



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 69 (as reported by the Committee of the Whole)
Senate Bill 70 (Substitute S-1 as reported by the Committee of the Whole)
Senate Bill 71 (as reported by the Committee of the Whole)
Senate Bill 72 (Substitute S-1 as reported by the Committee of the Whole)
Sponsor: Senator Lana Theis (S.B. 69)
Senator Ruth Johnson (S.B. 70)
Senator Roger Hauck (S.B. 71)
Senator Kristen McDonald Rivet (S.B. 72)
Committee: Civil Rights, Judiciary, and Public Safety

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 (S-1) would amend the sentencing guidelines in the Code of Criminal Procedure to include the felonies proposed by Senate Bill 69 and Senate Bill 71.

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 (S-1) would amend the sentencing guidelines in the Code of Criminal Procedure to include the felonies proposed by Senate Bill 69 and Senate Bill 71.

Senate Bill 70 is tie-barred to Senate Bill 69 and Senate Bill 71. Senate Bill 72 is tie-barred to Senate Bill 69 and Senate Bill 71. Each bill would take effect 90 days after its enactment.

Proposed MCL 333.16279 & 333.16279a (S.B. 69)
777.13n (S.B. 70)
333.16213 et al. (S.B. 71)
777.13n (S.B. 72)

BRIEF RATIONALE

According to testimony, some physicians have adopted standards for making certain they have consent before undertaking medical procedures on a minor that involve vaginal or anal penetration; however, some have not. Additionally, sexual contact and penetration under the pretext of medical treatment is not uncommon, such as the treatment of minors under the care of Larry Nassar, who was convicted of several counts of first-degree criminal sexual conduct that he perpetrated during his work as the team doctor for USA and Michigan State University gymnastics. Some people believe that the power imbalance in a patient-physician relationship puts a patient at the mercy of a physician's presumed expertise and unwilling to disagree to a procedure, such as in the case with Larry Nassar. Accordingly, it has been suggested that physicians be required to get formal consent from a minor patient's guardian before undertaking such medical procedures and require health professionals to document medical service involving vaginal or anal penetration to hold them accountable and deter medical malpractice.

PREVIOUS LEGISLATION

(Please note: This section 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. 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 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 (S-1) 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.

Under Senate Bill 71, and 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 (S-1) 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.