

Legislative Analysis



SEXUAL CONTACT OR SEXUAL PENETRATION UNDER PRETEXT OF MEDICAL TREATMENT

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<http://www.house.mi.gov/hfa>

Senate Bill 67 as reported from House committee
Sponsor: Sen. Dan Lauwers

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 68 as reported from House committee
Sponsor: Sen. Erika Geiss

House Committee: Criminal Justice
Senate Committee: Civil Rights, Judiciary, and Public Safety
Complete to 6-21-23

(Enacted as Public Acts 58 and 59 of 2023)

SUMMARY:

Senate Bill 67 would amend the Michigan Penal Code to prohibit a person who is undertaking medical treatment of a patient from engaging in sexual contact with or sexual penetration of the patient by misrepresenting the contact or penetration as necessary for or beneficial to the patient's health. A violation would be a felony subject to penalties as provided in the bill.

Senate Bill 68 would add the felonies established by Senate Bill 67 to the sentencing guidelines chapter of the Code of Criminal Procedure.

Senate Bill 67 would amend section 90 of the Michigan Penal Code, which now prohibits sexual intercourse with a female under the pretext of medical treatment. The current language would be replaced by a provision that is gender-neutral, encompasses sexual contact as well as sexual penetration, increases the penalty that may be imposed for a violation, and defines terms.

Currently under the act, any person who undertakes to medically treat any female person and, while treating her, represents that it is or will be necessary or beneficial to her health that she have sexual intercourse with a man, and thereby induces her to have intercourse with a man, is guilty of a felony punishable by imprisonment for up to 10 years. A man who is not the woman's husband who has intercourse with her by reason of such a representation is also guilty of a felony and subject to the same penalty.

The bill would instead provide that an individual who undertakes *medical treatment* of a *patient* and in the course of that treatment misrepresents that *sexual contact*, or *sexual penetration*, between the individual and the patient is necessary or will be beneficial to the patient's health and thereby induces the patient to engage in sexual contact or penetration with the individual is guilty of a felony punishable by imprisonment for up to 20 years (if involving sexual contact) or up to 25 years (if involving sexual penetration).

Medical treatment would include an examination or a procedure.

Patient would mean a person who has undergone or is seeking to undergo medical treatment.

Sexual contact would mean the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or done in a sexual manner.

Sexual penetration would mean sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, regardless of whether semen is emitted, if that intrusion can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or done in a sexual manner.

An individual could be charged with, convicted of, or punished for any other violation of law the person committed while violating the bill's prohibitions. A court could order a term of imprisonment imposed under the bill to be served consecutively to a term of imprisonment imposed for any other crime, including for any other violation of law that arose out of the same transaction as the violation under the bill. (Multiple sentences could be served one after another rather than at the same time.)

MCL 750.90

Senate Bill 68 would amend the sentencing guidelines in the Code of Criminal Procedure to provide that sexual contact under pretext of medical treatment is a Class C felony against a person with a maximum term of imprisonment of 20 years. Sexual penetration under pretext of medical treatment would be a Class B felony against a person with a maximum term of imprisonment of 25 years.

MCL 777.16d

Each bill would take effect 90 days after being enacted. However, Senate Bill 68 cannot take effect unless SB 67 is also enacted.

BACKGROUND:

Senate Bills 67 and 68 are reintroductions of Senate Bills 224 and 225 of the 2021-22 legislative session, Senate Bills 219 and 220 of the 2019-20 legislative session, and House Bills 5787 and 5788 of the 2017-18 legislative session. House Bills 5787 and 5788 of 2017-18 were passed by the House of Representatives.

BRIEF DISCUSSION:

Incidents in which trusted and celebrated doctors used their positions to sexually violate patients have highlighted weaknesses in Michigan law. Senate Bill 67 would update the existing penalty for engaging in sexual misconduct under the guise of medical treatment to apply to male and female patients and to cover a broader range of prohibited conduct. In addition, the maximum prison sentence would be increased from 10 years to 20 years for a violation involving sexual contact, and to 25 years for a violation involving penetration. Many believe that the higher penalties are fitting in light of the trauma and lifetime impact incurred

when a medical provider sexually violates a patient and seeks to avoid prosecution by claiming their actions were a medically recognized and needed treatment.

FISCAL IMPACT:

Senate Bill 67 would have an indeterminate fiscal impact on the state and on local units of government. The number of convictions that would result under provisions of the bill is not known. Violations would be felonies, and new felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

Senate Bill 68 is a companion bill to SB 67 and amends sentencing guidelines to include sexual contact under pretext of medical treatment as a class C felony. The bill would not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

A representative of the Michigan Coalition to End Domestic and Sexual Violence testified in support of the bills. (6-13-23)

The following entities indicated support for the bills (6-13-23):

- Michigan Domestic and Sexual Violence Prevention and Treatment Board
- Michigan Catholic Conference

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