

ADMISSIBILITY OF PRIOR ACTS OF SEXUAL ASSAULT

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House Bill 5658 (reported from committee as substitute H-1)

Sponsor: Rep. Laura Cox

Committee: Law and Justice

Complete to 5-24-18

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

SUMMARY:

House Bill 5658 would amend the Code of Criminal Procedure to allow certain evidence to be admissible in criminal actions involving domestic violence or sexual assault.

Currently, in a criminal action in which the defendant is accused of an offense involving domestic violence, relevant evidence of the defendant's commission of other acts of domestic violence is admissible in court.¹ However, any evidence of an act occurring more than 10 years before the charged offense is inadmissible, unless the court determines that admitting the evidence is in the interest of justice.

Where relevant evidence is already admissible in domestic violence criminal actions, the bill would add that, for sexual assault criminal actions, evidence of the defendant's commission of other acts of sexual assault is also admissible. **Sexual assault** would mean a listed offense as defined by the Sex Offenders Registration Act as a tier I, II, or III offense under that act (MCL 28.722).

The bill also would amend the exception for inadmissible evidence. Evidence of an act occurring more than 10 years before the charged offense would still be inadmissible, except that, in addition to admitting the evidence in the interest of justice, a court also could admit the evidence if the act was a sexual assault that was reported to law enforcement within 5 years of the date of the sexual assault, if the act was a sexual assault for which a sexual assault kit was collected, or if the act was a sexual assault and the testing of evidence connected to the assault resulted in a DNA identification profile that is associated with the defendant.

Finally, the bill specifies that the above changes would not alter or affect the statutes of limitations for the domestic violence or sexual assault offenses described in the section.

The bill would take effect 90 days after enactment.

MCL 768.27b

¹ The Michigan Rules of Evidence (MRE), cited by this section, are adopted by the Michigan Supreme Court and supersede any conflicting statutory rule of evidence (MRE 101). **Relevant evidence** is defined by the MRE as evidence having the tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

FISCAL IMPACT:

House Bill 5658 would have an indeterminate fiscal impact on the state and on local units of government. Expanding admissibility of prior sexual misconduct could lead to additional court cases and subsequent convictions. Information is not available on the number of convictions that would result under 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. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how 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.

POSITIONS:

Representatives of the following organizations testified in support of the bill (4-18-18):

- Department of Attorney General
- Michigan Domestic and Sexual Violence Prevention and Treatment Board
- Michigan Coalition to End Domestic and Sexual Violence

The following organizations indicated support for the bill (4-18-18):

- Michigan State Police
- Prosecuting Attorneys Association of Michigan
- American Association of University Women
- Michigan Catholic Conference

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.