

Legislative Analysis



PROHIBIT USE OF PROFESSIONAL AUTHORITY TO PREVENT REPORT OF CERTAIN CRIMES

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

House Bill 4851 as reported from committee
Sponsor: Rep. Julie Alexander

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

House Bill 4852 as reported from committee
Sponsor: Rep. Sara Cambensy

Committee: Judiciary
Complete to 11-3-21

BRIEF SUMMARY: House Bills 4851 and 4852 would each amend the Michigan Penal Code to prohibit an individual from intentionally using his or her professional authority over another person to prevent or attempt to prevent that other person from reporting certain crimes.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on the state and on local units of government. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

In 2016, hundreds of women and girls began to come forward to speak publicly against Larry Nassar, a nationally known physician employed by Michigan State University (MSU) who also provided medical treatments to members of the USA Olympics women's gymnastics team. The women and girls detailed the abuse they experienced, which had spanned decades. Many also allegedly had reported their abuse and the suspected abuse of others to different coaches and administrators. However, according to their reports, they were met with resistance and were often told not to report it to other authorities. Nassar received multiple life sentences in 2018. An investigation led to the convictions of other MSU employees. Legislation has been offered to specifically ensure that a person cannot intentionally use their position of authority to prevent the reporting of sexual assault crimes.

THE CONTENT OF THE BILLS:

Section 483a of the Penal Code currently prohibits a person from doing any of the following:

- Withholding or refusing to produce testimony, information, documents, or things in violation of a court order.
- Preventing or attempting to prevent through unlawful physical force another person from reporting a crime or attempted crime.
- Retaliating or attempting to retaliate against another person for reporting or attempting to report a crime or attempted crime.

Violation of these provisions is a misdemeanor punishable by imprisonment for up to one year, a fine of up to \$1,000, or both. If the violation involved committing or attempting to commit a crime or a threat to kill or injure a person or to cause property damage, it is a felony punishable by imprisonment for up to 10 years, a fine of up to \$20,000, or both.

House Bill 4851 would amend section 483a to additionally prohibit a person from intentionally using his or her professional position of authority over another person to prevent or attempt to prevent that other person from reporting a crime committed or attempted by another person that is listed in any of the following sections of the Penal Code:

- Section 136b (child abuse).
- Section 520b (criminal sexual conduct (CSC) in the first degree).
- Section 520c (CSC in the second degree).
- Section 520d (CSC in the third degree).
- Section 520e (CSC in the fourth degree).
- Section 520g (assault with intent to commit CSC in the first, second, or third degree).

MCL 750.483a

House Bill 4852 would add section 478b to the Penal Code to prohibit a person from intentionally using his or her position of authority over another person to prevent or attempt to prevent the other person from reporting an alleged violation of any of the following Penal Code sections to a Title IX coordinator at a *postsecondary educational institution*:

- Section 136b (child abuse).
- Section 520b (CSC in the first degree).
- Section 520c (CSC in the second degree).
- Section 520d (CSC in the third degree).
- Section 520e (CSC in the fourth degree).
- Section 520g (assault with intent to commit CSC in the first, second, or third degree).

Postsecondary educational institution would mean a degree- or certificate-granting public or private college or university, junior college, or community college located in this state.

A person who violated section 478b would be guilty of a misdemeanor punishable by imprisonment for up to one year, a fine of up to \$1,000, or both.

Proposed MCL 750.478b

Each bill would take effect 90 days after being enacted.

BACKGROUND:

The bills are reintroductions of House Bills 4374 and 4383 of the 2019-20 legislative session and House Bills 5537 and 5982 of the 2017-18 legislative session, which were all passed by the House of Representatives. The bills are 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 was found to have engaged in practices that constituted criminal sexual conduct.

FISCAL INFORMATION:

House Bill 4851 would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of persons who would be convicted under provisions of the bill. Violations could be either misdemeanors or felonies, depending

on the circumstances. New misdemeanor convictions would increase costs related to county jails or local misdemeanor probation supervision, or both. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,300 per supervised offender in the same year. 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 whether additional court-imposed fee revenue is generated. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4852 would have an indeterminate fiscal impact on local units of government. Information is not available on the number of persons who would be convicted under provisions of the bill. New misdemeanor convictions would increase costs related to county jails or local misdemeanor probation supervision, or both. 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 whether additional court-imposed fee revenue is generated. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

ARGUMENTS:

For:

Current law prohibits using actual physical or attempted physical force to prevent the reporting of a crime, and retaliation after a crime has been reported, but does not prohibit the use of a person's professional position of authority to prevent such a report—behavior that can be just as coercive and contrary to the interests of justice. Many allegations were made that MSU officials used their positions as the women's and girls' coaches, doctors, and other advisors and confidantes to prevent criminal reports. The bills would not only apply to the realm of sports, but to any situation in which a person used their position of authority to intimidate an individual into silence. For instance, in the wake of the Nassar scandal, stories surfaced of female medical students keeping silent for fear that complaints of improper conduct of a sexual nature by a supervising teaching physician who was also the dean of a medical school would result in dismissal from the program. Further, college and university students often travel to institutions in other states to compete in athletic and academic events, and attend or present at conferences. Under HB 4852, a person, for example, a person in authority accompanying the students such as a coach or academic advisor, could be subject to the bill's penalties for using their position of authority to prevent a report of a covered violation to a Title IX coordinator located at the institution at which the intimidation occurred.

Against:

Some critics of the bills argue that the bills should not be limited to the specified criminal sexual conduct allegations. A person can use his or her position of authority to prevent the reporting of many other crimes, and critics argue that the bill should not be limited to the specifically listed crimes.

POSITIONS:

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

The following entities indicated support for the bills:

- Michigan Catholic Conference (9-14-21)
- Michigan Coalition to End Domestic and Sexual Violence (9-28-21)
- American Association of University Women of Michigan (9-28-21)

The following entities indicated support for HB 4851 (9-14-21):

- Michigan Domestic and Sexual Violence Prevention and Treatment Board
- Prosecuting Attorneys Association of Michigan

Legislative Analyst: Emily S. Smith
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.