

## **NO GOVERNMENTAL IMMUNITY FOR SEXUAL MISCONDUCT**

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**Senate Bill 877 (S-1) as passed by the Senate**  
**Sponsor: Sen. Marty Knollenberg**  
**House Committee: Law and Justice**  
**Senate Committee: Judiciary**  
**Complete to 5-7-18**

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

### **BRIEF SUMMARY:**

Senate Bill 877 would amend the governmental immunity act to provide that a member, officer, employee, or agent of, or a volunteer for, a governmental agency is not immune from tort liability if he or she engaged in sexual misconduct while employed by or acting on behalf of the agency. A governmental agency would also not be immune from tort liability for sexual misconduct that a member, officer, employee, or agent engaged in during the course of employment or while acting on behalf of the agency if certain conditions applied, such as negligence in the hiring or supervision of the employee.

### **DETAILED SUMMARY:**

Currently, Public Act 170 of 1964, generally known as the governmental immunity act, grants immunity to the state and local units of government from civil liability when engaged in the exercise or discharge of a governmental function. The act extends this immunity to governmental officers and employees for an injury to a person or damage to property caused by the individual while in the course of employment or service and to a volunteer while acting on behalf of a governmental agency. Immunity from civil liability applies only under certain specified conditions; for instance, that the conduct did not amount to gross negligence that was the proximate cause of the injury or damage. (The act defines "gross negligence" as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.)

Senate Bill 877 would add another exemption from governmental immunity to allow civil, or tort, actions to be brought against a governmental member, officer, employee, or agent or volunteer or a governmental agency in certain cases involving sexual misconduct on the part of the member, officer, employee, or agent. The exemption would apply to conduct that occurred after December 31, 1996. Specifically, the bill would do the following:

- Provide that a member, officer, employee, or agent of a governmental agency or a volunteer acting on behalf of a governmental agency who engaged in sexual misconduct while in the course of employment or service or while acting on behalf of the governmental agency is not immune under the law from tort liability.
- Provide that a governmental agency is not immune from tort liability for sexual misconduct that a member, officer, employee, or agent of the governmental agency engaged in during the course of employment or service or while acting on behalf of the agency. This exemption from immunity would apply only if the governmental

agency was negligent in hiring, supervising, or training the individual or if the agency knew or should have known of the sexual misconduct and failed to report it to a law enforcement agency.

***Sexual misconduct*** would be defined to mean the conduct described in the following provisions of the Michigan Penal Code, regardless of whether the conduct resulted in a criminal conviction under those sections:

- Section 136: female genital mutilation.
- Section 145a: accosting or soliciting a minor for immoral purposes.
- Section 145b: accosting or soliciting a minor for immoral purposes after a prior conviction.
- Section 145c: child sexually abusive activity or material.
- Sections 520b, 520c, 520d, 520e, and 520g: 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, respectively.

The bill would take effect 90 days after being enacted.

Proposed MCL 691.147d

## **FISCAL IMPACT:**

### Judiciary

Senate Bill 877 would have an indeterminate fiscal impact on the state and on local units of government that 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. The bill could result in costs for litigation, as well as costs for judgments and settlements.

### Attorney General and Other State Departments

Senate Bill 877 would result in undetermined, but potentially significant, increases in costs to the Department of Attorney General and other state departments and agencies. Senate Bill 877 would allow individual state government employees and volunteers, as well as governmental agencies, to be liable for civil tort lawsuits for sexual misconduct. The bill could lead to a substantial increase in lawsuit claims and case filings against the state resulting in increased administration, litigation, and settlement costs.

Michigan Civil Service Commission rule 2-19 states that if an employee is named in any civil claim the employee may request an attorney at state expense for representation. If an appointing authority determines that the alleged misconduct occurred during the employee's course of work and within the employee's scope of authority, the employee is entitled to representation at state expense. The rule further states that the appointing authority shall request the Attorney General to represent the employee. If the Attorney General declines, an outside attorney may be hired and paid for by the state department.

Costs to the Attorney General would depend on the number of claims brought against the state that it handles and whether there would be increased caseloads and administrative duties that would require additional resources or personnel. The average cost of an additional attorney FTE is \$180,000.

The bill could also result in significant costs to the state for settlements won by plaintiffs against the state. Settlements costs can vary significantly, ranging from negligible amounts to millions of dollars.

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■ 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.