

## MEDICAL TREATMENT OF A MINOR

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**Senate Bills 226 and 227 as passed by the Senate**  
**Sponsor: Sen. Lana Theis**  
**House Committee: Judiciary**  
**Senate Committee: Judiciary and Public Safety**  
**Complete to 12-5-22**

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

### SUMMARY:

Senate Bill 226 would amend the Public Health Code to do require written parental consent before procedures involving vaginal or anal penetration can be performed on a minor; require such procedures to be within the scope of practice of the treating health care professional; require another health professional to be in the room during such procedures; provide exceptions; establish criminal penalties for violations; and require the Department of Licensing and Regulatory Affairs (LARA) to create a standardized consent form.

Senate Bill 227 would amend the Code of Criminal Procedure to include the maximum term of imprisonment for felonies established under SB 226 in the sentencing guidelines.

**Senate Bill 226** would add a new section to the Public Health Code to prohibit a licensee<sup>1</sup> or registrant from performing a medical treatment, procedure, or examination on a patient who is a minor (under 18 years of age) that involves the vaginal or anal penetration of the minor unless all of the following conditions are met:

- The medical treatment, procedure, or examination is within the scope of practice of the licensee's or registrant's health profession.
- A medical assistant or another licensee or registrant is in the room while the medical treatment, procedure, or examination is performed.
- The licensee or registrant obtains the written consent of a parent, guardian, or person in loco parentis of the minor (or the consent of any person authorized by law to provide consent) on a form created as specified in the bill or on another form that includes the same information. The written consent, which could be obtained electronically, would have to be obtained before the medical treatment, procedure, or examination is performed. A new consent form would not be required if the same medical treatment, procedure, or examination were required to be performed on a subsequent visit within six months from the date the first written consent was obtained. The consent form would have to be maintained in a patient's medical record for at least 15 years after the date the medical treatment, procedure, or examination was performed.

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<sup>1</sup> Currently, the following health care professions are licensed under Article 15 of the Public Health Code: athletic trainers, audiologists, acupuncturists, behavior analysts, chiropractors, counselors, dental assistants, dental hygienists, dentists, 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, social workers, speech-language pathologists, and veterinarians and veterinarian technicians. Registered professions include sanitarians and registered social service technicians.

### Exceptions

The conditions described above would not apply to a medical treatment, procedure, or examination performed in the following circumstances:

- If necessary and associated with, or incident to, a medical emergency (a circumstance that, in the licensee's or registrant's good-faith medical judgment, creates an immediate threat of serious risk to the life or physical health of the patient).
- If primarily related to the patient's urological, gastrointestinal, reproductive, gynecological, or sexual health.
- If performed at a children's advocacy center, as defined in the Child Protection Law.
- If performed for purposes of a sexual assault medical forensic examination under section 21527 of the code.
- If performed for the purpose of measuring the patient's temperature.
- If performed for the purpose of rectally administering a drug or medicine.

### Penalties

A person who knowingly violated the bill's requirements pertaining to a medical service involving vaginal or anal penetration performed on a minor would be guilty of a felony punishable by imprisonment for up to two years or a fine of up to \$5,000, or both, for a first offense, and by imprisonment for up to five years or a fine of up to \$10,000, or both, for a second or subsequent offense.

The bill would not prohibit a person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating the bill's provisions. A court could order a term of imprisonment imposed for a violation to be served consecutively to a term of imprisonment imposed for any other crime, including any other violation of law arising out of the same transaction as the violation of the bill. (This means that multiple sentences could be ordered to be served one at a time rather than all at the same time.)

### Consent form

LARA would have to create and could periodically update, and make publicly available on its website, a standardized consent form for use by a health care licensee or registrant who provides a medical treatment, procedure, or examination to a minor involving vaginal or anal penetration. Generally accepted standards of medical practice would have to be used in determining the information to be included on the form. The form would have to include at least all of the following statements:

- That gloves are generally used for a medical treatment, procedure, or examination involving vaginal or anal penetration.
- That the person providing consent may request that gloves be used during the treatment, procedure, or examination.
- That the person providing consent has the right to request a clear explanation of the nature of the treatment, procedure, or examination.
- That the person providing consent has the right to request information on whether there is a reasonable alternative to the treatment, procedure, or examination that does not consist of anal or vaginal penetration.
- That a licensee or registrant generally cannot be alone in the room with the patient while the treatment, procedure, or examination is being performed.

Proposed MCL 333.16279 and 333.16279a

**Senate Bill 227** would place the felony penalties established by Senate Bill 226 in the sentencing guidelines chapter of the Code of Criminal Procedure as follows:

- A first offense of performing medical treatments of a minor in violation of SB 226 would be a Class G crime against a person with a maximum term of imprisonment of two years.
- A second or subsequent offense would be a Class E crime against a person with a maximum term of imprisonment of five years.

Senate Bill 227 is tie-barred to SB 226, which means that it cannot take effect unless SB 226 is enacted into law.

MCL 777.13n

Each bill would take effect 90 days after being enacted.

## **BACKGROUND:**

Senate Bills 226 and 227 are identical to HBs 5793 and 5784 of the 2017-18 legislative session, respectively, as passed by the House of Representatives.

## **FISCAL IMPACT:**

### Department of Licensing and Regulatory Affairs

Senate Bill 226 would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs. The bill would require LARA to create a standardized consent form for use by licensees and registrants who provide treatments described in the bill and to make this form available on the department's website. This would result in nominal administrative costs, which would be sufficiently provided for by existing appropriations. The department would also experience costs related to the felonies established by the bill. LARA would be tasked with investigating and reporting alleged felony convictions by licensees to the appropriate disciplinary subcommittee, and the subcommittee could then levy licensing sanctions including one or more of the following: probation, limitation, denial, suspension, revocation, permanent revocation, restitution, or fines. These investigations would likely be supported by existing appropriations, and given the limited number of licensees likely to commit such violations, any impact on revenues would be negligible.

### Judiciary and Corrections

Senate Bill 226 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. Any increase in penal fine revenue

would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

Senate Bill 227 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

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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.