

Legislative Analysis



CIVIL AND CRIMINAL ACTIONS FOR CRIMINAL SEXUAL CONDUCT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4482 as introduced
Sponsor: Rep. Julie Brixie

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

House Bill 4483 as introduced
Sponsor: Rep. Samantha Steckloff

House Bill 4484 as introduced
Sponsor: Rep. Noah Arbit

House Bill 4486 as introduced
Sponsor: Rep. Karen Whitsett

House Bill 4485 as introduced
Sponsor: Rep. Reggie Miller

House Bill 4487 as introduced
Sponsor: Rep. Helena Scott

Committee: Criminal Justice
Complete to 6-5-23

BRIEF SUMMARY:

House Bills 4482, 4483, 4484, and 4487 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. (HBs 4482 and 4483)
- Eliminate the statute of limitations for **criminal sexual conduct** (CSC) if the offense was prosecuted and resulted in a conviction for CSC. (HB 4482)
- Extend a window for commencing an action for CSC from three years from the time of the assault or discovery of the assault to seven years from that time and the maximum age of the victim from 28 years to 52 years, whichever comes later. (HB 4482)
- Create a two-year window in which victims of CSC committed two-years before the effective date could commence an action. (HB 4482)
- Exempt a claim for compensation for CSC from statutes of limitations that pertain to filing a claim against the state. (HBs 4484 and 4487)
- Apply some of the provisions retroactively. (HB 4484 and 4487)

House Bill 4485 would eliminate the current statutes of limitations for a **criminal indictment** for CSC in the second or third degree and instead allow a criminal indictment to be found and filed at any time, regardless of the age of the alleged victim.

House Bill 4486 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 purposes of House Bills 4482, 4484, and 4486, **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.

DETAILED SUMMARY:

House Bills 4482, 4483, 4484, and 4487 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 (amended by HB 4483) establishes a statute of limitations of 10 years for an action to recover damages sustained because of *criminal sexual conduct*. Under section 5851b (amended by HB 4482), an individual who was a victim of CSC as a minor may bring a civil action at any time before they reach 28 years of age or three years after the date they discover, or through due diligence should have discovered, both their injury and the causal relationship between the injury and the CSC, whichever occurs later.

House Bill 4483 would delete the 10-year statute of limitations in section 5805 for adult victims of CSC and instead state that the period of limitations for CSC would be as provided in section 5851b.

House Bill 4482 would 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 seven years and the maximum age of the victim to 52. 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 52 years of age.
- Seven years (increased from three years) after the individual discovers, or through the exercise of due diligence should have discovered, both their 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 for such a prosecution or proceeding to have resulted in a conviction or juvenile adjudication.

In addition, House Bill 4482 would allow an action to recover damages sustained because of CSC to be brought *at any time without limitation* if a criminal prosecution is brought as a result of the conduct that results in a conviction for CSC.

Window for new claims to go forward

Currently, 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 their 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.) House Bill 4482 would effectively delete this provision.

Instead, House Bill 4482 would provide, regardless of other periods of limitation, that the claim of an individual who was the victim of CSC (adult or minor) *before* the bill's effective date would be revived and the individual could commence an action against the individual alleged to have committed the CSC to recover damages sustained because of the CSC *before* two years after the bill's effective date.

House Bill 4482 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).

Claims against the state

House Bill 4484 would exempt a claim to recover damages because of CSC, and House Bill 4487 would exempt a claim to which section 5851b applies, from statutes of limitations for filing a claim against the state that could otherwise restrict or bar claims filed under the provisions. 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 bills would provide an exception to this limitation for a claim pertaining to CSC or to which section 5851 applies, respectively.

House Bill 4484 would apply the above exception retroactively. House Bill 4487 would provide that it is curative, must be retroactively applied, applies to actions pending on its effective date, and is intended to express the original intent of the legislature regarding the application of the act that the bill would amend.

House Bill 4484 also would exempt a claim to recover damages because of CSC 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. This provision would not be retroactive.

House Bills 4482, 4483, and 4484 could not take effect unless all three of them were enacted.

MCL 600.5851b (HB 4482)

MCL 600.5805 (HB 4483)

MCL 600.6431 (HBs 4484 and 4487)

MCL 600.6452 (HB 4484)

House Bill 4485 would eliminate the current statute of limitations for **criminal indictments** under the Code of Criminal Procedure for a violation of section 520c or 520d of the Michigan Penal Code (CSC in the second or third degree, respectively) for an adult victim (at least 18 years of age) or minor victim (under 18 years of age). Under the bill, an indictment for CSC in the second or third degree could be found and filed at any time, regardless of the age of the alleged victim at the time of the offense. [CSC in the second degree involves sexual contact; CSC in the third degree involves sexual penetration.]

Current statute of limitations for CSC in the second or third degree:

Currently, an indictment for CSC in the second or third degree for an adult victim can be found and filed as follows:

- Within 10 years after the offense is committed or by the alleged victim's 21st birthday, whichever is later.

- If there is evidence of the offense that contains DNA from an unidentified individual, at any time after the offense is committed. After the individual is identified, however, the indictment must be found and filed within 10 years after that identification or by the alleged victim's 21st birthday, whichever is later.

If the victim is under 18 years of age, the statute of limitations for CSC in the second or third degree allows an indictment to be found and filed as follows:

- Within 15 years after the offense is committed or by the alleged victim's 28th birthday, whichever is later.
- If there is evidence of the offense that contains DNA from an unidentified individual, at any time after the offense is committed. After the individual is identified, however, the indictment must be found and filed within 15 years after that identification or by the alleged victim's 28th birthday, whichever is later.

The bill would delete the current the statute of limitations for a minor victim described above.

Crimes for which there is no statute of limitations

Currently, the act provides that an indictment for any of the following crimes may be found and filed at any time:

- Murder, conspiracy to commit murder, or solicitation to commit murder.
- Criminal sexual conduct in the first degree.
- Crimes involving explosives or human trafficking that are punishable by life.
- A violation of the Michigan Anti-Terrorism Act, Chapter LXXXIII-A of the Michigan Penal Code, that is punishable by imprisonment for life.

MCL 767.24

House Bill 4486 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 juvenile adjudication.

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

MCL 691.1407 and proposed MCL 691.1407d

FISCAL IMPACT:

House Bills 4482 and 4483 would have an indeterminate fiscal impact on the state and on local units of government. Revising and eliminating statutes of limitations and extending windows in which actions can commence will likely lead to an increase in the number of felony convictions. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4484 would have an indeterminate fiscal impact on local court systems. Exempting claims to recover damages because of CSC from statutes of limitations would likely lead to an increase in the number of court caseloads and associated administrative costs. The number by which court caseloads would increase is not known.

House Bill 4485 would have an indeterminate fiscal impact on the state and on local units of government. Eliminating the current time frames and allowing a criminal indictment to be found and filed at any time, regardless of the age of the victim at the time of the offense, will likely lead to an increase in the number of felony convictions. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bills 4486 and 4487 would have an indeterminate fiscal impact on local court systems. The fiscal impact would depend on how provisions of the bills affected court caseloads, the complexity of lawsuits, and related administrative costs.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ 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.