

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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House Bill 4293 (Substitute H-4 as reported without amendment)

Sponsor: Representative William Van Regenmorter

House Committee: Judiciary

Senate Committee: Judiciary

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**RATIONALE**

In recent years, there has been an increase in the number of instances in which the defendant in a criminal sexual conduct (CSC) prosecution files a civil suit against his accuser. In such cases, the criminal defendant typically files the civil suit before the completion of the criminal trial, contending that he has been defamed by the victim's charges, statements, and/or actions. Under the discovery procedures used in civil actions, parties to a suit can be required to provide depositions and answer interrogatories. Such a procedure may force the victim of the alleged rape to reveal details about her sexual history, which generally is barred in a CSC prosecution. It has been claimed that the filing of a civil suit by a CSC defendant against his accuser can discourage rape victims from reporting assaults and cooperating with criminal prosecutions, and that these actions often are brought for this purpose. Some people believe that civil suits brought by a CSC defendant against a rape victim should be prohibited until the completion of the related criminal trial in order to prevent defendants from contributing to rape victims' emotional distress, to shield victims from the humiliation of forced revelations regarding their sexual history, and to avoid the burden of additional legal expenses to victims.

**CONTENT**

The bill would amend the Revised Judicature Act to prohibit a defendant charged with any degree of criminal sexual conduct, or assault with intent to commit CSC, from commencing a civil action against the victim of the alleged

crime if the criminal action were pending and the civil action were based on statements or reports made by the victim that pertained to an incident from which the criminal charge arose. The prohibition would not apply, however, if the victim filed a civil suit against a defendant based on that incident. ("Victim" would include the parent, guardian, or custodian of the victim if the victim were either less than 18 years old or so mentally incapacitated that he or she could not "meaningfully understand or participate in the legal process".)

A civil action prohibited by the bill would have to be dismissed, without prejudice, and the period of limitations for commencing a civil suit would be suspended for the length of time that the criminal action was pending. The prohibition would apply only to a defendant who was charged with a crime allegedly committed after the bill's effective date, which would be 90 days after its enactment.

Proposed MCL 600.1902

**FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

**ARGUMENTS****Supporting Argument**

By prohibiting a civil suit by a CSC defendant against a rape victim before the resolution of the criminal proceeding, the bill would shield a rape victim from unnecessary additional

H.B. 4293 (2-21-90)

emotional pain. The claim that such civil suits are filed to intimidate rape victims is not a hollow one: in an article on the issue, the Detroit Free Press reported that an Assistant Washtenaw County Prosecutor "confirmed that rape victims have told prosecutors of their concern that their attackers might sue them, adding the costs of fighting a civil suit to the rape victim's emotional distress". The bill would go a long way toward protecting victims from the additional hardships presented by having to respond to a defendant's civil suit prior to the conclusion of a criminal trial, perhaps even having to answer under oath personal questions that are disallowed in the criminal proceeding, and having to sustain the legal costs involved with a civil suit.

#### Supporting Argument

Prohibiting a related civil suit until after the completion of a CSC prosecution would require that the two proceedings be carried out in a logical order. It makes little sense to attempt to determine whether a crime victim defamed the defendant charged with that crime until after the criminal matter is resolved because the finding of fact in the criminal matter would have direct relevance to the finding of fact in the civil matter. That is, if the criminal defendant were found guilty of the alleged crime, then the victim's statements charging that crime could hardly be libelous or slanderous. The resolution of the civil suit could be dependent upon the resolution of the criminal trial.

#### Opposing Argument

While trying to protect a rape victim from further emotional unrest is an admirable goal, the bill would ignore the right of someone falsely accused to seek a remedy for his emotional distress. The bill would abridge the criminal defendant's right to proceed civilly against someone who had defamed him or alleged false criminal charges against him. In addition, it may be unconstitutional for the Legislature to force one category of people who claim injury to delay seeking damages until the conclusion of the event that brought on the injury. If someone falsely accused of embezzlement, for instance, can bring a suit against the accuser, a CSC defendant should be entitled to the same consideration.

**Response:** The bill would not block defamation suits, but merely delay their filing

and suspend the period of limitation for such suits. In so doing, it would balance a person's right to access to civil relief against society's interest in protecting sexual assault victims from intimidation tactics.

#### Opposing Argument

The bill is unnecessary because there are motions available to attorneys to ensure that a civil suit not proceed more rapidly than a related criminal proceeding. For instance, a prosecutor could move for accelerated judgment on the criminal charge or the defense counsel in a civil suit could request a continuance until after the resolution of the criminal trial.

**Response:** According to testimony before the Senate Judiciary Committee, those types of courtroom tactics have been attempted and have failed in at least one case. While attorneys can try to have proceedings accelerated or delayed, the opposing attorney is likely to object to such actions. In addition, Michigan courts reportedly have ruled that concurrent civil actions are permissible.

#### Opposing Argument

A better approach to the problem of defendants' using civil suits to intimidate victims would be to change court rules to prohibit criminal defense attorneys from bringing libel and slander actions preceding the conclusion of a criminal trial in order to force victims to give testimony. Although bringing a rape victim's sexual history into a criminal trial is prohibited by law, there are no sanctions against attorneys who attempt it. Subjecting those attorneys to contempt charges and/or mandatory fines could prevent such questionable practices.

**Response:** Amending court rules is within the purview of the Michigan Supreme Court, not the Legislature.

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#### H8990/S4293A

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.