

REPORTING CERTAIN CONDUCT TO LARA

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House Bill 5824 as introduced
Sponsor: Rep. Holly Hughes
Committee: Law and Justice
Complete to 4-25-18

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

SUMMARY:

House Bill 5824 would add a new section to the Michigan Commission on Law Enforcement Standards (MCOLES) Act to require law enforcement officers and others licensed under the Act to forward an allegation of certain criminal acts of a sexual nature by a health professional to the Department of Licensing and Regulatory Affairs (LARA).

Among its duties, the MCOLES establishes mandatory minimum standards for the recruitment, selection, training, licensing, and license retention for law enforcement officers in the state.

Under the bill, an individual who is licensed under the MCOLES Act¹ would be required to forward to LARA any allegation he or she receives that a health professional licensed or registered under the Public Health Code² committed a violation of the Michigan Penal Code involving any of the following acts:

- Engaging in sexual contact or sexual penetration under the pretext of medical treatment (MCL 750.90, as revised by House Bill 5587).
- Production, distribution, or possession of child sexually abusive materials (MCL 750.145c).
- Criminal sexual conduct (CSC) in the first, second, third, or fourth degree or assault with intent to commit CSC in the first, second, or third degree (MCL 750.520b et al.).
- Any other criminal act involving sexual contact or sexual penetration by that health professional.

¹ Generally speaking, the MCOLES issues licenses to individuals who commence employment as a law enforcement officer and for whom the employing law enforcement agency, or entity conferring law enforcement authority upon those individuals, attested to the Commission that the individuals complied with the licensing standards. *Law enforcement officer* includes state troopers, members of local police departments and sheriffs' offices, college and university public safety officers, and tribal officers, as well as fire arson investigators, conservation officers, county or regional park rangers, and others. For a complete list of individuals licensed as law enforcement officers under the MCOLES Act, see MCL 28.602.

² Currently, the following health care professions are licensed or registered under Article 15 of the Public Health Code: acupuncturists, athletic trainers, audiologists, behavior analysts, chiropractors, counselors, dental assistants, dental hygienists, dentists, dietitians and nutritionists, marriage and family therapists, massage therapists, midwives, nurses, nursing home administrators, occupational therapists and occupational therapy assistants, optometrists, pharmacists, physical therapists and physical therapy assistants, physician's assistants, physicians (M.D.s and D.O.s), podiatrists, psychologists, respiratory therapists, sanitarians, social workers and social service technicians, speech-language pathologists, and veterinarians and veterinarian technicians.

Sexual contact and *sexual penetration* would mean those terms as defined in Section 520a of the Michigan Penal Code (MCL 750.520a).

The bill would take effect 90 days after being enacted.

BACKGROUND INFORMATION:

Section 16221 of the Public Health Code requires LARA to investigate an allegation involving a licensee, registrant, or applicant for licensure or registration under the Code that one or more grounds for disciplinary subcommittee action exist. This includes conducting hearings, administering oaths, and ordering relevant testimony to be given. The findings of the investigation are then reported to the appropriate disciplinary subcommittee. Grounds for disciplinary action include such things as failure to meet continuing education requirements, lack of good moral character, incompetence, unethical business practices, negligence, sexual misconduct, or a criminal conviction.

Disciplinary subcommittees are required under Section 16226 to impose one or more of the listed sanctions if the existence of one or more of the grounds for action is found. Sanctions can include denial, suspension, or revocation (including permanent revocation) of the license or registration; reprimand; fines; restitution; and community service.

The Regulatory and Compliance Division in the Bureau of Professional Licensing publishes a Disciplinary Action Report³ that lists the disciplinary actions taken against individuals who are licensed or registered under the Public Health Code and who are regulated by the various health and occupational boards within the Licensing Division. The report includes the licensee's or registrant's name, professional license number, the type of disciplinary action taken, effective date of the action, and the general nature of the complaint. The report is updated to include appeals of the Board's action to a higher court.

FISCAL IMPACT:

House Bill 5824 would have an indeterminate, yet likely nominal, fiscal impact on the Department of State Police and local law enforcement agencies, resulting from any increased administrative costs due to additional reporting requirements.

House Bill 5824 would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs. Any increase in investigations caused by the required forwarding of allegations would likely be borne by existing departmental appropriations.

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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.

³ Disciplinary Action Reports are available on LARA's website at <https://www.michigan.gov/lara/0,4601,7-154-72600-43008--00.html>