

# Legislative Analysis

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## **SEXUAL CONTACT UNDER PRETEXT OF MEDICAL TREATMENT**

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5787 (reported from committee as substitute H-1)**  
**Sponsor: Rep. Klint Kesto**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 5788 (reported from committee as substitute H-1)**  
**Sponsor: Rep. Erika Geiss**

**House Bill 5789 (reported from committee w/o amendment)**  
**Sponsor: Rep. Jeffrey R. Noble**

**House Bill 5790 (reported from committee w/o amendment)**  
**Sponsor: Rep. Daire Rendon**

**Committee: Law and Justice**  
**Complete to 5-24-18**

### **BRIEF SUMMARY:**

House Bill 5787 would prohibit a person who is undertaking medical treatment of a patient from engaging in sexual contact or sexual penetration with the patient by means of misrepresenting that contact or penetration as necessary or beneficial to the patient's health. The bill would establish felony penalties for a violation of the prohibition.

House Bill 5788 would place the maximum terms of imprisonment for the felony offenses established under House Bill 5787 within the sentencing guidelines chapter of the Code of Criminal Procedure.

House Bill 5789 would include a conviction for sexual contact or sexual penetration under the pretext of medical treatment in the list of grounds requiring sanctions to be imposed on a person licensed or registered under the Public Health Code.

House Bill 5790 would require a health professional license or registration to be permanently revoked for a violation involving sexual contact or sexual penetration under the pretext of medical treatment.

Each bill would take effect 90 days after being enacted.

### **DETAILED SUMMARY:**

House Bill 5787 would revise Section 90 of the Michigan Penal Code, which currently prohibits sexual intercourse with a female under the pretext of medical treatment. The current language would be replaced by a provision that is gender-neutral, encompasses

sexual contact as well as sexual penetration, increases the penalty that may be imposed for a violation, and defines terms.

Currently, Section 90 specifies that any person who undertakes to medically treat any female person and, while treating her, represents that it is or will be necessary or beneficial to her health that she have sexual intercourse with a man, and thereby induces her to have intercourse with a man, is guilty of a felony punishable by not more than 10 years of imprisonment. A man who is not the woman's husband who has intercourse with her by reason of such representation is also guilty of a felony and subject to the same penalty.

Under the bill, a person who undertakes medical treatment of a patient and in the course of that treatment misrepresents that sexual contact, or sexual penetration, between him or her and the patient is necessary or will be beneficial to the patient's health **and** who induces the patient to engage in sexual contact or penetration with him or her by means of the misrepresentation would be guilty of a felony punishable by imprisonment for not more than 20 years for an offense involving sexual contact and not more than 25 years for an offense involving sexual penetration.

The bill would allow a person to be charged with, convicted of, or punished for any other violation of law he or she committed while violating the bill's prohibitions. A court could order a term of imprisonment imposed under the bill to be served consecutively to a term of imprisonment imposed for any other crime, including a term of imprisonment imposed for any other violation of law that arose out of the same transaction as the violation under the bill. (That is, multiple sentences could be served one after another rather than at the same time.)

***Medical treatment*** would include an examination or a procedure, and ***patient*** would mean a person who has undergone or is seeking to undergo medical treatment.

***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 and would be conditioned upon whether the intentional touching could be reasonably construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or done in 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 in a sexual manner.

MCL 750.90

**House Bill 5788** would amend the sentencing guidelines portion of the Code of Criminal Procedure to specify that sexual contact under pretext of medical treatment would be a Class C felony against a person with a maximum term of imprisonment of 20 years. Sexual penetration under pretext of medical treatment would also be a Class B felony against a person but with a maximum term of imprisonment of 25 years.

The bill is tie-barred to House Bill 5787, meaning that HB 5788 could not take effect unless HB 5787 were also enacted into law.

MCL 777.16d

**House Bill 5789** would amend Section 16221 of the Public Health Code. Section 16221 requires the Department of Licensing and Regulatory Affairs (LARA) to investigate an allegation involving a licensee, registrant, or applicant for licensure or registration under the Public Health Code<sup>1</sup> that one or more grounds for disciplinary subcommittee action exists. This includes conducting hearings, administering oaths, and ordering relevant testimony to be given. The findings of the investigation are then reported to the appropriate disciplinary subcommittee. Disciplinary subcommittees are required to impose one or more of the sanctions listed in Section 16226 that apply to a specific violation. Sanctions can include denial, suspension, or revocation (including permanent revocation) of the license or registration; reprimand; fines; restitution; and community service.

Under the bill, a conviction for a violation of Section 90 of the Michigan Penal Code (as revised by House Bill 5787) would constitute grounds requiring a disciplinary subcommittee to proceed with license sanctions as applicable under Section 16226. A certified copy of the court record would be conclusive evidence of the conviction.

The bill is tie-barred to House Bills 5787 and 5790, meaning that HB 5789 could not take effect unless both of those bills were also enacted into law.

MCL 333.16221

**House Bill 5790** would amend Section 16226 of the Public Health Code. Section 16226 requires that, after finding the existence of one or more of the grounds for action by a disciplinary subcommittee listed in Section 16221, a disciplinary subcommittee must impose on a licensee, registrant, or applicant one or more of the specified sanctions for each violation. As discussed above, sanctions can include denial, suspension, or revocation (including permanent revocation) of the license or registration; reprimand; fines; restitution; and community service.

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<sup>1</sup> Currently, the following health care professions are licensed or registered under Article 15 of the Public Health Code: acupuncturists, athletic trainers, audiologists, behavior analysts, chiropractors, counselors, dental assistants, dental hygienists, dentists, dietitians and nutritionists, marriage and family therapists, massage therapists, midwives, nurses, nursing home administrators, occupational therapists and occupational therapy assistants, optometrists, pharmacists, physical therapists and physical therapy assistants, physician's assistants, physicians (M.D.s and D.O.s), podiatrists, psychologists, respiratory therapists, sanitarians, social workers and social service technicians, speech-language pathologists, and veterinarians and veterinarian technicians.

The bill would require that a license or registration issued under the Public Health Code be permanently revoked if the licensee or registrant had been convicted of sexual contact or sexual penetration under the pretext of medical treatment.

Currently under the Public Health Code, except for cases involving female genital mutilation, a disciplinary subcommittee is restricted from imposing permanent revocation unless it finds that the licensee or registrant engaged in a pattern of intentional acts of fraud or deceit that resulted in personal financial gain to the licensee or registrant and resulted in harm to the health of patients under the licensee's or registrant's care. The bill would also exempt from this provision a conviction for sexual contact or sexual penetration under the pretext of medical treatment.

The bill is tie-barred to House Bills 5787 and 5789, meaning that HB 5790 could not take effect unless both of those bills were also enacted into law.

MCL 333.16226

#### **FISCAL IMPACT:**

House Bill 5787 would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of convictions that would result under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated.

House Bill 5788 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

House Bill 5789 would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). The bill would add a conviction under MCL 750.90 to the list of activities that LARA would investigate and report to the appropriate disciplinary subcommittee when the conduct is alleged to have been committed by a licensee, registrant, or licensure applicant. This activity would be added to responsibilities already undertaken by the department, and would neither increase nor decrease expenditures or revenues.

House Bill 5790 would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). The bill would require disciplinary subcommittees to permanently revoke a licensee's or registrant's license or registration if the subcommittee found that a licensee or registrant had been convicted of violating MCL 750.90. Given the relatively small number of licensees and registrants that are likely to be found guilty of this

