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BILL ANALYSIS



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Senate Bill 762 (Substitute S-2 as reported)
Sponsor: Senator Joe Conroy
Committee: Judiciary

CONTENT

The bill would amend the Michigan Penal Code to criminalize as criminal sexual conduct (CSC) "sexual penetration" and "sexual contact" that occurred between certain persons related by blood or affinity to the fourth degree. The violations would not apply if both persons were lawfully married to each other at the time of the alleged violation. Also, it would be an affirmative defense that the other person used a position of authority over the defendant to coerce the defendant into the violation. The defendant would have to prove this defense by a preponderance of the evidence. The bill would take effect on June 1, 1996, and is tie-barred to House Bill 5076.

A person would be guilty of first-degree CSC if he or she engaged in sexual penetration with another person who was at least 13 but less than 18 years of age and related to the actor by blood or affinity to the fourth degree. First-degree CSC is a felony, punishable by imprisonment for life or any term of years. A person would be guilty of second-degree CSC if he or she engaged in sexual contact with another person who was at least 13 but less than 18 years of age and related to the actor by blood or affinity to the fourth degree. Second-degree CSC is a felony, punishable by up to 15 years' imprisonment.

Currently, an instance of sexual penetration is first-degree CSC, and an instance of sexual contact is second-degree CSC, when the actor is related to the victim by blood or affinity to the fourth degree, but only if the victim either is at least 13 but less than 16 years of age or is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless. The bill would delete reference to the victim's age, but would retain the violation with respect to mental or physical disabilities. The bill's affirmative defense provision, described above, would apply to this violation.

"Sexual penetration" is defined as "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". "Sexual contact" is defined as "the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification".

MCL 750.520b & 750.520c

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill could result in additional costs for the Department of Corrections for incarcerating violators of the bill's provisions.

There are no data readily available on the potential number of new commitments that might result from the bill's new provisions regarding incest. For information, in 1994, there were 287 commitments to the Department of Corrections for first-degree CSC, with an average minimum sentence of 13 years, 262 commitments for second-degree CSC, with an average minimum sentence of just over four years, 270 prison commitments for third-degree CSC with an average minimum sentence of four years, and 46 prison commitments for fourth-degree CSC with an average minimum sentence of 1.3 years.

If one assumed an increase of five new annual prison admissions for each degree of criminal sexual conduct (first through fourth) involving incest, then costs of incarceration in the long term could increase by approximately \$1.65 million.

Date Completed: 2-7-96

Fiscal Analyst: M. Hansen

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