

Legislative Analysis



INVASIVE BODILY EXAMINATIONS

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

Senate Bill 44 (S-2) as passed by the Senate
Sponsor: Sen. Paul Wojno

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

Senate Bill 45 as passed by the Senate
Sponsor: Sen. Sylvia A. Santana

House Committee: Health Policy
Senate Committee: Health Policy
Complete to 2-12-24

SUMMARY:

Senate Bills 44 and 45 would prohibit health professionals from performing pelvic, vaginal, rectal, or prostate examinations (referred to by the bills as *invasive bodily examinations*) on anesthetized or unconscious patients unless certain conditions are met (for example, the patient has given their informed consent). Senate Bill 44 contains substantive provisions, and Senate Bill 45 contains the definition of *invasive bodily examination*. Neither bill can take effect unless both bills are enacted. They are described together below.

Prohibition and duty

The bills would amend Part 161 (General Provisions) of Article 15 (Occupations) of the Public Health Code. Article 15 provides for the licensure and registration of health professionals under the code, and among other things Part 161 includes provisions that apply to all of those health professionals regardless of specific practice.

Subject to exceptions described below, the bills would prohibit a person licensed or registered under Article 15 from performing a pelvic, vaginal, rectal, or prostate examination on an anesthetized or unconscious patient. In addition, a licensee or registrant would have to ensure that a student who is in a health profession training program does not perform a pelvic, vaginal, rectal, or prostate examination on an anesthetized or unconscious patient while performing a duty assigned in the course of training by the licensee or registrant.

Exceptions

The provisions described above would not apply if one of the following conditions is met before the pelvic, vaginal, rectal, or prostate examination is performed:

- The examination is necessary for preventative, diagnostic, or treatment purposes and the patient or their authorized representative provides written, informed consent to it. The informed consent would in all cases have to allow the patient or representative to indicate whether a student described above may perform the examination.
- The performance of the examination is within the scope of care ordered for a surgical procedure or diagnostic examination to be performed on the patient, and the patient or their authorized representative has provided written, informed consent to that surgical procedure or diagnostic examination. The informed consent would in all cases have to allow the patient or representative to indicate whether a student described above may perform the pelvic, vaginal, rectal, or prostate examination.

- The examination is necessary for emergency diagnostic or treatment purposes and the patient is unconscious and incapable of providing informed consent.
- A court has ordered the examination for the purpose of collecting evidence.

Penalties

Violation of the above provisions would be subject to section 16299 of the Public Health Code, which provides that, unless otherwise specified, violations of Article 15 are misdemeanors punishable as follows:

- For a first violation, by imprisonment for up to 90 days or a fine of up to \$100, or both.
- For a second or subsequent violation, imprisonment for up to six months or a fine of \$200 to \$500, or both.

MCL 333.16105 and 333.16106 (SB 45) and proposed MCL 333.16280 (SB 44)

BACKGROUND:

The bills are similar to House Bill 4194 of the 2021-22 legislative session, as passed by the House. However, HB 4194 included a provision requiring that a patient be informed, once they regain consciousness, of an examination they could not consent to because unconscious, and it did not require that informed consent address student performance of an examination.

The bills are also similar to House Bill 4958 of the 2019-20 legislative session, as passed by the House, although that bill addressed only pelvic examinations, and it did not require that informed consent address student performance of an examination.

FISCAL IMPACT:

Senate Bill 44 would have an indeterminate fiscal impact on the state and on local units of government. The number of individuals that would be convicted because of violating conditions set forth in the bill is not known. Violations would be misdemeanors under section 16299 of the Public Health Code. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, the constitutionally designated recipients of those revenues.

Senate Bill 45 would have no fiscal impact on the state or local units of government.

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