

SEXUAL CONTACT OR SEXUAL PENETRATION UNDER PRETEXT OF MEDICAL TREATMENT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 224 as passed by the Senate
Sponsor: Sen. Dan Lauwers

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

Senate Bill 225 as passed by the Senate
Sponsor: Sen. Erika Geiss

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 12-6-22

SUMMARY:

Senate Bill 224 would amend the Michigan Penal Code to prohibit a person who is undertaking medical treatment of a patient from engaging in sexual contact or sexual penetration with the patient by means of misrepresenting that contact or penetration as necessary or beneficial to the patient's health. The bill would establish felony penalties for a violation of the prohibition.

Senate Bill 225 would add the maximum terms of imprisonment for the felony offenses established under Senate Bill 224 to the sentencing guidelines chapter of the Code of Criminal Procedure.

Senate Bill 224 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, section 90 provides that 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 representation is also guilty of a felony and subject to the same penalty.

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

The bill would allow a person to 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 a term of imprisonment imposed for any other violation of law that arose out of the same transaction as the violation under the bill. (That is, multiple sentences could be served one after another rather than at the same time.)

MCL 750.90

Senate Bill 225 would amend the sentencing guidelines portion of 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

Senate Bill 225 cannot take effect unless SB 224 is also enacted. Each bill would take effect 90 days after being enacted.

BRIEF DISCUSSION:

Incidents in which trusted and celebrated doctors used their positions to sexually violate patients have highlighted weaknesses in Michigan law that need strengthening. Senate Bill 224 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 for a violation involving sexual contact would be increased from 10 to 20 years, and the maximum penalty for a violation involving penetration would be 25 years in prison. Many believe the higher penalties are fitting in light of the trauma and lifetime impact incurred when a medical provider sexually violates a patient and then seeks to avoid prosecution by claiming his or her actions were a medically recognized and needed treatment.

SBs 224 and 225 are reintroductions of House Bills 5787 and 5788 of the 2017-2018 legislative session. Both bills were passed by the House of Representatives.

FISCAL IMPACT:

Senate Bill 224 would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of convictions that would result under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2021, the average cost of prison incarceration in a state facility was roughly \$44,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,600 per supervised offender in the same year. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated.

Senate Bill 225 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ 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.