

Legislative Analysis



FOIA EXEMPTION FOR ANONYMOUS PARTY IN CERTAIN CIVIL ACTIONS

Phone: (517) 373-8080
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Senate Bill 73 as reported from House committee

Sponsor: Sen. Sue Shink

House Committee: Criminal Justice

Senate Committee: Civil Rights, Judiciary, and Public Safety

Complete to 6-21-23

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

(Enacted as Public Act 64 of 2023)

SUMMARY:

Senate Bill 73 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 they allege 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 now allows certain investigating records compiled for law enforcement purposes to be exempted from disclosure to also allow such an exemption if the records would disclose the identity of a party who proceeds anonymously in a civil action in which they allege that they were the victim of sexual misconduct, as described above. To secure that party's anonymity, the party or their designee 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:

Senate Bill 73 is a reintroduction of House Bill 4856 of the 2021-22 legislative session and House Bill 4378 of the 2019-20 legislative session and is similar to House Bill 5797 of the 2017-18 legislative session. Each of those bills was passed by the House of Representatives.

BRIEF DISCUSSION:

Supporters of the bill argue that if a victim of sexual misconduct wishes to remain anonymous to the public, then they 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. (6-13-23)

The following entities indicated support for the bill (6-13-23):

- Michigan Domestic and Sexual Violence Prevention and Treatment Board
- State Bar of Michigan
- Michigan Catholic Conference

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Michael Clossen

■ 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.