony convictions could result in increased costs related to state prisons and 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.

Senate Bill 590 would have no fiscal impact on state or local governments.

Senate Bill 597 (Substitute H-1), would have a negative, but likely nominal, fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) to the extent that LARA would devote additional resources to various health professional boards and the task force on physician's assistants to develop, draft, and promulgate administrative rules pertaining to training standards for identifying victims of human trafficking.

Senate Bill 587 could have a minimal fiscal cost to the state and local units of government.

Senate Bill 592 would have no fiscal impact on state or local government because (1) it allows rather than mandating provision of services and (2) Medicaid eligibility is determined based on other state and federal criteria.

Senate Bill 593 could have a minimal fiscal cost to the state and local units of government.

ARGUMENTS:

For:

All of the bills, either directly or indirectly, incorporate recommendations made by the Michigan Commission on Human Trafficking or otherwise relate to the issue of human trafficking.

Senate Bill 584, in particular, acknowledges that the physical and emotional toll experienced by survivors of human trafficking leaves them needing more time to achieve the level of healing, self-esteem, freedom from fear, and trust in the legal system needed to properly assist in the investigation and prosecution of crimes against themselves and others. Thus, there would be no statute of limitations for crimes involving the death of another, which is in line with other heinous crimes such as murder and for certain crimes against children. For all other offenses relating to human trafficking, the SOL would be extended from six years (the current time period during which criminal charges may be filed) to 25 years.

Response:

There are reasons time limits are established for charging a person with a crime. Over time, memories of witnesses fade and lose reliability; evidence may be lost or become degraded (or perhaps was never found to begin with); and witnesses and those who could present corroborating or exonerating testimony have died or are incapable of testifying due to a medical condition. As an example of the difficulties presented with very long SOL, imagine a person being charged today with the crime of human trafficking based on the testimony of someone who 23 or 24 years earlier had worked a summer as a domestic, nanny, or field laborer for the person. How would an innocent person mount a defense? How would corroborating evidence be located for a prosecutor to successfully prosecute a person who had victimized others in the commercial sex trade or as a laborer? Where there may be compelling reasons for extending the SOL in human trafficking cases, 25 years may be too long. Besides, there already are laws on the books that have longer statutes of limitations sufficient to charge the worst of the human trafficking cases.

For:

As a whole, the bill package addresses many elements of the effects on victims of human trafficking. For instance, Senate Bills 587 and 593 would ensure that child victims would receive appropriate mental health services when coming in contact with the state's social services or foster care system. Victims of human trafficking often are left destitute, in poor health, with few resources to rebuild their lives and become participating members of society. Senate Bill 590 would allow a survivor to sue the perpetrator for damages and sets a reasonable time frame for filing claims (up to three years from the latest incident). Since the perpetrator profited from the labors of the survivor, it is only fair the survivor have an opportunity to reclaim some of the revenue and use it to move forward in life. Senate Bill 592 will allow survivors to receive physical and mental health services under Medicaid (however, since other eligibility must also be met, this provision is *permissive*, as opposed to being a *mandate or entitlement*). Senate Bill 597 will usher in new training standards for licensed health professionals to be able to identify victims of human trafficking when seeking physical, dental, or behavioral health treatments. This mirrors

current protocol for identifying children who may victims of child abuse and a trend for health professionals to be front line identifiers of victims of domestic violence or bullying. In this way, both child and adult victims may be able to be identified earlier in their victimization. As mandatory reporters, cases involving minor children would have to be reported to the police if sexual or physical abuse were involved, and a kind word, listening ear, or information regarding organizations assisting victims of human trafficking may be just the impetus for an adult to seek help.

POSITIONS:

The Office of Attorney General indicated support for Senate Bill 584. (5-21-14)

The Michigan Association of Health Plans indicated support for the bills. (5-21-14)

The Michigan Catholic Conference indicated support for SB 584, 587, 592, 593, and 597. (5-21-14)

Hope After Rape Conception indicated support for the bills. (5-21-14)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko
Paul Holland
Kevin Koorstra

■ 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.