

# Legislative Analysis

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## ABORTION: INTIMIDATION AND COERCION

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### House Bill 5879

Sponsor: Rep. Barb Vander Veen

### House Bill 5880

Sponsor: Rep. Leslie Mortimer

### House Bill 5882

Sponsor: Rep. Judy Emmons

### House Bill 5881

Sponsor: Rep. Fran Amos

### House Bill 5883

Sponsor: Rep. Shelley Goodman Taub

Committee: Judiciary

Complete to 4-18-06

## A SUMMARY OF HOUSE BILLS 5879-5883 AS INTRODUCED 3-16-06

House Bills 5880 and 5879 would amend the Public Health Code to establish a mandatory procedure to ensure that a patient who has scheduled an appointment for an abortion is not seeking an abortion due to intimidation or coercion.

House Bill 5882 would amend the Michigan Penal Code to create the Coercive Abortion Prevention Act, under which a person could not do either of the following with the intent to compel a pregnant female to seek an abortion: 1) commit, attempt to commit, or conspire to commit physical harm to the pregnant female; or 2) engage in a willful course of conduct involving repeated or continuing harassment of the pregnant female that would cause her to reasonably feel terrorized, frightened, intimidated, threatened, or harassed. House Bill 5883 would make complementary amendments to the sentencing guidelines provisions in the Code of Criminal Procedure.

House Bill 5881 would amend the Revised Judicature Act to allow a civil action to be brought by or on behalf of an individual injured by a coercive act (of the kind described in House Bill 5882).

The bills are described in more detail below.

### House Bill 5880

The bill would amend the Public Health Code (MCL 333.17015) to establish a procedure to ensure that a patient who has scheduled an appointment for an abortion is not seeking an abortion due to intimidation or coercion. The physician, or qualified assistant, would have to

- Inform the patient that certain actions to pressure a woman into having an abortion are illegal, but clarifying that discussions about available options, including personal

or intensely emotional expressions about such options, are not necessarily coercive and illegal.

- Ask the patient if the patient's husband, parents, siblings, relatives, or employer; the father or putative father of the fetus; the parents of the father or putative father of the fetus; or any other individual in a position of authority over the patient has threatened, intimidated, or coerced her into seeking an abortion (as would be prohibited under the Michigan Penal Code).

If a patient indicated that she is the victim of intimidation or coercion, the physician or person assisting the physician, would have to: 1) provide the patient with information about contacting local law enforcement where she lived and about domestic violence shelters or support organizations available in the event of any actual or threatened physical abuse or violence; 2) inform the patient that the intimidation or coercion is grounds for a civil action and that she could receive financial compensation for her damages; and 3) postpone the performance of the abortion for at least 24 hours beyond the 24-hour waiting period.

If the patient who is subject to intimidation or coercion is under 18 years of age, then the physician or assistant would have to contact the county child protective services agency where the child lives.

If a patient returns to the physician seeking an abortion after the required extra waiting period, the physician could perform the abortion.

### **House Bill 5879**

The bill would amend the Public Health Code (MCL 333.17015) to require that a physician perform the required coercion and intimidation screening not less than 24 hours prior to performing an abortion. The bill also would add to the consent form to be signed by the patient, the statement: "I understand that it is illegal for anyone to coerce or intimidate me into seeking an abortion."

### **House Bill 5882**

The bill would amend the Michigan Penal Code (MCL 750.15a) to create the Coercive Abortion Prevention Act. Under the new act, a person could not do either of the following with the intent to compel a pregnant female to seek an abortion: 1) commit, attempt to commit, or conspire to commit physical harm to the pregnant female; or 2) engage in a willful course of conduct involving repeated or continuing harassment of the pregnant female that would cause her to reasonably feel terrorized, frightened, intimidated, threatened, or harassed.

For the first category of prohibited acts (physical harm), violations would be classified and punished as follows:

- If the act results in the death of the pregnant female, the person would be guilty of a felony punishable by imprisonment for not more than 15 years and/or a fine of not more than \$7,500.
- If the act results in great bodily harm to the pregnant female, the person would be guilty of a felony punishable by imprisonment for not more than five years and/or a fine of not more than \$2,500.
- If the act results in serious or aggravated physical injury, the person would be guilty of a misdemeanor punishable by imprisonment for not more than six months and/or a fine of not more than \$500.
- If the act results in physical injury to the pregnant female, the person would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500.

For the second category of prohibited acts (harassment), a violation would be a misdemeanor punishable by a fine of up to \$1,000. However, if the person committing the violation was 18 years of age or older and the pregnant female was under 18, the maximum fine would be \$2,000.

The bill would not prevent a person from being charged with, convicted of, or punished for any crime committed while violating the bill's provisions. The court could order terms of imprisonment for a violation of the bill and for a violation of any other crime committed while violating the bill to be served consecutively.

The term "harassment" is defined in the bill to mean conduct directed toward a pregnant female that would cause a reasonable individual to suffer emotional distress and that actually causes emotional distress, including 1) repeatedly filing, attempting to file, or threatening to file for divorce; 2) repeatedly withdrawing, attempting to withdraw, or threatening to withdraw financial support that had previously been supplied or offered; or 3) repeatedly changing, attempting to change, or threatening to change an existing housing or cohabitation arrangement.

### **House Bill 5883**

The bill would amend the Code of Criminal Procedure (MCL 777.16a) to put the two felonies created by House Bill 5882 in sentencing guidelines provisions. Compelling a pregnant female to seek an abortion resulting in her death would be a Class C felony against a person with a 15-year maximum. Compelling a pregnant female to seek an abortion resulting in great bodily harm would be a Class E felony against a person with a 5-year maximum.

## House Bill 5881

The bill would amend the Revised Judicature Act (MCL 600.2975) to allow a civil action to be brought by or on behalf of an individual injured by a coercive act (of the kind described in House Bill 5882). A plaintiff could recover damages for emotional distress and other damages allowed by law. If the damages awarded to a plaintiff for noneconomic loss exceeded \$5,000 and damages award to the plaintiff for economic loss are \$5,000 or less, the award for noneconomic loss would be reduced by the court to \$5,000.

### FISCAL IMPACT:

House Bill 5879 as introduced has no significant fiscal impact on state or local government.

Under House Bill 5880 as introduced, there may be a fiscal impact to the Department of Human Services with the requirement for a physician to report to county child protective services a screening result that a patient under age 18 indicated intimidation or coercion related to the abortion decision. If the volume of reports resulting from House Bill 5880 is modest or negligible, the Department may be able to accommodate this change within existing resources. In 2004, the total number of women under age 18 who had an abortion performed in Michigan was 1,770.

House Bill 5881 would have an indeterminate fiscal impact, depending on how it affected civil dockets.

House Bills 5882 and 5883 would have an indeterminate fiscal impact on the state and local units of government, depending on how they affected prosecutorial charging decisions, numbers of misdemeanor and felony convictions obtained, and sentences imposed. The state could experience increased costs of prison incarceration, which currently average about \$30,000 per prisoner per year, and felony probation supervision, at about \$2,000 per supervised offender per year. Counties could experience increased costs due to jail sentences imposed; those costs vary from county to county. Misdemeanor probation supervision also is a local responsibility. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

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