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BILL



ANALYSIS

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House Bill 5076 (Substitute S-1)
Sponsor: Representative Clyde LeTarte
House Committee: Judiciary and Civil Rights
Senate Committee: Judiciary

Date Completed: 2-6-96

CONTENT

The bill would amend the Michigan Penal Code to criminalize as third-degree criminal sexual conduct (CSC) "sexual penetration" that occurred between certain persons related by blood or affinity to the third degree, and as fourth-degree CSC "sexual contact" that occurred between certain persons related by blood or affinity to the third 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 to a prosecution for either offense that the other person was in a position of authority over the defendant and used that authority to coerce the defendant to violate the prohibition. The defendant would have the burden of proving this defense by a preponderance of the evidence.

The bill would take effect on June 1, 1996, and is tie-barred to Senate Bill 762, which would make similar amendments regarding first- and second-degree CSC.

Third-Degree CSC

A person would be guilty of third-degree criminal sexual conduct if he or she engaged in sexual penetration with another person who was at least 18 years of age and related to the actor by blood or affinity to the third degree. Third-degree CSC is a felony, punishable by up to 15 years' imprisonment.

"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".

Fourth-Degree CSC

A person would be guilty of fourth-degree CSC if he or she engaged in sexual contact with another person who was at least 18 years of age and related to the actor by blood or affinity to the third degree. Fourth-degree CSC is a misdemeanor, punishable by up to two years' imprisonment, a maximum fine of \$500, or both.

“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 750.520d & 750.520e

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill could result in increased 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 could result from the bill's provisions regarding third- and fourth-degree CSC between persons related by blood or affinity to the third degree. As information, in 1994 there were 270 prison commitments for third-degree CSC with an average minimum sentence of four years. There were also 46 prison commitments for fourth-degree CSC with an average minimum sentence of 1.3 years.

If one assumed an increase of five new commitments each year for both third- and fourth-degree CSC between persons related by blood or affinity, then costs of incarceration would increase each year until the fourth year, when additional costs would remain constant at approximately \$375,000 per year.

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.