



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5787 (Substitute H-1 as passed by the House)
House Bill 5788 (Substitute H-1 as passed by the House)
House Bills 5789 and 5790 (as passed by the House)
Sponsor: Representative Klint Kesto (H.B. 5787)
Representative Erika Geiss (H.B. 5788)
Representative Jeffrey R. Noble (H.B. 5789)
Representative Daire Rendon (H.B. 5790)

House Committee: Law and Justice
Senate Committee: Judiciary

Date Completed: 5-31-18

CONTENT

House Bill 5787 (H-1) 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 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.

House Bill 5788 (H-1) would amend the sentencing guidelines in the Code of Criminal Procedure to include the felonies proposed by House Bill 5787 (H-1) and delete the guidelines for the offense that the bill would eliminate.

House Bill 5789 would amend the Public Health Code to include a conviction for engaging in sexual contact or sexual penetration under the pretext of medical treatment among the grounds for disciplinary action against a health professional.

House Bill 5790 would amend the Public Health Code to require a disciplinary subcommittee to revoke permanently the license of an individual convicted of engaging in sexual contact or sexual penetration under the pretext of medical treatment.

House Bill 5788 (H-1) is tie-barred to House Bill 5787. House Bill 5789 and 5790 are tie-barred to each other, and to 5787. Each bill would take effect 90 days after its enactment.

House Bill 5787 (H-1)

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 eliminate this prohibition.

The bill 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 imprisonment for up to 25 years.

"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.

House Bill 5788 (H-1)

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.

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 provision.

House Bills 5789 & 5790

Grounds for Discipline; Sexual Contact or Penetration under Pretext of Treatment

Section 16221 of the Public Health Code requires the Department of Licensing and Regulatory Affairs (LARA) to investigate allegations that grounds exist for disciplinary action against a licensee or registrant, and authorizes LARA to investigate activities related to the practice of

a health profession licensee, registrant, or applicant for licensure or registration. After its investigation, LARA must provide a copy of the administrative complaint to the appropriate disciplinary subcommittee.

The grounds for disciplinary action relate to one or more categories, including a violation of a general duty consisting of negligence or failure to exercise due care, a personal disqualification (such as incompetence, lack of good moral character, or substance use disorder), a prohibited act, an unethical business practice, or unprofessional conduct.

Under House Bill 5789, a personal disqualification would include a conviction for a violation of Section 90 of the Michigan Penal Code. A certified copy of the court record would be conclusive evidence of the conviction.

Sanction for Violation

If a disciplinary subcommittee finds that one or more of the grounds for disciplinary action in Section 16221 exist, it must impose one or more of the sanctions described in the Code. The sanctions vary depending on the nature of the grounds for disciplinary action. For a conviction of a violation of Section 90 of the Penal Code, House Bill 5790 would require permanent revocation of a health profession license or registration.

Except as otherwise provided for certain criminal offenses, a disciplinary subcommittee may not impose the sanction of permanent revocation without a finding that the licensee or registrant engaged in a pattern of intentional acts of fraud or deceit resulting in personal financial gain to the licensee or registrant and harm to the health of patients under the licensee's or registrant's care. Under House Bill 5790, this would not apply if the disciplinary subcommittee found that a licensee had been convicted of violating Section 90 of the Penal Code.

MCL 750.90 (H.B. 5787)
777.16d (H.B. 5788)
333.16221 (H.B. 5789)
333.16226 (H.B. 5790)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bill 5787 (H-1)

The bill would have a negative fiscal impact on the State and local government. More felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year.

House Bill 5788 (H-1)

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.

House Bill 5789

The bill would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs. The additional investigative and reporting activities required by the bill would not appreciably increase departmental expenditures.

House Bill 5790

The bill would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs. The additional licensing revocation processes and the possible resultant fines due to the specified violations would not appreciably increase expenditures or revenue.

Fiscal Analyst: Ryan Bergan
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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.