



Senate Fiscal Agency  
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BILL ANALYSIS



Telephone: (517) 373-5383  
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Senate Bill 871 (as passed by the Senate)  
Senate Bill 872 (Substitute S-4 as passed by the Senate)  
Senate Bill 873 (Substitute S-2 as passed by the Senate)  
Senate Bill 874 (Substitute S-2 as passed by the Senate)  
Senate Bills 875 and 876 (as passed by the Senate)  
Senate Bill 877 (Substitute S-1 as passed by the Senate)  
Senate Bills 878 and 879 (as passed by the Senate)  
Senate Bill 880 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Margaret E. O'Brien (S.B. 871, 873, 875, & 879)  
Senator David Knezek (S.B. 872)  
Senator Rick Jones (S.B. 874 & 880)  
Senator Ken Horn (S.B. 876)  
Senator Marty Knollenberg (S.B. 877)  
Senator Curtis Hertel, Jr. (S.B. 878)

Committee: Judiciary

Date Completed: 3-19-18

**CONTENT**

**Senate Bill 871 would amend the Code of Criminal Procedure to eliminate the statute of limitations on second-degree criminal sexual conduct (CSC) involving a victim under 18 years old; and allow an indictment for third-degree CSC involving a victim under 18 to be filed within 30 years after the offense or by the victim's 48<sup>th</sup> birthday, or at any time after the offense was committed if DNA evidence from an unidentified individual were obtained.**

**Senate Bill 872 (S-4) would amend the Revised Judicature Act to do the following:**

- Provide for a 10-year period of limitations on an action based on conduct that would constitute CSC.
- Allow an individual who was the victim of CSC while a minor to bring an action for damages at any time before he or she reached 48 years of age, for CSC conduct that accrued after December 31, 1996.
- Specify circumstances under which the retroactive effect of the bill would not apply.

**Senate Bill 873 (S-2) would amend the Child Protection Law to do the following:**

- Extend reporting requirements to individuals employed in a professional or counseling capacity at a postsecondary educational institution, bus drivers or bus driver aides, and individuals over 18 years of age who were paid or who volunteered to conduct K-12 or postsecondary interscholastic athletic activities or youth recreational athletic activities.
- Require a person that employed mandated reporters to notify those individuals of the reporting requirement.

- Require the Department of Health and Human Services (DHHS) to transmit a copy of a completed report within 24 hours of its completion to the regulatory agency with licensing authority over a licensed medical professional who was suspected of committing child abuse or child neglect.

**Senate Bill 874 (S-2)** would amend the Child Protection Law to do the following:

- Specify that a paid employee or a volunteer who was required to report suspected child abuse or child neglect, who had direct knowledge of the nature of the suspected child abuse or child neglect, and who willfully and knowingly failed to report would be guilty of a felony.
- For an employee who failed to report, prescribe a penalty that would be higher than the current penalty for a person who fails to report.
- For a volunteer who failed to report, prescribe a penalty that would be less than the penalty for an employee who failed to report.
- Prescribe an enhanced penalty for an employee who failed to report an instance of suspected child abuse or child neglect a second or subsequent time.

**Senate Bill 875** would amend the Revised Judicature Act to do the following:

- Exempt a claim against the State for sexual misconduct committed against an individual who was less than 18 years old from requirements to file a claim or a notice of intention to file a claim, and to have the claim or notice signed and verified by an officer authorized to administer oaths, within certain time frames.
- Specify that such a claim or the notice required for such a claim could be filed at any time after the event or events that gave rise to the claim, and without the signature and verification otherwise required.
- Allow the Michigan Supreme Court to adopt special rules to allow a claimant to bring a claim without providing for the signature and verification, and in a manner that protected his or her identity.

The amendments would have to be applied retroactively to January 1, 1997.

**Senate Bill 876** would amend the Revised Judicature Act to specify that periods of limitations for claims against the State would not apply to a claim of sexual misconduct committed against an individual who was less than 18 years of age.

**Senate Bill 877 (S-1)** would amend the governmental immunity law to do the following:

- Specify that a member, officer, employee, or agent of a governmental agency or a volunteer who engaged in sexual misconduct while employed or acting on behalf of the governmental agency would not be immune under the law from tort liability.
- Specify that a governmental agency would not be immune from tort liability for sexual misconduct that a member, officer, employee, or agent of the governmental agency engaged in while employed by or acting on behalf of the agency if it were 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.

**Senate Bill 878** would amend Section 145c of the Michigan Penal Code to do the following:

- **Prescribe an enhanced felony penalty for a person who knowingly possessed or knowingly accessed child sexually abusive material that depicted a prepubescent child or sadomasochistic abuse or bestiality, or included more than 100 images, if the person knew or had reason to know that the depicted child was a child.**
- **Prescribe a mandatory minimum sentence of five years' imprisonment if a person were convicted of a second or subsequent offense under Section 145c.**

**Senate Bill 879 would amend the sentencing guidelines in the Code of Criminal Procedure to include the felony proposed by Senate Bill 878 as a Class D offense against a person with a statutory maximum of 10 years.**

**Senate Bill 880 (S-1) would amend the sentencing guidelines in the Code of Criminal Procedure to include the felonies proposed by Senate Bill 874 (S-2) as Class G offenses against a person, with the statutory maximum proposed by that bill.**

Senate Bill 874 (S-2) and 880 (S-1) are tie-barred to each other. Senate Bill 879 is tie-barred to Senate Bill 878. Each bill, except Senate Bill 872 (S-4), would take effect 90 days after its enactment.

All of the bills, except Senate Bills 879 and 880 (S-1) are discussed in greater detail below.

### **Senate Bill 871**

The Code of Criminal Procedure prescribes the time frame in which an indictment for a crime must be found and filed. This is commonly referred to as the statute of limitations. Some crimes, such as murder and first-degree CSC, are not subject to a statute of limitations, meaning that an indictment can be found and filed at any time.

The bill also would allow an indictment to be found and filed at any time for a violation or attempted violation of Section 520c (second-degree CSC) of the Michigan Penal Code in which the victim was under 18 years of age.

In addition, an indictment for a violation of Section 520d of the Penal Code (third-degree CSC) in which the victim was under 18 could be found and filed as follows:

- Within 30 years after the offense was committed or by the alleged victim's 48<sup>th</sup> birthday, whichever was later.
- At any time after the offense was committed, if evidence of the offense were obtained and that evidence contained DNA that was determined to be from an unidentified individual.

In the case of DNA evidence from an unidentified individual, however, after the individual was identified, the statute of limitations would be 30 years after the individual was identified or by the alleged victim's 48<sup>th</sup> birthday, whichever was later.

Currently, an indictment for various offenses, including second- and third-degree CSC, may be found and filed within 10 years after the offense is committed or by the victim's 21<sup>st</sup> birthday, whichever is later. If evidence of the offense is obtained, however, and the evidence contains DNA that is determined to be from an unidentified individual, an indictment against that individual for the offense may be filed at any time after the offense is committed. After the individual is identified, however, the statute of limitations is 10 years after the individual is identified or by the alleged victim's 21<sup>st</sup> birthday, whichever is later. Under the bill, these provisions would apply except as provided for second- or third-degree CSC involving a victim under 18.

## **Senate Bill 872 (S-4)**

### Increased Period of Limitations for CSC

The Revised Judicature Act establishes periods of limitations for various types of actions, which limit the period of time a person may bring an action to recover damages after an injury or damage occurs or is discovered.

Under the bill, the period of limitations would be 10 years for an action based on conduct that constituted criminal sexual conduct. For this purpose, it would not be necessary that a criminal prosecution or other proceeding have been brought as a result of the conduct or, if a criminal prosecution or other proceeding were brought, that the prosecution or proceedings resulted in a conviction.

The Act establishes periods of limitations of two years for an action charging assault, battery, or false imprisonment; five years for an action charging assault or battery brought by a person who has been assaulted or battered by his or her current or former spouse, an individual with whom he or she has had a child, an individual with whom he or she resides or formerly resided, or an individual with whom he or she has or has had a dating relationship; and five years for an action to recover damages for injury to a person or property brought by a person who has been assaulted or battered by such an individual. Under the bill, these periods of limitations would apply except as provided for an action based on criminal sexual conduct.

As used in the bill, "criminal sexual conduct" would mean first-, second-, third-, or fourth-degree CSC, or assault with intent to commit second-degree CSC or to commit CSC involving sexual penetration.

### Retroactive Claims & Limitations

Under the bill, an individual who was a victim of criminal sexual conduct while a minor could commence an action to recover damages sustained because of the CSC at any time before he or she reached 48 years of age. This would apply to a claim based on CSC that accrued after December 31, 1996. However, if the claim accrued after December 31, 1996, and before three years before the bill's effective date, the action to recover damages for the claim would have to be filed before one year after the bill's effective date.

Also, retroactivity would not apply under either of the following circumstances:

- The victim consented to the conduct, the victim was at least 13 years of age but less than 16 at the time of the conduct, and the individual who engaged in the conduct was not more than four years older than the victim.
- The victim consented to the conduct, the victim was 16 or 17 years old at the time of the conduct, and the victim was not under the custodial authority of the individual who engaged in the conduct at the time of the conduct.

("Custodial authority" would mean that term as defined in the Sex Offenders Registration Act.)

These provisions would apply notwithstanding Section 5851 (which provides for an extended period of limitations if the person entitled to bring an action is under 18 or insane at the time the claim accrues.)

## **Senate Bill 873 (S-2)**

### **Mandated Reporters**

The Child Protection Law requires individuals in various professions or occupations to report to the DHHS if they have reasonable cause to suspect child abuse or child neglect. These individuals, commonly referred to as "mandated reporters", include medical professionals, marriage therapists, licensed counselors, social workers, social service technicians, law enforcement officers, members of the clergy, and regulated child care providers.

Mandatory reporters also include school counselors, school administrators, and school teachers. The bill would add individuals employed in a professional or counseling capacity at a postsecondary educational institution, and individuals employed as a school bus driver or school bus aide whether they were employed by the school or an entity under contract with the school.

In addition, the bill would require reporting by an individual 18 years of age or older who was paid to or who volunteered to conduct or assist in conducting K-12 or postsecondary interscholastic athletic activities or youth recreational athletic activities. Such an individual would include a coach, an assistant coach, or an athletic trainer. Someone required to report under these provisions would have to do so in the same manner as required for the individuals listed in the Law.

(A mandated reporter is required to make an immediate report to centralized intake by telephone or, if available, through the online reporting system. Within 72 hours after making an oral report by telephone, the person must file a written report. If the immediate report is made using the online system, and it includes the information required in a written report, the online report is considered a written report. A written or online report must contain the name of the child and a description of the child abuse or neglect. If possible, the report must include the name of the child's parents, the child's guardian, the people the child lives with, and the child's age. The report also must contain other information available to the reporting person that might establish the cause of the abuse or neglect, and the manner in which it occurred.)

The bill also would require a person that employed individuals who were mandated reporters to notify those individuals that they would have to report under the Law.

The bill would define "K-12 or postsecondary interscholastic athletic activity" as a K-12 or postsecondary school program or event, including practice and competition, during which youth athletes participate or practice to participate in an organized athletic game or competition against another K-12 or postsecondary school, team, club, entity, or individual.

"Youth recreational athletic activity" would mean a program or event, including practice and competition, not associated with a school, during which youth athletes participate or practice to participate in an organized athletic game or competition against another team, club, entity, or individual. The term would include, but not be limited to, athletic activity sponsored by a recreation center, community center, or private sports club.

### **Suspected Child Abuse by Medical Professional**

The Law governs the disposition of a written report of suspected child abuse or child neglect, and the results of any investigation conducted. Under the bill, if an allegation, written report, or subsequent investigation indicated that the individual who committed the suspected child abuse or child neglect was a licensed medical professional and the DHHS believed that the

report had basis in fact, the DHHS would have to transmit a copy of the completed report within 24 hours of its completion to the regulatory agency with licensing authority over the medical professional.

### **Senate Bill 874 (S-2)**

A person who is required to report under the Child Protection Law and knowingly fails to do so is guilty of a misdemeanor punishable by imprisonment for up to 93 days, or a maximum fine of \$500, or both. Under the bill, instead, a person who by his or her paid employment was required to report an instance of suspected child abuse or child neglect, who had direct knowledge of the nature of the suspected child abuse or child neglect, and who willfully and knowingly failed to report would be guilty of a felony punishable by up to two years' imprisonment or a fine of at least \$1,000 but not more than \$5,000, or both.

A person who was a volunteer required by the Law to report an instance of suspected child abuse or child neglect, who had direct knowledge of the nature of the suspected abuse or neglect, and who willfully and knowingly failed to report would be guilty of a misdemeanor punishable by up to one year's imprisonment or a maximum fine of \$1,000, or both.

If a paid employee committed a second or subsequent offense, he or she would be guilty of a felony punishable by up to seven years' imprisonment, a maximum fine of \$15,000, or both.

### **Senate Bill 875**

The Revised Judicature Act specifies that a claim may not be maintained against the State unless the claimant, within one year after the claim has accrued, files with the clerk of the Court of Claims either a written claim or a written notice of intention to file a claim against the State or any of its departments, commissions, boards, institutions, arms, or agencies. Among other things, the notice must include a signature and verification by the claimant before an officer authorized to administer oaths, and, if the claim is for property damage or personal injuries, the claim or notice must be filed within six months after the event that gives rise to the claim.

Under the bill, these requirements would not apply to a claim for sexual misconduct committed against an individual who was less than 18 years of age. The claim or notice required for such a claim could be filed at any time after the event or events that gave rise to the claim. Both of the following would apply to a claimant who brought a claim for sexual misconduct:

- The claimant could bring his or her claim without providing for the signature and verification required.
- The claimant could bring his or her claim in a manner that protected his or her identity throughout the proceedings.

The Michigan Supreme Court could adopt special rules of procedure under Section 6422 to implement that protection. (Section 6422 specifies that practice and procedure in the Court of Claims generally must be in accordance with the statutes and court rules prescribing the practice in the circuit courts, but authorizes the Supreme Court to adopt special rules for the Court of Claims.)

The bill would have to be applied retroactively to January 1, 1997.

"Sexual misconduct" would mean conduct described in Section 136, 145a, 145b, 145c, 520b, 520c, 520d, 520e, or 520g of the Michigan Penal Code, regardless of whether the conduct resulted in a criminal conviction. (Those sections prohibit the following conduct, respectively:

female genital mutilation, accosting or soliciting a minor for immoral purposes, accosting or soliciting a minor for immoral purposes after a prior conviction, child sexually abusive activity, first-, second-, third-, and fourth-degree CSC, and assault with intent to commit CSC.)

### **Senate Bill 876**

Under Section 6452 of the Revised Judicature Act, every claim against the State, cognizable by the Court of Claims, is forever barred unless it is filed with the clerk of the court or a suit is brought on the claim in Federal court, within three years after the claim first accrues. Except as otherwise provided, Chapter 58 of the Act (which pertains to the period of limitations for various actions) also applies to the limitation prescribed in Section 6452. Under the bill, these provisions would apply except as otherwise provided.

The bill specifies that the time limitations described above would not apply to a claim of sexual misconduct committed against an individual who was less than 18 years of age. The bill would have to be applied retroactively to January 1, 1997.

"Sexual misconduct" would be defined as in Senate Bill 875.

### **Senate Bill 877 (S-1)**

Generally, under the governmental immunity law, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. (Governmental agency" means the State or a political subdivision.)

In addition, each officer and employee of a governmental agency and each volunteer acting on behalf of a governmental agency are immune from tort liability for an injury to a person or damage to property caused by the person while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency, if the individual is acting or reasonably believes he or she is acting within the scope of his or her authority, the governmental agency is engaged in the exercise or discharge of a governmental function, and the individual's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

Under the bill, 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 would not be immune under the law from tort liability.

A governmental agency would not be immune under the law from tort liability for sexual misconduct that a member, officer, employee, or agent of the government agency engaged in during the course of employment or service or while acting on behalf of the government agency if either of the following applied:

- The agency was negligent in the hiring, supervision, or training of the member, officer, employee, or agent.
- The agency knew or should have known of the sexual misconduct and failed to report it to an appropriate law enforcement agency.

The bill would apply to conduct that occurred after December 31, 1996.

"Sexual misconduct" would be defined as in Senate Bill 875.

## **Senate Bill 878**

Under Section 145c of the Penal Code, a person who knowingly possesses or knowingly seeks and accesses any child sexually abusive material is guilty of a felony punishable by imprisonment for up to four years or a maximum fine of \$10,000, or both, if he or she knows, has reason to know, or should reasonably be expected to know the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or the person has not taken reasonable precautions to determine the age of the child. Under the bill, this would apply except as provided below.

Under the bill, a person who knowingly possessed or knowingly sought and accessed any child sexually abusive material would be guilty of a felony punishable by imprisonment for up to 10 years or a maximum fine of \$50,000, or both, if both of the following applied:

- The child sexually abusive material depicted a prepubescent child or a child less than 12 years of age, depicted sadomasochistic abuse or bestiality, or included more than 100 images of child sexually abusive material.
- The person knew, had reason to know, or should reasonably have been expected to know that the depicted child was a child, or that the sexually abusive material included a child, or that the depiction constituting the material appeared to include a child, or the person had not taken reasonable precautions to determine the age of the depicted child.

If a person were convicted of a second or subsequent offense under Section 145c, the sentence imposed for that offense would be a mandatory minimum sentence of at least five years. For the purposes of Section 145c, an offense would be considered a second or subsequent offense if, before conviction of the second or subsequent offense, the offender had been convicted under Section 145c or of another crime involving a sexual offense against a minor, or under a substantially similar statute of another state or the United States.

MCL 767.24 (S.B. 871)  
MCL 600.5805 et al. (S.B. 872)  
MCL 722.623 (S.B. 873)  
MCL 722.633 (S.B. 874)  
MCL 600.6431 (S.B. 875)  
MCL 600.6452 (S.B. 876)  
Proposed MCL 691.1407d (S.B. 877)  
MCL 750.145c (S.B. 878)  
MCL 777.16g (S.B. 879)  
MCL 777.15g (S.B. 880)

Legislative Analyst: Jeff Mann

## **FISCAL IMPACT**

### **Senate Bill 871**

The bill could have a negative fiscal impact on the State and local government. Removing or extending the statute of limitations for the specified crimes could lead to more prosecutions for those crimes. More prosecutions and convictions could have a negative fiscal impact on the State and local government. An increase in felony arrests and convictions could increase demands on law enforcement, court systems, 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 associated increase in fine revenue increases funding to public libraries.



### **Senate Bill 872 (S-4)**

The bill would have an indeterminate fiscal impact on State and local government. The State and local units of government could face indeterminate liability in the form of judgments, settlements, and litigation costs for the actions of their employees going back to December 31, 1996, if governmental immunity did not apply. The ability of any particular local unit of government to absorb the cost of a judgment would depend upon the severity of the judgment and the financial health of the local unit of government. To the extent that the bill led to an increase in the number of actions commenced in the circuit court, the State and local units of government could incur some increase in administrative costs. Any increase in costs, however, would be offset to some degree by a corresponding increase in applicable filing fees, motion fees, and other court-imposed fees or payments.

In addition, an increase in caseloads could influence the Judicial Resources Recommendations report, which evaluates caseloads and makes recommendations for increases or decreases in judgeships for circuit, district, and probate courts every two years. As a result, judgeships and staffing costs could increase as a result of the bill.

### **Senate Bill 873 (S-2)**

The bill could lead to an increase in costs to the Child Protective Services (CPS) unit within the Department of Health and Human Services associated with investigating reports of suspected abuse or neglect under made by the individuals required to report under the bill. There could be an uncertain increase in costs to local government if suspected abuse or neglect were committed by a person who was responsible for the health and welfare of the child and were determined to be a criminal violation.

Additionally, if the suspected abuse or neglect were committed by someone other than a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy, the investigation would be in the jurisdiction of law enforcement rather than CPS. Child Protective Services has a mandate to investigate harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment. Investigations of abuse or neglect committed by a person other than someone who is responsible for the child's health or welfare could lead to an increase in fiscal cost to local government and law enforcement.

Administrative costs to DHHS also could increase if DHHS required staffing resources to transmit information concerning allegations, written reports, or subsequent investigations of abuse by a licensed medical professional. As the bill would require the transmittal of information within 24 hours to the regulatory agency with authority over the medical professional, the DHHS could need additional staffing to satisfy that condition.

### **Senate Bill 874 (S-2) and 878**

The bills could have a negative fiscal impact on the State and local government. More felony and misdemeanor arrests and convictions could increase demands on law enforcement, court systems, 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 associated increase in fine revenue increases funding to public libraries.

### **Senate Bill 875**

The bill would have an uncertain but likely fiscal cost to State government and no fiscal impact on local government. As the bill would exempt claims against the State for sexual misconduct involving a child from requirements to file a claim or notice within a certain time frame, and to have the claim or noticed signed and verified by an officer authorized to administer oaths, and would make the exemption retroactive to January 1, 1997, the possible cost to the State is uncertain. If the bill resulted in a large number of case filings, it could increase costs for administration and salaries. The bill also could result in significant costs to the State for judgments, settlements, and litigation costs.

### **Senate Bill 876**

The bill would have an uncertain but likely fiscal cost to State government and no fiscal impact on local government. As the bill would exempt claims against the State for sexual misconduct against minors from the period of limitations, and make the exemption retroactive to January 1, 1997, the possible cost to State government is uncertain. If the bill resulted in an unexpectedly large number of case filings, additional State assistance could be required for administrative costs and salaries. The bill could also result in significant costs to the State for judgments, settlements, and litigation costs.

### **Senate Bill 877 (S-1)**

The bill would have an uncertain, but potentially large impact on the State and local units of government due to an increase in court filings.

As the bill would eliminate governmental immunity for employees for sexual misconduct from 1997 and beyond, a large number of new case filings could result. If so, additional State and local assistance could be required for administrative costs and salaries. Agencies found to be negligent or unresponsive to an employee's misconduct could be liable as well. The bill could result in significant costs to the State and local units for judgments, settlements, and litigation costs. These costs are difficult to gauge. One case could cost the State several million dollars, but dozens of case filings could result in no financial impact.

### **Senate Bills 879 and 880 (S-1)**

The bills would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bills would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

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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.