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Senate Bill 73 (as enacted)
Sponsor: Senator Sue Shink
Senate Committee: Civil Rights, Judiciary, and Public Safety
House Committee: Criminal Justice

PUBLIC ACT 64 of 2023

Date Completed: 3-20-24

RATIONALE

Some survivors of sexual assault want confidentiality before reporting their victimization to law enforcement or attempting to hold their perpetrator accountable in court. A survivor of sexual assault in Michigan does not have a guarantee of that confidentiality during an anonymous civil action, which may discourage the survivor from making a report. Ultimately, without a survivor's report, perpetrators of sexual assault often cannot be held accountable. Exempting a victim's identity from disclosure under the Freedom of Information Act (FOIA) during an anonymous civil action will encourage victims of sexual assault to report their victimization.

CONTENT

The bill amended FOIA to exempt from disclosure information that reveals the identity of an anonymous party in a civil action alleging sexual misconduct and investigating records compiled for law enforcement purposes to the extent that disclosure as a public record would disclose the identity of a party who proceeds anonymously in a civil action in which the party alleges that the individual is the victim of sexual misconduct.

The bill took effect on July 12, 2023.

Under the Act, after providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body. A public body may exempt a public record from disclosure under a number of exemptions in the Act.

The bill allows a public body to exempt from disclosure information that reveals the identity of a party who proceeds anonymously in a civil action in which the party alleges that the party is the victim of sexual misconduct.

"Sexual misconduct" means conduct described in Section 90, 136, 145a, 145b, 145c, 520b, 520c, 520d, 520e, or 520g of the Michigan Penal Code, regardless of whether the conduct resulted in a criminal conviction. (Those sections prohibit the following conduct, respectively: sexual intercourse under the pretext of medical treatment, female genital mutilation, contributing to the neglect or delinquency of a minor, accosting or soliciting a minor for immoral purposes, accosting or soliciting a minor for immoral purposes after a prior conviction, child sexually abusive activity, first-, second-, third-, and fourth-degree criminal sexual conduct (CSC), and assault with intent to commit CSC.)

The Act also allows a public body to exempt from disclosure investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

- Interfere with law enforcement proceedings.
- Deprive a person of the right to a fair trial or impartial administrative adjudication.
- Constitute an unwarranted invasion of personal property.
- Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the court of a criminal investigation, disclose confidential information furnished only by a confidential source.
- Disclose law enforcement investigative techniques.
- Endanger the life or physical safety of law enforcement personnel.

Under the bill, a public body also may exempt from disclosure investigating records compiled for law enforcement purposes only to the extent that disclosure as a public record would disclose the identity of a party who, as described above, proceeds anonymously in a civil action in which the party alleged that the individual is the victim of sexual misconduct. For the purpose of securing the individual's anonymity, that party or the party's designee may provide written notification of the civil action and the individual's wish to remain anonymous to any law enforcement agency that has investigating records subject to this provision, and the law enforcement agency must retain a copy of the notification in its files with those investigating records.

MCL 15.243

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill was a reintroduction of House Bill 4378 of the 2019-2020 Legislative Session. House Bill 4378 passed the House and was reported by the Senate Committee on Judiciary and Public Safety but received no further action.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

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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.