



Senate Fiscal Agency
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House Bills 4370 and 4371 (as reported without amendment)
Senate Bills 217 and 218 (as reported without amendment)
Sponsor: Representative Mary Whiteford (H.B. 4370)
Representative Roger Hauck (H.B. 4371)
Senator Lana Theis (S.B. 217)
Senator Ruth Johnson (S.B. 218)

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety

Date Completed: 12-10-20

CONTENT

House Bill 4370 would amend the Public Health Code to do the following:

- Require a health profession licensee to indicate in a patient's medical record that a medical service involving vaginal or anal penetration was performed unless the service met one of several circumstances.
- Require a health facility or agency to ensure that a patient's medical record stated that a medical service involving vaginal or anal penetration was performed unless the service met one of several circumstances.
- Require a health profession licensee, or a health facility or agency, to keep and retain a medical record for a service that involved vaginal or anal penetration of a patient for at least 15 years from the date of service.
- Prescribe administrative fines and criminal penalties for a violation of the documentation requirements.
- Allow a licensee or his or her personal representative, or a health facility or agency to destroy or dispose of a medical record for a service that involved vaginal or anal penetration of a patient only after maintaining it for 15 years.
- Require various health profession boards to create a document that provided guidance to licensees on generally accepted standards of practice for services involving vaginal or anal penetration.

Senate Bill 217 would amend the Public Health Code to do the following:

- Prohibit a licensee or registrant from performing on a patient who was a minor a medical treatment, procedure, or examination that involved vaginal or anal penetration unless it was within the scope of the licensee's or registrant's practice, a medical assistant or another licensee was present in the room, and the minor's parent or guardian gave his or her consent.
- Specify circumstances under which the prohibition would not apply, such as the treatment or procedure was necessary and associated with a medical emergency.
- Prescribe felony penalties for a violation.
- Require the Department of Licensing and Regulatory Affairs (LARA) to create a standardized consent form to be used by a licensee or registrant who provided to a minor

patient a medical treatment, procedure, or examination that involved vaginal or anal penetration.

-- Require LARA to make the form publicly available on its website.

Senate Bill 218 and House Bill 4371 would amend the sentencing guidelines in the Code of Criminal Procedure to include the felonies proposed by House Bill 4370 and Senate Bill 217.

Senate Bills 217 is tie-barred to House Bill 4370. Senate Bill 218 is tie-barred to House Bill 4370 and Senate Bill 217. House Bill 4371 is tie-barred to House Bill 4370 and Senate Bill 217.

MCL 333.16213 et al. (H.B. 4370)

Legislative Analyst: Stephen Jackson

777.13n (H.B. 4371)

777.13n (S.B. 217)

Proposed MCL 333.1627 & 333.16279a (S.B. 218)

FISCAL IMPACT

House Bill 4370 would have an indeterminate fiscal impact on LARA. The Department could incur some additional costs associated with the investigation of violations; however, the number of these investigations likely would be small and absorbed by existing appropriations. Similarly, the creation and publication of guidance to licenses likely would not result in significant cost increases.

Except as otherwise provided, a violation of Section 16213(1) requiring documentation of procedures involving vaginal or anal penetration could result in an administrative fine of not more than \$1,000 for a first violation and not more than \$2,500 for a second violation. Any additional violation would be classified as a misdemeanor and could result in a fine of not more than \$5,000. If a violation were the result of gross negligence, it would automatically be considered a misdemeanor and could be subject to the fine of not more than \$5,000. An intentional violation could result in a fine of not more than \$7,500. A disciplinary subcommittee could impose additional fines.

Similarly, a violation of Section 20175(1) could result in an administrative fine of not more than \$2,500 for a first violation and not more than \$5,000 for a second violation. A subsequent violation could result in a fine of not more than \$7,500, while a grossly negligent or intentional violation could result in a fine of not more than \$10,000. A disciplinary subcommittee could impose additional fines.

The bill also would have a negative fiscal impact on State and local government in that misdemeanor and felony arrests and convictions under the bill could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. However, it is unknown how many people would be prosecuted under the bill's provisions. The average cost to State government for felony probation supervision is approximately \$3,100 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$5,400 per prisoner per year. Any additional revenue from imposed fines would go to local libraries.

Senate Bill 217 would have a negative fiscal impact on State and local government. New felony arrests and convictions under the bill could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. However, it is unknown how many people would be prosecuted under the bill's provisions. The average cost to State government for felony probation supervision is approximately \$3,100 per probationer per year. For any increase in prison intakes, in the short term, the

marginal cost to State government is approximately \$5,400 per prisoner per year. Any additional revenue from imposed fines would go to local libraries. The bill would have no fiscal impact on LARA.

House Bill 4371 and Senate Bill 218 would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bills would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

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