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BILL ANALYSIS

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House Bill 4525 (Substitute H-1 as passed by the House)
Sponsor: Representative Jon Jellema
House Committee: Criminal Law and Corrections
Senate Committee: Judiciary

Date Completed: 3-22-00

CONTENT

The bill would amend the Michigan Penal Code to extend criminal sexual conduct (CSC) penalties to sexual penetration or sexual contact by a “mental health professional” with a client or patient or by a “member of the clergy” with a person for whom the clergy member was providing “emotional or mental health services or treatment” or “spiritual counseling or advice”. The penalties would apply to incidents that occurred during the time of treatment or counseling and within two years after that period, and consent would not be a defense to prosecution.

The bill also provides that a mental health professional or member of the clergy who had reason to believe that a person he or she was treating, counseling, or advising was a victim of CSC committed by a mental health professional or member of the clergy, would have to ask for the person’s consent to report the violation and, if the victim consented, report the violation to the police. A mental health professional or clergy member who filed a report in good faith would be immune from civil or criminal liability for making the report.

The bill would take effect on June 1, 2000.

Definitions

“Mental health professional” would mean either that term as defined in the Mental Health Code or a person who held himself or herself out as being a mental health professional as defined in the Mental Health Code (MCL 330.1100b). (The Mental Health Code defines “mental health professional” as an individual who is trained and experienced in the area of mental illness or developmental disabilities and is one of the following: a physician, psychologist, or registered professional nurse licensed to practice in Michigan under the Public Health Code; a certified social worker, social worker, or social worker technician registered in Michigan under the Occupational Code; a licensed professional counselor licensed to practice in Michigan under the Public Health Code; or a marriage and family therapist licensed under the Occupational Code.)

“Member of the clergy” would mean a person who was ordained or otherwise officially recognized by a church, denomination, religious association, or religious sect as being a religious leader of that church denomination, association, or sect; a layperson who was designated to provide spiritual counseling or advice on behalf of a church, denomination, religious association, or religious sect; or an individual who held himself or herself out as one of the above.

“Emotional or mental health services or treatment” would mean assessing, diagnosing, treating, or counseling a client or patient for a mental or emotional illness, symptom, or disorder, to understand an unconscious or conscious motivation, to resolve an emotional relationship, or attitudinal conflict, or to modify a behavior that interfered with effective emotional, social, or intellectual functioning. “Spiritual counseling or advice” would have the same meaning, except that the definition would refer to an individual, rather than a client or patient, and would apply in a spiritual or religious context.

The Penal Code defines “sexual penetration” as 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, but emission of semen is not required. “Sexual contact” includes 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.

CSC Penalties for Mental Health Professional or Clergy Member

Third-degree. Under the Penal Code, a person is guilty of third-degree CSC if he or she engages in sexual penetration with another person under any of various listed circumstances. The bill would add the following to that list:

- The actor was a mental health professional and the sexual penetration occurred during or within two years after the period in which the victim was the mental health professional’s client or patient, and the victim was not his or her spouse.
- The actor was a member of the clergy and the sexual penetration occurred during or within two years after the period in which the clergy member provided emotional or mental health services or treatment or spiritual counseling or advice to the victim as part of his or her duties as a clergy member, and the victim was not his or her spouse.

Third-degree CSC is a felony punishable by up to 15 years’ imprisonment.

Fourth-degree. Under the Penal Code, a person is guilty of fourth-degree CSC if he or she engages in sexual contact with another person under any of various listed circumstances. The bill would add the following to that list:

- The actor was a mental health professional and the sexual contact occurred during or within two years after the period in which the victim was the mental health professional’s client or patient, and the victim was not his or her spouse.
- The actor was a member of the clergy and the sexual contact occurred during or within two years after the period in which the clergy member provided emotional or mental health services or treatment or spiritual counseling or advice to the victim as part of his or her duties as a clergy member, and the victim was not his or her spouse.

Fourth-degree CSC is a misdemeanor punishable by up to two years’ imprisonment, a maximum fine of \$500, or both.

Reporting

If a mental health professional or clergy member had reason to believe that an individual he or she was treating, counseling, or advising was a victim of first-, second-, third-, or fourth-degree CSC and that the violation was committed by another mental health professional or clergy member, the mental health professional or clergy member who was treating, counseling, or advising the person promptly would have to ask the individual whether he or she wanted the mental health professional or clergy member to report the incident. The treating mental health professional or clergy member would have to inform the person that the report would not require identifying the victim of the violation.

If the individual consented to the report, he or she would have to provide written consent and specify whether his or her identity could be included in the report. Within 30 days, the mental health professional or clergy member would have to report the suspected violation to both the Department of State Police and the police department in the local unit in which the violation allegedly occurred. If the Department of State Police determined that the alleged violator was in a licensed occupation, the Department promptly would have to notify the appropriate licensing or registration board of the alleged violation. It would be a misdemeanor, punishable by up to 93 days’ imprisonment and/or a maximum fine of \$500, for a mental

health professional or clergy member intentionally to fail to file a report under the bill.

A report filed under the bill could contain only information that was necessary to identify the mental health professional or clergy member providing the report and the alleged violator, and information regarding the alleged violation. The report could not contain information identifying the alleged victim, unless the victim had requested that his or her identity be included.

Information regarding the identity of a victim or alleged victim of sexual contact by a mental health professional or clergy member could not be disclosed by a person required to report the violation or by any other person who received or had access to a report or record, unless that disclosure was with the written consent of the victim or alleged victim. This restriction would not prohibit the Department of State Police, a local police department, a prosecuting attorney, or a Michigan licensing or registration board from exchanging information in a report or record. A report and a record made from a report under the bill that was maintained by the Department of State Police, a licensing or registration board, a prosecuting attorney, or other person, official, or institution would be confidential and exempt from disclosure under the Freedom of Information Act. It would be a misdemeanor, punishable by up to 93 days' imprisonment and/or a maximum fine of \$500, for a person intentionally to disclose confidential information in violation of the bill.

Good Faith Immunity

A person who, in good faith, made a report or record under the bill would be immune from any civil or criminal liability for making the report. It would be a rebuttable presumption that a person who made a report under the bill acted in good faith. This immunity would not apply to civil or criminal liability resulting from a violation for which a report was required under the bill.

MCL 750.520a et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

House Bill 4525 (H-1) would have an indeterminate fiscal impact on State and local government.

To the extent that the bill would expand the definition of third- and fourth-degree criminal sexual conduct to include actors who are mental health professionals or members of the clergy, within two years of having provided services to a victim, there could be more offenders found guilty of third- and fourth-degree CSC. However, there are no data to indicate how many more offenders there might be.

According to the 1997 Department of Corrections Statistical Report, there were 275 new commitments to prison for third-degree CSC with an average minimum sentence of five years and 50 new commitments for fourth-degree CSC with an average minimum sentence of 1.2 years. Assuming that the number of offenders committed to prison increased 5% as a result of the expanded definition and that the average minimum sentence remained constant, given that the average annual cost of incarceration is \$22,000, costs of incarceration for the additional offenders could increase by \$1,617,000.

Additionally, the bill would create misdemeanors for failing to file a report on behalf of a victim of sexual penetration or sexual contact by a mental health professional or member of the clergy, and for disclosing confidential information contained in the report. There are no data available to determine how many offenders could be convicted of these misdemeanors on an annual basis. Local units of government would receive the fine revenue or incur the costs of incarceration.

Fiscal Analyst: K. Firestone

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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.