

# Legislative Analysis



## FOIA EXEMPTION FOR ANONYMOUS PARTY IN CERTAIN CIVIL ACTIONS

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**House Bill 4378 (H-1) as reported from committee**  
**Sponsor: Rep. Kristy Pagan**  
**Committee: Judiciary**  
**Complete to 9-4-19**

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

**BRIEF SUMMARY:** House Bill 4378 would amend the Freedom of Information Act (FOIA) to exempt disclosure of information that would reveal the identity of an anonymous party in certain civil actions.

**FISCAL IMPACT:** The bill would have no fiscal impact on the state or local units of government.

### ***THE CONTENT OF THE BILL:***

Michigan's FOIA statute, 1976 PA 442, establishes procedures and requirements for the disclosure of public records by all public bodies in the state. There are two classes of public records: those subject to disclosure and those exempt from disclosure. Generally, all records are subject to disclosure unless specifically exempted.

The bill would create an exemption from disclosure for any information that would reveal the identity of a party who proceeds anonymously in a civil action in which that party alleges that he or she was the victim of *sexual misconduct*.

*Sexual misconduct* would mean sexual contact or penetration under the pretext of medical treatment; female genital mutilation of a child; accosting, enticing, or soliciting a child for an immoral purpose; child pornography; or criminal sexual conduct in the first, second, third, or fourth degree or assault with intent to commit criminal sexual conduct in the first, second, or third degree, regardless of whether the conduct resulted in a criminal conviction.

The bill would also amend the provision allowing exemption from disclosure of investigating records compiled for law enforcement purposes by adding that the exemption would be allowed if it would disclose the identity of a party, who, as described above, proceeds anonymously in a civil action in which that party alleges that he or she was the victim of sexual misconduct. For the purposes of securing his or her anonymity, the party may provide written notification of the civil action and the wish to remain anonymous to any law enforcement agency that has investigating records. The law enforcement agency would be required to retain a copy of the notification in its files with those investigating records.

MCL 15.243

## ***BACKGROUND:***

House Bill 4378 is similar to House Bill 5797 of the 2017-18 legislative session, which was passed by the House of Representatives in May 2018.<sup>1</sup> The bill is part of a larger package of bills to address sexual assaults that were originally introduced last session following the revelation of hundreds of instances in which Larry Nassar, a nationally known physician employed by Michigan State University who also provided medical treatments to members of the USA Olympics women's gymnastics team, was found to have engaged in practices that constituted criminal sexual conduct.

## ***ARGUMENTS:***

### ***For:***

Supporters of the bill argue that if a victim of sexual misconduct wishes to remain anonymous to the public, then the victim should have the right to do so. Currently, however, the victim's request for anonymity is only applied to the sexual misconduct case and not to subsequent FOIA requests, which could cause the victim to live in fear that his or her identity will be disclosed to the public. The bill would ensure that the victim's anonymity is protected not only during the case, but afterward as well.

### ***Against:***

No arguments against the bill were presented during committee testimony.

## ***POSITIONS:***

The following organizations indicated support for the bill:

- Department of Civil Rights (4-23-19)
- Michigan Domestic and Sexual Violence Prevention and Treatment Board (8-27-19)
- Michigan Association of School Boards (4-23-19)
- Prosecuting Attorneys Association of Michigan (4-23-19)
- American Association of University Women (4-23-19)
- Michigan Coalition to End Domestic Sexual Violence (8-27-19)
- State Bar of Michigan (8-27-19)

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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.

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<sup>1</sup> See <http://legislature.mi.gov/doc.aspx?2018-HB-5797>