



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 762 and 763 (as introduced 11-28-95)
Sponsor: Senator Joe Conroy
Committee: Judiciary

Date Completed: 1-29-96

CONTENT

Senate Bills 762 and 763 would amend, respectively, the Michigan Penal Code and Public Act 189 of 1966, which provides procedures for obtaining and executing search warrants, to categorize incest as first- or second-degree criminal sexual conduct (CSC) and to provide for the issuance of a search warrant for the search and seizure of blood or other fluid or tissue samples in an incest investigation.

Senate Bill 763 is tie-barred to Senate Bill 762.

Senate Bill 762

First-Degree CSC

Under the bill, a person would be guilty of first-degree CSC, which involves “sexual penetration”, if he or she committed incest by engaging in sexual penetration with a victim when the actor was related to the victim by blood or affinity to the fourth degree. First-degree CSC is a felony punishable by imprisonment for life or for any term of years; the incest offense, however, would be a felony punishable by imprisonment for life or for any term of years, but not less than five years.

Currently, an instance of sexual penetration is first-degree CSC when the actor is related to the victim by blood or affinity to the fourth degree 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 those provisions.

“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”.

Second-Degree CSC

The bill specifies that a person would be guilty of second-degree CSC, which involves “sexual contact”, if he or she committed incest by engaging in sexual penetration with a victim when the actor was related to the victim by blood or affinity to the fourth degree. Second-degree CSC is a felony punishable by up to 15 years’ imprisonment; the incest offense, however, would be a felony punishable by imprisonment for not less than five years or more than 20 years.

Currently, 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 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 those provisions.

“Sexual contact” is defined as including “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”.

Senate Bill 763

If a court had probable cause to believe that a person committed incest in violation of Senate Bill 762, the court, upon proper petition for a search warrant, would have to authorize the search and seizure of blood or other fluid or tissue samples from all of the following:

- Any individual whom the court had probable cause to believe had committed the incest.
- A child, if the court had probable cause to believe that the incest resulted in the birth of that child.
- The remains of an unborn child, if the court had probable cause to believe that the incest resulted in a pregnancy that was terminated before the birth of the child.

Senate Bill 763 would not prohibit the court from issuing a search warrant for other evidence as considered appropriate by the court.

MCL 750.520b & 750.520c (S.B. 762)
Proposed MCL 780.652a (S.B. 763)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 762 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 criminal sexual conduct (CSC1), with an average minimum sentence of 13 years (only 49 of those commitments receiving a sentence less than five years) and 262 commitments for criminal sexual conduct second degree (CSC2), with an average minimum sentence of just over four years (105 offenders receiving sentences of five years or greater). If judges sentenced offenders convicted of incest in the same manner in which they sentence other CSC offenders, then one would expect little impact as a result of the new five-year mandatory minimum for the CSC1 involving incest. Based on past sentencing practices, however, the five-year mandatory minimum could result in increased sentence lengths for those individuals convicted of CSC2.

If one assumed an increase of five new annual prison admissions for CSC1 involving incest, receiving an average 13-year prison sentence, and five new annual admissions for CSC2 involving incest, receiving at least a five-year prison sentence, then costs of incarceration in the long term could increase by approximately \$1.4 million.

Senate Bill 763 would have no fiscal impact on State or local government.

Fiscal Analyst: M. Hansen
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.