

# HOUSE BILL NO. 5403

January 23, 2020, Introduced by Reps. Mueller, Calley, Warren, Pohutsky, LaGrand, Rabhi, Sneller, Leutheuser, Berman, Kahle, Eisen, Whiteford, Wozniak, Cherry, Brann and Whitsett and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 451 (MCL 750.451), as amended by 2016 PA 338.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 451. (1) Except as otherwise provided in this section, a  
2 person convicted of violating section 448 **for obtaining the**  
3 **services of a prostitute**, 449, 449a(1), 450, or 462 is guilty of a  
4 misdemeanor punishable by imprisonment for not more than 93 days or  
5 a fine of not more than \$500.00, or both.

6       (2) A person 16 years of age or older who is convicted of



1 violating section 448 **for obtaining the services of a prostitute,**  
2 449, 449a(1), 450, or 462 and who has 1 prior conviction is guilty  
3 of a misdemeanor punishable by imprisonment for not more than 1  
4 year or a fine of not more than \$1,000.00, or both.

5 (3) A person convicted of violating section 448 **for obtaining**  
6 **the services of a prostitute,** 449, 449a(1), 450, or 462 and who has  
7 2 or more prior convictions is guilty of a felony punishable by  
8 imprisonment for not more than 2 years or a fine of not more than  
9 \$2,000.00, or both.

10 (4) A person convicted of violating section 449a(2) is guilty  
11 of a felony punishable by imprisonment for not more than 5 years or  
12 a fine of not more than \$10,000.00, or both.

13 (5) If the prosecuting attorney intends to seek an enhanced  
14 sentence based upon the defendant having 1 or more prior  
15 convictions, the prosecuting attorney shall include on the  
16 complaint and information a statement listing the prior conviction  
17 or convictions. The existence of the defendant's prior conviction  
18 or convictions ~~shall~~**must** be determined by the court, without a  
19 jury, at sentencing or at a separate hearing for that purpose  
20 before sentencing. The existence of a prior conviction may be  
21 established by any evidence relevant for that purpose, including,  
22 but not limited to, 1 or more of the following:

23 (a) A copy of the judgment of conviction.

24 (b) A transcript of a prior trial, plea-taking, or sentencing.

25 (c) Information contained in a presentence report.

26 (d) The defendant's statement.

27 (6) In any prosecution of a person under 18 years of age for  
28 an offense punishable under this section or a local ordinance  
29 substantially corresponding to an offense punishable under this



1 section, it ~~shall~~**must** be presumed that the person under 18 years  
2 of age was coerced into child sexually abusive activity or  
3 commercial sexual activity in violation of section 462e or  
4 otherwise forced or coerced into committing that offense by another  
5 person engaged in human trafficking in violation of sections 462a  
6 to 462h. The prosecution may overcome this presumption by proving  
7 beyond a reasonable doubt that the person was not forced or coerced  
8 into committing the offense. The state may petition the court to  
9 find the person under 18 years of age to be dependent and in danger  
10 of substantial physical or psychological harm under section 2(b)(3)  
11 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL  
12 712A.2. A person under 18 years of age who fails to substantially  
13 comply with court-ordered services under section 2(b)(3) of chapter  
14 XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, is not  
15 eligible for the presumption under this section.

16 (7) Excluding any reasonable period of detention for  
17 investigation purposes, a law enforcement officer who encounters a  
18 person under 18 years of age engaging in any conduct that would be  
19 a violation of section 448, 449, 450, or 462, or a local ordinance  
20 substantially corresponding to section 448, 449, 450, or 462, if  
21 engaged in by a person 16 years of age or over shall immediately  
22 report to the department of health and human services a suspected  
23 violation of human trafficking involving a person under 18 years of  
24 age in violation of sections 462a to 462h.

25 (8) The department of health and human services shall begin an  
26 investigation of a human trafficking violation reported to the  
27 department of health and human services under subsection (7) within  
28 24 hours after the report is made to the department of health and  
29 human services, as provided in section 8 of the child protection



1 law, 1975 PA 238, MCL 722.628. The investigation ~~shall~~**must** include  
2 a determination as to whether the person under 18 years of age is  
3 dependent and in danger of substantial physical or psychological  
4 harm under section 2(b)(3) of chapter XIIIA of the probate code of  
5 1939, 1939 PA 288, MCL 712A.2.

6 (9) Except as otherwise provided in this section, a person  
7 convicted of violating section 448 for engaging in prostitution is  
8 guilty of a misdemeanor punishable by a fine of not more than  
9 \$50.00.

10 (10) A person 16 years of age or older who is convicted of  
11 violating section 448 for engaging in prostitution and who has 1  
12 prior conviction under section 448 for engaging in prostitution is  
13 guilty of a misdemeanor punishable by imprisonment for not more  
14 than 93 days or a fine of not more than \$250.00, or both.

15 (11) A person convicted of violating section 448 for engaging  
16 in prostitution and who has 2 or more prior convictions under  
17 section 448 for engaging in prostitution is guilty of a misdemeanor  
18 punishable by imprisonment for not more than 1 year or a fine of  
19 not more than \$500.00, or both.

20 (12) If the court imposes a sentence of probation for a  
21 violation of section 448 for obtaining the services of a  
22 prostitute, the court may require the person to complete sex  
23 addiction therapy as a condition of his or her sentence of  
24 probation.

25 (13) For a violation of section 448 for engaging in  
26 prostitution, the court may evaluate whether the person is  
27 appropriate for placement in and eligible to participate in either  
28 a drug court under chapter 10A of the revised judicature act of  
29 1961, 1961 PA 236, MCL 600.1060 to 600.1088, or a mental health



1 court under chapter 10B of the revised judicature act of 1961, 1961  
2 PA 236, MCL 600.1090 to 600.1099a.

3 (14) ~~(9)~~—As used in this section, "prior conviction" means a  
4 violation of section 448, 449, 449a(1), 450, or 462 or a violation  
5 of a law of another state or of a political subdivision of this  
6 state or another state substantially corresponding to section 448,  
7 449, 449a(1), 450, or 462.

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