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Senate Bills 515 and 517 (Substitute S-1 as passed by the Senate)  
Senate Bill 516 (as passed by the Senate)  
Sponsor: Senator Rosemary Bayer (S.B. 515)  
Senator Sue Shink (S.B. 516)  
Senator Stephanie Chang (S.B. 517)  
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 3-28-24

## **RATIONALE**

Human trafficking is the illegal act of forcing an individual to perform labor or sexual acts and often involves the kidnapping and harboring of the individual. According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, Michigan ranks in the top 10 states for instances of human trafficking. The State has worked to combat human trafficking, enacting significant criminal penalties for traffickers and establishing the Human Trafficking Commission in the Attorney General's office; however, human trafficking persists in the State. Some people believe that criminal procedures, such as rules related to the use of evidence in trials and hearings, make prosecuting human trafficking difficult and contribute to its persistence. The Code of Criminal Procedures currently provides exceptions to some procedures and rules in cases of domestic violence, among other crimes, because circumstances of those cases also make prosecuting alleged perpetrators difficult. Testimony indicates that the circumstances that make prosecuting domestic violence difficult are like the circumstances that make prosecuting human trafficking difficult; the circumstances generally relate to a victim's inability or unwillingness to testify in these cases for fear of personal safety. Accordingly, it has been suggested that current exceptions to certain criminal procedures apply to trials and hearings for human trafficking to combat human trafficking.

## **CONTENT**

**Senate Bill 515 (S-1) would amend Chapter VIII (Trials) of the Code of Criminal Procedure to allow a statement concerning prostitution or human trafficking to be admissible as evidence.**

**Senate Bill 516 would amend Chapter VIII of the Code of Criminal Procedure to allow evidence of a defendant's prior commission of commercial sexual activity, human trafficking, or prostitution to be admissible for any relevant purpose.**

**Senate Bill 517 (S-1) would amend Chapter LXVIIA (Human Trafficking) of the Michigan Penal Code to prohibit a victim, complainant, or witness necessary for the prosecution from being excused from testifying or complying with an investigation, proceeding, or trial involving human trafficking if evidence would tend to degrade or incriminate the individual. The bill specifies that truthful testimony by the individual generally could not be used against the individual in a criminal case.**

### **Senate Bill 515 (S-1)**

Under the Code of Criminal Procedure, evidence of a statement is admissible if the statement  
1) claimed to describe or explain the infliction or threat of physical injury upon the declarant;

2) was made near the time of the infliction or threat of physical injury; 3) indicated trustworthiness; and 4) was made to a police officer.

Currently, the Code only allows a statement that meets the requirements described above to be admissible if the statement concerns an offense involving domestic abuse. Under the bill, a statement that met the requirements described above and that concerned an offense involving prostitution or human trafficking also would be admissible.<sup>1</sup>

Additionally, the bill would define "infliction or threat of physical injury" as including all the following:

- Physically harming or restraining any individual.
- Threatening to harm or physically restrain any individual or the creation of any scheme, plan, or pattern intended to cause an individual to believe that failure to perform an act would result in physical, psychological, reputational, or financial harm to, or physical restraint of, any individual.
- Facilitating or controlling an individual's access to a controlled substance, other than for a legitimate medical purpose.

("Controlled substance" means a drug, substance, or immediate precursor included in schedules one to seven of Part 72 (Standards and Schedules) of the Public Health Code.)

### **Senate Bill 516**

Under Section 27b of the Code, except as provided for acts occurring more than 10 years before the charged offense, in a criminal action in which the defendant is accused of an offense involving domestic violence or sexual assault, evidence of the defendant's commission of other acts of domestic violence or sexual assault are admissible for any purpose for which it is relevant, if it is not excluded under Michigan Rule of Evidence 403.<sup>2</sup> Under the bill, if a defendant were accused of commercial sexual activity, human trafficking, or prostitution, evidence of the defendant's commission of other acts of commercial sexual activity, human trafficking, or prostitution also would be admissible for any relevant purpose and if not excluded under Michigan Rule of Evidence 403.

"Commercial sexual activity" would mean at least one of the following for which anything of value is given or received by any person:

- An act of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.
- Intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for revenge, humiliation, or out of anger.
- Any child sexually abusive activity or material.

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<sup>1</sup> Generally, "human trafficking" and "prostitution" would mean violations of chapters concerning them within the Michigan Penal Code.

<sup>2</sup> Michigan Rule of Evidence 403 states, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

-- Any motion picture, video game, exhibition, show, representation, or other presentation that, in whole or in part, depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse.

### **Senate Bill 517 (S-1)**

Chapter LXVIIA of the Michigan Penal Code specifies that the testimony of a victim of a human trafficking offense is not required in a prosecution for that offense; however, if the victim testifies, that testimony need not be corroborated. Additionally, it allows for expert testimony on behavioral patterns of human trafficking victims.

Under the bill, a victim, complainant, or witness for the prosecution could not be excused from attending and testifying or producing any books, papers, or other documents before a court or magistrate upon an investigation, proceeding, or trial for a violation of the Chapter on the grounds that the testimony or evidence could tend to degrade or incriminate the victim, complainant, or witness for the prosecution. Truthful testimony, evidence, or other truthful information compelled under this provision and any information derived directly or indirectly from that truthful testimony, evidence, or other truthful information could not be used against the witness in a criminal case, except for impeachment purposes or in a prosecution for perjury or otherwise failing to testify or produce evidence as required.

MCL 768.27c (S.B. 515)  
768.27b (S.B. 516)  
750.462g (S.B. 517)

### **PREVIOUS LEGISLATION**

*(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)*

Senate Bill 515 is a reintroduction of House Bill 4214 and Senate Bill 1015 of the 2021-2022 Legislative Session. Senate Bill 516 is a reintroduction of House Bill 4095 of the 2021-2022 Legislative Session and House Bill 5638 of the 2019-2020 Legislative Session.

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Hearsay is a statement made by an individual outside of a trial or hearing and is generally not admissible as evidence. The Code grants exceptions to the inadmissibility of hearsay in specific instances, such as when the statement concerns an offense of domestic violence. According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, current hearsay exceptions exist because victims of crimes like domestic violence have difficulty facing their alleged perpetrators; a victim may not be ready to confront the alleged perpetrator because of personal fear or concern for retaliation if the perpetrator were not convicted. The hearsay exception allows victims time to process their experiences and separate themselves from their perpetrators before confronting a perpetrator later in trial.

Victims of human trafficking similarly fear their human trafficking perpetrators. In addition, testimony indicates that victims of human trafficking are often forced to abuse drugs, which could require the victim to attend a drug treatment facility upon being rescued from the human trafficking situation. These circumstances deter or prevent a human trafficking victim from attending pretrial, evidentiary hearings, which can occur within weeks of an arrest and are important in determining whether cases against alleged perpetrators go to trial. Granting a similar exception to hearsay rules for a statement concerning an offense of human trafficking would help prosecutors hold human traffickers legally accountable.

### **Supporting Argument**

Other-acts evidence is evidence of other crimes or wrongdoings by a defendant and is generally not admissible as evidence; however, the Code grants certain exceptions to the inadmissibility of other-acts evidence, such as when the defendant is accused of committing an act of domestic violence and the evidence is of previous domestic violence. According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, the repetitive nature of domestic violence warrants the Code's exception; focusing on one instance of domestic violence often does not represent accurately the magnitude of the domestic violence, and some people believe this can lead to a less significant penalty upon conviction.

Evidently, like domestic violence, human trafficking is also repetitive in nature. Testimony indicates that human trafficking does not happen in a vacuum and often involves many victims and a high-level of organized criminal activity. Accordingly, focusing on one instance of human trafficking can result in less significant penalties than may be warranted given the actual magnitude of the crime. Allowing the admission of other-acts evidence in trials concerning human trafficking would help prosecutors convey the magnitude of a defendant's alleged crimes and help prosecutors combat the repetitive, organized nature of human trafficking.

### **Supporting Argument**

According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, victims of human trafficking are often manipulated into performing illegal activities, such as theft, smuggling, or prostitution. When prosecutors charge a person with human trafficking, the prosecutors rely upon victims' testimony to obtain a conviction; however, a victim of human trafficking may not want to testify in court against a defendant because the victim's testimony could be self-incriminating. Compelling victims to testify and guaranteeing that their truthful testimony could not be used against them in a criminal case would improve prosecutors' abilities to hold human traffickers accountable.

Legislative Analyst: Eleni Lionas

### **FISCAL IMPACT**

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

Fiscal Analyst: Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.