

HOUSE No. 4350

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, February 12, 2024.

The committee on The Judiciary, to whom were referred the petition (accompanied by bill, Senate, No. 1122) of Bruce E. Tarr for legislation to criminalize sexual assault by fraud by a medical professional, and the petition (accompanied by bill, House, No. 1550) of Kate Hogan relative to the penalty imposed for the crime of sexual assault by fraud of medical professionals, reports recommending that the accompanying bill (House, No. 4350) ought to pass.

For the committee,

MICHAEL S. DAY.

HOUSE No. 4350

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act criminalizing sexual assault by fraud of a medical professional.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 178C of chapter 6 of the General Laws, as appearing in the 2022
2 Official Edition, is hereby amended by inserting, in line 62, after the words “chapter 265;” the
3 following words:- indecent assault and battery on vulnerable persons in custody by law
4 enforcement under section 13H ½ of said chapter 265; indecent assault and battery on a patient
5 or client by a health care provider under section 13H ¾ of said chapter 265;.

6 SECTION 2. Said section 178C of said chapter 6, as so appearing, is hereby further
7 amended by inserting, in line 67, after the words “chapter 265;” the following words: rape of a
8 patient or client by a health care provider under section 22D of said chapter 265;.

9 SECTION 3. Section 1 of chapter 123A of the General Laws, as so appearing, is hereby
10 amended by inserting, in line 49, after the word “sixty-five;” the following words:- indecent
11 assault and battery on vulnerable persons in custody by law enforcement under section 13H ½ of
12 said chapter 265; indecent assault and battery on a patient or client by a health care provider
13 under section 13H ¾ of said chapter 265;.

14 SECTION 4. Said section 1 of said chapter 123A of the General Laws, as so appearing, is
15 hereby further amended by inserting, in line 54, after the words “chapter 265;” the following
16 words:- rape of a patient or client by a health care provider under section 22D of said chapter
17 265;.

18 SECTION 5. Section 133E of chapter 127 of the General Laws, as so appearing, is
19 hereby amended by inserting, in line 16, after the words “chapter 265” the following words:-
20 indecent assault and battery on vulnerable persons in custody by law enforcement under section
21 13H ½ of said chapter 265; indecent assault and battery on a patient or client by a health care
22 provider under section 13H ¾ of said chapter 265;.

23 SECTION 6. Said section 133E of said chapter 127 of the General Laws, as so appearing,
24 is hereby further amended by inserting, in line 20, after the words “chapter 265;” the following
25 words:- rape of a patient or client by a health care provider under section 22D of said chapter
26 265;.

27 SECTION 7. Chapter 265 of the General Laws is hereby amended by inserting after
28 Section 13H ½ the following section:-.

29 Section 13H ¾ (a) For the purposes of this section “health care provider” shall mean a
30 person, corporation, facility or institution licensed by the commonwealth to provide health care
31 of professional services as a physician, hospital, clinic or nursing home, dentist, registered or
32 licensed nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, social
33 worker, or acupuncturist, or an officer, employee or agent thereof acting in the scope and course
34 of their employment.

35 (b) A person who is, or holds themselves out to be, a health care provider or clergy
36 member, and who commits an indecent assault and battery on a patient or client during the
37 course of diagnosis, counseling, or treatment shall be punished by imprisonment in the state
38 prison for not more than 5 years, or by imprisonment for not more than 2 1/2 years in a house of
39 correction. In a prosecution commenced under this section, the patient or client shall be deemed
40 incapable of consenting to contact of a sexual nature when consent was procured by a false
41 representation that the act was for a legitimate medical or treatment purpose.

42 SECTION 8. Said Chapter 265 of the General Laws is hereby further amended by
43 inserting after Section 22C the following section:-

44 Section 22D (a) For the purposes of this section “health care provider” shall mean a
45 person, corporation, facility or institution licensed by the commonwealth to provide health care
46 of professional services as a physician, hospital, clinic or nursing home, dentist, registered or
47 licensed nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, social
48 worker, or acupuncturist, or an officer, employee or agent thereof acting in the scope and course
49 of their employment.

50 (b) A person who is, or holds themselves out to be, a health care provider or clergy
51 member, and who knowingly induces a patient or client to engage in sexual intercourse during
52 the course of diagnosis, counseling, or treatment, shall be punished by imprisonment in the state
53 prison for not more than 20 years. In a prosecution commenced under this section, the patient or
54 client shall be deemed incapable of consenting to contact of a sexual nature when consent was
55 procured by false representation that the act was for a legitimate medical or treatment purpose.

56 SECTION 9. Section 63 of chapter 277 of the General Laws, as so appearing, is hereby
57 amended by inserting, in line 4, after the word “22C,” the following words:- 22D,.

58 SECTION 10. Said section 63 of said chapter 277 of the General Laws, as so appearing,
59 is hereby amended by inserting, in line 27, after the word “13H,” the following words:- 13H $\frac{1}{2}$,
60 13H $\frac{3}{4}$,.