

SENATE No. 2905

The Commonwealth of Massachusetts

—
**In the One Hundred and Ninety-Third General Court
(2023-2024)**
—

SENATE, July 29, 2024.

The committee on Senate Ways and Means to whom was referred the House Bill criminalizing sexual assault by fraud of a medical professional (House, No. 4350); reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2905.

For the committee,
Michael J. Rodrigues

SENATE No. 2905

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In the One Hundred and Ninety-Third General Court
(2023-2024)

1 SECTION 1. Section 178C of chapter 6 of the General Laws, as appearing in the 2022
2 Official Edition, is hereby amended by inserting after the figure “265”, in line 62, the following
3 words:- ; indecent assault and battery on vulnerable persons in custody by law enforcement
4 under section 13H ½ of said chapter 265; indecent assault and battery on a patient or client by a
5 health care provider under section 13H ¾ of said chapter 265.

6 SECTION 2. Said section 178C of said chapter 6, as so appearing, is hereby further
7 amended by inserting after the figure “265”, in line 67, the following words:- ; rape of a patient
8 or client by a health care provider under section 22D of said chapter 265.

9 SECTION 3. Section 1 of chapter 123A of the General Laws, as so appearing, is hereby
10 amended by inserting after the word “sixty-five”, in line 49, the following words:- ; indecent
11 assault and battery on vulnerable persons in custody by law enforcement under section 13H ½ of
12 said chapter 265; indecent assault and battery on a patient or client by a health care provider
13 under section 13H ¾ of said chapter 265.

14 SECTION 4. Said section 1 of said chapter 123A, as so appearing, is hereby further
15 amended by inserting after the figure “265”, in line 54, the following words:- ; rape of a patient
16 or client by a health care provider under section 22D of said chapter 265.

17 SECTION 5. Section 133E of chapter 127 of the General Laws, as so appearing, is
18 hereby amended by inserting after the figure “265”, in line 16, the following words:- ; indecent
19 assault and battery on vulnerable persons in custody by law enforcement under section 13H ½ of
20 said chapter 265; indecent assault and battery on a patient or client by a health care provider
21 under section 13H ¾ of said chapter 265.

22 SECTION 6. Said section 133E of said chapter 127, as so appearing, is hereby further
23 amended by inserting after the figure “265”, in line 20, the following words:- ; rape of a patient
24 or client by a health care provider under section 22D of said chapter 265.

25 SECTION 7. Chapter 265 of the General Laws is hereby amended by inserting after
26 section 13H ½ the following section:-

27 Section 13H ¾. (a) For the purposes of this section, “health care provider” shall mean a
28 person licensed by the commonwealth to provide health care as a physician, dentist, registered or
29 licensed nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, social
30 worker or acupuncturist acting in the scope and course of their employment.

31 (b) A person who is, or holds themselves out to be, a health care provider or clergy
32 member and commits an indecent assault and battery on a patient or client during the course of
33 diagnosis, counseling or treatment shall be punished by imprisonment in the state prison for not
34 more than 5 years or by imprisonment in a house of correction for not more than 2 1/2 years. In a
35 prosecution commenced under this section, the patient or client shall be deemed incapable of
36 consenting to contact of a sexual nature when consent was procured by a false representation that
37 such contact was for a legitimate medical, counseling or treatment purpose and not consistent
38 with generally accepted principles of professional medical practice.

39 SECTION 8. Said chapter 265 is hereby further amended by inserting after section 22C
40 the following section:-

41 Section 22D. (a) For the purposes of this section, “health care provider” shall mean a
42 person, licensed by the commonwealth to provide health care of professional services as a
43 physician, dentist, registered or licensed nurse, optometrist, podiatrist, chiropractor, physical
44 therapist, psychologist, social worker or acupuncturist acting in the scope and course of their
45 employment.

46 (b) A person who is, or holds themselves out to be, a health care provider or clergy
47 member and who knowingly induces by false misrepresentation a patient or client to engage in
48 sexual intercourse during the course of diagnosis, counseling or treatment shall be punished by
49 imprisonment in the state prison for not more than 20 years. In a prosecution commenced under
50 this section, the patient or client shall be deemed incapable of consenting to contact of a sexual
51 nature when consent was procured by false representation that such contact was for a legitimate
52 medical, counseling or treatment purpose and not consistent with generally accepted principles
53 of professional medical practice.

54 SECTION 9. Section 63 of chapter 277 of the General Laws, as appearing in the 2022
55 Official Edition, is hereby amended by inserting after the figure “22C”, in line 4, the following
56 figure:- , 22D.

57 SECTION 10. Said section 63 of said chapter 277, as so appearing, is hereby further
58 amended by inserting after the figure “13H”, in line 27, the following figures:- , 13H ½, 13H ¾.