

## **DOMESTIC VIOLENCE LAWSUITS: EXTEND STATUTE OF LIMITATIONS**

**House Bill 4187 (Substitute H-2)  
Sponsor: Rep. Deborah Cherry**

**House Bill 4524 (Substitute H-2)  
Sponsor: Rep. Marc Shulman**

**First Analysis (5-11-99)  
Committee: Family and Civil Law**

### ***THE APPARENT PROBLEM:***

The Revised Judicature Act of 1961 provides the statutory limitations for filing civil lawsuits for the recovery of damages based on injuries to persons or property. With certain rare exceptions, a lawsuit for damages must be filed within the limitations period or be invalid. Generally, the idea is that the time period allows a plaintiff the time to discover his or her cause of action and put together a case, and provides potential defendants with the knowledge that cases against them will have to be brought in a timely manner and that they will not be disadvantaged by a plaintiff's delay by being asked to defend actions that occurred many years before. The statute of limitations varies for different causes of action -- for example libel and slander cases have a one year statute of limitations, while assault, battery, and false imprisonment cases have a two year statute of limitations. Some exceptions exist that extend the period of limitations for certain potential plaintiffs; for example, in medical malpractice cases a plaintiff must bring his or her case within the normal period of limitation or within 6 months after the plaintiff discovers or should have discovered the existence of the claim, whichever is later. Other exceptions deal with the "disability" of the would-be plaintiff -- in this case disability refers to the status of the would-be plaintiff as either a minor or insane. For example, person who is a minor at the time the cause of action accrued has one year after he or she reaches the age of majority to bring the lawsuit even if the actual statute of limitations would have expired. The same sort of extension applies to people who are insane at the time the cause of action accrues. It has been suggested that another exception should be made for the victims of domestic violence.

### ***THE CONTENT OF THE BILLS:***

House Bill 4187 and House Bill 4524 would set a special period of limitations for victims of domestic violence to bring certain cases for the recovery of damages. Currently, a case brought by a victim of domestic violence charging assault or battery must be filed within two years of the occurrence of the assault or battery, and a case for damages resulting from injuries to a person or property must be filed within three years from the time that the injury had occurred. Under the bills, a victim of domestic violence would have five years from the date of the assault, battery, or injury to file his or her case. The periods of limitation established by the bills would apply not only to causes of action that arose on or after the date the bills were enacted, but also to those causes of action where the current period of limitations had not expired by the time that the bills were enacted. Neither bill would take effect if the other was not enacted into law.

Both bills would define domestic violence as inflicting bodily injury causing serious emotional injury or psychological trauma, or placing in fear of imminent physical harm by threat or force by an assailant against a victim, where the victim and assailant are or were involved in a consensual sexual relationship and were either married, divorced, had a child in common, or were adult (or the victim was an emancipated minor) members of the opposite sex who were or had been living together.

MCL 600.5805

### ***FISCAL IMPLICATIONS:***

Fiscal information is not available.

**ARGUMENTS:****For:**

Victims of domestic violence suffer the same injuries as other assault victims, but usually they are in a position of vulnerability while they remain "attached" to their assailant. This limits their likelihood of pursuing a lawsuit against the person that assaulted them until after the victim has made a clean break. However, even after initially breaking off a relationship with an abusive spouse the other party is generally considered to be at great risk and often the fear of harm remains for some time after the parties have been separated. Further, the abused party may have a great deal on his or her mind when escaping from such a relationship -- issues of finding a place to live, maybe a new job, moving away from the abuser and making other changes in his or her life to start out on his or her own. The two and three year limitations currently provided might not even out last time it takes for the victim to feel safe from further abuse. Given the nature of the relationship between the abuser and the abused in domestic violence cases, more time should be given to allow victims time to recover their lives before they set about recovering monetary damages.

**Against:**

There is little reason to grant a special extension to cases that stem from domestic violence; the trauma of being assaulted applies to all victims of assault. Domestic violence victims have no monopoly on feeling fearful or having difficulty returning to a sense of normalcy after having been assaulted. If an extension is granted based on who was assaulted, what will be next -- one could make a similar case for granting an extension for the elderly or the handicapped who are more vulnerable to such attacks.

The bills also make use of the term "victim of domestic assault" which in and of itself almost presumes that the "victim" was harmed. Generally, a party that is bringing a civil cause of action is known as a "plaintiff", which is certainly a more neutral term.

**Against:**

These bills would grant a spouse in a divorce case an opportunity, after the divorce has divided the marital estate, to bring a lawsuit against the other spouse to seek a larger portion of the marital estate. For the

sake of judicial expediency, the bills should require that a would-be plaintiff bring all his or her claims at the same time.

**Response:**

Actually, the claims in a divorce case and a claim for monetary damages for an assault are not really related. It should be noted that Michigan is a no-fault divorce state and, generally, the actions of the parties are not used to alter the distribution of assets. A divorce case seeks to make a fair distribution of the assets of the marriage and to decide issues of custody and support where necessary. A lawsuit for damages based upon an assault is intended to make the plaintiff whole -- to compensate him or her for the harm that was done.

**Rebuttal:**

Although Michigan is indeed a no-fault state, there are provisions that allow for a judge to take fault into account when distributing assets. Admittedly, these provisions are not used with any regularity; however, when they are used the would-be plaintiff should, in all fairness, be limited in his or her ability to pursue further damages.

**Against:**

The bills use an antiquated definition of domestic violence that could lead to confusion. The definition differs from the definitions used in many other places in the law; it is far more limiting in to whom it would apply. For example, the crime of domestic assault and battery applies to an individual who assaults or assaults and batters his or her spouse or former spouse, an individual with whom he or she has a child in common, or a resident or former resident of his or her household. The language in the bills would only deal with cases where the parties lived together and had a consensual heterosexual sexual relationship, while the description in the criminal law would cover all cases where the parties had lived together.

**Response:**

There seems good reason to allow for such a restriction. The argument in support of the extended statute of limitations is based upon the idea that because of the nature of the relationship between the parties it is more difficult for the victim-plaintiff to decide to sue and follow through with such a lawsuit. It seems unfair to apply this logic to cases where the parties did not have an intimate relationship.

**POSITIONS:**

The Michigan Conference of the National Organization for Women supports the concept of the bills. (5-6-99)

The Michigan Coalition Against Domestic and Sexual Violence supports the concept of the bills, but opposes the current language due to the definition of domestic violence. (5-10-99)

Analyst: W. Flory

---

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.