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Senate Bill 588 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Mark C. Jansen
Committee: Families, Seniors and Human Services

Date Completed: 8-27-14

CONTENT

The bill would amend the Code of Criminal Procedure to provide that it would be an affirmative defense in a prosecution for a violation of Chapter 67 of the Michigan Penal Code (prostitution) that the defendant committed the offense as a result of being or having been a victim of human trafficking, under Chapter 67A of the Penal Code.

Specifically, the affirmative defense would apply to charges under Sections 448 to 462 of the Michigan Penal Code, which are described below.

Under Section 448, a person 16 years of age or older who accosts, solicits, or invites another person in a public place or in or from a building or vehicle to commit prostitution or to do any other lewd or immoral act is guilty of a crime punishable as provided in Section 451 (discussed below).

Section 449 provides that a person 16 years of age or older who receives or admits or offers to receive or admit a person into a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation, or who knowingly permits a person to remain in a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation, is guilty of a crime punishable as provided in Section 451.

Section 449a prohibits a male from engaging or offering to engage the services of a female, who is not his wife, for the purposes of prostitution.

Section 450 provides that a person 16 years of age or older who aids, assists, or abets another person to commit or offer to commit an act prohibited under Section 448 or 449 is guilty of a crime punishable as provided in Section 451.

Under Section 451, a person convicted of violating Section 448, 449, 449a, 450, or 462 (described below), or a substantially corresponding law, is guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$500. If the person has a prior conviction under any of those sections, he or she is guilty of a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000. A person who has two or more prior convictions is guilty of a felony punishable by imprisonment for up to two years and/or a maximum fine of \$2,000.

Section 452 generally prohibits keeping, maintaining, or operating any house or place for the purpose of prostitution. The offense is a felony punishable by up to five years' imprisonment or a maximum fine of \$2,500.

(Section 453 pertains to testimony in a proceeding for a violation of Chapter 67.)

Section 454 generally prohibits leasing a dwelling house with knowledge that the lessee intends to use as a house for prostitution. The offense is a misdemeanor punishable by up to six months' imprisonment or a maximum fine of \$750.

Section 455 prohibits "pandering". Any person is guilty of a felony punishable by imprisonment for up to 20 years if he or she procures a female inmate for a house of prostitution; induces a female to become a prostitute; by promises, threats, violence, or any device or scheme, causes a female to become an inmate of a house of prostitution or remain there; by promises, threats, violence, any device or scheme, fraud or artifice, duress, abuse of any position of confidence or authority, or having legal charge, procures a female to enter a place in which prostitution is practiced, encouraged or allowed, for the purpose of prostitution; procures any female to come into or leave this State for the purpose of prostitution; under the pretense of marriage, takes or detains a female for the purpose of sexual intercourse; or receives or gives or agrees to receive or give value for procuring or attempting to procure a female to become a prostitute or to come into or leave this State for the purpose of prostitution.

Under Section 456, it is a felony for a man to leave his wife in a house of prostitution or to lead a life of prostitution. The offense is punishable by up to 20 years' imprisonment.

Section 457 prohibits knowingly accepting earnings of a prostitute. The offense is a felony punishable by up to 20 years' imprisonment.

Section 458 prohibits detaining a female in a house of prostitution for any debt she may have contracted while living in the house. The offense is a felony punishable by a minimum sentence of two years and a maximum sentence of 20 years.

Section 459 prohibits transporting a female for purposes of prostitution. The offense is a felony punishable by up to 20 years' imprisonment.

Section 462 generally prohibits allowing a person under 16 years old to remain in a house of prostitution.

Chapter 67A of the Michigan Penal Code prescribes felony penalties for various activities involving forced labor or services, including the following:

- Subjecting a person to forced labor or services by physically harming or restraining the person, by abusing the law or legal process, by confiscating or destroying the person's passport or immigration document, or by using blackmail or exerting financial control over the person.
- Recruiting, enticing, or transporting another person with the intent or knowledge that he or she will be subjected to forced labor or services.
- Knowingly providing or obtaining the labor or services of another by force, fraud, or coercion.
- Recruiting, harboring, or transporting a person for labor or services for the purpose of holding him or her in involuntary servitude or debt bondage.

Chapter 67A also makes it a felony to recruit, entice, harbor, transport, or obtain a minor knowing that he or she will be used for child sexually abusive activity.

Proposed MCL 760.21d

BACKGROUND

Human Trafficking in Michigan

Despite media and news reports portraying human trafficking as a foreign or out-of-state concern, human trafficking offenses are reported in this State with some frequency. Michigan is believed to be a destination for foreign and domestic human trafficking for several reasons.¹ The State's border crossings into Canada allow traffickers convenient entry into the United States. Likewise, the interstate system that runs through Michigan allows traffickers to bring their victims from other states. In addition, the financial hardships suffered by economically depressed areas such as Flint and Detroit make enforcement of the laws pertaining to human trafficking difficult.

Methods of Trafficker Intimidation & Legal Response

Michigan and Federal law recognizes that traffickers use various methods to defraud, intimidate, and otherwise harm their victims. These include confinement, physical abuse, forced abortions, sexual assault, and debt bondage. Traffickers also may resort to psychological tactics and threats, including the threat of deportation, violence against the victim or others, criminal prosecution, and other acts of extortion. Threats are especially effective when an activity in which a victim is forced to engage is illegal, e.g., prostitution, violation of immigration laws, etc. At least two main objectives are achieved through threats. The first is to dissuade the victim from reporting the crime to police, family, or friends. Victims typically comply out of concern for the victim's own safety or the safety of others, or to avoid potential legal or social consequences of the victim's status as a trafficked individual. Threats also serve to exert coercive control over the victims, often to the extent that the only person a victim trusts is his or her trafficker, especially when the victim is a minor.²

In Michigan, the Legislature, the Governor, and the Attorney General collaborated to form the Michigan Commission on Human Trafficking, a group composed of law enforcement officers, legislators, human trafficking activist organizations, and academics, for the purpose of assessing the threat of human trafficking and developing a strategy to combat it. The Commission's 2013 report set forth a number of findings, strategies, and legislative recommendations to reduce human trafficking in this State. These include undermining the influence that human traffickers can have on their victims and reducing the burdens on victims for crimes they committed while being victimized.³

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: John Maxwell

¹ "An Overview of Human Trafficking in the U.S. and Michigan", p. 3, *Senate Fiscal Agency State Notes: Topics of Legislative Interest*, Spring 2014.

² Michigan Commission on Human Trafficking, 2013 Report on Human Trafficking, 45, retrieved 8-22-2014 at: http://michigan.gov/documents/ag/2013_Human_Trafficking_Annual_Report_439271_7.pdf?20140403122710.

³ Id.