



House & Senate Criminal Sexual Conduct Reform Package

Brief Descriptions of Senate Bills 871-872, 874 and 880

As passed by the House on May 24

House Bills 5537, 5539, 5658-5661, 5783-5784, 5787-5799, 5800, 5982 and 6043

As passed by the Senate Judiciary Committee on June 6

SB 871 (H-2) (O'Brien): Extending the Criminal Statute of Limitations for Criminal Sexual Conduct

The bill extends the criminal statute of limitation for criminal sexual conduct in the second and third degrees to 15 years after the offense or after the victim's 28th birthday, whichever is later, when the victim is under 18 years old. The bill also allows for charges to be filed later if DNA evidence is recovered at the time of the incident and then is later identified.

This bill has been sent to the Governor.

SB 872 (H-1) (Knezek): Extending the Civil Period of Limitations for Criminal Sexual Conduct

The bill extends the period of limitations to 10 years for an action to recover damages sustained because of criminal sexual conduct. It also extends the period of limitations for criminal sexual conduct cases involving a minor until s/he is 28 years old or three years after the date the individual discovers or should have discovered that the individual's injuries have a causal relationship with the criminal sexual conduct, whichever is later. No criminal conviction/adjudication is necessary for a civil case to be brought.

The bill also allows for civil criminal sexual conduct cases involving a minor that date back to Jan. 1, 1997 to be brought within 90 days of the bill's effective date if certain conditions are met. To bring a claim the defendant must have been convicted of criminal sexual conduct in the first degree and admitted that s/he either was in a position of authority over the victim as the victim's physician or that the defendant engaged in medical treatment or examination of the victim in a manner that is medically recognized unethical or unacceptable.

This bill has been sent to the Governor.

HB 5537 (H-1) and HB 5982 (Kesto and Cambensy): Prohibit Use of Position of Authority to Stop Reporting of a Crime

HB 5537 (H-1) prohibits a person from intentionally using his or her professional position of authority over another person from reporting child abuse, criminal sexual conduct in the first, second, third or fourth degree, or assault with intent to commit CSC one, two or three. HB 5982 extends this to Title IX investigators as well. A violation of these provisions is a misdemeanor punishable by up to one-year imprisonment and/or a up to \$1,000 fine. If the violation involves committing or attempting to commit a crime or a threat to kill or injure any person or cause property damage, then the violation is a felony punishable by imprisonment for up to 10 years and/or up to \$20,000.

HB 5539 (LaSata): Include Sexual Abuse, Assault and Rape to the List of Information Reportable to OK2SAY

HB 5539 amends the School Safety Act to expand the list of reasons an individual can contact OK2SAY to include sexual abuse, assault or rape. The legislation does not limit the expansion or the current list, but simply specifies that the above are specific reasons to report to OK2SAY.

HB 5658 (H-1) (Cox): Expand Types of Evidence Admissible in Certain Cases

This legislation will expand the types of admissible evidence to allow a defendant's prior commission of sexual assault to be admissible when the defendant is accused of an offense involving domestic violence or sexual

assault. Current law allows previous acts of domestic violence to be admissible against a defendant accused of a new domestic violence charge, HB 5658 provides an expansion for sexual assault, so long as certain criteria are met.

HB 5660 (H-2), HB 5661 (H-2), HB 5794 (H-1) (Love, Farrington and Iden): Increase Penalties for Child Sexually Abusive Material

These bills would create an enhanced felony penalty for a person who knowingly possessed or knowingly accessed child sexually abusive material that depicted a prepubescent child or sadomasochistic abuse or bestiality, or included more than 100 images, if the person knew or had reason to know that the depicted child was a child. It would also establish a mandatory minimum sentence of five years' imprisonment if a person were convicted of a second or subsequent offense.

HB 5659 (S-1), HB 5796 (H-1), SB 874 (H-1) and SB 880 (H-1) (Griffin, Pagan, Jones and Jones): Mandatory Reporting, Increasing Criminal Penalties for Mandatory Reporters and Training Materials

HB 5659 would establish physical therapists, physical therapist assistants, athletic trainers and paid coaches (K-12 and postsecondary) over the age of 18 to the list of individuals who are mandatory reporters. SB 874 establishes criminal penalties for an individual who fails to report a second or subsequent time. If a mandatory reporter fails to report an incident of child abuse or child neglect a second time, that individual is guilty of up to one-year imprisonment or \$5,000 fine, or both misdemeanors. If a mandatory reporter fails to report an incident a third or subsequent time, the person is guilty of a felony punishable by up to four years and/or \$15,000.

HB 5796 requires the Department of Health and Human Services to consult with the Michigan Domestic and Sexual Violence Prevention and Treatment Board and the Michigan Coalition to End Domestic Violence to create comprehensive training materials for individuals required to report suspected child abuse and neglect. The materials must be available on the DHHS website. Employers/organizations with mandatory reporters would be required to provide training to their employees required to report.

HB 5783 (H-3), HB 5784 (H-1), HB 5787 (S-1), HB 5788 (H-1), HB 5789 (S-1), HB 5790, HB 5793 (H-1) (Whiteford, Hauck, Kesto, Geiss, Noble, Rendon, Theis): Medical Treatment and Practice Reforms

HB 5783 requires performance of a medical service involving vaginal or anal penetration to be included in a patient's medical records, including records maintained by health facilities, and be maintained for at least 15 years, as well as establish administrative and criminal penalties for noncompliance. The medical boards must develop guidance and standards for practice of services involving vaginal and anal penetration and distribute it to their professionals. HB 5793 requires parental consent for these types of exams before they can be performed on a minor.

HB 5787 prohibits a medical professional from engaging in sexual contact or sexual penetration with a patient by means of misrepresenting that contact or penetration as necessary/beneficial for the patient's health. HBs 5784 and 5788 outline the various criminal penalties for violations of these bills.

HB 5789 includes a conviction for sexual contact or sexual penetration under the pretext of medical treatment in the list of grounds for requiring sanctions to be imposed on a person and HB 5790 requires a health professional license/registration be permanently revoked for a violation involving sexual contact or sexual penetration under the pretext of medical treatment.

HB 5791 (H-2) (Chang): Require MDE to Create Materials Regarding Sexual Assault/Harassment

The bill requires the Michigan Department of Education to develop materials on sexual assault and sexual harassment and provide them to school districts, ISDs and PSAs for distribution to students in grades 6-12 in a manner determined by the district. The materials will be developed in consultation with the Michigan Domestic and Sexual Violence Prevention and Treatment Board and the Michigan Coalition to End Domestic and Sexual

Violence. The information must include information regarding what constitutes sexual assault and harassment, an explanation that sexual assault and harassment are not the victim's fault and information on resources available for victims.

HB 5792 (H-1) and HB 5795 (H-1) (Hoadley and Singh): Title IX Ombudsman and Improvement Plans

HB 5792 creates the "Campus Sexual Assault Response Improvement Plan and Grant Act" to help higher education institutions improve their responses to campus sexual assault and allows the Department of Health and Human Services to develop the program. HB 5795 creates a higher education sexual assault ombudsman within the Department of Civil Rights.

HB 5797 (H-1) (Pagan): FOIA Exemption for Survivor Identities

This would exempt information from being disclosed under FOIA that would reveal the identity of an individual who has filed an anonymous civil lawsuit.

HB 5798 (S-1) (Albert): Expand the Definition of Victim for Purposes of Victim Impact Statements

The legislation will allow the spouse of a victim, child of the victim (if the child is over 18 years old), parent/guardian/custodian of victim, sibling or grandparent of the victim to make a victim impact statement if the victim is deceased or mentally incapacitated, or the victim consents to the listed individual making a victim impact statement.

HB 5799 (Hornberger): Amends Removal Procedures for Officials on Certain Statewide Elected Boards

HB 5799 allows the Governor to examine and remove a member of the State Board of Education or a state university governing board when the Legislature is in session.

HB 5800 (H-3) (Rabhi): Limit a School's Ability to Discipline Students Under Certain Circumstances

The bill would prohibit a school from suspending a student for more than 10 days for actions the student took during a sexual assault incident. The legislation also encourages school boards to follow recommendations of its Title IX coordinator when deciding to discipline a student under those circumstances. This prohibition would not apply if the student pleads guilty or is convicted/adjudicated of certain violent crimes, or the student possessed a dangerous weapon in a weapon-free school zone or committed a criminal sexual conduct crime in a school building or on school grounds. It also would not apply if, following a completed Title IX investigation, it was determined by clear and convincing evidence that the report of sexual assault is false.

HB 6043 (S-2) (Clemente): Require Certain School Personnel Employee Information be Sent to MDE

The bill would require a school district to report information it receives regarding unprofessional conduct for a potential employee from his/her current or former district to MDE. It would also require any information received on current employees related to unprofessional conduct that resulted in disciplinary action or nonrenewal of a contract to be reported to the Department along with the action taken by district. MDE would maintain these records for six years.

All of the listed House Bills are currently under consideration by full Senate.

The Senate Bills are awaiting concurrence with the House changes unless otherwise listed.

More information is available on each bill at michiganlegislature.org.