



Senate Fiscal Agency  
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## BILL ANALYSIS



Telephone: (517) 373-5383  
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Senate Bills 67 and 68 (as enacted)  
Sponsor: Senator Dan Lauwers (S.B. 67)  
Senator Erika Geiss (S.B. 68)

**PUBLIC ACTS 58 & 59 of 2023**

Senate Committee: Civil Rights, Judiciary, and Public Safety  
House Committee: Criminal Justice

Date Completed: 5-23-24

**RATIONALE**

According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, sexual contact and penetration under the pretext of medical treatment is not uncommon. In 2017, Larry Nassar, a former doctor for Michigan State University's gymnastics team and USA Gymnastics, was convicted of several counts of first-degree criminal sexual conduct. One-hundred and fifty-six survivors testified against him, many recounting how Nassar assaulted them under the guise of medical treatment. Similar statements have been made about deceased University of Michigan physician Robert Anderson and deceased Ohio State physician Richard Strauss,<sup>1</sup> as well as youth hockey physician Zvi Levran<sup>2</sup>. Some believed that these examples demonstrated the need for the law to include a specific prohibition against sexual contact and penetration under the pretext of medical treatment.

**CONTENT**

**Senate Bill 67 amended the Michigan Penal Code to delete a provision that prohibited 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 is 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 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 amended 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 eliminated.**

The bills took effect October 10, 2023.

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<sup>1</sup> Dodge, Samuel, "Michigan-Ohio State sex abuse survivors will protest together before football game", *MLIVE*, November 24, 2021.

<sup>2</sup> "Michigan 'Hockey Doc' to Stand Trial on Sexual Assault Charges Connected to Youth Hockey Physicals", *AP News*, July 26, 2023.

### **Senate Bill 67**

Previously, Section 90 of the Penal Code prohibited a person from undertaking to medically treat any female person and, while treating her, represent to her that it was necessary or beneficial for her health that she have sexual intercourse with a man, and thereby induce her to have sexual intercourse. A violation was a felony punishable by up to 10 years' imprisonment. The bill deleted this prohibition.

Instead, under the bill, Section 90 prohibits an individual who undertakes a patient's medical treatment from misrepresenting to the patient that sexual contact or sexual penetration between the individual and the patient is 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 violates this prohibition by engaging in sexual contact is guilty of a felony punishable by up to 20 years' imprisonment. An individual who violates the prohibition by engaging in sexual penetration is guilty of a felony punishable by up to 25 years' imprisonment.

"Sexual contact" means 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" means 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.

Additionally, the bill amended Section 90 to state that it does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating the Section. The court may 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 is a Class C felony against a person with a statutory maximum sentence of 20 years' imprisonment. Sexual penetration under the pretext of medical treatment is a Class B felony against a person with a statutory maximum of 25 years' imprisonment.

Previously, sexual intercourse under pretext of medical treatment was a Class D felony against a person with a statutory maximum sentence of 10 years' imprisonment. The bill deleted that guideline.

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

### **PREVIOUS LEGISLATION**

*(This section does not provide a comprehensive account of previous legislative efforts on this 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.

## **ARGUMENTS**

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

### **Supporting Argument**

The bills will hold doctors accountable for their actions. According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, there is a power imbalance between doctors and their patients. Patients may lack knowledge and understanding about their medical condition and so be vulnerable and dependent on the expertise of their doctors. As a result, doctors often are trusted members of their communities; however, some abuse this power and exploit their patients' vulnerabilities. For example, Larry Nassar abused his patients by claiming his actions were necessary medical treatments. His patients, mostly underaged girls, and their families believed him. When they expressed doubt, privately or publicly, they were manipulated.

Testimony also indicates that the effects of sexual assault linger long after the initial incident, psychologically, emotionally, and physically scarring survivors. Despite this, perpetrators, including doctors, may never be brought to justice. Nassar operated for at least 14 years before he was arrested.<sup>3</sup> Patients, including assault survivors, deserve safe, mindful medical care, especially during sensitive operations. As a result of the bill, doctors who take advantage of their patients' vulnerability will be charged with an appropriate punishment, in addition to other, more general charges previously covered in the law.

Legislative Analyst: Eleni Lionas

## **FISCAL IMPACT**

### **Senate Bill 67**

The bill will have a negative fiscal impact on State and local government. New felony arrests and convictions under the bill may increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities; however, it is unknown how many people will be prosecuted under the bill's 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 \$98 to \$192 per day, depending on the security level of the facility. Any associated increase in fine revenue will increase funding to public libraries.

### **Senate Bill 68**

The bill will 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 will 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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<sup>3</sup> Sommerlad, Joe, and Ariana Baio, "Larry Nassar: A timeline of the sexual abuse allegations against the former USA Gymnastics team doctor", *The Independent*, July 10, 2023.

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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.