

# Legislative Analysis



## COMMERCIAL SEXUAL ACTIVITY

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5841 (H-2) as passed by the House**  
**Sponsor: Rep. Mai Xiong**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 5842 as passed by the House**  
**Sponsor: Rep. Tyrone Carter**

**House Bill 5843 as passed by the House**  
**Sponsor: Rep. Angela Witwer**

**House Bill 5850 as passed by the House**  
**Sponsor: Rep. Gina Johnsen**

**House Bill 5844 as passed by the House**  
**Sponsor: Rep. Jenn Hill**

**House Bill 5851 as passed by the House**  
**Sponsor: Rep. Kimberly Edwards**

**House Bill 5845 as passed by the House**  
**Sponsor: Rep. Samantha Steckloff**

**House Bill 5852 as passed by the House**  
**Sponsor: Rep. Pat Outman**

**House Bill 5846 as passed by the House**  
**Sponsor: Rep. Kara Hope**

**House Bill 5853 (H-1) as passed by the House**  
**Sponsor: Rep. Laurie Pohutsky**

**House Bill 5847 as passed by the House**  
**Sponsor: Rep. Douglas C. Wozniak**

**House Bill 5854 as passed by the House**  
**Sponsor: Rep. Veronica A. Paiz**

**House Bill 5849 as passed by the House**  
**Sponsor: Rep. Denise Mentzer**

**House Bill 5864 as passed by the House**  
**Sponsor: Rep. Felicia Brabec**

**House Committee: Judiciary**  
**Senate Committee: [Pending]**  
**Complete to 12-17-24**

## SUMMARY:

Generally speaking, the bills would amend several acts to replace the word “prostitution,” broadly understood as sex for payment, with the more expansively defined term *commercial sexual activity*. The terms “brothel,” “bordello,” and the like would generally be described as a house, vehicle, or other place where *commercial sexual activity* takes place. The term “prostitute” would be replaced with *person engaged in commercial sexual activity*.

*Commercial sexual activity* would mean any of the following for which money changes hands:

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

- An act of sexual contact, which would include both of the following:
  - The intentional touching of the clothing covering the immediate area of either party's intimate parts, or the intimate touching of either party's intimate parts, if that intimate 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.
    - To inflict humiliation.
    - Out of anger.
  - The intentional touching of either party's intimate parts, if that intimate 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.
    - To inflict humiliation.
    - Out of anger.
- An act of sexual penetration, which would include any of the following (with the emission of semen not required for a violation):
  - Sexual intercourse.
  - Cunnilingus.
  - Fellatio.
  - Anal intercourse.
  - Any other intrusion, however slight, of any part of a person's body into the genital or anal openings of another person's body.
  - Any other intrusion, however slight, of any object into the genital or anal openings of another person's body.
- The production, distribution, financing, or possession of child sexually abusive material.

**House Bill 5841** would amend the Michigan Penal Code. Chapter LXVII of the code contains prohibitions and penalties that are currently related to prostitution. The bill would reorganize several sections of this chapter, consolidating their provisions into a single section, and it would change the terms of reference (and their applicable scope of meaning) as described above.

Age restriction

Some provisions and penalties now apply only to individuals who are 16 or older.<sup>1</sup> The bill would remove this age restriction so that the provisions would apply more generally.

Prohibitions and penalties under the code

Among other prohibitions, the code currently prohibits all of the following and prescribes the same penalties for violations, as described below:

- Accosting, soliciting, or inviting another person in a public place or in or from a building or vehicle, by word, gesture, or other means, to commit prostitution or do any other lewd or immoral act. (Current section 448, proposed section 449(1))

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<sup>1</sup> Specifically, sections 448 (soliciting, accosting, or inviting another person to commit prostitution), 449 (receiving or admitting or offering to receive or admit a person into a place for the purpose of prostitution), 450 (aiding, assisting, or abetting another person to commit certain prostitution offenses), and 462 (allowing, for a purpose other than prostitution, a person 16 or younger to remain in a house of prostitution). The bill would move the relevant provisions of sections 448 and 450 to section 449.

- Receiving or admitting or offering to receive or admit a person into a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation, or knowingly allowing a person to remain in such a place for such a purpose. (Current section 449, proposed section 449(2))
- Engaging or offering to engage the services of another person, who is not their spouse, for the purpose of prostitution, lewdness, or assignation, by the payment in money or other forms of consideration. (Current section 449a(1), proposed section 449(4))
- Aiding, assisting, or abetting another person to commit or offer to commit an act described above. (Current section 450, proposed section 449(6))
- For a purpose other than prostitution, taking a person who is 16 or younger to a house of prostitution, or employing, receiving, detaining, or allowing them to remain there. (Section 462 under both current law and the bill)

The above violations are currently crimes punishable as follows:

- For a first offense, a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both.
- For a second offense, a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$1,000, or both.
- For a third or subsequent offense, a felony punishable by imprisonment for up to two years or a fine of up to \$2,000, or both.

#### Prohibitions and penalties under the bill

The bill would amend the above prohibitions to change the age reference from 16 to 18 and to change the terminology used. The bill would prohibit a person from doing any of the following:

- Accosting, soliciting, or inviting another person in a public place or in or from a building or vehicle, by word, gesture, or other means, to provide *commercial sexual activity*. (Current section 448, proposed section 449(1))
- Receiving or admitting or offering to receive or admit a person into a place, house, or vehicle for the purpose of *commercial sexual activity* or knowingly allowing a person to remain in a place, house, or vehicle for the purpose of *commercial sexual activity*. (Current section 449, proposed section 449(2))
- Obtaining or offering to obtain a *commercial sexual activity*. (Current section 449a(1), proposed section 449(4))
- Aiding, assisting, or abetting another person to commit or offer to commit an act described above. (Current section 450, proposed section 449(6))
- For a purpose other than *commercial sexual activity*, taking a person who is *19 or younger* to a house, vehicle, or other place in which commercial sexual activity is practiced, encouraged, or allowed, or employing, receiving, detaining, or allowing them to remain there. (Section 462 under both current law and the bill)

The bill would increase the applicable penalties as follows:

- For a first offense, a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both. [Same as current law]
- For a second offense, a *felony* punishable by imprisonment for up to *two* years or a fine of up to *\$2,000*, or both.
- For a third or subsequent offense, a felony punishable by imprisonment for up to *four* years or a fine of up to *\$4,000*, or both.

### Providing a commercial sexual activity

The bill would prohibit a person from providing or offering to provide a *commercial sexual activity* (proposed section 449(3)). A violation would be a crime punishable as follows (same as those above):

- For a first offense, a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both.
- For a second offense, a felony punishable by imprisonment for up to two years or a fine of up to \$2,000, or both.
- For a third or subsequent offense, a felony punishable by imprisonment for up to four years or a fine of up to \$4,000, or both.

### Hazardous communicable diseases

As described above, the code prohibits engaging or offering to engage the services of another person, other than their spouse, for the purposes of prostitution. Currently, a person convicted of violating this provision is subject to Part 52 (Hazardous Communicable Diseases) of the Public Health Code, which requires individuals who are potential sources of communicable infection to cooperate with health officers to prevent or control transmission of diseases (which can include detention).

The bill would retain the above provision related to Part 52 of the Public Health Code. In addition, under the bill, individuals convicted of any of the following would also be newly subject to Part 52 of the Public Health Code:

- Accosting, soliciting, or inviting another person in a public place or in or from a building or vehicle, by word, gesture, or other means, to provide *commercial sexual activity*. (Current section 448, proposed section 449(1))
- Receiving or admitting or offering to receive or admit a person into a place, house, or vehicle for the purpose of *commercial sexual activity* or knowingly allowing a person to remain in a place, house, or vehicle for the purpose of *commercial sexual activity*. (Current section 449, proposed section 449(2))
- Providing or offering to provide a *commercial sexual activity*. (Proposed section 449(3))
- Obtaining or offering to obtain *commercial sexual activity* from a person who is less than 18 years of age. (Current section 449a(2), proposed section 449(5))
- Aiding, assisting, or abetting another person to commit or offer to commit an act described above. (Current section 450, proposed section 449(6))

### Eligibility for deferral

The code now allows the court to defer further proceedings, without entering a judgment of guilt, and place the accused individual on probation for certain violations of Chapter LXVII. Among other conditions and procedural requirements, these provisions apply only if the violation was committed as a direct result of the accused individual's being a victim of a human trafficking violation. Under current law, these provisions apply only to the following violations:

- Accosting, soliciting, or inviting another person in a public place or in or from a building or vehicle, by word, gesture, or other means, to commit prostitution or do any other lewd or immoral act. (Current section 448, proposed section 449(1))
- Receiving or admitting or offering to receive or admit a person into a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation, or

knowingly allowing a person to remain in such a place for such a purpose. (Current section 449, proposed section 449(2))

- Aiding, assisting, or abetting another person to commit or offer to commit an act described above. (Current section 450, proposed section 449(6))
- For a purpose other than prostitution, taking a person who is 16 or younger [under the bill, 18 or younger] to a house of prostitution, or employing, receiving, detaining, or allowing them to remain there. (Section 462 under both current law and the bill)

Under the bill, deferral and probation as described above would also be newly available for the following violations:

- Obtaining or offering to obtain a *commercial sexual activity*. (Current section 449a(1), proposed section 449(4))
- Obtaining or offering to obtain *commercial sexual activity* from a person who is less than 18 years of age. (Current section 449a(2), proposed section 449(5))

In addition, the bill would require an individual to be assessed for a deferral under section 451c (the bill does not say assessed by whom) if their actions that violated any of the sections listed above were either of the following:

- A direct result of being a victim of human trafficking.
- Caused, induced, persuaded, encouraged, or enticed by a promise or threat, violence, or any device or scheme in violation of section 455 of the code.

Note, however, that an individual assessed for a deferral under the second bulleted item above would not be eligible for a deferral under the bill unless their violation was committed as a direct result of their being a victim of a human trafficking violation.

For purposes of the above provisions, the applicable parts of section 455, as amended by the bill, would provide that a person who does any of the following is guilty of a felony punishable by imprisonment for up to 20 years:

- **By promise, threat, or violence, or by any device or scheme**, causes, induces, persuades, encourages, takes, places, harbors, or entices a person to become an inmate of a house, vehicle, or any other place in which *commercial sexual activity* is practiced, encouraged, or allowed.
- **By any promise or threat, or by violence or any device or scheme**, causes, induces, persuades, encourages, or entices an occupant of a house, vehicle, or other place in which *commercial sexual activity* is practiced, encouraged, or allowed to remain there as an occupant.
- **By any promise or threat, or by violence, any device or scheme**, fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, or having legal charge, takes, places, harbors, entices, persuades, encourages, or procures any person to provide *commercial sexual activity*.

#### Aiding or abetting in operating a place

The code now provides that a person who keeps, maintains, or operates, *or aids and abets in keeping, maintaining, or operating*, a house of ill-fame, bawdy house, or any house or place resorted to for the purpose of prostitution or lewdness is guilty of a felony punishable by imprisonment for up to five years or a fine of up to \$5,000, or both.

The bill would remove the aiding and abetting prohibition italicized above. Under the bill, a person who keeps, maintains, or operates a house, vehicle, or other place resorted to for the purpose of commercial sexual activity would be guilty of a felony punishable by imprisonment for up to five years or a fine of up to \$5,000, or both.

#### Rental of residential space

A provision of the code now generally prohibits renting a dwelling house, room, or apartment to someone knowing that the lessee intends to use it as “a house of ill-fame or place of resort for the purpose of prostitution and lewdness, *or for the purpose of gambling for money or other property.*”

The bill would remove the language related to gambling. It would retain the reference to houses and rooms, presumably to still exclude buildings or structures that are not primarily used or intended for use as residential dwellings, but it would also add vehicles to the prohibition, replacing apartments.

#### Taking or enticing away a minor

The code currently provides that a person who takes or entices away a minor under 16 years old from the minor’s parent, guardian, or other person having charge of the minor, without their consent, for the purpose of prostitution, concubinage, sexual intercourse, or marriage is guilty of a felony punishable by imprisonment for up to 10 years.

The bill would amend this provision so that it would apply regarding a minor under 18 years of age. In addition to changing “prostitution” to *commercial sexual activity* (defined as above), the bill would change “concubinage” to *child sexually abusive activity* (which is defined in section 145c of the code for purposes of that section).

#### Disorderly persons

The code now says that a person is a disorderly person if they are on a list that includes being a “common prostitute.” The bill would change this last term to *person engaged in commercial sexual activity*. In addition, a person is a disorderly person if they are found loitering in “a house of ill fame or prostitution or place where prostitution or lewdness is practiced, encouraged, or allowed.” The bill would change this to a person found loitering in “a house, vehicle, or other place in which commercial sexual activity is practiced, encouraged, or allowed.” Being a disorderly person is a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$500, or both.

In addition, a person is disorderly if they refuse or neglect to support their family despite having sufficient ability to do so. If they have been convicted of this and are charged with a subsequent such violation within two years, the code requires that they be prosecuted as a subsequent offender if their family is receiving public relief or support. However, the provision they are supposed to be charged under as a subsequent offender does not actually contain anything allowing that kind of charge, so by default they still face the same penalty as for a first offense (a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$500, or both).

The bill would instead cite a different provision, which would make the above offense (disorderly for nonsupport a subsequent time within two years while family is receiving public

support) a new felony, punishable by imprisonment for up to four years or a fine of up to \$10,000, or both.<sup>2</sup>

#### Other provisions

Finally, the bill would change the term “prostitution” to *commercial sexual activity* when used in sections of the code concerning racketeering, money laundering, and the collection of DNA samples from persons convicted of certain crimes.

The bill would repeal section 449a of the code. The section, noted above, now contains prohibitions that the bill would move to section 449.

The bill would take effect 90 days after it is enacted. The bill cannot take effect unless House Bills 5842 to 5854 and 5864 are also enacted.

MCL 750.13 et seq. and MCL 750.449a (repealed)

**House Bill 5864** would amend the sentencing guidelines provisions of the Code of Criminal Procedure to change terms related to prostitution to comport with the terminology proposed by House Bill 5841. The bill also would add to the guidelines a new felony that would be created by House Bill 5841 and change the classification of a currently existing felony. Specifically, a commercial sexual activity violation with one prior conviction would be a Class G crime against public order with a statutory maximum term of imprisonment of two years, and a commercial sexual activity violation with two or more prior convictions would be a Class F crime against public order (currently it is a Class G offense) with a statutory maximum of four years. The bill would take effect 90 days after being enacted, but cannot take effect unless House Bill 5841 is also enacted.

MCL 777.16w

**House Bills 5842 to 5847 and 5849 to 5854** would amend several different acts to make similar changes to definitions and terms related to prostitution/commercial sexual activity. Other

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<sup>2</sup> When the Penal Code was enacted in 1931, section 167 defined the crime of being a disorderly person, and section 168 prescribed penalties, including enhanced penalties for repeat offenses. All violations, even for repeat offenses, were misdemeanors. In 1956, section 167 was amended to specifically direct that a person convicted for nonsupport who has a subsequent offense within two years while their family is receiving public support must be charged as a repeat offender under section 168. In 1965, though, section 168 was amended to get rid of all of its enhanced penalties for repeat offenses and to simply state that being a disorderly person is a misdemeanor. However, the legislature did not at that time also change the requirement in section 167 to charge certain nonsupport offenders under section 168’s enhanced penalties (even though those penalties had ceased to exist).

Then, in 2006, the Penal Code was amended to create a new felony, in section 167d, for disrupting a funeral or memorial service. The penalties for the new felony were added to section 168: imprisonment for up to two years and/or a fine of up to \$5,000 for a first offense, and imprisonment for up to four years and/or a fine of up to \$10,000 for a subsequent offense. These penalties are for violations of section 167d (funeral disruption) only; the 2006 amendments also provided that being a disorderly person is otherwise a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$500. These penalties are the current law.

Although section 167 says to charge certain persons under section 168 as repeat offenders for nonsupport, these offenders are now guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$500, the same as for a first offense, because section 168 does not have any repeat offense provisions that would apply to them. The bill, though, would require them to be charged the same as repeat offenders of the funeral disruption provisions, which would make them guilty of a felony punishable by imprisonment for up to four years and/or a fine of up to \$10,000. The package of bills does not propose to amend the sentencing guidelines to reflect the new felony.

changes are noted below. Each bill would take effect 90 days after being enacted and cannot take effect unless House 5841 is also enacted. The bills would amend the following acts:

HB 5842:	DNA Identification Profiling System Act (MCL 28.176)
HB 5843:	Probate Code (MCL 712A.2 et seq.)
HB 5844:	Juvenile Facilities Act (MCL 803.225a)
HB 5845:	Youth Rehabilitation Services Act (MCL 803.307a)
HB 5846:	Public Health Code (MCL 333.5129)
HB 5847:	Fourth Class City Act (MCL 91.1)
HB 5849:	Revised Judicature Act (MCL 600.3801)
HB 5850:	1973 PA 116, the child care licensing act (MCL 722.115r)
HB 5851:	Child Protection Law (MCL 722.622)
HB 5852:	Human Trafficking Notification Act (MCL 752.1033)
HB 5853:	Sex Offenders Registration Act (MCL 28.722)
HB 5854:	Michigan Liquor Control Code (MCL 436.1906)

House Bill 5843 would amend a provision in the juvenile code that provides that the family division of circuit court, if it finds on the record that voluntary services have been exhausted or refused, has concurrent jurisdiction in proceedings concerning a juvenile who is 17 or 18 found within the county who is found of their own free will and knowledge in a house of prostitution, assignation, or ill-fame. The bill would change the final phrase to “in a house in which commercial sexual activity is committed, a house of assignation, or a house of ill-fame” (rather than the more standard phrasing in the bills, “in a house, vehicle, or other place in which commercial sexual activity is committed”).

House Bill 5845 would amend a reference to a violation of section 462 of the Michigan Penal Code to describe that violation as “*female* under the age of 17 in a house, vehicle, or other place in which commercial sexual activity is practiced, encouraged, or allowed.” However, that provision is not gender-specific and would apply to individuals under the age of 19 under House Bill 5841.

House Bill 5846 would remove a provision that now *requires* a district court to order tests for HIV, hepatitis B or C, or a sexually transmitted infection for an individual charged with aiding, assisting, or abetting another person to commit prostitution/commercial sexual activity offenses if the defendant is bound over to circuit court on the charge and the district court determines that there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant. (A retained provision would *allow* a court to order such a test for a person charged with that violation.)

House Bill 5850 would amend a reference to a felony involving “pandering, transporting an individual for *prostitution*, and keeping, maintaining, or operating a house of ill fame” by changing the italicized word to *commercial sexual activity* but retaining the terms “pandering” and “house of ill fame.”

House Bill 5853 would remove the crime of obtaining or offering to obtain commercial sexual activity from a person who is less than 18 years of age from being considered a Tier I offense



(or any registerable offense) under the Sex Offenders Registration Act (SORA).<sup>3</sup> The bill also would retain a current citation to section 448 of the Michigan Penal Code, which would effectively remove the crime of soliciting, accosting, or inviting a person who is a minor to engage in commercial sexual activity from being listed as a Tier II offense (or any registerable offense) under SORA.

## **FISCAL IMPACT:**

House Bill 5841 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. Violations would be felonies, and new felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly \$49,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bills 5842 to 5847, 5849 to 5854, and 5864 would not have a direct fiscal impact on the state or local governments.

Legislative Analyst: Rick Yuille  
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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.

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<sup>3</sup> These provisions are now in section 449a(2), and under the bill package would be moved to section 449(5). House Bill 5853 does not include section 449(5) as a Tier I offense. The bill would provide that a violation of “former section 449a(2)” is a Tier I offense, so violations of that section charged before it is repealed by House Bill 5941 would still be Tier I offenses under SORA, but new violations section 449(5) would not.