

Legislative Analysis



EXPUNGEMENT OF CONVICTIONS FOR OFFENSES COMMITTED BY VICTIMS OF HUMAN TRAFFICKING

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House Bill 5836 as introduced
Sponsor: Rep. Kelly Breen

House Bill 5837 as introduced
Sponsor: Rep. Matt Koleszar

House Bill 5838 as introduced
Sponsor: Rep. Carol Glanville

House Bill 5839 as introduced
Sponsor: Rep. Reggie Miller

House Bill 5840 as introduced
Sponsor: Rep. John Fitzgerald

Committee: Judiciary
Complete to 11-13-24

SUMMARY:

House Bill 5836 would amend 1965 PA 213, which provides for the setting aside of certain criminal convictions, to expand the types of criminal offenses committed by individuals who are victims of *human trafficking violations* that may be set aside (or “expunged”) from an individual’s criminal record by court order. Current law allows individuals with no more than three total felony offenses to petition a court for expungement of one or more criminal convictions, subject to the following restrictions:

- An individual may not have a more than two convictions for an assaultive crime (as defined in the act) set aside during their lifetime.
- An individual may not have more than one felony conviction for the same offense set aside if the offense is punishable by more than 10 years’ imprisonment.
- An individual convicted of fourth degree criminal sexual conduct may apply for the conviction to be set aside only if they have not been convicted of any other offense other than a maximum of two *minor offenses* (any crime for which the maximum term of imprisonment does not exceed 90 days, the maximum fine does not exceed \$1,000, and the individual is not more than 21 years old).

Human trafficking violation means any action in violation of chapter LXVIIA of the Michigan Penal Code, which prohibits individuals from knowingly recruiting, enticing, harboring, transporting, providing, or obtaining another individual for the purpose of forced labor or services, holding the individual in debt bondage, or benefitting financially or receiving anything of value from participation in an enterprise, regardless of whether or not the victim resists the actions of the individual.

Currently, human trafficking victims may only apply to have a narrow set of convictions set aside under the statute (namely, for offenses related to prostitution). The bill would eliminate these restrictions, allowing individuals to petition a court to expunge *any* criminal convictions for offenses committed as a direct result of their being a victim of a human trafficking violation, subject to the restrictions described above and any other applicable requirements of the act.

MCL 780.621

House Bill 5837 would amend Chapter VIII (Trials) of the Code of Criminal Procedure to provide that, in criminal prosecutions for felony or misdemeanor offenses, it is an affirmative defense¹ that a defendant committed the offense as a direct result of their being a victim of human trafficking (under the bill, a defendant would have to provide evidence to that effect). The bill also provides that a defendant who employs this defense bears the burden of proving it under a preponderance of the evidence standard.²

Proposed MCL 768.21d

House Bill 5838 would amend the juvenile code (Chapter XIIA of the Probate Code) to expand the types of *adjudications* for offenses committed by juveniles who are victims of human trafficking violations that may be set aside (or “expunged”) from an individual’s criminal record by court order. (An adjudication is the juvenile equivalent of an adult criminal conviction.) Current law provides individuals with the ability to petition a court for expungement of one or more juvenile adjudications, subject to the following restrictions:

- An individual may not have been adjudicated for more than one juvenile offense that would be a felony if committed by an adult, or more than three juvenile offenses in total (of which no more than one may be a juvenile offense that would be a felony if committed by an adult) and no felony convictions.
- An individual may have the following adjudications set aside:
 - One adjudication for an offense that would be a felony if committed by an adult and no more than two adjudications for an offense that would be a misdemeanor if committed by an adult.
 - No more than three adjudications for an offense that would be a misdemeanor if committed by an adult (with no adjudication for an offense that would be a felony if committed by an adult).

Currently, juvenile human trafficking victims may only apply to have a narrow set of adjudications set aside under the statute (namely, for offenses related to prostitution). The

¹ An *affirmative defense* is a defense in which a defendant introduces evidence that, if found to be credible, negates the defendant’s criminal liability, even if it is proven that they committed the alleged offense. Under House Bill 5837, it would be required that the evidence demonstrate that the defendant’s offense was committed as a direct result of their being a victim of a human trafficking violation.

² *Preponderance of the evidence* is an evidentiary standard that requires demonstrating that a proposition is more likely true than not true. Under this standard, the burden of proof is satisfied when the party with the burden convinces the judge or jury that there is a greater than 50 percent chance their claim is true. Under House Bill 5837, the defendant bears the burden of proof.

bill would eliminate these restrictions, allowing individuals to petition a court to expunge *any* juvenile adjudications for offenses committed as a direct result of the individual being a victim of a human trafficking violation, subject to the restrictions listed above and any other applicable requirements of the code.

MCL 712A.18e

House Bill 5839 would amend the Michigan Penal Code to modify the requirements for safeguarding juveniles who are victims of sex and labor trafficking via *safe harbor protections* (legal provisions designed to divert minor-age victims of sex and labor trafficking and exploitation away from the juvenile justice system by restricting the conditions under which they can be arrested and prosecuted as criminals). Current law allows a prosecution attempting to overcome the presumption that a minor was coerced or forced into child sexually abusive activity, commercial sexual activity, or other form of human trafficking to petition the court to first rule that a minor is dependent and in danger of substantial physical or psychological harm. The bill would simply require this step in all relevant prosecutions.

Current law also prohibits extending this presumption of coercion or force in cases involving juveniles who fail to substantially comply with court-ordered services under the juvenile code. The bill would newly allow for prospective eligibility for the presumption of coercion or force in these cases.

MCL 750.451

House Bill 5840 would amend the Michigan Penal Code to modify the qualifications of expert witnesses in human trafficking cases. Current law allows expert testimony on the behavioral patterns of human trafficking victims and the ways in which victim behaviors may deviate from societal expectations to be admitted as evidence in human trafficking cases, provided that the testimony is otherwise admissible under the rules of evidence. Under the bill, to be qualified by a court as an expert, a witness would instead be required to possess specialized knowledge (i.e., beyond that of an average layperson) based on the witness's experience with, or specialized training or education in, criminal justice, behavioral sciences, or victim services issues related to human trafficking.

The bill would allow witnesses with this sort of expertise to be called to testify by either the prosecution or the defense, provided that their expertise would assist the judge or jury in understanding the dynamics of human trafficking, victim response to victimization, and impact on victims of human trafficking during and after an individual's victimization. The bill would also prohibit courts from admitting into evidence the opinions of human trafficking-qualified expert witnesses regarding the credibility of any other witness or the victim.

MCL 750.462g

House Bills 5836 through 5840 would each take effect 90 days after being enacted.

FISCAL IMPACT:

A fiscal analysis is in progress.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.