

Legislative Analysis



EXTENDING STATUTE OF LIMITATIONS FOR CERTAIN ACTIONS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 871 as passed by the Senate
Sponsor: Sen. Margaret O'Brien

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 872 (S-4) as passed by the Senate
Sponsor: Sen. David Knezek

House Committee: Law and Justice
Senate Committee: Judiciary
Complete to 5-9-18

REVISED SUMMARY:

Senate Bill 871 would amend the Code of Criminal Procedure, and Senate Bill 872 would amend the Revised Judicature Act, to extend the statute of limitations for certain criminal sexual conduct (CSC). A statute of limitations refers to the amount of time a plaintiff has to file an action.

Senate Bill 871 would amend the statute of limitations for criminal indictments under the Code of Criminal Procedure.

Currently, an indictment for a violation or attempted violation of Section 520c or 520d of the Michigan Penal Code (CSC in the second or third degree, respectively) can be found and filed as follows:

- Within 10 years after the offense is committed or by the alleged victim's 21st birthday, whichever is later.
- If there is evidence of the offense that contains DNA from an unidentified individual, at any time after the offense is committed. After the individual is identified, however, the indictment must be found and filed within 10 years after that identification or by the alleged victim's 21st birthday, whichever is later.

Senate Bill 871 would eliminate the statute of limitations for a violation or attempted violation of CSC in the second degree (MCL 750.520c) in which the victim is under 18 years of age. CSC in the second degree involves sexual contact. An indictment for such an offense could be found and filed at any time.

The bill would also extend the statute of limitations for CSC in the third degree (MCL 750.520d) in which the victim is under 18 years of age. CSC in the third degree involves sexual penetration. The bill would allow an indictment to be found and filed as follows:

- Within 30 years after the offense is committed or by the alleged victim's 48th birthday, whichever is later.
- If there is evidence of the offense that contains DNA from an unidentified individual, at any time after the offense is committed. After the individual is

identified, however, the indictment must be found and filed within 30 years after that identification or by the alleged victim's 48th birthday, whichever is later.

MCL 767.24

Senate Bill 872 would amend the statute of limitations for civil actions under the Revised Judicature Act. Civil actions enable a plaintiff to recover damages for injuries to persons or property. Generally, the period of limitations to recover damages for injury to a person or property is 3 years after the injury. Current law contains exceptions that prescribe shorter or longer periods of limitations for certain specified grounds for an action.

The bill would add language specifying that the statute of limitations is 10 years for an action based on conduct that constitutes ***criminal sexual conduct***. It would not be necessary that a criminal prosecution or other proceeding have been brought as a result of the conduct or that a prosecution or proceeding resulted in a conviction. The bill would define ***criminal sexual conduct*** as conduct prohibited under Section 520b, 520c, 520d, 520e, or 520g of the Michigan Penal Code (MCL 750.520b et al.). These sections respectively prohibit criminal sexual conduct in the first, second, third, or fourth degree or assault with intent to commit CSC in the first, second, or third degree.

Finally, the bill would add a new Section 5851b to allow a minor victim of CSC to commence an action to recover damages sustained because of the CSC at any time before he or she reaches the age of 48 years. The new section would be applied retroactively and would apply to claims based on CSC that accrue as far back as January 1, 1997. However, the retroactive effect would be limited by both of the following:

- If the claim accrued after December 31, 1996 and prior to 3 years before the bill's effective date, the action to recover damages for the claim would have to be filed within 1 year after the bill's effective date.
- Retroactivity would not apply in either of the circumstances:
 - If the victim consented to the conduct, the victim was at least 13 years of age but less than 16 years of age at the time of the conduct, and the individual who engaged in the conduct is not more than 4 years older than the victim.
 - If the victim consented to the conduct, the victim was 16 or 17 years of age at the time of the conduct, and the victim was not under the ***custodial authority*** of the individual who engaged in the conduct at the time of the conduct. ***Custodial authority*** would mean that phrase as defined in the Sex Offenders Registration Act (MCL 28.722(c)), which lists nine different factors that can constitute "custodial authority."

This new section would not limit an individual's right to bring an action under Section 5851, which provides for an extended period of limitations if the person entitled to bring an action is under 18 years of age or insane at the time the claim accrues.

MCL 600.5805 and proposed MCL 600.5851b

FISCAL IMPACT:

Senate Bill 871 would have an indeterminate fiscal impact on the state and on local units of government. Eliminating and extending the statute of limitations on second- and third-degree CSC cases involving victims under the age of 18 could lead to additional court cases and subsequent convictions. Information is not available on the number of persons who would be convicted under the provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. The fiscal impact on local court systems would depend on how the provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

Senate Bill 872 would have an indeterminate fiscal impact on the state and on local units of government. Establishing a 10-year statute of limitations for an action based on conduct that constitutes CSC, and allowing individuals who were victims of CSC as minors to bring actions for damages at any time before they reach 48 years of age, could lead to additional court cases and increased administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. The bill could result in costs for litigation, as well as costs for judgments and settlements.

Legislative Analyst: Emily S. Smith
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.