

HOUSE BILL NO. 4094

February 03, 2021, Introduced by Reps. Rendon, Whitsett, Glenn, Whiteford, Calley, Brabec, Kahle, Paquette, Bollin, Wozniak, Clemente, Hammoud, Anthony, Puri, Thanedar, Bolden, Stone, Jones and Yancey 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, 449, 449a(1), 450, or
3 462 is guilty of a misdemeanor punishable by imprisonment for not
4 more than 93 days or a fine of not more than \$500.00, or both.

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

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

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

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

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

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

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

24 (c) Information contained in a presentence report.

25 (d) The defendant's statement.

26 (6) In any prosecution of a person under 18 years of age for
27 an offense punishable under this section or a local ordinance
28 substantially corresponding to an offense punishable under this
29 section, it ~~shall~~**must** be presumed that the person under 18 years

1 of age was coerced into child sexually abusive activity or
2 commercial sexual activity in violation of section 462e or
3 otherwise forced or coerced into committing that offense by another
4 person engaged in human trafficking in violation of sections 462a
5 to 462h. The prosecution may overcome this presumption by proving
6 beyond a reasonable doubt that the person was not forced or coerced
7 into committing the offense. The state ~~may~~**must** petition the court
8 to find the person under 18 years of age to be dependent and in
9 danger of substantial physical or psychological harm under section
10 2(b)(3) of chapter XIIIA of the probate code of 1939, 1939 PA 288,
11 MCL 712A.2. A person under 18 years of age who fails to
12 substantially comply with court-ordered services under section
13 2(b)(3) of chapter XIIIA of the probate code of 1939, 1939 PA 288,
14 MCL 712A.2, ~~is not~~**may be** eligible for the presumption under this
15 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) As used in this section, "prior conviction" means a
7 violation of section 448, 449, 449a(1), 450, or 462 or a violation
8 of a law of another state or of a political subdivision of this
9 state or another state substantially corresponding to section 448,
10 449, 449a(1), 450, or 462.

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