

ADMISSIBILITY OF PRIOR ACTS OF SEXUAL ASSAULT

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House Bill 5658 as enacted
Public Act 372 of 2018
Sponsor: Rep. Laura Cox
House Committee: Law and Justice
Senate Committee: Judiciary
Complete to 2-15-19

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

SUMMARY:

House Bill 5658 amends the Code of Criminal Procedure to allow certain evidence to be admissible in criminal actions involving domestic violence or sexual assault. Section 27b of Chapter VIII of the Code provides that, in a criminal action in which the defendant is accused of an offense involving domestic violence, *relevant evidence* of the defendant's commission of other acts of domestic violence is admissible in court.¹ However, any evidence of an act occurring more than 10 years before the charged offense is inadmissible unless the court determines that admitting the evidence is in the interest of justice.

Where relevant evidence is already admissible in domestic violence criminal actions, the bill would add that, for *sexual assault* criminal actions, evidence of the defendant's commission of other acts of sexual assault is also admissible. *Sexual assault* means a listed offense as defined by the Sex Offenders Registration Act as a tier I, tier II, or tier III offense under that act.²

The bill also amends the exception for inadmissible evidence. Evidence of an act occurring more than 10 years before the charged offense is still inadmissible, except that, in addition to admitting the evidence in the interest of justice, a court also may admit the evidence if it determines that the act was any of the following:

- A sexual assault that was reported to law enforcement within five years of the date of the sexual assault.
- A sexual assault for which a sexual assault kit was collected.
- A sexual assault for which the testing of evidence connected to the assault resulted in a DNA identification profile that is associated with the defendant.

Finally, the bill specifies that the above changes do not alter or affect the statutes of limitations for the domestic violence or sexual assault offenses described in the section.

The bill takes effect March 17, 2019.

MCL 768.27b

¹ The Michigan Rules of Evidence (MRE), cited by this section, are adopted by the Michigan Supreme Court and supersede any conflicting statutory rule of evidence (MRE 101). *Relevant evidence* is defined by the MRE as evidence having the tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

² See <http://legislature.mi.gov/doc.aspx?mcl-28-722>

BRIEF DISCUSSION:

In cases of domestic violence, similar offenses committed by the defendant within the previous 10 years are considered relevant evidence and are admissible in court because they are considered to show a propensity for committing such crimes. Supporters of the bill argued that sexual assault victims should have the same opportunity as domestic violence victims to bring forth such evidence because prior criminal actions regarding sexual assault are just as indicative of a propensity to commit such crimes as prior criminal actions regarding domestic violence. Critics of the bill raised concerns regarding constitutional protections for the accused and argued that allowing prior criminal actions regarding sexual assault, even if the statute of limitations has run, diminishes a prosecutor's burden of proving that the defendant committed the current crime.

FISCAL IMPACT:

House Bill 5658 would have an indeterminate fiscal impact on the state and on local units of government. Expanding admissibility of prior sexual misconduct could lead to additional court cases and subsequent convictions. Information is not available on the number of convictions that would result under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

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