

Legislative Analysis



MODIFY DEFINITION OF 2ND DEGREE CSC

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House Bill 5041 (Substitute H-2)
Sponsor: Rep. Mark Meadows
Committee: Judiciary

Complete to 2-7-08

A SUMMARY OF HOUSE BILL 5041 AS REPORTED FROM COMMITTEE 1-30-08

The bill would amend the Michigan Penal Code (MCL 750.520c) to modify one of the listed scenarios that constitutes criminal sexual conduct (CSC) in the second degree. Currently, a person who is affiliated as an employee or volunteer with the county or the state Department of Corrections is guilty of second degree CSC if the victim is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program (and the person engaging in the conduct knows that the victim is under the county's jurisdiction).

House Bill 5041 would modify the above definition so that it would apply to an employee or volunteer "who engaged in sexual contact with the victim while the victim was imprisoned or who uses his or her position of authority over the victim to gain access to or to coerce or otherwise encourage the victim to engage in sexual contact during supervision" by the employee or volunteer.

FISCAL IMPACT:

The bill likely would have a minimal fiscal impact on the state and local units of government. In 2005, the most recent year for which data are available, there were two offenders sentenced for second-degree criminal sexual conduct where the other person was a county prisoner or probationer. One of the offenders was sentenced to prison, and the other to probation. In addition, there were 167 offenders sentenced for second-degree criminal sexual conduct where there were multiple variables or where no variable was specified. It is possible that some of those cases involved offenses where the other persons were county prisoners or probationers.

To the extent that the bill reduced the number of people convicted of second-degree criminal sexual conduct, it could reduce state or local correctional costs. Appropriated state costs of prison incarceration average about \$32,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs of parole and probation supervision average about \$2,000 per supervised offender per year. Local costs of jail incarceration vary by county.

BACKGROUND INFORMATION:

The stated intent of the legislation is to close a loophole in the criminal sexual conduct (2nd degree) statute that is having unintended consequences. The statute in question makes it a *per se* offense for an employee, contract employee, or volunteer with a county or Department of Corrections to engage in sexual contact with a parolee or probationer. In one case, a DOC corrections officer engaged in a consensual relationship with a former prisoner who, at the time of the affair, was on parole. The employee, a single mother, pled guilty to a reduced charge. However, she still is required to be on the Sex Offender Registry for 25 years. According to her testimony, this has affected her ability to find housing and subjects her to the daily fear that someone, if they have seen her picture on the Internet, will mistake her as a pedophile and report her to the police if they see her walking with her daughter. In another case, a deputy sheriff was charged under the statute when his live-in girlfriend was placed on probation after being convicted of a misdemeanor offense.

The bill as reported from committee (Substitute H-2) would clarify that only acts in which the actor used his or her position to gain access to, coerce, or otherwise encourage a relationship would fall under the provision. A floor substitute which has been offered (Substitute H-3) would further tighten the language to apply in cases in which the actor had sexual contact with a prisoner or who used "his or her position of authority over the victim to gain access to or to coerce or otherwise encourage the victim to engage in sexual contact during any term of supervision."

Such a change to this provision would provide the protection to the people intended, without inadvertently criminalizing consensual relationships between adults (and even spouses).

POSITIONS:

A representative of the Police Officers Association of Michigan testified in support of the bill. (1-30-08)

The Michigan Coalition Against Domestic and Sexual Violence is neutral on the bill. (1-30-08)

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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.