

March 12, 2018

Re: Senate Bills 871-879

Dear Distinguished Legislators:

I write as a former Chief Justice of the Supreme Court and Director of the Department of Human Services regarding Senate Bills 871-879, recently introduced by Senator Margaret O'Brien. The Bills, as currently worded, will have lasting negative consequences for public and private entities across our State. As currently drafted, these bills undermine well-established jurisprudential rules that serve our State's commitment to just and speedy criminal and civil legal proceedings.

I urge you to take the time to get this right.

Everyone is aware of the horrible crimes that Dr. Nassar committed. I urge the Michigan Legislature, however, to allow interested parties to testify about the impact of these Bills and conduct an exacting review of them – Bills which were introduced in committee and passed on the same day after less than two hours of testimony.

My concerns about these Bills are based, not only by my twelve years as a Justice of the Michigan Supreme Court, including four as Chief Justice, but as an advocate for children's rights and child protective services. Thus, I wholeheartedly support efforts to create additional protections for victims of sexual abuse and punish those who commit abhorrent acts of sexual misconduct. For that reason, I applaud the proposal's expansion of the mandatory reporter provisions on a prospective basis.

As a longtime jurist, however, I support careful deliberation that these proposed changes to Michigan's law deserve. Although each proposal requires exacting review, I highlight here the more harmful portions. First, the proposal would retroactively extend the civil period of limitations to 30 years. This would be one of the longest civil statute of limitations in the United States. This would make Michigan an extreme outlier. Statutes of limitations, as our Supreme Court has explained, serve important policy interests, such as: to encourage plaintiffs to pursue their rights diligently and within a reasonable time so that the opposing party has a fair opportunity to defend; to relieve already congested court systems from dealing with "stale" claims, where the facts in dispute occurred so long ago that evidence was either forgotten or manufactured; and to protect people and entities from protracted fear of litigation. Permitting stale claims to languish for years – or, as proposed, for decades – would ill-serve Michigan's citizens and their judicial system.

Retroactively extending the statute of limitations and retroactively removing governmental immunity will expose the State to *billions* of dollars in liabilities for claims dating back 30 years. The State operates prison systems, parks and recreation programs and, in DHHS, foster care programs. Thousands of persons have moved through programs over the last 30 years. The State will not be able to find witnesses to defend claims for so long a period as these

HONORABLE MAURA D. CORRIGAN

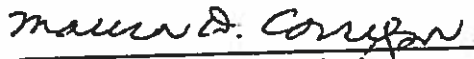
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bills would permit. This new liability will affect the State's bond rating and probably that of county and municipal entities because these bills similarly affect them.

But as troubling as is this new liability for governmental entities, *every* business in Michigan, including small businesses and charities would experience adverse effects. Exposing every business in the State to this new unexpected (and probably uninsured) liability is unjustifiable, no matter how noble the goals. Minnesota learned this the hard way when it retroactively extended its statute of limitations for sexual assaults for just three years. Michigan should learn from Minnesota and not replicate their experience.

Finally, these Senate Bills create serious constitutional issues that will be litigated for years to come. In short, while I commend the goal, the Legislature should pause to deliberate and consider certain profoundly negative implications of these Senate Bills as currently drafted. These bills can be reworked to avoid constitutional defects and achieve just results for victims. I would be happy to offer testimony or other assistance to address the concern about sexual assaults without bankrupting the State and its many businesses and precipitating years of litigation in which lawyers, not victims, will become the principal beneficiaries.

Sincerely,


Honorable Maura D. Corrigan