

Legislative Analysis



PROHIBITION OF NONCONSENSUAL INVASIVE BODILY EXAMINATIONS

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House Bill 4194 as reported from committee
Sponsor: Rep. Pamela Hornberger
Committee: Health Policy
Complete to 1-31-22

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

SUMMARY:

House Bill 4194 would amend Part 161 of the Public Health Code to generally prohibit a licensee or registrant¹ from performing, or allowing a student in the course of studies for a health profession training program to perform, an invasive bodily examination on an anesthetized or unconscious patient.

However, such an examination on an anesthetized or unconscious patient could be conducted if one of the following conditions is met before it is performed:

- The patient or patient's authorized representative provides written, informed consent to the invasive bodily examination and it is necessary for preventative, diagnostic, or treatment purposes.
- The patient or patient's authorized representative provides written, informed consent to a surgical procedure or diagnostic examination to be performed on the patient and the invasive bodily examination is within the scope of care for that procedure or examination.
- The patient is unconscious and incapable of providing informed consent and the invasive bodily examination is necessary for diagnostic or treatment purposes.
- A court has ordered the invasive bodily examination in order to collect evidence.

Section 16299 of the code is a "catch-all" provision that classifies most violations of Article 15 (Occupations) of the code as misdemeanors punishable by imprisonment of up to 90 days or a fine of up to \$100, or both, for a first violation, and double those penalties for a second or subsequent violation. Violation of HB 4194 would be punishable by those penalties.

Proposed MCL 333.16279

BACKGROUND:

A similar bill, House Bill 4958 of the 2019-20 legislative session,² was considered by the House Health Policy and Ways and Means committees and passed by the House of Representatives before being considered by the Senate Health Policy and Human Services committee. That bill applied to pelvic examinations instead of invasive bodily examinations.

¹ "Licensee or registrant," as used in Part 161 of the Public Health Code, means any licensee or registrant regulated by Article 15 (Occupations) of the code.

² <http://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-4958-8B8BC512.pdf>

FISCAL IMPACT:

House Bill 4194 would have an indeterminate fiscal impact on the state and on local units of government. The number of individuals that would be convicted because of violating conditions set forth in the bill is not known.

Violations would be misdemeanors under MCL 333.16299. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction.

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.

Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

The following entities indicated support for the bill:

- Michigan Domestic and Sexual Violence Prevention and Treatment Board (12-2-21)
- Michigan Coalition to End Domestic and Sexual Violence (12-2-21)
- American Association of University Women of Michigan (12-9-21)
- Michigan Health and Hospital Association (12-9-21)

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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.