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Senate Bills 69 and 70 (as introduced 2-16-23)
Sponsor: Senator Lana Theis (S.B. 69)
Senator Ruth Johnson (S.B. 70)
Committee: Civil rights, Judiciary, and Public Safety

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INTRODUCTION

Taken together, the bills would prohibit a licensee or registrant under the Public Health Code from performing on a patient who was a minor any medical procedure involving vaginal or anal penetration unless the procedure met specified requirements, such as a requirement that the licensee or registrant obtain the written consent of a parent or guardian. The bills also would provide exemptions from the prohibition, including an exemption for a medical emergency, among others. Finally, the bills would prescribe penalties for violations of the prohibition and add felony charges for those violations to the Code of Criminal Procedure.

PREVIOUS LEGISLATION

(Please note: The information in this summary provides a cursory overview of previous legislation and its progress. It does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

Senate Bills 69 and 70 are reintroductions of Senate Bills 226 and 227 from the 2021-2022 Legislative Session. Senate Bills 226 and 227 passed the Senate but received no further action in the House.

FISCAL IMPACT

Senate Bill 69 would have a negative fiscal impact on the 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 provisions of the bill. The average cost to State government for felony probation supervision is approximately \$4,200 per probationer per year. For any increase in prison intakes the average annual cost of housing a prisoner in a State correctional facility is an estimated \$45,700. Per diem rates range from a low of \$98 to a high of \$192 per day, depending on the security level of the facility. Any associated increase in fine revenue would increase funding to public libraries.

Senate Bill 70 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.

Proposed MCL 333.16279 & 333.16279a (S.B. 69)
MCL 777.13n (S.B. 70)

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CONTENT

Senate Bill 69 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 70 would amend the sentencing guidelines in the Code of Criminal Procedure to include the felonies proposed by Senate Bill 69.

Senate Bill 69

Medical Treatment of Minor Involving Vaginal or Anal Penetration; Prohibition

Except as otherwise provided, the bill would prohibit a licensee or registrant from performing on a patient who was a minor a medical treatment, procedure, or examination that involved the vaginal or anal penetration of the minor unless all the following were met:

- The medical treatment, procedure, or examination was within the licensee's or registrant's scope of practice for his or her health profession.
- A medical assistant or another licensee or registrant was in the room while the medical treatment, procedure, or examination was performed.
- Before performing the treatment, procedure, or examination, the licensee or registrant obtained the written consent of a parent, guardian, or person in loco parentis of the minor or the consent of any person who was authorized to provide it, on a form created under the bill or another form that included the same information.

The written consent could be obtained through electronic means, and the person providing consent could waive the requirement for the presence of a medical assistant or another licensee in the room during the treatment or examination. The consent form would have to be maintained in a patient's medical record for at least 15 years from the date on which the treatment, procedure, or examination was performed.

A licensee or registrant who obtained the consent and who required subsequent visits to perform the same treatment, procedure, or examination on the minor could perform them on subsequent visits without obtaining the consent if the subsequent treatment, procedure or examination were performed within six months from the date of obtaining the consent.

Exceptions to the Prohibition

The prohibition would not apply under any of the following circumstances:

- The treatment, procedure, or examination was necessary and was associated with or incident to a medical emergency.
- The treatment, procedure, or examination primarily related to the patient's urological, gastrointestinal, reproductive, gynecological, or sexual health.
- The treatment, procedure, or examination was performed at a children's advocacy center.
- The treatment, procedure, or examination was performed for the purposes of a sexual assault medical forensic examination.
- The treatment, procedure, or examination was performed to measure a patient's temperature.
- The treatment, procedure, or examination was performed for the purpose of rectally administering a drug or medicine.

"Medical emergency" would mean 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. "Children's advocacy center" would mean that term as defined in the Child Protection Law: an entity accredited as a child advocacy center by the National Children's Alliance or its successor agency or an entity granted associate or developing membership status by the National Children's Alliance or its successor agency.

Penalties

A person who knowingly performed a medical treatment, procedure, or examination in violation of the prohibition would be guilty of a felony punishable as follows:

- For the first offense, up to two years' imprisonment or a maximum fine of \$5,000, or both.
- For a second or subsequent offense, up to five years' imprisonment or a maximum fine of \$10,000, or both.

The bill 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 prohibition. The court could order a term of imprisonment imposed for a violation to be served consecutively to a term imposed for another crime, including any other violation of law arising out of the same transaction.

Standardized Consent Form

The Department would have to create and could periodically update a standardized consent form to be use by a licensee or registrant who provided to a minor a medical treatment, procedure, or examination that involved the vaginal or anal penetration of the minor. The Department would have to use generally accepted standards of medical practice in determining the information to be included on the form. The form would have to include at least all the following statements:

- Gloves generally would be used for a treatment, procedure, or examination involving vaginal or anal penetration.
- The person providing consent for the treatment, procedure, or examination would have the right to request information on whether there was a reasonable alternative that did not consist of anal or vaginal penetration.
- The person providing the consent would have the right to request a clear explanation of the nature of the treatment, procedure, or examination.
- The person providing consent could request that gloves be used during the treatment, procedure, or examination.
- A licensee or registrant generally could not be alone in the room with the patient while the treatment, procedure, or examination was being performed.

The Department would have to make the form publicly available on its website.

Senate Bill 70

The bill would add the following sentencing guidelines in the Code of Criminal Procedure for a violation of the proposed prohibition in Senate Bill 69:

- A first offense of performing certain medical treatment on a minor would be a Class G felony against a person with a statutory maximum of two years' imprisonment.
- A subsequent offense would be a Class E felony against a person with a statutory maximum of five years' imprisonment.