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BILL



ANALYSIS

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House Bill 5658 (Substitute H-1 as passed by the House)  
Sponsor: Representative Laura Cox  
House Committee: Law and Justice  
Senate Committee: Judiciary

Date Completed: 6-4-18

### **CONTENT**

**The bill would amend the Code of Criminal Procedure to allow a court to admit evidence of a defendant's prior commission of sexual assault; and specify conditions under which a court could admit evidence of sexual assault that occurred more than 10 years before the charged offense.**

Under Section 27b of the Code, except as provided for acts occurring more than 10 years before the charged offense, in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant, if it is not excluded under Michigan Rule of Evidence 403. Under the bill, if a defendant were accused of sexual assault, evidence of his or her other acts of sexual assault also could be admitted under Section 27b.

(Michigan Rule of Evidence 403 states, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.")

Currently, evidence of an act occurring more than 10 years before the charged offense is inadmissible under Section 27b unless the court determines that admitting the evidence is in the interest of justice. Under, the bill, if the act were a sexual assault, such evidence also could be admitted if one or more of the following applied:

- The sexual assault was reported to law enforcement within five years of the date of the assault.
- A sexual assault evidence kit was collected.
- The testing of evidence connected to the sexual assault resulted in a DNA identification profile that was associated with the defendant.

The bill states that it would not alter or in any manner affect the statutes of limitation for the offenses described in Section 27b.

The bill would define "sexual assault" as a listed offense as that term is defined in the Sex Offenders Registration Act. (Please see **BACKGROUND** for that definition.)

The bill would take effect 90 days after being enacted.

MCL 768.27b

## **BACKGROUND**

The Sex Offenders Registration Act requires individuals who are convicted of a listed offense to register with a law enforcement agency, the Department of Corrections, or another registering authority. The definition of "listed offense" categorizes offenses as Tier I, Tier II, and Tier III offenses, as shown in Table 1.

Table 1

<b>Listed Offense Penal Code Section</b>	<b>Tier</b>		
	<b>1</b>	<b>2</b>	<b>3</b>
145a - accosting/soliciting child for immoral purpose		X	
145b - accosting/soliciting with 1 or more prior convictions		X	
145c(4) - possession of child sexually abusive material	X		
145c(2) - causing or allowing child to engage in child sexually abusive activity or material		X	
145c(3) - distribution or promotion of child sexually abusive activity or material		X	
145d(1)(a) - use of the internet to commit 145a, 145c, 349, 350, 520b, 520c, 520d, 520e, 520g, or 722.675 (disseminating sexually explicit matter to a minor)		X	
158 - sodomy - if victim is a minor		X <sup>a)b)</sup>	
335a(2)(b) - indecent exposure involving fondling - if victim is a minor	X		
338, 338a, 338b - gross indecency		X <sup>1)</sup> a)b)	X <sup>2)</sup>
349 - kidnapping - if victim is a minor			X
349b - unlawful imprisonment - if victim is a minor	X		
350 - enticing a child under 14 from his or her parents			X
448 - soliciting a person to commit prostitution or immoral conduct - if victim is a minor		X	
449a(2) - engaging the services of a minor for prostitution	X		
462e(a) - recruiting a minor for commercial sexual activity		X	
455 - pandering (enticing a person to become a prostitute)		X	
520b - criminal sexual conduct (CSC) 1st degree			X <sup>a)</sup>
520c - CSC 2nd degree		X	X <sup>2)</sup>
520d - CSC 3rd degree			X <sup>a)</sup>
520e - CSC 4th degree	X <sup>3)</sup>	X <sup>1)</sup>	X <sup>4)</sup>
520g(1) - assault with intent to commit CSC- sexual penetration			X <sup>a)</sup>
520g(2) - assault with intent to commit 2 <sup>nd</sup> degree CSC	X <sup>3)</sup>	X <sup>1)</sup>	X <sup>2)</sup>
539j - surveillance or photography of unclothed person in violation of his/her privacy - if victim is a minor	X		
<sup>1)</sup> Against a minor aged 13 or older. <sup>2)</sup> Against a minor under 13. <sup>3)</sup> Against a person aged 18 or older <sup>4)</sup> Committed by a person 17 or older against a minor under 13 <sup>a)</sup> Not a listed offense if the victim consented to the conduct constituting the violation, the victim was at least 13 years old but younger than 16 at the time of the violation, and the individual is not more than four years older than the victim. <sup>b)</sup> Not a listed offense if the victim consented, the victim was 16 or 17 years old at the time of the violation, and the victim was not under the individual's custodial authority at the time of the violation.			

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bill is not expected to have a significant impact on State or local courts. By allowing a court to admit evidence of a defendant's prior sexual assault, including sexual assaults occurring more than 10 years before a charged offense, the bill has the potential to increase

criminal court filings and convictions. The increase in filings and convictions cannot be determined, and could be offset by court-ordered fines and costs.

To the extent that the changes led to more misdemeanor and felony convictions, there would be increased costs for community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. Any increase in penal fine revenue increases revenue to public libraries.

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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.