

Legislative Analysis



ALLOW PROSECUTION FOR CRIMINAL SEXUAL CONDUCT IF SPOUSE IS MENTALLY INCAPACITATED

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<http://www.house.mi.gov/hfa>

House Bill 4202 as introduced
Sponsor: Rep. Laurie Pohutsky
Committee: Criminal Justice
Complete to 3-10-23

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

SUMMARY:

House Bill 4202 would amend the Michigan Penal Code to eliminate the bar against prosecution for a criminal sexual conduct offense involving a legal spouse solely because the spouse is mentally incapacitated.

Under Michigan law, a person can be charged and convicted for criminal sexual conduct (CSC) in the first through fourth degrees or assault with intent to commit CSC in the first through fourth degrees even if the victim is their legal spouse. However, a person cannot be charged or convicted solely because their legal spouse is under 16 years of age, *mentally incapable*, or *mentally incapacitated*.

Mentally incapable means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of their conduct.

Mentally incapacitated means that a person is rendered temporarily incapable of appraising or controlling their conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without their consent or due to any other act committed upon that person without their consent.

The bill would remove “mentally incapacitated” from the provision described above and provide that a person cannot be charged or convicted for a CSC offense solely because their legal spouse is under 16 years of age or mentally incapable.

MCL 750.520I

BACKGROUND:

The bill is identical to House Bill 4699 of the 2021-22 legislative session, which was passed by the House of Representatives.

FISCAL IMPACT:

House Bill 4202 would have an indeterminate fiscal impact on the state and on local units of government. To the extent that its provisions result in an increase in felony convictions, the bill 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. Any 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.

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