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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYLER ELGAR COTTON,

Defendant-Appellant.

FOR PUBLICATION
August 28, 2026
9:29 AM

No. 378335
Iron Circuit Court
LC No. 25-010272-FH

Before: GADOLA, C.J., and RIORDAN and SWARTZLE, JJ.

SWARTZLE, J.

Defendant was charged with first-degree criminal sexual conduct (CSC-I) after his infant sons, who were in his care, were discovered with rectal injuries. Defendant argues in this interlocutory appeal that he was providing his sons with medical treatment, and, therefore, he should not have been bound over on the CSC-I charges. Bona fide medical treatment or hygienic care of an infant by a parent cannot be considered a *sexual* penetration, even if such treatment or care involves an intrusion into the infant's genital or anal opening. With that said, the prosecutor presented sufficient evidence that defendant engaged in sexual penetration of his infant sons to satisfy the probable-cause standard of the preliminary examination. Accordingly, for the reasons explained here, we affirm the bindover and return this matter for further proceedings consistent with this opinion.

I. BACKGROUND

The following brief background is taken from the preliminary examination: Defendant was watching his infant twin sons alone while their mother was out of town. Police officers arrived at defendant's residence to investigate reports of possible child abuse and found bloody diapers and wipes. The children's mother reported that she found a bloody wipe in the rectum of one of the boys. In addition, one of them had bruising on his head and showed symptoms of blood in his brain, resulting in seizures and requiring drainage.

Defendant was charged with two counts of CSC-I, MCL 750.520(b)(1)(a); one count of first-degree child abuse, MCL 750.136b(2); and one count of second-degree child abuse, MCL 750.136b(3). During the preliminary examination, a nurse practitioner who treated the infant boys

testified that both had severe injuries to their anuses and rectums that were consistent with blunt-force penetrative trauma by a finger or similar object. The nurse practitioner testified that defendant claimed that he was attempting to treat the boys' constipation by inserting wipes into their rectums; the nurse practitioner opined that defendant's explanation was inconsistent with their injuries and medical histories.

Defendant argued against bindover on the two counts of CSC-I, asserting that there was no evidence that any alleged acts by him had a sexual purpose. The district court concluded that the prosecutor was not required to offer evidence that defendant's conduct had a sexual purpose and bound over defendant on the two CSC-I counts and the child-abuse count. Defendant moved in the circuit court to quash the bindover and dismiss the two CSC-I counts; the circuit court denied the motion.

Defendant sought interlocutory appeal on the CSC-I charges, raising the following claims:

1. Does Michigan law provide that sexual purpose is an element of first-degree criminal sexual conduct where medical penetrations are involved, and did the lower courts abuse their discretion in failing to require the prosecution to present evidence at the preliminary examination that Tyler Cotton had a sexual purpose when he penetrated the anal openings of his twin sons?

2. Is Michigan's first-degree criminal sexual conduct statute unconstitutionally vague and overbroad where it criminalizes the penetration of a person's genital or anal openings without considering whether the penetration was for a medical purpose and not a sexual one?

A panel of this Court granted the application, limited to these two claims. *People v Cotton*, unpublished order of the Court of Appeals, February 20, 2026 (Docket No. 378335).

II. ANALYSIS

A. STANDARD OF REVIEW

On each claim, defendant challenges the bindover decision by the district court as well as the denial by the circuit court of his motion to quash and dismiss. We review for an abuse of discretion a district court's bindover decision and a circuit court's decision on a motion to quash and dismiss. *People v Hawkins*, 340 Mich App 155, 173; 985 NW2d 853 (2022). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes" or if it "makes an error of law." *People v Swain*, 288 Mich App 609, 628-629; 794 NW2d 92 (2010). On matters of statutory interpretation and constitutionality, we review these de novo. *People v Miller*, 326 Mich App 719, 737; 929 NW2d 821 (2019).

To bindover a defendant after a preliminary examination, the prosecutor must present some evidence on each element of a crime "sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the defendant's guilt." *People v Henderson*, 282 Mich App 307, 312; 765 NW2d 619 (2009). "If the evidence conflicts or raises a reasonable doubt,

the defendant should be bound over for trial, where the questions can be resolved by the trier of fact." *Id.*

B. DEFENDANT'S FIRST CLAIM

As noted earlier, defendant raises two claims in this interlocutory appeal. The claims are, in essence, presented in the alternative: (1) sexual purpose is an element of CSC-I; but if it is not, then (2) the statute is unconstitutionally vague and overbroad because it criminalizes penetration done for a medical purpose. The prosecutor rejects both claims, arguing with respect to the first one that Michigan law is clear that sexual purpose is not an element of CSC-I. On the second claim, the prosecutor maintains that "there is no parental-medical-treatment exception to [CSC-I], person under 13 years of age." Although the prosecutor has the better argument overall, the prosecutor's categorical position against medical treatment by a parent goes too far, as we explain.

1. "SEXUAL PENETRATION" DEFINED

On the first claim, we begin with the text of the statute. MCL 750.520b(1)(a) provides, "A person is guilty of criminal sexual conduct in the first degree if he or she engages in *sexual penetration* with another person and . . . [t]hat other person is under 13 years of age." (Emphasis added.) The key definition relevant here is "sexual penetration." Our Legislature defines this term as follows: " 'Sexual penetration' means 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." MCL 750.520a(r). Defendant reads a sexual-purpose component into this definition, whereas the prosecutor sees none.

2. FAIR-READING STANDARD OF STATUTORY INTERPRETATION

Generally speaking, when construing a statute, a court must determine what our Legislature meant by the language it enacted. "The Legislature is presumed to intend the meaning clearly expressed, and this Court must give effect to the plain, ordinary, or generally accepted meaning of the Legislature's terms." *D'Agostini Land Co LLC v Dep't of Treasury*, 322 Mich App 545, 554; 912 NW2d 593 (2018); see also MCL 8.3a. In doing this, we apply "the 'fair reading' standard, where the text, context, and statutory history are consulted to construe a statute as a reasonable reader would do." *Eagan v City of Detroit,* ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 366454); slip op at 7. This approach eschews a "hyperliteral meaning of each word in the text," and instead recognizes that "[t]he full body of a text contains implications that can alter the literal meaning of individual words." Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (St. Paul: Thomson/West, 2012), p 356. This approach dovetails with our Legislature's rule of construction for the penal code set forth in MCL 750.2: "The rule that a penal statute is to be strictly construed shall not apply to this act or any of the provisions thereof. All provisions of this act shall be construed according to the fair import of their terms, to promote justice and to effect the objects of the law."

3. SEXUAL PURPOSE IS NOT AN ELEMENT OF "SEXUAL PENETRATION"

In considering the fair import of the definition of "sexual penetration," it is immediately clear that a sexual purpose is not found among the definition's text or context. The definition itself focuses on various *acts*, without any mention or hint toward the purpose motivating the act. For example, a person who performs sexual intercourse with another person could, of course, be doing so for the purpose of sexual gratification; but the person might rather be doing so for the purpose of financial gain or sadistic torture, independent of any sexual gratification. In any of these scenarios, the penetrative act would meet the statutory definition of "sexual penetration." There is, in short, no purpose-based limiting principle in this definition.

This stands in stark contrast to the definition of "sexual contact," which immediately precedes the one for "sexual penetration." For a particular act of contact to be "sexual contact," it must be shown that the contact was "for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner." MCL 750.520a(q). This type of language is conspicuously missing from the adjacent definition of "sexual penetration" in MCL 750.520a(r).

Thus, a comparison between the two statutory definitions confirms that our Legislature both (1) knew how to include a purpose component to a definition of a penal act when it wanted to do so, and (2) chose not to do so with respect to the definition of "sexual penetration" found in MCL 750.520a(r). Nothing in the statute suggests that our Legislature intended that a sexual purpose be an element of CSC-I, victim under 13 years of age. We are not the first to come to this conclusion. See, e.g., *People v Levran*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 370931); slip op at 3 (holding that "sexual penetration" under MCL 750.520a(r) does not require that the penetration "be made for sexual arousal or gratification, for a sexual purpose, or in a sexual manner"); see also *People v Nyx*, 479 Mich 112, 117-118; 734 NW2d 548 (2007) (explaining that a "prosecutor need not show that the perpetrator of a sexual penetration had any particular criminal intent in order to obtain a conviction of CSC I"); *People v Lemons*, 454 Mich 234, 253; 562 NW2d 447 (1997) ("Sexual penetration can be for any purpose."). Thus, defendant's first claim on appeal fails.[1]

C. DEFENDANT'S SECOND CLAIM

The fact that "sexual penetration" under MCL 750.520a(r) does not require a showing of sexual purpose does not mean, however, that a parent's bona fide medical treatment or hygienic

[1]In 2023, our Legislature amended MCL 750.90, a provision targeting medical professionals who sexually assault their patients through misrepresentation; this was in direct response to the notorious crimes committed by Larry Nassar. In that amended section, our Legislature adopted a definition of "sexual penetration" that included the requirement that the intrusion "reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or done in a sexual manner." MCL 750.90(5)(d). For several reasons, we do not glean any guidance from this definition when construing the meaning of MCL 750.520a(r). First, it is undisputed that MCL 750.90 does not apply here, as the alleged victims were not patients of defendant, and defendant is not a medical professional. Second, when construing a statute, it is not particularly helpful to consult a subsequently enacted statute, even one dealing with the same or similar subject. See *People v Watkins*, 491 Mich 450, 482; 818 NW2d 296 (2012).

care of a child constitutes CSC-I. To begin, consider again the definition of "sexual penetration": "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." MCL 750.520a(r). The definition provides an expansive understanding of "penetration," in that it can be "any . . . intrusion," "however slight," into "the genital or anal openings" of a person. If our Legislature had stopped there, criminalizing each and every penetration into the genital or anal opening of a person, then arguably the definition would do precisely what the prosecutor has suggested on appeal—there would be no consideration in the CSC-I statute for a parent's bona fide medical treatment or hygienic care of a child.

Our Legislature did not, however, stop there. In contrast to the *extent* of the intrusion of "sexual penetration" (which is expansive in scope), the definition is otherwise narrowed in scope by the *class* or *type* of intrusion proscribed. Specifically, the intrusion must be, in some sense, a "sexual" act, one that is "sexual" in nature. To see this, consider the four types of intrusion that are specified in the definition: "sexual intercourse, cunnilingus, fellatio, [and] anal intercourse." Each of these acts is fairly understood to be a sexual act—i.e., an act that involves a male or female reproductive organ (or both) in a way that (1) actualizes or (2) simulates an act related to reproduction, though reproduction need not be the objective or result of the act. Put another way, all four of these acts have a common class or type, in that they can be categorized as sexual, as opposed to some other kind of penetration into a person's body (e.g., surgical).

This identification of a common class or type of intrusion—a sexual intrusion—informs how the rest of the definition must be understood. "When the initial terms all belong to an obvious and readily identifiable genus, one presumes that the speaker or writer has that category in mind for the entire passage." *Reading Law*, p 199. This is merely a restatement of the well-known *ejusdem generis* canon of statutory interpretation, *id.*, a canon that has long been part of this state's jurisprudence, as our Supreme Court explained more than a century ago:

> It is a well settled general rule, and one especially applicable in the interpretation of statutes which define crimes and regulate their punishment, that general words are to be restrained to the matter with which the act is dealing, and that if it be dealing with specific things or particular modes only, the general words must be limited to such things or modes, except when it is apparent that the Legislature intended by the general words to go further. [*McDade v People*, 29 Mich 50, 52 (1874).]

This canon continues to guide courts today. For example, just two years ago, our Supreme Court explained how the canon works in this way: "*Ejusdem generis* provides that in a statute in which general words follow a designation of particular subjects, the meaning of the general words will ordinarily be presumed to be and construed as *restricted by* the particular designation and as including only those things of the same kind, class, character or nature as those specifically enumerated." *People v Burkman*, 513 Mich 300, 321; 15 NW3d 216 (2024) (emphasis added).

Thus, when reading the catchall phrase at the end of the definition of "sexual penetration"—i.e., "any other intrusion . . . of any part of a person's body or of any object into the genital or anal openings of another person's body"—the "other intrusion" must be understood to

be of the same class or type as "sexual intercourse, cunnilingus, fellatio, [and] anal intercourse." An intrusion that satisfies the catchall provision must be, in some sense, a *sexual* intrusion.

This reading is further supported by the very label given to the definition, "*sexual* penetration," MCL 750.520a (emphasis added), as well as to the catch-line heading of the operative statute, "criminal *sexual* conduct in the first degree," MCL 750.520b (emphasis added). Although the catch-line heading cannot give the statute a broader or narrower construction than the text permits, MCL 8.4b, the use of the adjective "sexual" in both places at least suggests that our reading is a fair one.

Thus, properly understood, MCL 750.520a(r) and 750.520b do not criminalize the act of a parent who provides bona fide, age-appropriate medical treatment or hygienic care to his or her child and, when doing so, has to intrude into the child's genital or anal opening (e.g., applying a topical cream to care for an infant's yeast infection). In no reasonable sense could such an intrusion be understood to be a "sexual" one.

A contrary reading of CSC-I, one that puts to the side the context of the definition of "sexual penetration," would, in fact, give rise to serious constitutional questions, including the criminalization of the basic right (and duty) of a parent to care for his or her child. See, e.g., *Santosky v Kramer*, 455 US 745, 758-759; 102 S Ct 1388; 71 L Ed 2d 599 (1982) (stating that it was "plain beyond the need for multiple citation" that a parent has, among other things, the right to care for and manage his or her child); *Parham v JR*, 442 US 584, 602-604; 99 S Ct 2493; 61 L Ed 2d 101 (1979) (holding that parents "can and must make" judgments about their child's need for medical care and treatment); *In re Sanders*, 495 Mich 394, 409; 852 NW2d 524 (2014) ("Among these fundamental rights is the right of parents to make decisions concerning the care, custody, and control of their children."). "Even if a criminal statute has a legitimate application, and virtually all do, it is nevertheless unconstitutional if it stretches so far that it makes unlawful a substantial amount of constitutionally protected conduct." *People v Morris*, 314 Mich App 399, 406-407; 886 NW2d 910 (2016) (cleaned up). A court should reasonably interpret a statute in a way that preserves the statute's constitutionality. *In re Certified Questions*, 506 Mich 332, 355-356; 958 NW2d 1 (2020). Our reading here avoids the very real danger of criminalizing a parent's act of providing bona fide, age-appropriate care to a child when such care requires an intrusion into the child's genital or anal opening.[2]

[2] This danger animated Justice MCCORMACK's dissent in *People v Overton*, where she wrote in relevant part: "While the facts here do not, in my view, raise an overbreadth concern, I worry that affirmance of the defendant's CSC-I conviction would provide support going forward for prosecuting truly innocuous and even common parenting events, such as a mother instructing her daughter about genital hygiene." 497 Mich 941, 944-945 (2014) (MCCORMACK, J, dissenting) (footnote omitted).

Our reading of Michigan's CSC-I statute is also consistent with how some other states have read similar statutes to avoid the identical constitutional concern raised here. For example, in *State v Lesik*, 322 Wis 2d 753; 2010 WI App 12; 780 NW2d 210 (2009), a stepfather was convicted of

Moreover, from a grammatical standpoint, had our Legislature intended the more expansive view, it would not have needed to list the four specific sexual acts at the beginning of the definition. Rather, it could have simply defined "sexual penetration" as something like the following: "Any 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." In eschewing this option, and instead identifying specific sexual acts that constitute sexual penetration, our Legislature made clear that parents, prosecutors, and courts should understand the general catchall provision to be informed by the type of specific acts listed. If we were to adopt the prosecutor's more expansive view, then we would be treating the four specifically listed acts as mere surplusage, and this is something that courts have warned repeatedly against doing when interpreting a statute. See *People v Pinkney*, 501 Mich 259, 282-283; 912 NW2d 535 (2018); *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012). Parents should not be left to "the mercy of *noblesse oblige*" (i.e., prosecutorial discretion) when deciding whether to provide bona fide medical treatment or hygienic care to their child. *United States v Stevens*, 559 US 460, 480; 130 S Ct 1577; 176 L Ed 2d 435 (2010).

Given our reading of the statute, defendant's alternative claim on appeal that the CSC-I statute is unconstitutionally vague or overbroad lacks merit. The definition of sexual penetration is not vague, nor does it infringe on parents' fundamental right to care for their child. Parents can provide bona fide, age-appropriate medical treatment and hygienic care to their child without violating CSC-I, even when such treatment or care requires intrusion into a genital or anal opening.

As applied here, during defendant's preliminary examination, the nurse practitioner testified that the infant boys were injured in their anal openings, and these injuries were consistent with blunt-force trauma caused by a finger or similar object. The nurse practitioner also testified that defendant's claim of medical care was not consistent with the medical findings. Although the prosecutor's evidence might well be challenged at trial, at the preliminary-examination stage, the evidence was "sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the defendant's guilt." *Henderson*, 282 Mich App at 312. Accordingly, neither court abused its discretion regarding the bindover. If defendant proceeds to

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sexual assault of his stepdaughter. The defendant argued on appeal that the definition of "sexual intercourse" (which was similar to our definition of "sexual penetration") swept too broadly and covered "medically appropriate conduct" by a parent. *Id.* at 761. The Wisconsin Court of Appeals disagreed, construing the definition of "sexual intercourse" to exclude "bona fide medical, health care, or hygiene procedures" performed by a parent on his or her child. *Id.* at 763; see also *Roberson v State*, 501 So 2d 398, 400 (Miss, 1987) ("Although, on its face, the definition of sexual penetration announced in § 97-3-97 encompasses *any* penetration, the Court holds the parameters of the definition of sexual penetration are logically confined to activities which are the product of sexual behavior or libidinal gratification, not merely the product of clinical examinations or domestic, parental functions."). For an extensive discussion about the interaction of sexual-assault statutes and parental medical treatment and hygienic care, see *Bieganski v Shinn*, 149 F4th 1055 (CA 9, 2025).

trial, we leave it to the sound discretion of the trial court whether the jury should be instructed on any bona fide medical treatment or hygienic care that can be provided by a parent to his child.[3]

III. CONCLUSION

As explained, a plain reading of the definition of "sexual penetration" in MCL 750.520a(r) confirms that a prosecutor need not prove a sexual purpose to show such penetration, and this is fatal to defendant's first claim on interlocutory appeal. With respect to defendant's second claim, a parent's bona fide medical treatment or hygienic care to a child cannot be considered a sexual act, and therefore such treatment or care falls outside the definition of "sexual penetration." Read in this way, CSC-I is not unconstitutionally vague or overbroad, and this is fatal to defendant's second claim on interlocutory appeal.

Affirmed. We do not retain jurisdiction.

/s/ Brock A. Swartzle
/s/ Michael F. Gadola
/s/ Michael J. Riordan

[3] In the mine-run of CSC-I cases, there will not be a legitimate factual question on whether the alleged intrusion was of a sexual class or type, whether the intrusion is one of the specific ones listed or the intrusion falls under the catchall provision. See, e.g., *People v Hammons*, 210 Mich App 554, 557; 534 NW2d 183 (1995) (explaining that digital penetration can constitute "sexual penetration" for purposes of CSC statute). When the evidence at trial does raise a legitimate question about whether the alleged intrusion was sexual or not (e.g., when a parent presents evidence sufficient to raise a question of fact on whether the parent provided bona fide, age-appropriate medical treatment or hygienic care to a child), then the trial court can, in the sound exercise of its discretion, provide the jury with instruction on that matter. See *People v Jarman*, 140 Mich App 93, 98-99; 362 NW2d 900 (1985).