

Legislative Analysis



ABORTION: INTIMIDATION AND COERCION

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House Bill 5879 (Substitute H-2)
Sponsor: Rep. Barb Vander Veen

House Bill 5880 (Substitute H-2)
Sponsor: Rep. Leslie Mortimer

House Bill 5882 (Substitute H-3)
Sponsor: Rep. Judy Emmons

House Bill 5881 (Substitute H-2)
Sponsor: Rep. Fran Amos

House Bill 5883 (Substitute H-1)
Sponsor: Rep. Shelley Goodman Taub

Committee: Judiciary

Complete to 5-31-06

A SUMMARY OF HOUSE BILLS 5879-5883 AS REPORTED FROM HOUSE COMMITTEE 5-24-06

House Bills 5880 and 5879 would amend the Public Health Code to establish a mandatory procedure to ensure that a patient who has scheduled an appointment for an abortion is not seeking an abortion due to intimidation or coercion.

House Bill 5882 would amend the Michigan Penal Code to create the Coercive Abortion Prevention Act, under which a person could not do either of the following with the intent to compel a pregnant female to seek an abortion: 1) commit, attempt to commit, or conspire to commit physical harm to the pregnant female; or 2) engage in a willful course of conduct involving repeated or continuing harassment of the pregnant female that would cause her to reasonably feel terrorized, frightened, intimidated, threatened, or harassed. House Bill 5883 would make complementary amendments to the sentencing guidelines provisions in the Code of Criminal Procedure.

House Bill 5881 would amend the Revised Judicature Act to allow a civil action to be brought by or on behalf of an individual injured by a coercive act (of the kind described in House Bill 5882).

The bills, which are described in more detail below, are tie-barred to each other and, if all are enacted, would take effect October 1, 2006.

House Bill 5880

The bill would amend the Public Health Code (MCL 333.17015) to establish a procedure to ensure that a patient who has scheduled an appointment for an abortion is not seeking an abortion due to intimidation or coercion. The physician, or qualified assistant, would have to:

- Inform the patient that certain actions to pressure a woman into having an abortion are illegal, but clarifying that discussions about available options, including personal or intensely emotional expressions about such options, are not necessarily coercive and illegal.
- Ask the patient if the patient's husband, parents, siblings, relatives, or employer; the father or putative father of the fetus; the parents of the father or putative father of the fetus; or any other individual in a position of authority over the patient has threatened, intimidated, or coerced her into seeking an abortion (as would be prohibited under the Michigan Penal Code).

If a patient indicated that she is the victim of intimidation or coercion, the physician or person assisting the physician would have to: 1) provide the patient with information about contacting local or state law enforcement and about domestic violence shelters or support organizations available in the event of any actual or threatened physical abuse or violence; and 2) inform the patient that the intimidation or coercion is grounds for a civil action and that she could receive financial compensation for her damages.

If the patient who is subject to intimidation or coercion is under 18 years of age, then the physician or assistant would have to contact a county child protective services agency where the child lives.

A private office, freestanding surgical outpatient facility, or other facility or clinic in which abortions are performed would have to post a notice in a conspicuous place in an area accessible to patients, employees, and visitors stating that it is illegal for anyone to coerce or intimidate a woman into seeking an abortion. The patient would have to be provided with a copy of that notice, and upon request, the facility would also have to provide the patient with access to a telephone in a room that assured privacy.

If a patient still seeks an abortion after receiving the required information, the physician could perform the abortion.

The bill would specify that it would not create a right to abortion and that, notwithstanding any other provision of the bill, a person could not perform an abortion that was prohibited by law.

House Bill 5879

The bill would amend the Public Health Code (MCL 333.17015) to require that a physician perform the required coercion and intimidation screening not less than 24 hours prior to performing an abortion. The bill also would add to the consent form to be signed by the patient, the statement: "I understand that it is illegal for anyone to coerce or intimidate me into seeking an abortion." In addition, the consent form would also have to include the words "willfully and voluntarily" in the statement authorizing the physician to perform an abortion.

The bill would also require the Department of Community Health to develop, draft, and print the notice described in House Bill 5880. The printing would have to be done in English, Arabic, and Spanish, and be of the size and point type prescribed in the bill. The notice would have to be provided to physicians through their licensing boards and made available to the public on the informed consent website.

House Bill 5882

The bill would amend the Michigan Penal Code (MCL 750.15a) to create the Coercive Abortion Prevention Act. Under the new act, a person who had actual knowledge a person was pregnant could not do either of the following with the intent to compel a pregnant female to seek an abortion: 1) commit, attempt to commit, or conspire to commit physical harm to the pregnant female; or 2) engage in a willful course of conduct involving repeated or continuing harassment of the pregnant female that would cause her to reasonably feel terrorized, frightened, intimidated, threatened, or harassed. "Course of conduct" would mean a pattern of conduct composed of a series of two or more separate noncontinuous acts evidencing a continuity of purpose.

For the first category of prohibited acts (physical harm), violations would be classified and punished as follows:

- If the act results in the death of the pregnant female, the person would be guilty of a felony punishable by imprisonment for not more than 15 years and/or a fine of not more than \$7,500.
- If the act results in great bodily harm to the pregnant female, the person would be guilty of a felony punishable by imprisonment for not more than five years and/or a fine of not more than \$2,500.
- If the act results in serious or aggravated physical injury, the person would be guilty of a misdemeanor punishable by imprisonment for not more than six months and/or a fine of not more than \$500.
- If the act results in physical injury to the pregnant female, the person would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500.

For the second category of prohibited acts (harassment), a violation would be a misdemeanor punishable by a fine of up to \$1,000. However, if the person committing the violation was 18 years of age or older and the pregnant female was under 18, the maximum fine would be \$2,000.

If requested by the pregnant female, a law enforcement agency investigation of a violation of the bill's provisions would have to notify the pregnant female not less than 24 hours before initially contacting the person alleged to have coerced or intimidated her.

The bill would not prevent a person from being charged with, convicted of, or punished for any crime committed while violating the bill's provisions. The court could order terms of imprisonment for a violation of the bill and for a violation of any other crime committed while violating the bill to be served consecutively.

The bill would not prohibit First Amendment rights (free speech) as protected under the U.S. Constitution. The bill would specify that it would not create a right to abortion and that, notwithstanding any other provision of the bill, a person could not perform an abortion that was prohibited by law.

House Bill 5883

The bill would amend the Code of Criminal Procedure (MCL 777.16a) to put the two felonies created by House Bill 5882 in sentencing guidelines provisions. Compelling a pregnant female to seek an abortion resulting in her death would be a Class C felony against a person with a 15-year maximum. Compelling a pregnant female to seek an abortion resulting in great bodily harm would be a Class E felony against a person with a 5-year maximum.

House Bill 5881

The bill would amend the Revised Judicature Act (MCL 600.2975) to allow a civil action to be brought by or on behalf of an individual injured by a coercive act (of the kind described in House Bill 5882). A plaintiff could recover damages for emotional distress and other damages allowed by law. If the damages awarded to a plaintiff for noneconomic loss exceeded \$5,000 and damages award to the plaintiff for economic loss are \$5,000 or less, the award for noneconomic loss would be reduced by the court to \$5,000.

The bill would also establish a three-year statute of limitation period during which an action could commence. If the individual injured by the coercive act was under 18 years at the time the claim first accrued, an action would have to commence within one year after she reached 18 years of age.

The bill would specify that it would not create a right to abortion and that, notwithstanding any other provision of the bill, a person could not perform an abortion that was prohibited by law.

FISCAL IMPACT:

House Bill 5879 has no significant fiscal impact on state or local government.

Under House Bill 5880 there may be a fiscal impact to the Department of Human Services with the requirement for a physician to report to county child protective services a screening result that a patient under age 18 indicated intimidation or coercion related to the abortion decision. If the volume of reports resulting from House Bill 5880 is modest

or negligible, the Department may be able to accommodate this change within existing resources. In 2004, the total number of women under age 18 who had an abortion performed in Michigan was 1,770.

House Bill 5881 would have an indeterminate fiscal impact, depending on how it affected civil dockets.

House Bills 5882 and 5883 would have an indeterminate fiscal impact on the state and local units of government, depending on how they affected prosecutorial charging decisions, numbers of misdemeanor and felony convictions obtained, and sentences imposed. The state could experience increased costs of prison incarceration, which currently average about \$30,000 per prisoner per year, and felony probation supervision, at about \$2,000 per supervised offender per year. Counties could experience increased costs due to jail sentences imposed; those costs vary from county to county. Misdemeanor probation supervision also is a local responsibility. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

BACKGROUND INFORMATION:

The legislation was proposed to address the concern that some pregnant girls and women are coerced or harassed into choosing an abortion against their wills. Reportedly, the coercion and/or harassment typically comes from the boyfriend or husband, parents, other family members, close friends, and sometimes employers and can range from verbal threats of loss of financial support or living arrangements, ending the relationship, physical violence, or being fired to actual physical harm and in extreme cases, even death to the pregnant female. Abusive boyfriends and spouses have been known to beat to the point of miscarriage a woman who refused to obtain an abortion. Homicide is the number one cause of death of pregnant women, and many incidents stem from domestic violence situations. Workers and volunteers at crisis pregnancy shelters say that many clients report experiencing undue pressure to choose abortion, whereas they would prefer to carry the baby to term. Underage girls have reported being dragged, sometimes even physically carried, by their parents into abortion clinics against their will. Some who do post-abortion counseling report that when pressured to choose abortion against their will, many women suffer long-term emotional distress and depression that affects their overall quality of life.

Supporters of the package feel that making it a crime to pressure a pregnant female into choosing an abortion, and allowing her to later sue a person who does so, could be an effective deterrent and also empower a pregnant woman to make her own decision. Requiring abortion providers to screen for domestic violence and provide information about contacting a law enforcement agency about available domestic violence shelters and support organizations could reduce incidents of domestic violence related to unplanned pregnancies by getting women at risk into safe places.

Opponents of the legislation say that the bills would only provide an illusion of safety. In reality, they say, the legislation could have the unintended effect of putting many women at more risk for injury from domestic violence. Abusers tend to escalate the level of violence whenever they feel they are losing control. If they discovered their partner or girlfriend was about to go to the police or a shelter, it is likely they would increase the violence to whatever level they felt was necessary to obtain compliance. If a woman was successful in contacting law enforcement before suffering physical harm, the abuser would only be fined. Even in the case of physical harm or serious physical injury, the offender, due to plea agreements and jail overcrowding, may see no or little jail time. It has been well documented that batterers often engage in retaliation after being arrested and then released, as they feel that they have done no wrong. If current criminal laws do little to deter domestic violence on a day-to-day basis, it is unrealistic to believe that the bills' provisions would provide a safer environment. A better approach would be to retain the required domestic violence screening by abortion providers (or any health provider in any situation) and supplying information about how to obtain help, and also to expand funding for and use by the courts of batterer intervention programs known to be successful. Representatives of physicians testified that they already screen for domestic abuse and intimidation but do not want to be put in the position of a law enforcement officer. Physicians need to act in the best interest of the patient, and patients may avoid care if they think the physician is more interested in law enforcement.

In addition, some critics feel that parents of minor girls should still have the final decision regarding whether or not to abort the fetus. Under the bills, the parents could be fined or jailed for acting in what they see as their child's best interest. Also, some opponents feel that if the bills go forward, they should be amended to protect the woman from coercion or harassment whether she chooses to have an abortion, or chooses not to. They argue that it is wrong to protect one choice and not the other, especially since the U.S. Constitution does give women the right to choose for themselves.

POSITIONS:

The following organizations testified in or indicated support for the bills:

Michigan Catholic Conference (5-10-06)

Operation Outcry (5-24-06)

Rachel's Vineyard (5-10-06)

Right to Life of Michigan (5-10-06)

Mother and Unborn Baby Care, Inc. (5-10-06)

Anchor of Hope (5-10-06)

The following organizations testified in or indicated opposition to the bills:

American College of Obstetricians and Gynecologists/Michigan Section (5-24-06)

Michigan Coalition Against Domestic and Sexual Violence (5-24-06)

Michigan Domestic Violence Prevention and Treatment Board (5-10-06)

Batterer Intervention Services Coalition of Michigan (BISC-MI) (5-10-06)

Family Law Section – State Bar of Michigan (HB 5882) (5-10-06)

Michigan NOW (5-10-06)

Planned Parenthood Affiliates of Michigan (5-24-06)

MARAL Pro-Choice Michigan (5-24-06)

American Civil Liberties Union of Michigan (5-24-06)

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■ 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.