



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 903 and 904 (as introduced 3-15-18)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 3-19-18

CONTENT

Senate Bill 903 would enact the "Postsecondary Student Protection Act" to do the following:

- Require individuals who were professional employees of a postsecondary educational institution or who were paid or volunteered to conduct postsecondary interscholastic athletic activities to report to a law enforcement agency if they suspected that a student was a victim of sexual assault.
- Require a reporting individual also to notify the institution if he or she were a member of the staff.
- Provide that a member of an institution could not be penalized for reporting as required.
- Provide that an individual who was required to report would be liable for civil damages if he or she failed to do so.
- Prescribe a felony penalty for an employee, and a misdemeanor penalty for a volunteer, who had direct knowledge of the nature of the sexual assault and willfully and knowingly failed to report as required.
- Prescribe a felony penalty for an employee or volunteer who committed a second or subsequent offense.

Senate Bill 904 would amend the sentencing guidelines in the Code of Criminal Procedure to classify the felonies proposed by Senate Bill 903 as Class G offenses against a person with a statutory maximum of two years' imprisonment for a paid employee's failure to report, or seven years for an employee's or volunteer's second or subsequent offense.

The bills are tie-barred. Each bill would take effect 90 days after being enacted.

Senate Bill 903 is described in more detail below.

Definitions

"Postsecondary educational institution" would mean a degree- or certificate-granting public or private college or university, junior college, or community college that is located in Michigan.

"Postsecondary interscholastic athletic activity" would mean a program or event offered by a postsecondary educational institution, including practice and competition, during which athletes participate or practice to participate in an organized athletic game or competition against another school, team, club, entity, or individual.

"Sexual assault" would mean an act, attempted act, or conspiracy to engage in an act of criminal conduct as defined in Section 520b, 520c, 520d, or 520g of the Michigan Penal Code (i.e., criminal sexual conduct (CSC) in the first, second, third, or fourth degree, or assault with intent to commit CSC involving sexual penetration or second-degree CSC).

"Student" would mean an individual who is 18 years of age or older and who is enrolled in an educational program at a postsecondary educational institution or is a participant in a postsecondary interscholastic athletic activity.

Reporting Requirements

If an individual who was employed in a professional capacity at a postsecondary educational institution or was paid or volunteered to conduct postsecondary interscholastic athletic activities had reasonable cause to suspect that a student had been the victim of sexual assault at the institution or while attending or participating in any program, activity, or event sponsored or otherwise provided or supported by the institution, that individual would be required to make an immediate report of the facts giving rise to the suspicion to a law enforcement agency in the county where the incident was suspected to have occurred.

If the reporting individual were a member of the staff of the institution, he or she would have to notify the individual in charge of the institution of his or her finding and that the report had been made. This notification would not relieve the staff member of the obligation to report to a law enforcement agency. One report from the institution would be adequate to meet the reporting requirement. A member of an institution could not be dismissed or otherwise penalized for making a required report or for cooperating in an investigation.

Failure to Report

An individual who was required to report an instance of suspected sexual assault and who failed to do so would be civilly liable for the damages proximately caused by the failure.

An individual who was required to report by his or her paid employment, who had direct knowledge of the nature of the suspected sexual assault, and who willfully and knowingly failed to report, would be guilty of a felony. The offense would be punishable by imprisonment for up to two years or a fine of at least \$1,000 but not more than \$5,000, or both.

A volunteer who was required to report, who had direct knowledge of the nature of the suspected sexual assault, and who willfully and knowingly failed to report, would be guilty of a misdemeanor. The offense would be punishable by imprisonment for up to one year, a maximum fine of \$1,000, or both.

If either an employee or a volunteer committed a second or subsequent offense, he or she would be guilty of a felony punishable by imprisonment for up to seven years or a maximum fine of \$15,000, or both.

MCL 777.13p (S.B. 904)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 903

The bill could have a negative fiscal impact on the State and local government. Increased misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The

average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

Senate Bill 904

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State. According to the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law), the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: Ryan Bergan

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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.