



**Senate Fiscal Agency**  
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BILL



ANALYSIS

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Senate Bills 337 and 338 (as introduced 4-27-17)  
Sponsor: Senator Margaret E. O'Brien (S.B. 337)  
Senator Rick Jones (S.B. 338)  
Committee: Judiciary

Date Completed: 5-1-17

### **CONTENT**

**Senate Bill 337 would amend the Michigan Penal Code to do the following:**

- **Prohibit a person from knowingly circumcising, excising, or infibulating any part of the labia majora, labia minora, or clitoris of another person under 18 years old.**
- **Prescribe a penalty of up to 15 years imprisonment for a violation.**
- **Specify that a surgical operation would not be a violation of the proposed prohibition if it were performed under certain conditions.**
- **Specify that it would not be a defense to prosecution for a violation that the person on whom the operation was performed, or any other person, believed that the operation was required as a matter of custom or ritual.**

**Senate Bill 338 would amend the Code of Criminal Procedure to include in the sentencing guidelines the offense proposed by Senate Bill 337.**

Senate Bill 338 is tie-barred to Senate Bill 337. Each bill would take effect 90 days after its enactment.

### **Senate Bill 337**

Except as provided below, the bill would prohibit a person from knowingly circumcising, excising, or infibulating all or any part of the labia majora, labia minora, or clitoris of another person who was less than 18 years of age. A person who violated this prohibition would be guilty of a felony punishable by up to 15 years' imprisonment.

A surgical operation would not be a violation if either of the following conditions applied: a) the operation was necessary to the health of the person on whom it was performed, and it was performed by a licensed medical practitioner; or b) the operation was performed on a person in labor or who had just given birth and it was performed for medical purposes connected with that labor or birth by a licensed medical practitioner or midwife, or a person in training to become a licensed medical practitioner or licensed midwife.

It would not be a defense to prosecution for a violation that the person on whom the operation was performed or would be performed, or any other person, believed that the operation was required as a matter of custom or ritual.

The bill would define "licensed medical practitioner" as a medical physician or osteopathic physician who is licensed under Article 15 (Occupations) of the Public Health Code. "Licensed midwife" would mean a midwife licensed under Article 15 of the Public Health Code.

"Person in training" would mean an individual acting under the delegatory authority and supervision of a physician under Section 16215(2) of the Public Health Code (which allows a licensed physician or surgeon to delegate the performance of a surgical procedure to a medical school student or physician's assistant trainee under certain circumstances). The term would include an individual described in Section 16215(3), but would not include an individual whose license had been suspended. (Section 16215(3) allows a licensee who is an allopathic physician or osteopathic physician and surgeon to delegate a task or function that requires the use of surgical instrumentation to an unlicensed person who is performing acupuncture or who is removing only bone, skin, blood vessels, cartilage, dura mater, ligaments, tendons, pericardial tissue, or heart valves from a deceased individual for medical or scientific purposes.)

### **Senate Bill 338**

The bill would include the felony proposed by Senate Bill 337 in the sentencing guidelines as a Class B crime against a person with a statutory maximum of 15 years.

Proposed MCL 750.136 (S.B. 337)  
MCL 777.16g (S.B. 338)

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

### **Senate Bill 337**

The bill could have a negative fiscal impact on State and local government. More felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$3,764 per prisoner per year.

### **Senate Bill 338**

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law). According to one interpretation of that decision, the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: Ryan Bergan

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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.