

Legislative Analysis



CIVIL ACTIONS FOR CRIMINAL SEXUAL CONDUCT

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<http://www.house.mi.gov/hfa>

House Bill 4306 as introduced
Sponsor: Rep. Karen Whitsett

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

House Bill 4307 as introduced
Sponsor: Rep. Ryan Berman

Committee: Oversight
Complete to 9-30-21

SUMMARY:

House Bill 4306 would amend the Revised Judicature Act to do all of the following:

- Revise the statutes of limitations for when an adult or minor victim of a sexual assault may bring a civil action for damages sustained as a result of that assault to no longer differentiate between adult and minor victims.
- Extend a window in which to commence an action for *criminal sexual conduct* (CSC) from three years from the time of the assault or the discovery of the assault to six years from that time.
- Create a one-year window in which victims of CSC committed by a physician or individual under the guise of providing medical treatment could commence an action, including against a governmental entity.

House Bill 4307 would amend 1964 PA 170, the governmental immunity law, to provide that the act does not grant immunity to a governmental agency or its employees or agents regarding conduct involving CSC if the agency or employees or agents knew or should have known that an individual had committed a prior act of CSC and failed to act or intervene to prevent a subsequent act of CSC by that individual.

For both bills, *criminal sexual conduct* (CSC) would be defined as conduct prohibited under section 520b, 520c, 520d, 520e, or 520g of the Michigan Penal Code, which respectively prohibit 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.

House Bill 4306 would amend the statute of limitations for civil actions under the Revised Judicature Act. A statute of limitations refers to the amount of time a plaintiff has to file an action. Civil actions enable a plaintiff to recover damages for injuries to persons or property. Currently, section 5805 establishes a statute of limitations of 10 years for an action to recover damages sustained because of CSC. Under section 5851b, an individual who was a victim of CSC as a minor may bring a civil action at any time before he or she reaches 28 years of age or three years after the date he or she 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, whichever occurs later.

The bill would delete the 10-year statute of limitations in section 5805 for adult victims of CSC and revise the statute of limitations in section 5851b for minor victims of CSC to instead apply to any victim of CSC. The bill also would extend the time period for filing after discovery from three years to six years. Under the bill, an individual who is the victim of CSC could commence an action to recover damages sustained because of the CSC at any time before whichever of the following is later:

- Ten years after the time the claim accrues.
- The date the individual reaches 28 years of age.
- Six years (increased from 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.

As currently, it would not be necessary for a criminal prosecution or other proceeding to have been brought as a result of the conduct or that such a prosecution or proceeding have resulted in a conviction or juvenile adjudication.

Claims involving CSC under the guise of medical treatment

Additionally, regardless of other periods of limitation, section 5851b allowed an individual who, while a minor, was the victim of CSC after December 31, 1996, but before June 12, 2016, to commence an action by September 10, 2018, to recover damages sustained because of the CSC 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 and admitted to certain facts pertaining to his or her conduct. This provision was added by 2018 PA 183 to allow claims of victims of CSC related to Larry Nassar, the former sports medicine doctor at Michigan State University, to go forward. (The June 12, 2016, and September 10, 2018, dates in the provision are respectively two years before the effective date of 2018 PA 183 and 90 days after that date.)

The bill would revise that provision to instead apply, regardless of other periods of limitation, to both adult and minor victims of CSC under certain circumstances. An individual who was the victim of CSC could commence an action against the individual alleged to have committed the CSC or any other *person* to recover damages sustained because of the CSC within one year after the effective date of HB 4306 if either of the following applies:

- The individual alleged to have committed the CSC was in a position of authority over the victim as the victim's physician and used that authority to coerce the victim to submit.
- The individual alleged to have committed the CSC 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.

Person would mean an individual, partnership, corporation, association, governmental entity, or other legal entity.

The bill would retain language providing that section 5851b does 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). The bill would add that nothing in the act or any previous or subsequent act would limit the causes of action available to a plaintiff, including causes of action against persons other than the individual alleged to have committed the CSC.

Claims against the state

The bill also would exempt a claim for compensation to which section 5851b would apply from statutes of limitations for filing a claim against the state that could otherwise restrict or bar claims filed under that provision. For example, the act requires all actions claiming property damage or personal injuries to be filed, or a notice of intent to be filed, within six months after the damage or injury occurred. The bill would provide an exception to this limitation for a claim to which section 5851b applies. The bill also would exempt such a claim from the permanent bar on bringing a claim against the state unless the claim is filed with the clerk of the Court of Claims, or an action commenced on the claim in federal court (as authorized under the act), within three years after the claim first accrues.

MCL 600.5805 et seq.

House Bill 4307 would add a new section to 1964 PA 170, which pertains to governmental liability for negligence, to provide that the act does not grant immunity to a governmental agency or an employee or agent of a governmental agency with respect to conduct involving CSC if both of the following apply:

- The governmental agency or employee or agent knew or should have known that the individual who committed the CSC had committed a prior act of CSC.
- The governmental agency or employee or agent failed to act or intervene to prevent the subsequent criminal sexual conduct.

Nothing in the act or any previous or subsequent act would limit the causes of action available to a plaintiff, including causes of action against persons other than the individual alleged to have committed the CSC. For purposes of the new section, it would not be necessary for a criminal prosecution or other proceeding to have been brought as a result of the CSC or for a prosecution or proceeding that was brought to have resulted in a conviction or in an adjudication under Chapter XIIA of the Probate Code (known as the juvenile code).

MCL 691.1407 and proposed MCL 691.1407d

Finally, each bill would provide that it is curative, must be retroactively applied, applies to actions pending on the bill's effective date, and is intended to express the original intent of the legislature regarding the application of the act that the bill would amend.

FISCAL IMPACT:

House Bills 4306 and 4307 would have an indeterminate fiscal impact on local court funding units. Any fiscal impact would be directly related to how provisions of the bills affect court caseloads, the complexity of the lawsuits, and related administrative costs.

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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.