

Legislative Analysis



PROHIBIT CERTAIN CONDUCT BY MENTAL HEALTH PROFESSIONAL

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House Bill 5521

Sponsor: Rep. Tom Pearce

Committee: Judiciary

Complete to 4-27-10

A SUMMARY OF HOUSE BILL 5521 AS INTRODUCED 10-15-09

The bill would make a mental health professional who engages in sexual penetration with a person who was a client during or within two years of the time in which the sexual penetration occurred guilty of third-degree criminal sexual conduct, a felony offense with a maximum 15-year sentence.

Currently, a mental health professional is prohibited under state law from engaging in sexual contact with a patient or client and for a period of two years after the professional relationship ends. A violation constitutes fourth-degree criminal sexual conduct, a misdemeanor punishable by up to two years imprisonment. The prohibition applies to allopathic or osteopathic physicians (psychiatrists), licensed psychologists, licensed Master's social workers, licensed professional counselors, and licensed marriage and family therapists.

Specifically, House Bill 5521 would amend the Michigan Penal Code to specify that a person who is a mental health professional would be guilty of criminal sexual conduct in the third degree if he or she engaged in sexual penetration with another individual during or within two years after the period in which that individual was a client and was not the professional's spouse. The consent of the victim would not be a defense to a prosecution. In addition, a prosecution under this provision could not be used as evidence that the victim was mentally incompetent.

Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years.

MCL 750.520d

FISCAL IMPACT:

The bill could increase incarceration and/or probation costs to the State and local units of government. As background, under current law, mental health professionals who engage in "sexual contact" (versus "sexual penetration") with clients under these circumstances are guilty of fourth-degree criminal sexual conduct, a misdemeanor offense with a maximum 2-year sentence. In calendar year 2008, 12 persons were convicted of fourth-degree criminal sexual conduct as mental health professionals involved with sexual

contact. Eleven were sentenced to prison, while one was placed on probation. Another 102 persons were convicted of fourth-degree criminal sexual conduct based on multiple variables (which may have included, but more likely did not include, being a mental health professional involved with sexual contact). Of these, 24 were sentenced to prison, 55 to probation, 21 to a county jail, and 2 with other dispositions.

To the extent that some of these crimes involved sexual penetration beyond basic sexual contact, the bill's provision creating a third-degree criminal sexual conduct offense would apply. Convictions for third-degree sexual conduct in these cases would increase the likelihood of a prison or jail sentence and would likely increase the length of the resulting minimum prison or jail sentence. The average appropriated cost of prison incarceration is roughly \$33,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. Costs of parole and probation supervision, exclusive of the cost of electronic tether, average about \$2,100 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues. County jail costs vary by jurisdiction.

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