

Legislative Analysis



FOIA EXEMPTION FOR ANONYMOUS PARTY IN CERTAIN CIVIL ACTIONS

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House Bill 4856 (H-1) as passed by the House
Sponsor: Rep. Kyra Harris Bolden
Committee: Judiciary
Complete to 11-4-21

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

SUMMARY:

House Bill 4856 would amend the Freedom of Information Act (FOIA) to exempt disclosure of information that would reveal the identity of an anonymous party in certain civil actions.

FOIA establishes procedures and requirements for the disclosure of public records by all public bodies in Michigan. It creates two classes of public records: those subject to disclosure and those exempt. In general, records are subject to disclosure unless specifically exempted.

The bill would create an exemption from disclosure for any information that would reveal the identity of a party who proceeds anonymously in a civil action in which that party alleges that they were the victim of *sexual misconduct*.

Sexual misconduct would mean sexual contact or penetration under the pretext of medical treatment; female genital mutilation of a child; accosting, enticing, or soliciting a child for an immoral purpose; child pornography; or 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, regardless of whether the conduct resulted in a criminal conviction.

The bill also would amend a provision that allows investigating records compiled for law enforcement purposes to be exempted from disclosure by adding that this exemption would be allowed if it would disclose the identity of a party, who, as described above, proceeds anonymously in a civil action in which that party alleges that they were the victim of sexual misconduct.

For the purposes of securing their anonymity, the party could provide written notification of the civil action and the wish to remain anonymous to any law enforcement agency that has investigating records. The law enforcement agency would have to retain a copy of the notification in its files with those records.

MCL 15.243

BACKGROUND AND DISCUSSION:

The bill is a reintroduction of House Bill 4378 of the 2019-20 legislative session and is similar to House Bill 5797 of the 2017-18 legislative session. Both of those bills were passed by the House of Representatives.

The bill is part of a larger package of bills to address sexual assault that were originally introduced following the revelation of hundreds of instances in which Larry Nassar, a nationally known physician employed by Michigan State University who also provided medical treatments to members of the USA Olympics women's gymnastics team, was found to have engaged in practices that constituted criminal sexual conduct over several years.

Supporters of the bill argue that if a victim of sexual misconduct wishes to remain anonymous to the public, then the victim should have the right to do so. Currently, however, the victim's request for anonymity is only applied to the sexual misconduct case and not to subsequent FOIA requests, which could cause the victim to live in fear that their identity will be disclosed to the public. The bill would ensure that the victim's anonymity is protected not only during the case, but afterward as well.

FISCAL IMPACT:

The bill would have no fiscal impact on the state or local units of government.

POSITIONS:

A representative of the Michigan Coalition to End Domestic and Sexual Violence testified in support of the bill. (9-14-21)

The following entities indicated support for the bill:

- Michigan Catholic Conference (9-14-21)
- Michigan Domestic and Sexual Violence Prevention and Treatment Board (9-14-21)
- American Association of University Women of Michigan (9-28-21)

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