



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 71 and 72 (as introduced 2-16-23)
Sponsor: Senator Roger Hauck (S.B. 71)
Senator Kristen McDonald Rivet (S.B. 72)
Committee: Civil Rights, Judiciary, and Public Safety

CONTENT

Senate Bill 71 would amend the Public Health Code to do the following:

- Require a health profession licensee to indicate in a patient's medical record that a medical service involving vaginal or anal penetration was performed unless the service met one of several circumstances.
- Require a health facility or agency to ensure that a patient's medical record stated that a medical service involving vaginal or anal penetration was performed unless the service met one of several circumstances.
- Require a health profession licensee, or a health facility or agency, to keep and retain a medical record for a service that involved vaginal or anal penetration of a patient for at least 15 years from the date of service.
- Prescribe administrative fines and criminal penalties for a violation of the bill.
- Allow a licensee or his or her personal representative, or a health facility or agency to destroy or dispose of a medical record for a service that involved vaginal or anal penetration of a patient only after maintaining it for 15 years.
- Require various health profession boards to create a document that provided guidance to licensees on generally accepted standards of practice for services involving vaginal or anal penetration.

Senate Bill 72 would amend the Code of Criminal Procedure to include the felonies proposed by Senate Bill 71.

MCL 333.16213 et al. (S.B. 71)
777.13n (S.B. 72)

BRIEF RATIONALE

According to testimony, sexual contact and penetration under the pretext of medical treatment is not uncommon. A well-known example is that of Larry Nassar, a former doctor for Michigan State University's gymnastics team who was convicted of several counts of first-degree criminal sexual conduct that he perpetrated during his work as the team doctor. Some people believe that requiring health professionals to document medical service involving vaginal or anal penetration would hold them accountable and deter such medical malpractice.

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 71 and 72 are similar to House Bills 5783 and 5784, respectively, of the 2017-2018 Legislative Session. House Bills 5783 and 5784 passed the House and were reported by the Senate Committee on Judiciary but received no further action.

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

Senate Bill 71

Except as otherwise provided, a violation of Section 16213(1) requiring documentation of procedures involving vaginal or anal penetration could result in an administrative fine of not more than \$1,000 for a first violation and not more than \$2,500 for a second violation. Any additional violation would be classified as a misdemeanor and could result in a fine of not more than \$5,000, imprisonment for not more than 180 days, or both. If a violation were the result of gross negligence, it would automatically be considered a misdemeanor and could be subject to the fine of not more than \$5,000, imprisonment for not more than 180 days, or both. An intentional violation could result in a fine of not more than \$7,500, imprisonment for not more than two years, or both. A disciplinary subcommittee could impose additional fines.

Similarly, a violation of Section 20175(1) could result in an administrative fine of not more than \$2,500 for a first violation and not more than \$5,000 for a second violation. A subsequent violation could result in a fine of not more than \$7,500, imprisonment for not more than 180 days, or both. A grossly negligent or intentional violation could result in a fine of not more than \$10,000, imprisonment for not more than 180 days (negligent) or two years (intentional), or both. A disciplinary subcommittee could impose additional fines.

The bill also would have a negative fiscal impact on the State and local government. New felony arrests and convictions under the proposed 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 72

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.

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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.