



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 37 & 39 (as passed by the Senate)
Sponsor: Senator Rosemary Bayer (S.B. 37)
Senator Erika Geiss (S.B. 39)
Committee: Health Policy

Date Completed: 4-24-23

CONTENT

Senate Bill 37 would delete from sentencing guidelines in the Code of Criminal Procedure the felonies prescribed under Section 14 of the Penal Code.

Senate Bill 39 would repeal Section 14 of the Michigan Penal Code, which prescribes a felony for administering to a pregnant woman any medicine, drug, or substance, or employing any instrument or other means, with intent to procure a miscarriage, unless it is necessary to protect the life of the mother and specifies that if those actions cause the death of the pregnant woman the offense is manslaughter.

Senate Bill 37 and Senate Bill 38 are tie-barred to Senate Bill 39. Senate Bill 38 would modify a provision stating a person who is convicted and sentenced for violating Section 14 of the Penal Code is not eligible for parole until they have served the minimum term imposed by the court.

Senate Bill 37

Currently, under the Code of Criminal Procedure, administering an abortion is a Class G felony against a person with a statutory maximum sentence of four years' imprisonment. Administering an abortion resulting in the death of the female is a Class C felony against a person with a statutory maximum sentence of 15 years' imprisonment.

The bill would delete these sentencing guidelines.

Senate Bill 39

Under Section 14 of the Penal Code, a person who willfully administers to any pregnant woman any medicine, drug, substance or thing whatever, or employs any instrument or other means, with intent to procure a miscarriage, unless it is necessary to preserve the life of the woman, is guilty of a felony. If this transaction causes the death of a pregnant woman, the offense is manslaughter.

The bill would repeal Section 14.

MCL 777.16a (S.B. 37)
MCL 750.14 (repealed) (S.B. 39)

BRIEF RATIONALE

The passage of Proposal 22-3, which enshrined the individual right to reproductive freedom in the Michigan Constitution, invalidated State laws that conflicted with the Proposal's

amendments. It has been suggested that various State laws be amended or repealed to agree with the Proposal's provisions.

BACKGROUND

In 1973, the United States Supreme Court issued its decision in *Roe v. Wade*, in which the Court struck down a Texas law making abortion illegal except when necessary to save the mother's life.¹ Following this decision, the abortion ban under Section 14 of the Michigan Penal Code went dormant. In June 2022, the US Supreme Court issued its opinion in *Dobbs v. Jackson Women's Health Organization*, which overruled *Roe* on the grounds that the US Constitution makes no reference to abortion, and the right is not implicitly protected by any constitutional provision, including the Fourteenth Amendment.² Following the *Dobbs* decision, Michigan's abortion ban went back into effect; however, a lawsuit was filed seeking to block the enforcement of the law and that lawsuit resulted in a court of claims judge ruling that the abortion ban was unconstitutional.

During the 2022 election cycle, a group called Reproductive Freedom for All circulated petitions and collected enough signatures for a proposed constitutional amendment to be placed on the 2022 November general election ballot. The amendment establishes an individual right to reproductive freedom, including the right to make and carry out all decisions about pregnancy, such as prenatal care, childbirth, postpartum care, contraception, sterilization, abortion, miscarriage management, and infertility; allows the State to prohibit abortion after fetal viability unless needed to protect a patient's life or physical or mental health; prohibits State discrimination in enforcement of the right; prohibits the prosecution of an individual, or a person helping a pregnant individual, for exercising rights established by the amendment; and invalidates State laws that conflict with the proposed amendment.³ Proposal 22-3 passed with 56.66% of electors in favor of the proposal.⁴

Legislative Analysts: Eleni Lionas
Alex Krabill

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco, Jr.

¹ 410 US 113 (1973)

² 597 US ____.

³ "November 2022 Ballot Proposal 22-3", Senate Fiscal Agency.

⁴ "2022 Michigan Election Results", The Office of Secretary of State Jocelyn Benson. Available at: https://mielections.us/election/results/2022GEN_CENR.html. Retrieved on 2-28-2023.