



**House
Legislative
Analysis
Section**

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SEX ABUSE PROSECUTIONS, SUITS

House Bill 4430 as passed by the House
Sponsor: Rep. Gary L. Randall

House Bill 4518 as passed by the House
Sponsor: Rep. Richard Bandstra

Second Analysis (8-6-93)
Committee: Judiciary

THE APPARENT PROBLEM:

The trauma suffered by victims of childhood sexual abuse is so severe that they sometimes repress the memory of the experience; evidently this can happen even when the sexual abuse occurs in adolescence. The court of appeals recently recognized the phenomenon in its 1988 decision on Meiers-Post v. Schafer (170 Mich App 174). The court noted that the three-year statute of limitations that ordinarily applies in civil suits is suspended during a period of insanity, and held that the statute of limitations may be suspended under the insanity clause in cases where a plaintiff alleging sexual abuse can establish that memory of the abuse had been repressed to the degree that she (or he) could not have been aware of rights that she (or he) was otherwise bound to know. However, the court also held that there would have to be corroboration for the plaintiff's testimony that the sexual assault occurred. Thus, the court reasoned, there would be a fair balance between the risk of stale claims and the unfairness of precluding justifiable causes of action.

The rule formulated by the court of appeals has been criticized for in effect requiring a person to claim insanity in order to bring a suit based on childhood sexual abuse. Moreover, while the court has found a means of accommodating civil suits, the statute of limitations on a criminal prosecution in such cases is clear: six years after the event or before the alleged victim's twenty-first birthday, whichever is later.

Many believe that the trauma suffered by victims of sexual abuse justifies extension of the statutes of limitations on civil suits and criminal prosecutions.

THE CONTENT OF THE BILLS:

House Bill 4430 would amend the Code of Criminal Procedure (MCL 767.24) to extend the statute of limitations for prosecution of certain sex offenses committed against a minor. The bill generally would eliminate the statute of limitations for production or distribution of child pornography, or for first- or third-degree criminal sexual conduct (both of which are penetration offenses) where the alleged victim was a child. However, without corroborating evidence as specified by the bill, a prosecution could not be commenced more than six years after the offense was committed or after the alleged victim's twenty-first birthday, whichever was later.

For second - or fourth-degree criminal sexual conduct or attempted criminal sexual conduct where the alleged victim was a minor, the statute of limitations would remain unchanged: it would expire six years after the offense was committed or the date of the alleged victim's twenty-first birthday, whichever was later.

(Current law requires a prosecution for child pornography or criminal sexual conduct against a minor to be brought within six years after the commission of the offense or by the alleged victim's twenty-first birthday, whichever is later.)

The bill would state a legislative intent that the extension of the statute of limitations is to apply retroactively to offenses for which prosecution was not barred at the time the bill took effect.

House Bill 4518 would amend the Revised Judicature Act (MCL 600.5857) to extend the

House Bills 4430 and 4518 (8-6-93)

statute of limitation on bringing a lawsuit for sexual abuse, defined as child pornography, criminal sexual conduct (first-, second-, third-, or fourth-degree), assault with attempt to commit criminal sexual conduct, or a similar prior law.

A person could bring an action to recover damages resulting from an act of sexual abuse if the action was commenced either before the date of the plaintiff's twenty-fourth birthday or before the expiration of three years after the plaintiff discovered or should have discovered that the sexual abuse caused the injury, whichever was later. (The current statute of limitations is three years, although if the person was a minor at the time the claim accrued, he or she has until his or her nineteenth birthday to file suit, even though the statute of limitations had expired.)

However, a person could not bring an action under the bill without certain corroborating evidence, whether or not that evidence would be admissible during trial. Evidence would have to include one or more of the following: an admission by the defendant; sworn testimony that one or more other individuals had also been sexually abused by the defendant; an oral or written statement made contemporaneously with the alleged abuse; scientific evidence, including a statement from a mental health expert; a statement from a witness to the abuse; a record of the defendant's prior criminal conviction or no-contest plea involving sexual abuse; medical records; or, other evidence that the court considered to have a high degree of reliability.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bills would have no significant fiscal implications for the state. (8-5-93)

ARGUMENTS:

For:

Many people who experience sexual abuse as youngsters or adolescents suffer trauma so great that they repress the memories of the events. The memories may surface years later, either through psychological therapy or upon the occurrence of some triggering event. However, the statutes of limitations on prosecutions and civil suits are so restrictive that bringing timely action is extremely difficult, if not impossible, for many victims.

The bills would extend the statutes of limitations, thus enabling many cases that would otherwise be barred to go forward, and in turn enabling victims to obtain redress and wrongdoers to be punished. Being able to fully confront their abusers also will help many victims to complete the healing process, breaking the chain of abuse that can run from one generation to the next. Molesters will be held accountable for their actions, thus not only forcing them to realize the gravity of their offenses, but also providing the opportunity for court-ordered counseling that may prevent others from being harmed. Without the bills, many of those who sexually abuse children will continue to be able to escape the consequences of the law.

Against:

The bills should contain longer extensions, if not eliminations, of the statutes of limitations for bringing actions based on childhood sexual abuse. Repressed memories of childhood sexual trauma often do not surface until the victim is in his or her thirties, and even then tend to unfold gradually; there may be no lightening bolt of realization. Further, those who repress the memories are often the victims of a family member or other person with authority, such as a teacher or priest. Even after memories begin to surface, there may be great difficulty in summoning up the strength to confront the abuser. The law should grant more time to victims of childhood sexual assault.

Against:

The statutes of limitations, at least the statute applying to civil suits, should not be extended. To do so would be to risk clogging the courts with suits based on false or misguided allegations. Issues of repressed memories are not clear-cut: there are many questions about the reliability of newly-emerged repressed memories, especially when they surface through hypnosis or psychotherapy. To open up the law to accommodate newly-acquired memories would be to open up the courts to frivolous suits.

Against:

The bills err in requiring corroborating evidence, especially with regard to criminal prosecutions. The requirement would not merely undermine prosecutorial discretion; it would directly contradict the provision of law that says that the testimony of a victim in a criminal sexual conduct prosecution need not be corroborated. Requiring corroboration would be contrary to the basic principle that a rape

victim is not the person on trial; the law should not single out rape victims as somehow less credible than other victims of crime. Even with regard to civil suits, however, many believe that corroboration should not be required. To require corroboration would be to impose an unnecessary burden on already-suffering plaintiffs and to allow more sex offenders to escape the law.

Response:

Not to require corroboration in civil suits, at least, would be to risk the expenses and burdens on the system of having worthless lawsuits proceed in court. The corroboration requirement would be fairly easy to meet, and it would have the virtue of ensuring that at least the most egregiously frivolous suits were not filed. In addition, some have argued that if corroboration is to be required in civil suits, then it ought to be required in criminal prosecutions. Defendants in both civil suits and prosecutions will be hard-pressed to defend themselves so long after the event was alleged to have happened.

Against:

While the bills address issues with regard to perpetrators of abuse, they would excuse other culpable adults from prosecution or lawsuit. A parent who did nothing to stop a pattern of sexual abuse against a child should be held accountable.

Against:

House Bill 4518 would open the door for all victims of sexual assault, not just childhood victims, to bring suit long after the fact. The bill would allow an alleged victim to bring suit three years after discovering that sexual abuse caused an injury, but sexual abuse is not defined with regard to age. Thus, theoretically, someone raped at age thirty who discovers at age 40 that some psychological problem can be attributed to the assault will be able to bring a lawsuit against the alleged offender, even if that offender had not been convicted.

Response:

Given the deep psychological trauma that can be caused by a sexual assault, it would be justifiable to extend the statute of limitations for all victims of sexual assault, not just juvenile victims.

POSITIONS:

The Department of State Police supports House Bill 4430 and supports the concept of House Bill 4518. (8-4-93)

The National Organization for Women, Michigan Conference supports House Bill 4430 and supports House Bill 4518 as a first step. (8-4-93)

The Sexual Assault Information Network supports House Bill 4430 and supports House Bill 4518 as a first step. (8-4-93)

The Prosecuting Attorneys Association of Michigan supported House Bill 4430 as introduced, but does not support the requirement for corroborative evidence in criminal prosecutions, and does not have a position on House Bill 4518. (8-3-93)