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BILL ANALYSIS



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House Bill 4355 (Substitute H-1 as passed by the House)
Sponsor: Representative Gary Glenn
House Committee: Law and Justice
Senate Committee: Judiciary

Date Completed: 9-11-17

CONTENT

The bill would amend the Michigan Penal Code to remove the immunity from prosecution of a law enforcement officer for various prostitution-related offenses if the officer engaged in sexual penetration while in the course of his or her duties.

Under Section 451a of the Code, Sections 448, 449, 449a, 450, and 451 do not apply to a law enforcement officer while in the performance of his or her duties as an officer. The bill specifies that Section 451a would not apply to a law enforcement officer if he or she engaged in sexual penetration as that term is defined in Section 520a while in the course of his or her duties. (Sections 448 through 451 define various prostitution-related offenses, and prescribe the penalties for each crime. The **BACKGROUND** section below contains more information about the offenses and penalties.)

(Section 520a states that "sexual penetration" means 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.)

The bill is tie-barred to Senate Bill 275, and would take effect 90 days after its enactment. (Senate Bill 275 (H-1) would amend Section 451a to specify that, except as provided in Section 451b (which House Bill 4355 (H-1) would enact), Sections 448, 449, 449a, 450, 451, as well as Section 459, would not apply to a law enforcement officer while in the performance of his or her duties.)

Proposed MCL 750.451b

BACKGROUND

Under Section 448 of the Michigan Penal Code, 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, by word, gesture, or any other means, 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 or vehicle for the purpose of prostitution, or who knowingly permits a person to remain in a place or vehicle for the purpose of prostitution, is guilty of a crime punishable as provided in Section 451.

Section 449a(1) prohibits a person from engaging or offering to engage the services of another person, who is not his or her spouse, for the purposes of prostitution. Section 449a(2) prohibits the same conduct when the person engaged is under 18 years old.

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, 449, or 449a is guilty of a crime punishable as provided in Section 451.

Under Section 451, a person convicted of violating Section 448, 449, 449a(1), or 450 is guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$500. If a person 16 years old or older has a prior conviction under any of those sections, or a substantially corresponding law of another state or of a political subdivision of this or another state, he or she is guilty of a misdemeanor punishable by imprisonment for up to one year, a maximum fine of \$1,000, or both. 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. A person convicted of violating Section 449a(2) is guilty of a felony punishable by up to five years' imprisonment, a maximum fine of \$10,000, or both.

Section 459(1) prohibits a person from knowingly transporting or causing to be transported, or aiding or assisting in obtaining transportation for, by any means of conveyance, into, through, or across the State, any person for the purpose of prostitution or with the intent to induce, entice, or compel that person to become a prostitute. A person who violates this prohibition is guilty of a felony punishable by up to 20 years' imprisonment, a maximum fine of \$20,000, or both. Section 459(2) prohibits a person from knowingly selling or offering to sell travel services that include or facilitate travel for the purpose of engaging in what would be a violation of Chapter 67 (Prostitution) or Chapter 67A (Human Trafficking), if the violation occurred in Michigan. A person who violates Section 459(2) is guilty of a felony punishable by up to five years' imprisonment, a maximum fine of \$5,000, or both, unless the conduct involves a minor, in which case the penalty is up to 10 years' imprisonment and/or a maximum fine of \$15,000. ("Travel services" means transportation by air, sea, or ground, hotel or other lodging or accommodations, package tours, or the provision of vouchers or coupons to be redeemed for future travel, or accommodations for a fee, commission, or other valuable consideration.)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill could have a negative fiscal impact on the State and local government. The sections from which law enforcement officers are currently exempted treat violations as misdemeanors and felonies with varying penalties. The changes in the bill could lead to more officers being charged and convicted under those sections. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$3,764 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

Fiscal Analyst: Ryan Bergan

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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.