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Senate Bills 224 and 225 (as introduced 3-10-21)  
Sponsor: Senator Dan Lauwers (S.B. 224)  
Senator Erika Geiss (S.B. 225)  
Committee: Judiciary and Public Safety

Date Completed: 4-28-21

## **CONTENT**

**Senate Bill 224 would amend the Michigan Penal Code to delete a provision that prohibits a person from engaging in sexual intercourse with a woman under the pretext of medical treatment, and to do the following:**

- **Prohibit a person undertaking medical treatment from misrepresenting to a patient that sexual contact or sexual penetration between the person and the patient would be necessary or beneficial to the patient's health and inducing the patient to engage in sexual contact or sexual penetration with the person by means of the misrepresentation.**
- **Prescribe felony penalties for a violation of the proposed prohibition.**
- **Allow a court to order a term of imprisonment imposed for a violation to be served consecutively to a term imposed for another crime.**

**Senate Bill 225 would amend the sentencing guidelines in the Code of Criminal Procedure to include the felonies proposed by Senate Bill 224 and to delete the guidelines for the offense that bill would eliminate.**

Senate Bill 225 is tie-barred to Senate Bill 224. Each bill would take effect 90 days after its enactment.

### **Senate Bill 224**

Section 90 of the Penal Code prohibits a person from undertaking to medically treat any female person and, while treating her, represent to her that it is necessary or beneficial for her health that she have sexual intercourse with a man, and thereby induce her to have sexual intercourse. A violation is a felony punishable by up to 10 years' imprisonment. The bill would delete this prohibition.

Instead, under the bill, Section 90 would prohibit a person who undertook a patient's medical treatment from misrepresenting to the patient that sexual contact or sexual penetration between the person and the patient would be necessary or beneficial to the patient's health and inducing the patient to engage in sexual contact or sexual penetration with the person by means of the misrepresentation. A person who violated the prohibition by engaging in sexual contact would be guilty of a felony punishable by up to 20 years' imprisonment. A person who violated the prohibition by engaging in sexual penetration would be guilty of a felony punishable by up to 25 years' imprisonment.

"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 intentional touching can reasonably be construed as being for

the purpose of sexual arousal or gratification, done for a sexual purpose, or done for 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 for a sexual manner.

The bill states that Section 90 would not prohibit a person from being charged with, convicted of, or punished for any other violation of law that was committed by that person while violating the section. The court could order a term of imprisonment imposed for a violation of Section 90 to be served consecutively to a term imposed for another crime, including any other violation of law arising out of the same transaction.

### **Senate Bill 225**

Under the bill, sexual contact under pretext of medical treatment would be a Class C felony against a person with a statutory maximum sentence of 20 years' imprisonment. Sexual penetration under the pretext of medical treatment would be a Class B felony against a person with a statutory maximum of 25 years' imprisonment.

Currently, sexual intercourse under pretext of medical treatment is a Class D felony against a person with a statutory maximum sentence of 10 years' imprisonment. The bill would delete that guideline.

MCL 750.90 (S.B. 224)  
777.16d (S.B. 225)

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

#### **Senate Bill 224**

The bill would have a negative fiscal impact on State and local units of 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.

#### **Senate Bill 225**

The bill 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 bill 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.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.