



Senate Fiscal Agency
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Senate Bills 67 and 68 (as introduced 2-16-23)
Sponsor: Senator Dan Lauwers (S.B. 67)
Senator Erika Geiss (S.B. 68)
Committee: Civil Rights, Judiciary, and Public Safety

(Senate-passed version)

Date Completed: 4-12-23

CONTENT

Senate Bill 67 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 to 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.**

Senate Bill 68 would amend the sentencing guidelines in the Code of Criminal Procedure to include the felonies proposed by Senate Bill 67 and to delete the guidelines for the offense that bill would eliminate.

Senate Bill 68 is tie-barred to Senate Bill 67. Each bill would take effect 90 days after its enactment.

Senate Bill 67

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 delete this prohibition.

Instead, under the bill, Section 90 would prohibit an individual who undertook a patient's medical treatment from misrepresenting to the patient that sexual contact or sexual penetration between the individual 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 individual by means of the misrepresentation. An individual who violated the prohibition by engaging in sexual contact would be guilty of a felony punishable by up to 20 years' imprisonment. An individual who violated the prohibition by engaging in sexual penetration would be guilty of a felony punishable by up to 25 years' imprisonment.

"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 an individual from being charged with, convicted of, or punished for any other violation of law that was committed by that individual 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.

Senate Bill 68

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' imprisonment.

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 guideline.

MCL 750.90 (S.B. 67)
777.16d (S.B. 68)

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 67 and 68 are reintroductions of Senate Bills 224 and 225, respectively, from the 2021-2022 Legislative Session. Senate Bills 224 and 225 passed the Senate but received no further action in the House.

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

Senate Bill 67

The bill 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 the bills' provisions. 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 68

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.

Fiscal Analyst: Joe Carrasco, Jr.

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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.