

EXPAND THIRD AND FOURTH DEGREE CSC

House Bill 4525

Sponsor: Rep. Jon Jellema

**Committee: Criminal Law and
Corrections**

Complete to 7-15-99

A SUMMARY OF HOUSE BILL 4525 AS INTRODUCED 4-20-99

The bill would amend the Michigan Penal Code to criminalize sexual penetration or contact between a mental health professional and his or her patients and between a member of the clergy and members of his or her flock, even if the patient or member of the church had consented to the sexual activity. A member of the clergy would be defined as anyone who was ordained or recognized as a religious leader by a church, denomination, religious association or sect; any lay person who provided spiritual guidance, aid or comfort on behalf of the church; a youth pastor, youth counselor, camp counselor or person in a substantially similar position for a church, denomination, religious association or sect; or anyone who held him or herself out as any of these. A mental health professional would mean an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is a medical or osteopathic physician licensed to practice in this state; a licensed psychologist, registered professional nurse, professional counselor, or marriage and family therapist licensed to practice in this state; or a certified social worker, a social worker, or a social worker technician registered in this state; or an individual who holds him or herself out as being a someone who meets this definition.

The bill would provide that members of the clergy or mental health professionals who engaged in sexual activity with certain persons would be guilty of either third degree criminal sexual conduct (if sexual penetration occurred), or fourth degree criminal sexual conduct (if sexual contact occurred). Third degree CSC is a felony punishable by up to 15 years imprisonment, while fourth degree CSC is a misdemeanor punishable by imprisonment for no more than 2 years or a fine of no more than \$500, or both. A mental health professional would be guilty of one of these crimes, depending upon the nature of the sexual activity, if he or she engaged in sexual activity (even if consensual) with a client or patient, who was not his or her spouse, during or within 2 years after the person was his or her client or patient. A member of the clergy would be guilty if he or she engaged in sexual activity (even if consensual) with a person, who was not his or her spouse, for whom the clergy member was providing spiritual counseling or advice, emotional or mental health services or treatment, or aid and comfort, during or within 2 years after the time that the clergy member was assisting the victim. "Emotional or mental health services or treatment" would mean assessment, diagnosis, treatment, or counseling of a client or patient for a mental or emotional illness, symptom, or disorder or to understand unconscious or conscious motivation, to resolve emotional, relationship, or attitudinal conflicts, or to modify behaviors that interfere with effective emotional, social, or intellectual functioning.

The bill would also require that a report of suspected criminal sexual conduct violations by a mental health professional or member of the clergy be reported by other members of the clergy or mental health professionals with the permission of the suspected victim. If a mental health professional or member of the clergy had reason to believe that someone he or she was treating, counseling, or advising was a victim of a CSC crime and that another mental health professional or member of the clergy was responsible, the person suspecting that a crime had occurred would be required to promptly ask the victim if he or she wanted a report made under the bill's provisions. The mental health professional or clergy member who made the report would be required to inform the alleged victim that the report would not require identification of him or her as the victim. If the alleged victim agreed to make a report, he or she would have to provide the person who makes the report (the clergy member or mental health professional) with written consent and specify whether the alleged victim's identity could be included in the report. The report would have to contain only the information necessary to identify the mental health professional or clergy member who was making the report, the person accused of the violation, and information regarding the violation. The alleged victim's name or other identifying information would not be included, unless he or she requested that it be included. Within 30 days after receiving permission to make such a report from the alleged victim, the mental health professional or member of the clergy would have provide the report of the suspected violation to both the local police department (for where the alleged crime occurred) and the Department of State Police. If a mental health professional or a member of the clergy intentionally failed to file a report under these circumstances he or she would be guilty of a misdemeanor punishable by imprisonment for no more than 93 days and/or a fine of up to \$500. If the Department of State Police, upon review of the report, determined that individual accused of the crime was in a licensed occupation, the department would be required to promptly notify the appropriate licensing or registration board of the alleged violation.

A report made as required by the bill would confidential and would be exempted from the disclosure requirements contained in the Freedom of Information Act. Anyone who intentionally disclosed confidential information from such a report would be guilty of a misdemeanor punishable by imprisonment for no more than 93 days and/or a fine of up to \$500. Information regarding the identity of the victim or alleged victim of sexual contact by a mental health professional or member of the clergy could not be disclosed by the person making the report or anyone else with access to a report or record unless the victim or alleged victim consented in writing to the disclosure. [Note: The bill uses the term "sexual contact" in this provision; however, that term is specifically defined in the act and is limited to touching. Other provisions of the bill apparently apply both to instances of "sexual contact" and "sexual penetration."] However, the state or local police, a prosecuting attorney, or a licensing or registration board could exchange information from a report or record regarding a mental health professional or member of the clergy without violating this prohibition. If the Department of State Police received two or more reports regarding the same mental health professional or member of the clergy, the department would be required to provide the information from the reports to the appropriate prosecuting attorneys.

A person who made a good faith report or record as required under the bill would be immune from any civil or criminal liability for making the report. However, the immunity would not apply to civil or criminal liability resulting from a violation for which a report would be required under the bill. Anyone who made such a report would be presumed to have done so in good faith. However, this presumption could be rebutted.

MCL 750.520a et al.

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.