

MICHIGAN STATE
U N I V E R S I T Y

MEMORANDUM
Attorney-Client Privileged

To: Deans, Directors, Chairs

From: Shannon Torres, Associate General Counsel
Brian Quinn, Vice President for Legal Affairs and General Counsel

Date: September 26, 2023

Re: New State Laws

This past summer, the Michigan legislature passed, and Governor Whitmer signed, bills to amend state criminal law related to reporting of child abuse, criminal sexual conduct, and assault with intent to commit criminal sexual conduct. As a result, individuals, including MSU employees, may be criminally investigated or charged if it is viewed that they are in a “professional position of authority over another person” and intentionally use that position to “prevent or attempt to prevent” that person from reporting the specified crimes to the police or a Title IX Coordinator. These laws become effective on **September 27, 2023**.

Please review the below for additional detail and recommendations.

Amended Laws: Language and Purpose

The amended laws read:

A person who intentionally uses the person’s professional position of authority over another person to prevent or attempt to prevent the other person from reporting an alleged violation of section 136b [child abuse], sections 520b to 520e [criminal sexual conduct in the first, second, third, or fourth degree], or section 520g [assault with intent to commit criminal sexual conduct involving penetration or in the second degree] to a title IX coordinator at a postsecondary educational institution is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

M.C.L. 750.478b(1).



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(1) A person shall not do any of the following: ... (c) Intentionally use the person’s professional position of authority over another person to prevent or attempt to prevent the other person from reporting a crime listed in section 136b, 520b, 520c, 520d, 520e, or 520g, that is committed or attempted by another person.

(2) A person who violates subsection (1) is guilty of a crime as follows: ... the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

M.C.L. 750.483a(1)(c), (2).

State legislators have described the bills as necessary to prevent a situation where someone comes forward and then is discouraged from reporting. *See* <https://www.legislature.mi.gov/documents/2023-2024/billanalysis/Senate/pdf/2023-SFA-4123-F.pdf> (“Reportedly, some victims of Nassar’s crimes reported the CSC [criminal sexual conduct] but nothing came of those reports; some people believe this could have been a result of a person using authority to intentionally prevent those reports from reaching people responsible for their handling.”); https://www.michigan.gov/whitmer/news/press-releases/2023/06/29/whitmer-signs-bills-to-protect-michigan-students-at-schools_colleges-and-universities-from-abuse (quoting Rep. Graham Filler: “When survivors gather the courage to disclose what they have endured, they should never be pressured to keep quiet by those in authority. They deserve a system where their voices are amplified, their pain is acknowledged, and their courage becomes a catalyst for change” and Rep. Carol Glanville: “We are sending a strong message that protecting survivors and holding accountable those who would silence them is a top priority.”)

Potential Application and Advice

Unfortunately, state law does not define “professional position of authority,” and we do not have clarity on how this law may be applied. University Trustees and many University employees and volunteers could be viewed as being in a professional position of authority over another person, including other employees, students, athletes, and participants in youth programs.

MSU policy and protocol have imposed broad reporting responsibilities for many years.¹ Most employees and volunteers are required to promptly report suspected child abuse and sexual assault of which they become aware in the context of their

¹ RVSM mandatory reporting requirements were clarified this month in the [Mandatory Reporting for Relationship Violence, Sexual Misconduct and Stalking Policy](#). Requirements related to child abuse are found in the [University Reporting Protocol: Child Abuse and Other Harm to Children](#).

working or professional capacity. MSU policy also makes clear that reporting is encouraged even when not required.

Therefore, for most employees and volunteers, following MSU policy and reporting all known information to the MSU Department of Police and Public Safety (DPPS) and/or the MSU Office for Civil Rights and Title IX Education and Compliance (OCR) should mitigate any risk of criminal exposure.² Nonetheless, **we advise each employee not to intentionally discourage someone else from reporting to the police or Title IX Coordinator. In addition, carefully consider the language you use during conversations to avoid the perception that you are attempting to prevent reporting, particularly where there may be a power differential between you and another person who may report criminal conduct.**

Our office will be monitoring developments with respect to enforcement of these laws. Please do not hesitate to reach out if you have any questions or would like to discuss.

S.P.T.
B.Q.

² Even if an employee or volunteer failed to report as required by University Policy, the failure would not be a potential violation of the new criminal laws unless the employee intentionally used their professional position of authority over *another person* to prevent or attempt to prevent *the other person* from reporting.