

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 4187 (Substitute S-1 as reported)
House Bill 4524 (Substitute S-1 as reported)
Sponsor: Representative Deborah Cherry (House Bill 4187)
Representative Marc Shulman (House Bill 4524)
House Committee: Family and Civil Law
Senate Committee: Judiciary

Date Completed: 12-13-99

RATIONALE

Chapter 55 of the Revised Judicature Act (RJA) contains limitation periods for filing civil lawsuits, which typically require a suit to be filed within a specific number of years after the incident that gave rise to the lawsuit. With certain exceptions, if a lawsuit is not filed within the limitation period, it is invalid. Generally, the time period is thought to allow a plaintiff sufficient time to discover his or her cause of action and put together a case, as well as inform potential defendants that cases against them will have to be brought in a timely manner. The limitation periods also safeguard defendants from being disadvantaged by a plaintiff's delay, by having to defend occurrences that took place many years in the past.

The statute of limitations varies for different causes of action. For example, libel and slander cases have a one-year period of limitations, while assault, battery, and false imprisonment cases have a two-year period of limitations. Some statutory exceptions extend the period of limitations for certain potential plaintiffs. For example, in medical malpractice cases, a plaintiff must bring his or her case within a specified period of limitations or within six months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. Other exceptions deal with the "disability" of a would-be plaintiff; that is, the person's status as either a minor or insane. For example, a person who is a minor at the time the cause of action accrued has one year after he or she reaches the age of majority to bring the lawsuit, even if the actual statute of limitations has expired. Some people believe that, in addition to exceptions currently allowed, the statutory period of limitations should be extended for the victim of assault or battery in a domestic violence situation.

House Bills 4187 (S-1) and 4524 (S-1) would amend the same section of the Revised Judicature Act (RJA) to extend the period of limitations for an action charging assault or battery brought by a victim of domestic violence and for an action to recover damages for injury to a person or property brought by a victim of domestic violence. The bills are tie-barred.

House Bill 4187 (S-1)

Under the RJA, the period of limitations is two years for an action charging assault, battery, or false imprisonment. Under the bill, the period of limitations would be five years for an action charging assault or battery brought by a person who had been assaulted or battered by his or her spouse or former spouse, an individual with whom he or she had a child in common, or a person with whom he or she currently or formerly resided. The five-year limitation would apply to causes of action arising on or after the date of the bill's enactment and to causes of action in which the RJA's two-year period for assault, battery, or false imprisonment had not already expired as of the date of the bill's enactment.

CONTENT

House Bill 4524 (S-1)

Under the RJA, for an action to recover damages for the death of a person or for injury to a person or property, the period of limitations is three years after the time of the death or injury. Under the bill, the period of limitations would be five years for an action to recover damages for injury to a person or property brought by a person who had been assaulted or battered by his or her spouse or former spouse, an individual with whom he or she had a child in common, or a person with whom he or she currently or formerly resided. The five-year limitation would apply to causes of action arising on or after the date of the bill's enactment and to causes of action in which the three-year period to recover damages for the death of a person or for injury to a person or property had not already expired as of the date of the bill's enactment.

In addition, House Bill 4524 (S-1) would make revisions identical to those in House Bill 4187 (S-1).

MCL 600.5805

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Victims of domestic violence suffer the same types of physical injuries as other assault victims, but are usually in a unique position of vulnerability while they remain with their assailants. This limits a victim's likelihood of pursuing a lawsuit against the assailant until after the victim has made a clean break from the abuser. Even after initially breaking off a relationship with an abusive partner, however, the victimized party can remain at great risk and continue to fear harm for some time after the parties have been separated. Also, an abused party may have a great deal to contend with when escaping from such a relationship (e.g., finding a place to live and perhaps a new job, moving away from the abuser, and making other lifestyle changes to start out on his or her own). The two- and three-year limitations currently provided in law for an action charging assault or battery and for an action to recover damages for injury to a person or property might not even outlast the time it takes for a domestic violence victim to feel safe from further abuse. Given the nature of the relationship between abuser and abused in domestic violence cases, these victims should be given more time to restore their lives before they set about recovering monetary damages. The RJA's period of limitations provision should recognize these special circumstances.

Supporting Argument

Domestic violence is not limited to situations in which the parties are or have been married, have a child in common, are or were involved in a consensual sexual relationship, or are members of the opposite sex who do or used to live together. For example, an adult man might assault his or her elderly father, or vice versa. By including a person who was assaulted or battered by someone with whom he or she currently or formerly resided, the Senate substitutes to these bills would encompass additional types of relationships.

Opposing Argument

There is little reason to grant a special extension to cases that stem from domestic violence. All victims of assault may feel fearful or have difficulty returning to a sense of normalcy after having been assaulted. If an extension were granted based on who was assaulted, a similar case could be made for granting an extension for the elderly or the handicapped, who also may be particularly vulnerable to physical attack.

Response: Victims of domestic violence have unique circumstances that distinguish them from other assault victims. Unlike a person who is violated by a stranger, domestic violence victims are, by definition, abused by someone upon whom they may be financially or emotionally dependent, someone to whom they have made a legal and emotional commitment, someone with whom they share a residence, or someone who is the father or mother of their child. Extending the period of limitations for these victims is not based on their vulnerability to physical attack, but on the physical and psychological difficulty of escaping and overcoming this type of situation.

Opposing Argument

The bills could be used inappropriately as a legal weapon in divorce cases. Under the bills, after a property settlement had divided a marital estate, a former spouse could bring suit against the other to seek a larger portion of the estate. Although Michigan has so-called "no-fault" divorce laws, a judge may take fault into account when distributing assets. Although this may be uncommon, the would-be plaintiff should be limited in his or her ability to pursue further damages. For the sake of judicial expediency and fairness to all parties, the bills should require that a plaintiff bring all of his or her claims at the same time.

Response: The allegations in a divorce case and a claim for monetary damages for an assault are not necessarily related. A divorce case seeks to make a fair distribution of the assets of the marriage and to decide issues of custody and support where necessary. A lawsuit for damages based upon an assault is intended to make the plaintiff whole; that is, to compensate him or her for the harm that was

done. Furthermore, requiring someone to bring his or her assault or battery claim at the time of a divorce proceeding actually could shorten the existing period of limitations.

Legislative Analyst: P. Affholter

FISCAL IMPACT

There are no comprehensive Statewide data on the number of potential cases that could come under the proposed five-year statute of limitations under the bill.

Fiscal Analyst: B. Bowerman

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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.