

# Legislative Analysis

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## **CRIMINAL SEXUAL CONDUCT: SCHOOL EMPLOYEES & VOLUNTEERS**

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**House Bill 6307 (Substitute H-2)**  
**Sponsor: Rep. Judy Emmons**  
**Committee: Judiciary**

### **First Analysis (10-24-06)**

**BRIEF SUMMARY:** The bill would amend criminal sexual conduct (CSC) laws to prohibit sexual penetration or sexual contact with another person, if the person committing the act is a school employee, aide, paraprofessional, or volunteer (other than a student).

**FISCAL IMPACT:** The bill would have an indeterminate fiscal impact on state and local governments, as discussed in more detail below.

### **THE APPARENT PROBLEM:**

Under Michigan's criminal sexual conduct (CSC) statutory provisions, the age of consent for sexual relations is 16. Public Act 714 of 2002 (enrolled Senate Bill 1127) amended the CSC provisions to prohibit sexual contact of any kind between students and teachers or school administrators, even if the relationship was consensual and the student was over the age of consent.

Recently, there have been several incidents in which school coaches had consensual sexual relationships with high school students 16 years of age or older. Even though the men were school employees, they could not be prosecuted because they were not teachers. Legislation is being sought to expand the prohibition on sexual relationships with students to include other adults working or volunteering in the schools.

In addition, children and adults with developmental disabilities who receive special education services in schools or who live in dependent living settings are also especially vulnerable to inappropriate sexual advances from their teachers or those who work at their dependent living facilities. Some feel, therefore, that sexual contact or sexual penetration with a special education student or resident of a dependent living facility should also be a *per se* violation of the CSC statutes.

### **THE CONTENT OF THE BILL:**

The bill would amend the Michigan Penal Code to prohibit as criminal sexual conduct (CSC) sexual penetration or sexual contact with another person, if the actor (the person accused) is an aide, paraprofessional, volunteer other than a student, or employee at a public or nonpublic school where the other person is enrolled.

The same prohibition already applies to a teacher, substitute teacher, and school administrator.

The newly added violation would be first-degree CSC if the act involved sexual penetration and the other person were at least 13 but less than 16 years old, and second degree if it involved sexual contact and the other person were at least 13 but less than 16 years old. (Separate provisions address CSC violations for children under 13, and they apply regardless of occupation.)

The newly added violation would be third-degree CSC if the act involved sexual penetration and the other person were at least 16 but less than 18 years of age, and fourth-degree CSC if the act involved sexual contact and the other person were at least 16 but less than 18 years old. However, the third-degree or fourth-degree violation would not apply if the other person were emancipated or if the two people were lawfully married to each other at the time of the alleged violation.

The bill would also make it a first- or second-degree CSC for a person employed by a dependent living setting to have sexual penetration or sexual contact with a resident living in the facility and would apply the same first- and second-degree CSC prohibitions concerning students and school staff to special education students.

Currently, it is first- or second-degree CSC if the other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless and sexual penetration or sexual contact occurs with an actor who is a blood relative or who is in a position of authority over the other person and used that authority to coerce the other person to submit. The bill would add to this, as first-degree or second-degree CSC (for any age), an act in which the other person was a resident of a dependent living setting and the actor was employed in any capacity by that dependent living setting. The bill would redefine "developmental disability" following the definition in the Mental Health Code and would define "dependent living setting" to include a licensed adult foster care facility, a licensed nursing home, and a licensed home for the aged.

The bill would also prohibit as first-degree or second-degree CSC an act involving another person who was at least 16 years of age but less than 26 years of age and who was receiving special education services and the actor was a teacher, substitute teacher, aide, paraprofessional, volunteer other than a student, employee, or administrator of the public or nonpublic school, school district, or intermediate school district from which the other person received the special education services.

(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 imprisonment for up to 15 years. Third-degree CSC is a felony punishable by imprisonment for up to 15 years.

In addition, recent legislation that took effect August 28, 2006 increased the penalties for adults 17 years of age or older whose victim is less than 13 years of age, as follows:

- First-degree CSC – Life or any term of years, but a minimum of 25 years; life without parole if previously convicted of 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, or assault with intent to commit CSC and the victim was under 13; and lifetime electronic monitoring.
- Second-degree CSC – Lifetime electronic monitoring.)

MCL 750.520a et al.

### ***BACKGROUND INFORMATION:***

The Senate-passed version of Senate Bill 1127 of 2002, which later became Public Act 714, applied the *per se* CSC provisions to school volunteers, all employees, and to contractual services providers of public and private schools as well as intermediate school districts. The bill was amended in the House to apply only to teachers, substitute teachers, and administrators of the student's school and to eliminate the reference to intermediate school districts.

### ***FISCAL INFORMATION:***

The bill would have an indeterminate fiscal impact on the state and local units of government, depending on how it affected the numbers and types of criminal convictions. To the extent that the bill increased the numbers of individuals convicted of criminal sexual conduct, it could increase costs for the state or local units of government. Costs of felony probation supervision (about \$2,000 per supervised offender annually) or prison incarceration (about \$30,000 per prisoner annually) would be borne by the state, while the cost of any jail sentence would be borne by the county (costs vary from county to county).

### ***ARGUMENTS:***

#### ***For:***

Children should be able to attend school and participate in school sports without fear of being lured into a relationship with a coach or other school employee or volunteer. Though current law does allow prosecution of those in a position of authority who use that authority to coerce intercourse or sexual contact, a prosecutor must establish that the person is indeed in a position of authority over that student, and that he or she used that authority to force or coerce the sexual activity. However, in the case of consensual sex, it is difficult to prove that a coach, or any other school employee or adult volunteer, used the power inherent in his or her position to force that relationship. Public Act 714 of 2002 amended the criminal laws to make sexual relations between a student and a teacher or school administrator a *per se* violation of the criminal sexual conduct provisions. Recent incidents involving high school coaches and students over the age of consent have shown the need to expand the provisions of Public Act 714 to include all school employees and volunteers.

In one of the recent incidents giving impetus to the bill, a high school wrestling coach entered into a consensual relationship with a 16-year-old girl. He was initially convicted under the CSC provisions, but the conviction was later reversed on appeal. In another consensual relationship, a varsity basketball coach impregnated a 17-year-old on the team; because it could not be proven that he had used his position as coach to force the relationship, he could not be prosecuted. Even though the age of consent is 16 years old, it is still inappropriate that school volunteers and personnel (i.e., bus drivers, coaches, custodians, counselors, and aides) engage in liaisons with students. The bill would create a strong deterrent to any of these persons considering such an ill-advised action.

***Response:***

The bill would expand the *per se* CSC provisions to include many school personnel and volunteers not covered now. However, the bill should also apply to contractual services providers. Many school districts have privatized the services of custodial staff and bus drivers. These people also come into daily or weekly contact with school children. Yet, they will be treated differently from those doing the same jobs who are employed by the schools.

***For:***

The bill would also increase protection of students ages 16 to 25 who receive special education services and persons of any age living in a dependent living setting. Conduct involving sexual penetration or sexual contact with any of these individuals (by school personnel with special education students and by employees of nursing homes, adult foster care facilities, or homes for the aged with residents) would be a *per se* violation of the 1<sup>st</sup> and 2<sup>nd</sup> degree CSC statutes. The state has a responsibility to protect its more vulnerable citizens, and the bill's provisions would enable the state to more fully do so.

***Against:***

It is not unusual for young men or women in the community, such as recent graduates, to be assistant coaches or volunteer in other capacities in schools. Some feel the bill's provisions therefore should not be applied to those situations referred to as "Romeo and Juliet" relationships in which a young man or woman, who may be the same age or near the same age as the students he or she is working with, become involved in a consensual relationship with a student 16 years of age or older.

***Rebuttal:***

The issues here are trust and the abuse of authority or perceived authority. Any non-student who is working with students or around students at a school carries a certain level of authority and should not encourage, or engage in, a sexual relationship with a student.

***Against:***

The Sex Offender Registry is already clogged with the names of persons who are not sexual predators and who do not pose a risk to society. By making sex or sexual contact with a student a *per se* violation of the CSC laws, the situation will be made worse. Individuals convicted under the bill for 1<sup>st</sup> or 2<sup>nd</sup> degree CSC would have to register as sex offenders for the rest of their lives, and those convicted of 3<sup>rd</sup> or 4<sup>th</sup> degree CSC (whose conduct was with a person of legal age to consent) would have to register for 25 years. Each incident should instead be able to be examined and charged on a case-by-

case basis. As many on the Sex Offender Registry can attest, the public views everyone on the registry as a pedophile or sexual predator, though most are neither and pose no further threat of reoffending. Public perception, however, makes it difficult for registrants to find gainful employment, as many occupations are now closed to anyone on the registry, and to find housing, as no one wants a registered sex offender to live close by. Indeed, the dread of facing such lifetime repercussions led a young student teacher, who faced charges under the provisions of Public Act 714 of 2002 for a consensual relationship with a student old enough to consent, to end his own life. It isn't that school employees and volunteers who take advantage of or engage in inappropriate sexual relations with school-age children shouldn't be punished, it is the problem that in doing so, those charged under the bill's provisions (who must then register as sex offenders), never get to repay their debt to society. Until such time as the sex offender registry statute is overhauled to glean out those who are not sexual predators, legislation that would automatically add more people to it who are not predators should be carefully considered.

### ***POSITIONS:***

The Prosecuting Attorneys Association of Michigan supports the bill. (10-3-06)

The Michigan Coalition Against Domestic and Sexual Violence indicated support for the bill. (9-20-06)

The Michigan Department of Education indicated neutrality on the bill. (9-20-06)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.