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SFA**BILL ANALYSIS**

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Senate Bill 1127 (as enrolled)
Sponsor: Senator Joanne G. Emmons
Senate Committee: Judiciary
House Committee: Criminal Justice

PUBLIC ACT 714 of 2002

Date Completed: 1-9-03

RATIONALE

Under Michigan's criminal sexual conduct (CSC) statutory provisions, the age of consent for sexual relations is 16. Even though a teacher or school administrator typically has an influential and authoritative role in the life of a student, there has been no provision in the CSC laws that criminalizes sexual relations between a student who is at least 16 and a teacher or school administrator. While most school districts apparently have employment policies prohibiting sexual relations between teachers or administrators and their students, that conduct is not illegal if it is consensual. Recently, for example, a teacher in Big Rapids reportedly was found to be intimately involved with a 16-year-old student. Since it was a consensual relationship and the girl was 16, no CSC charges could be brought against the 37-year-old teacher.

Although this type of situation is no doubt rare, the Big Rapids incident is not unique. Some people believe that, regardless of whether a student has reached the age of consent, sexual relationships between a student and a teacher or school administrator should be considered criminal sexual conduct and be subject to the penalties for that crime.

CONTENT

The bill amends the Michigan Penal Code to prohibit as criminal sexual conduct sexual penetration or sexual contact with another person, if the actor is a teacher, substitute teacher, or administrator of a public or nonpublic school in which the other person is enrolled. The bill takes effect on April 1, 2003.

Under the bill, the violation is first-degree CSC if the act involves sexual penetration, or

second degree CSC if it involves sexual contact, the other person is at least 13 but less than 16 years old, and the actor is a teacher, substitute teacher, or administrator of the school in which the other person is enrolled.

The bill makes the violation third-degree CSC if the act involves sexual penetration, or fourth-degree CSC if it involves sexual contact, the other person is at least 16 but less than 18 years old and a student at a public or nonpublic school, and the actor is a teacher, substitute teacher, or administrator at the school. The third- and fourth-degree violations do not apply if the other person is emancipated or if the two people are lawfully married to each other at the time of the alleged violation.

Under the Code, first-degree CSC is a felony punishable by imprisonment for life or any term of years. Second-degree CSC is a felony punishable by up to 15 years' imprisonment. Third-degree CSC is a felony punishable by up to 15 years' imprisonment. Fourth-degree CSC is a misdemeanor punishable by up to two years' imprisonment, a maximum fine of \$500, or both.

MCL 750.520a-750.520e

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Michigan Penal Code has not specifically prohibited sexual relations between a teacher or school administrator and a student. Since

the age of consent in Michigan is 16, a consensual sexual relationship between a 16-year-old high school student and his or her teacher is legal, even if most would agree that such a relationship is improper. Although Michigan's CSC laws apply when the actor is in a position of authority over the victim and uses that authority to coerce the victim to submit, it may be difficult for a prosecutor to prove that the existence of that authority alone constitutes coercion. In an instance in Big Rapids, for example, a 16-year-old girl who was found to be having a sexual relationship with her 37-year-old teacher reportedly contended that the relationship was consensual and that she was not coerced.

Since teachers and school administrators are in a position to exercise their influence over impressionable teenagers, they should not be allowed to engage in sexual liaisons with their charges. Parents place a great deal of trust in those who supervise and instruct their children throughout the school day, and the law should reinforce that trust by establishing barriers to intimate relationships between school personnel and students. Also, children should be able to attend school free of any concern about being lured into an improper relationship with an adult teacher or administrator. In order to ensure parents' trust and students' safety, the bill amends the CSC laws to criminalize sexual relationships between a teacher or administrator and a student.

Response: The bill applies only when the student is under 18, but many high school seniors are 18 or even 19 years old before they graduate. The bill may inadvertently send a message that sexual relationships with teachers are permissible when the student is 18 or 19. Perhaps the new provisions should apply regardless of the age of the student.

Opposing Argument

The enacted version of the bill is much narrower in scope than the version that passed the Senate. As passed by the Senate, the bill would have applied to all employees and volunteers in the school district or intermediate school district in which the student was enrolled. As enacted, the bill fails to address a sexual relationship between a student and a school district employee other than a teacher or administrator. Thus, the bill does not extend CSC penalties to other school employees, contractors, or volunteers who

may come into contact with students, such as counselors, librarians, bus drivers, clerical staff, custodial workers, food service workers, teachers' aides, and volunteer classroom assistants. These adults should be held to the same standard that applies to teachers and administrators with regard to improper relationships with students.

Response: The bill focuses on teachers and administrators because they have direct authority over students. The bill avoids casting too wide a net, which might have covered, for instance, an 18-year-old recent graduate hired to do custodial or food service work and whose 17-year-old boyfriend or girlfriend might still be enrolled in the school.

Opposing Argument

The bill is unnecessary. Current laws are sufficient to deal with sexual predators and others who victimize school children or any other person. If a teacher or school administrator uses his or her position of authority to coerce a student into a sexual relationship, he or she is already subject to CSC charges. In addition, although the 37-year-old male teacher in Big Rapids who was involved with a 16-year-old female student could not be charged with CSC without a showing of coercion, other charges might have applied. For instance, the Michigan Penal Code makes it a felony for a man to "seduce and debauch" any unmarried woman (MCL 750.532). This offense is punishable by up to five years' imprisonment or a fine of up to \$2,500.

The bill also is too harsh. It subjects a person to up to 15 years' imprisonment for engaging in a sexual relationship with a willing partner who has reached the legal age of consent. A better approach would be to encourage school districts to develop policies prohibiting such relationships and take appropriate enforcement measures, including placing information about violations in the teacher's or administrator's personnel file and revealing that information to prospective future employers.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on State and local government.

Table 1 shows the number of offenders convicted of each of the applicable criminal sexual conduct offenses according to the 1999 Department of Corrections Statistical Report. The data do not describe the circumstances of the crime, which would indicate whether the offender was a teacher, substitute teacher, or administrator of the school the victim attended. Thus, there is no way to know to what extent, if at all, a teacher, substitute teacher, or administrator convicted under the bill, would have been convicted under current law.

Table 1

1999 Criminal Sexual Conduct (CSC) Offenses	
CSC - First Degree	437
CSC - Second Degree	745
CSC - Third Degree	553
CSC - Fourth Degree	582

Table 2 shows the sentencing guidelines minimum sentence ranges for each of the offenses, at the low end and the high end of the guidelines. Offenders convicted of first-, second-, or third-degree criminal sexual conduct may receive probation or incarceration in a State facility. The State incurs the cost of probation at \$4.38 per day as well as incarceration at an average annual cost of \$25,000. Fourth-degree criminal sexual conduct offenders are likely to receive probation or incarceration in a local facility. The State incurs the cost of probation, while local units bear the cost of incarceration, which may vary by county from \$27 to \$65 per day.

Table 2

Sentencing Guideline Minimum Ranges		
Offense	Class	Minimum Range (Months)
CSC - First Degree	A	21-35 to 270-450 or Life
CSC - Second Degree	C	0-11 to 62-114
CSC - Third Degree	B	0-18 to 117-160
CSC - Fourth Degree	G	0-3 to 7-23

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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.

Fiscal Analyst: Bethany Wicksall