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BILL ANALYSIS

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House Bill 5879 (Substitute H-3 as passed by the House)
House Bill 5880 (Substitute H-3 as passed by the House)
House Bill 5881 (Substitute H-3 as passed by the House)
House Bill 5882 (Substitute H-4 as passed by the House)
House Bill 5883 (Substitute H-2 as passed by the House)
Sponsor: Representative Barb Vander Veen (H.B. 5879)
Representative Leslie Mortimer (H.B. 5880)
Representative Fran Amos (H.B. 5881)
Representative Judy Emmons (H.B. 5882)
Representative Shelley Goodman Taub (H.B. 5883)

House Committee: Judiciary
Senate Committee: Health Policy

Date Completed: 11-15-06

CONTENT

The bills would amend various statutes to do all of the following:

- **Prohibit and prescribe criminal penalties for committing certain assaultive offenses or stalking against a pregnant female with the intent to compel her to seek an abortion.**
- **Prohibit and prescribe criminal or civil penalties for filing for divorce, withdrawing financial support, changing housing or cohabitation arrangements, or attempting or threatening any of those actions, with the intent to compel a pregnant female to seek an abortion.**
- **Allow a civil action to be brought by or on behalf of an individual injured by a coercive act described above.**
- **Require a physician or a qualified person assisting a physician to ask an abortion patient if she had been threatened, intimidate, or coerced into seeking an abortion, and confirm with the patient that coercion and intimidation screening was performed.**
- **Require the Department of Community Health (DCH) to develop protocols and assessment materials**

for performing intimidation and coercion screening.

- **Require the DCH to revise the informed consent form and website to include provisions about the illegality of coercion or intimidation to seek an abortion.**
- **Require the DCH to develop a notice of the illegality of intimidating or coercing someone into having an abortion, and require a facility in which abortions were performed to post that notice and provide a copy to abortion patients.**
- **Require a physician or qualified assistant, if a patient indicated that she was the victim of intimidation or coercion, to comply with DCH protocols and, if the patient were under 18, also contact child protective services.**

House Bills 5880 (H-3), 5881 (H-3), and 5882 (H-4) specify that they would not create a right to an abortion and that, notwithstanding any other provision of those bills, a person could not perform an abortion that was prohibited by law.

House Bills 5879 (H-3) and 5880 (H-3) would amend the Public Health Code; House Bill 5881 (H-3) would amend the Revised

Judicature Act; House Bill 5882 (H-4) would create the "Coercive Abortion Prevention Act" within the Michigan Penal Code; and House Bill 5883 (H-2) would amend the Code of Criminal Procedure.

The bills are tie-barred.

House Bill 5879 (H-3)

Abortion Informed Consent

Michigan's abortion informed consent procedures are outlined in Section 17015 of the Public Health Code. Under Section 17015, except in the case of a medical emergency necessitating the performance of an abortion, a physician may not perform an abortion otherwise permitted by law without the patient's informed written consent, given freely and without coercion. A physician or qualified person assisting the physician must do certain things at least 24 hours before the physician performs an abortion upon a pregnant woman. The bill also would require the physician or qualified assistant to perform the coercion and intimidation screening required under Section 17015a of the Code (which House Bill 5880 (H-3) would add) and, if applicable, comply with that section's protocol and reporting requirements.

In addition, under Section 17015, before obtaining the patient's signature on an acknowledgment and consent form, a physician personally and in the presence of the patient must provide her with the physician's name, and inform her of her right to withhold or withdraw her consent to the abortion at any time before it is performed. The bill also would require the physician, personally and in the presence of the patient, to confirm with her that the coercion and intimidation screening required by Section 17015a was performed.

Under Section 17015, before performing an abortion, a physician or qualified person assisting the physician must do all of the following:

- Obtain the patient's signature on an acknowledgment and consent form, confirming that she has received the required information.
- Give the patient a physical copy of the signed form.

- Retain in the patient's medical record a copy of the signed form and, if applicable, a copy of the pregnancy certification form completed under Section 17015.

Under the bill, a physician or qualified assistant would have to take those actions after the required 24-hour waiting period expired but before performing an abortion.

("Qualified person assisting the physician" means another physician or physician's assistant licensed under Part 175 of the Public Health Code; a fully licensed or limited licensed psychologist licensed under Part 182; a professional counselor licensed under Part 181; a registered professional nurse or a licensed practical nurse licensed under Part 172; or a social worker licensed under Part 185.)

DCH Responsibilities

Section 17015 requires the DCH to develop, draft, and print, in nontechnical English, Arabic, and Spanish, an acknowledgment and consent form that includes specific information. Under the bill, the form would have to indicate that the authorization for an abortion procedure was given "voluntarily and willfully". The bill also would add the following sentence to the form: "I understand that it is illegal for anyone to coerce or intimidate me into seeking an abortion."

The DCH also must develop and maintain an internet website that allows a patient considering an abortion to review information required to be provided to her at least 24 hours before a physician performs an abortion. The bill would require that the website open with the notice that, under proposed Section 17015a, would have to be posted in a facility or clinic where abortions were performed. (Under House Bill 5880 (H-1), that notice would have to state that it was illegal for anyone to coerce or intimidate a woman into seeking an abortion.)

The bill would require the DCH to develop, draft, and print, in nontechnical English, Arabic, and Spanish, the notice required to be posted and provided to the patient under Section 17015a. The notice would have to be at least 8.5 inches by 14 inches and the required statement would have to be printed in at least 44-point type. The notice would

have to be made available to physicians through the Michigan Board of Medicine and the Michigan Board of Osteopathic Medicine and Surgery.

The bill also would require the DCH to develop, draft, and print protocols and assessment materials to be used by a physician or a qualified person assisting the physician while performing the intimidation and coercion screening required under proposed Section 17015a. In developing the protocols and assessment materials, the DCH would have to consider the standards and recommendations of the Joint Committee on Accreditation of Healthcare Organizations and the American Medical Association. The protocols and assessment materials would have to address at least each of the following:

- Danger assessments.
- Physical and psychological assessments.
- Safety plans.
- Discharge instructions.
- Referrals to law enforcement and support organizations.
- Private access to a telephone and safe transportation.

House Bill 5880 (H-3)

The bill would add Section 17015a to the Public Health Code. Under the bill, if a patient scheduled an appointment for an abortion after receiving the information required under Section 17015, the physician or qualified person assisting the physician would have to do both of the following to ensure that the patient's request for an abortion was not the result of intimidation or coercion:

- Give the patient a copy of the notice required to be posted under the bill, and orally inform her that certain actions to pressure a woman into having an abortion were illegal and grounds for a civil action, but clarify that discussions about the options available, including personal or intensely emotional expressions about such options, were not necessarily coercive and illegal.
- Ask the patient if her husband, parents, siblings, relatives, or employer or the father or putative father of the fetus, the parents of the father or putative father, or any other individual in a position of authority over her had threatened,

intimidated, or coerced her into seeking an abortion as prohibited by the Coercive Abortion Prevention Act (proposed by House Bill 5882 (H-4)).

If a patient indicated that she was the victim of intimidation or coercion, the physician or qualified assistant would have to comply with the protocols established by the DCH (pursuant to House Bill 5879 (H-3)). In addition, if a patient who was under 18 years old indicated that she was the victim of intimidation or coercion, the physician or qualified assistant would have to contact a county child protective services agency.

A private office, freestanding surgical outpatient facility, or other facility or clinic in which abortions were performed would have to post a notice stating that it was illegal for anyone to coerce or intimidate a woman into seeking an abortion. The notice would have to be posted in a conspicuous place in an area of the facility that was accessible to patients, employees, and visitors.

If a patient still sought an abortion after the bill's requirements were fulfilled, the physician could perform the abortion, after obtaining the patient's signature on the acknowledgement and consent form required under Section 17015.

House Bill 5881 (H-3)

Under the bill, an action could be brought by or on behalf of an individual injured by a "coercive act" (an act prohibited by the proposed Coercive Abortion Prevention Act).

A plaintiff in an action under the bill 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 awarded for economic loss were \$5,000 or less, the court would have to reduce the award for noneconomic loss to \$5,000. ("Emotional distress" would mean significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.)

A person could not bring or maintain an action under the bill unless it were commenced within either of the following periods:

- Three years after the claim first accrued to the individual injured by the coercive act.
- If the individual injured by the coercive act were under 18 years old at the time the claim first accrued, one year after the individual reached 18.

(Under the Revised Judicature Act, "economic loss" means objectively verifiable pecuniary damages arising from medical expenses or medical care, rehabilitation services, custodial care, loss of wages, loss of future earnings, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, loss of employment, or other objectively verifiable monetary losses. "Noneconomic loss" means any type of pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, or other nonpecuniary damages.)

House Bill 5882 (H-4)

The bill would create the Coercive Abortion Prevention Act within the Michigan Penal Code. The bill would prohibit a person who had actual knowledge that a female was pregnant from doing any of the following with the intent to compel her to seek an abortion:

- Committing or attempting to commit assault and battery (MCL 750.81), aggravated assault (MCL 750.81a), assault with intent to commit murder (MCL750.83), assault with intent to do great bodily harm (MCL 750.84), assault with intent to maim (MCL 750.86), or stalking (MCL 750.411h).
- Filing or attempting to file for a divorce from the pregnant female.
- Withdrawing or attempting to withdraw from the pregnant female financial support that had previously been supplied or offered to her.
- Changing or attempting to change an existing housing or cohabitation arrangement with the pregnant female.
- Threatening to engage in conduct proscribed above (except the assaultive offenses).

A violation involving any of the assaultive or stalking offenses listed above would be a

crime punishable by the same penalty as for the underlying violation.

A violation involving filing for divorce, withdrawing financial support, or changing an existing housing or cohabitation arrangement, or attempting to engage in that conduct, would be a misdemeanor punishable by a maximum fine of \$2,000.

A violation involving threatening to file for divorce, withdraw financial support, or change an existing housing or cohabitation arrangement would be a State civil infraction for which the offender could be fined up to \$1,000.

If a violation involving filing for divorce, withdrawing financial support, changing an existing housing or cohabitation arrangement, or attempting or threatening to take any of those actions, were committed by the father or putative father of the unborn child who was at least 18 years old against a pregnant female who was under 18, the violation would be a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$5,000, or both.

The bill specifies that it would not prohibit a person from being charged with, convicted of, or punished for any crime committed while committing a violation described above. The court could order a term of imprisonment imposed for violating the bill to be served consecutively to a term imposed for any crime committed during that violation.

Upon the request of a pregnant female, a law enforcement agency investigating a violation of the bill would have to notify her at least 24 hours before initially contacting the person alleged to have violated the bill.

House Bill 5883 (H-2)

The bill would add to the sentencing guidelines compelling a pregnant female to seek an abortion by committing or attempting to commit assault or stalking (as House Bill 5882 (H-4) would prohibit). A violation would be categorized as a felony against a person, with a variable statutory maximum sentence.

MCL 333.17015 (H.B. 5879)

MCL 333.17515 et al. (H.B. 5880)

Proposed MCL 600.2976 (H.B. 5881)
Proposed MCL 750.15a (H.B. 5882)
MCL 777.18 (H.B. 5883)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 5879 (H-3)

The Department of Community Health would see a moderate, indeterminate increase in administrative costs from fulfilling the requirements established in the bill. The DCH would incur these costs by modifying current consent forms and providing health providers and facilities with written materials related to the intimidation and coercion screening process.

House Bills 5880 (H-3) and 5881 (H-3)

The bills would have no fiscal impact on State or local government.

House Bills 5882 (H-4) and 5883 (H-2)

The bills would have an indeterminate fiscal impact on the Department of Corrections and local units of government. There are no data to indicate how many offenders would be convicted of the proposed offenses. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. To the extent that bills would result in increased incarceration time for offenders convicted of other crimes committed while violating the proposed Coercive Abortion Prevention Act, the State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$31,000. Additional penal fine revenue would benefit 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.