



# MICU Briefing: May 2018

## *Overview of Bills introduced in Michigan Legislature in Response to Michigan State Sexual Assault Cases*

During the 2017-2018 legislative session in Michigan, 37 bills were introduced with the goal of mitigating sexual assault in the state and preventing a case like that of Larry Nassar at Michigan State University from happening again. Many of these bills directly affect higher education institutions. This document provides an overview of the bills, what they require, and how they would change current policy. As of May 7, 2018, the drafting date of this document, the bills have yet to be passed and are currently awaiting committee debate, testimony, and potential changes before going to the House floor for a vote.<sup>1</sup>

### Senate Bills

The Senate introduced a ten-bill package in February. The concerns about the Senate bills include the unintended consequences of allowing civil suits to be brought forward for cases dating back to 1997. Many of these lawsuits could be difficult-to-defend.

Senate Bills include<sup>2</sup>:

**SB 871** – Statute of Limitations (O’Brien)

- Gets rid of the statute of limitations for second-degree criminal sexual conduct against a minor. In cases of third-degree criminal sexual conduct, it would give minor victims until their 48th birthday, or within 30 years after DNA evidence identifies the defendant.

**SB 872** – Statute of Limitations (Knezek)

- Lets those who were sexually assaulted as minors for cases as far back as 1997 file civil lawsuits. They would have one year from the time the bill becomes law to file their suits.

**SB 873** – Mandatory Reporters (O’Brien)

- Expands list of people who must report allegations of child abuse to include K-12 coaches, college staff, youth sports coaches, assistant coaches, athletic trainers and volunteers.

**SB 874** – Child Abuse Reporting (Jones)

- Increases penalties for failure to report suspected child abuse or neglect.

**SB 875** – Court of Claims (O’Brien)

- Allows minor victims of sexual abuse to remain publically anonymous when they bring a civil lawsuit in front of the Court of Claims.

**SB 876** – Court of Claims (Horn)

- Would get rid of the current statute of limitations for victims of childhood sexual abuse who file lawsuits in the Court of Claims.

**SB 877** – Government Immunity (Knollenberg)

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<sup>1</sup> Information summarized or taken directly from Cheyna Roth’s overview on Michigan Radio’s website. Link here: <http://michiganradio.org/post/review-37-bills-legislators-have-introduced-response-larry-nassar-scandal>

<sup>2</sup> Ibid.



- Would get rid of governmental immunity for some individuals and entities. For individuals, if they committed sexual assault. For entities, they lose government immunity if there was negligence in the hiring, supervision, training, or if the agency knew or should have known of the misconduct and failed to report it.

[SB 878](#) – Sexually Abusive Material (Hertel)

- Creates the crime of aggravated possession of child sexually abusive material and provides for a penalty.

[SB 879](#) – Sexually Abusive Material (O’Brien)

- Creates the crime of aggravated possession of child sexually abusive material and outlines sentencing guidelines.

[SB 880](#) – Child Abuse Reporting (Jones)

- Codifies the changes in sentencing guidelines to increase the penalty for not reporting child abuse.

## House Bills

The House bills introduced are focused primarily on the investigation into Michigan State University and would change how institutions process sexual assault claims.

House Bills include:

[HB 5537](#) – Criminal Sexual Conduct (Kesto)

- Makes it a crime to prevent the reporting of a crime by intentional use of a person’s position of authority.
- Requires that a person must “*intentionally*” use his or her “*professional* position of authority” for the new crime to apply

[HB 5539](#) – Student Safety Act (LaSata)

- Includes sexual assault, abuse and rape in the student safety act. That’s a program for receiving reports and other information from the public about potential self-harm and potential harm to others or criminal acts.

[HB 5658](#) – Sexual Crimes (Cox)

- Allows for the admissibility of prior acts of sexual crimes in some cases.
- Clarifies that Section 27a, which addresses admissibility of prior acts in sexual assault cases with minor victims, is not an *exception* to the section modified by this bill; rather, this bill in no way limits Section 27a.

[HB 5659](#) – Mandatory Reporting (Griffin)

- Expands mandatory reporting requirements for child abuse or child neglect to include K-12 coaches, assistant coaches and athletic trainers, and volunteers.

[HB 5660](#) – Sexual Abuse (Love)

- Increases the penalty for the crime of aggravated possession of child sexually abusive material under some circumstances.
- Modifies the language regarding the penalty for second and subsequent child porn offenses to address a concern that the as-introduced language could be unconstitutionally vague.
- Technical changes that move both of the crimes into the same bill (HB 5660) and puts the penalty for second and subsequent offenses in the other bill (HB 5794).



[HB 5661](#) – Sexual Abuse (Farrington)

- Provides for sentencing guidelines for crime of aggravated possession of child sexually abusive material.

[HB 5783](#) – Medical Record Retention (Whiteford)

- Requires medical offices, physical therapists, athletic trainers, and chiropractors protect, retain, and maintain medical records referencing a vaginal or anal penetration treatment for 15 years. Makes it a crime to fail to keep such records. Exemptions made for urological and gastrointestinal services.
- Expands the exemptions to the extended retention requirements to include emergency medical services, services to measure the patient's temperature or administer a drug, and urological and gastrointestinal services
- Better aligns the exemptions from the physician guidance materials with the exemptions from the extended retention requirements
- Requires the boards to consult with affected stakeholders in developing the guidance materials
- Expands the relevant professions covered by the guidance materials to include chiropractors, physical therapists, and athletic trainers
- Replaces the criminal penalties (misdemeanor for non-intentional violations; felony for intentional violations) with a tiered civil and criminal penalty structure that distinguishes between an inadvertent mistake (<\$1,000 civil fine), multiple mistakes (<\$2,500 civil fine for a second mistake; misdemeanor for a third or subsequent mistake), a grossly negligent mistake (misdemeanor), and an intentional violation (felony). Note that provisions in current law would still allow licensing sanctions for these violations.

[HB 5784](#) – Medical Record Retention (Hauck)

- Enacts sentencing guidelines for the crime of intentionally failing to document certain services in a medical record and performing certain medical treatments on a minor without consent and another individual present.

[HB 5785](#) – Sexual Assault (LaSata)

- The bill would require sex education for 11th and 12th graders to include instruction on sexual assault and dating violence.

[HB 5786](#) – Education Employees (Clemente)

- Requires the Department of Education to maintain records giving the reason or reasons a person stops working for a school district, intermediate school district, public school academy, or under contract in a public school. It also says the department is immune from civil liability.

[HB 5787](#) – Sexual Assault – (Kesto)

- Updates the language of the law that makes sexual contact and sexual penetration under the pretext of medical treatment a felony and increases penalties.

[HB 5788](#) – Sexual Assault (Geiss)

- Provides the sentencing guidelines for the revised crime of sexual contact or sexual penetration under the pretext of medical treatment. The bill would make it a 20 year felony for sexual contact and a 25 year felony for sexual penetration.
- Technical fix to place the crime on a higher grid that is more proportional to the penalty set in HB 5787

[HB 5789](#) – Sexual Assault (Noble)



- The bill would require the permanent revocation of a medical professional's license or registration if he or she is convicted of sexual conduct under the guise of medical treatment.

[HB 5790](#) – Sexual Assault (Rendon)

- The bill would require the permanent revocation of a medical professional's license or registration if he or she is convicted of sexual conduct under the guise of medical treatment.

[HB 5791](#) – Sexual Assault (Chang)

- Requires K-12 schools give students information about sexual assault and harassment and encourage related professional development.

[HB 5792](#) – Sexual Assault Response Grants (Hoadley)

- Creates campus sexual assault response improvement plan and grant act.

[HB 5793](#) – Medical Examinations on Minors (Theis)

- Requires additional person present during certain medical examinations of minors and consent for treatments involving anal or vaginal penetration. Exemptions made for urological and gastrointestinal services.
- Limits the criminal penalty to where a person “knowingly” violates the informed consent requirement
- Allows for waiver of the chaperone requirement by the person who gives consent
- Expands the exemptions to urological and gastrointestinal services, as well as for services performed to measure the patient's temperature or administer a drug or medicine
- Defines what a medical emergency is for purposes of that exemption
- Allows providers to use their own version of LARA's standard consent form so long as such includes the same information
- Clarifies that the informed consent must be kept as part of the patient's medical record
- Clarifies that LARA has flexibility in determining what to include on the consent form but requires LARA to rely on generally accepted standards of medical practice to that end

[HB 5794](#) – Sexually Abusive Material (Iden)

- Creates the crime of aggravated production, financing and distribution of child sexually abusive material.

[HB 5795](#) – Campus Sexual Assault Ombudsman (Singh)

- Creates office of college campus sexual assault ombudsman within Department of Civil Rights. The ombudsman would, among other things, advocate for students at colleges who are victims of sexual assault committed on campus and encourage higher education institutions to improve their services to help students who are victims of sexual assault.

[HB 5796](#) – Mandatory Reporters (Pagan)

- The bill would require the distribution of training package to individuals designated as mandatory reporters for child abuse or child neglect.

[HB 5797](#) – Sexual Assault (Pagan)

- Allows people alleging sexual assault in civil actions stay anonymous.

[HB 5798](#) – Victim Impact Statements (Albert)

- Expands who qualifies as a "victim" for purposes of impact statements. Would require the consent of the victim before other individuals could provide a statement.



- Requires the consent of the victim before any of the newly added individuals can be permitted to provide a victim impact statement at sentencing, unless the victim is deceased or incapacitated

[HB 5799](#) – University Boards (Hornberger)

- Clarifies procedure for removal of official on a university governing board or the State Board of Education. The governor would have the power and duty to look into a member and remove him or her including when the Legislature is in session. Right now, the law says the governor does not have that power when the Legislature is in session.

[HB 5800](#) – Sexual Assault (Rabhi)

- Prevents K-12 schools from expelling or suspending for more than 10 days a student for actions that the student says happened while he or she was being sexually assaulted or in response to the assault. Also requires school officials to refer student to Title IX coordinator for school district if student reports sexual assault or official believes a sexual assault occurred.

[HB 5824](#) – Health Professionals (Huges)

- Requires a licensed health professional to forward certain sexual misconduct allegations against themselves the Department of Licensing and Regulatory Affairs.

## Budget-related Bills

Because Michigan does not have a specific authority or office that controls higher education policy and institutions in the state, much of higher education policy is embedded in annual budget bills. Both the House and Senate introduced language that would reduce public university funding if a school does not adopt certain policies.

[SB 857](#) – Higher Education Budget (Schuitmaker)

- Includes 14.3 million dollars for campus safety programs, sexual assault prevention programs, and student mental health. Includes provision that all university presidents and governing officials receive all Title IX complaints of sexual misconduct.

[HB 5571](#) – Higher Education Budget (LaSata)

- Includes provision that would cut a university's funding by 10-percent if the school doesn't adopt certain policies related to sexual assault. Those policies include having an in-person sexual assault prevention course for some students, and requiring that sexual assault complaints to the Title IX office against employees are shared with the school's governing body.