

SUBJECT: Consent requirement for sexual assault by health care provider

COMMITTEE: Criminal Jurisprudence— favorable, with amendment

VOTE: 7 ayes — Place, Talton, Dunnam, Galloway, Hinojosa, Keel, A. Reyna
0 nays
2 absent — Farrar, Nixon

SENATE VOTE: On final passage, April 15 — voice vote

WITNESSES: No public hearing

BACKGROUND : The criminal offense of sexual assault against an adult occurs if a person assaults another without that person's consent. Under one provision, a sexual assault is deemed without consent if the assaulter is a mental health services provider who causes another person, who is a patient or former patient of the provider, to submit or participate by exploiting the other person's emotional dependency on the provider. Sexual assault is a second-degree felony, with a penalty of two to 20 years in prison and an optional fine of up to \$10,000.

DIGEST: SB 542, as amended, would deem sexual assault against an adult to be without consent if the assaulter was a health care services provider who caused another person, who was a patient or former patient of the provider, to submit or participate by exploiting the other person's emotional dependency on the provider.

Health care services provider would be defined as:

- licensed physicians;
- licensed chiropractors;
- licensed vocational nurses, registered nurses, or advanced practice nurses;
- licensed physical therapists; and
- licensed physician's assistants.

SB 542 would take effect September 1, 1997.

**SUPPORTERS
SAY:**

SB 542 would extend current law about sexual assault involving exploitation by mental health providers so that it would apply to other health care providers. Patients of all health care providers should be given the same protections.

Patients of health care providers are often more vulnerable to exploitation than other persons and deserve special protections. Patients often develop a relationship with health care providers and trust them with personal information and to do what is best. In addition, patients are sometimes medicated. In these situations, health care providers who take advantage of patients by getting them to submit or participate in a sexual act by exploiting the patients' emotional dependency should be held accountable. Examples have occurred in which doctors fondled and assaulted emotionally vulnerable patients who had turned to them for care.

SB 542 would simply extend language in current law to all health care providers. Courts would make a determination about whether a health care provider exploited a patient and whether the patient was emotionally dependent on the provider. Civil court penalties and actions by licensing boards are not sufficient punishment for this serious criminal offense.

**OPPONENTS
SAY:**

SB 542 would continue an unwise development of special circumstances relating to consent in sexual assault cases. The 1993 Penal Code established broad language and eliminated special provisions so that there would be uniformity. Health care providers should be prosecuted for sexual assault under the current statutes if they commit an offense. In addition, patients can turn to civil courts and health care licensing boards if a health care provider is guilty of misconduct. It could be difficult for courts to determine if a patient were exploited or emotionally dependent on a provider. SB 542 could open the door to special consent provision being applied to other professions, such as lawyers and professors.

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NOTES: The Senate-passed version of the bill listed the persons to whom SB 542 would apply. The committee amendment would apply the bill to “health care services providers” and define the term.