

Legislative Analysis



EXTENDING STATUTE OF LIMITATIONS FOR CERTAIN ACTIONS

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Senate Bill 871 (reported from committee as substitute H-2)
Sponsor: Sen. Margaret O'Brien

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

Senate Bill 872 (reported from committee as substitute H-1)
Sponsor: Sen. David Knezek

House Committee: Law and Justice *(Enacted as Public Acts 182 and 183 of 2018)*
Senate Committee: Judiciary
Complete to 5-24-18

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 for a violation of Section 520c or 520d of the Michigan Penal Code (CSC in the second or third degree, respectively). [CSC in the second degree involves sexual contact; CSC in the third degree involves sexual penetration.]

Currently, an indictment for CSC in the second or third degree 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 extend the statute of limitations for CSC in the second or third degree in which the victim is under 18 years of age, allowing an indictment to be found and filed as follows:

- Within 15 years after the offense is committed or by the alleged victim's 28th 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 15 years after that identification or by the alleged victim's 28th 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 also delete redundant provisions in current law regarding the period of limitations to recover damages for injury brought by a person who has been assaulted or battered by his or her spouse or former spouse, someone with whom he or she has had a child, someone with whom he or she lived or used to live, or someone with whom her or she has or has had a dating relationship. These provisions duplicate others contained in Section 5805, and their removal would not change current law.

The bill would also add language specifying that the statute of limitations is 10 years for an action to recover damages sustained because of *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 such a prosecution or proceeding have resulted in a conviction or adjudication.

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 an individual who, while a minor, is the victim of CSC to commence an action to recover damages sustained because of the CSC at any time before whichever of the following is later:

- The individual reaches the age of 28 years.
- Three years after the individual discovers, or through the exercise of due diligence should have discovered, both his or her injury and the causal relationship between the injury and the CSC.

It would not be necessary, for an action described above, that a criminal prosecution or other proceeding have been brought as a result of the conduct or that such a prosecution or proceeding have resulted in a conviction or adjudication.

The bill would also provide that, regardless of other periods of limitation, an individual who, while a minor, was the victim of CSC after December 31, 1996 but before 2 years before the effective date of the bill may commence an action to recover damages sustained because of the CSC within 90 days after the bill takes effect if the person alleged to have committed the CSC was convicted of CSC in the first degree against any person under Section 520b of the Michigan Penal Code (MCL 750.520b) and the defendant admitted either of the following:

- That the defendant was in a position of authority over the victim as the victim's physician and used that authority to coerce the victim to submit.

- That the defendant engaged in purported medical treatment or examination of the victim in a manner that is, or for purposes that are, medically recognized as unethical or unacceptable.

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 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. 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 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 28 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.

POSITIONS:

A representative of CHILD USA testified in support of both bills. (5-15-18)

The following organizations indicated support for both bills:

- Michigan Domestic and Sexual Violence Prevention and Treatment Board (5-8-18)
- Coalition for the Survivors of Childhood Sexual Abuse (5-8-18)
- American Association of University Women (5-8-18)
- Michigan Coalition to End Domestic and Sexual Violence (5-23-18)

The following organizations indicated support for SB 871:

- The Junior League of Lansing (5-8-18)
- Sister Survivors (5-8-18)
- Rape, Abuse, & Incest National Network (5-15-18)
- The Michigan State Council of Junior Leagues (5-16-18)

The American Civil Liberties Union of Michigan indicated a neutral position regarding SB 871. (5-22-18)

The Criminal Defense Attorneys of Michigan indicated a neutral position regarding SB 871. (5-23-18)

A representative of the Michigan Chamber of Commerce testified with no position regarding SB 872. (5-16-18)

A representative of the Detroit Police Athletic League testified in opposition to both bills. (5-16-18)

Representatives of the following organizations testified in opposition to SB 872:

- Michigan State Medical Society (5-16-18)
- The American Tort Reform Association (5-15-18)

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.