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BILL



ANALYSIS

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Senate Bill 386 (Substitute S-1 as reported)
Sponsor: Senator Bruce Patterson
Committee: Judiciary

Date Completed: 5-8-07

RATIONALE

Under Michigan law, the age of consent for sexual relations typically is 16. Sexual contact or sexual penetration with a person under 16 may be first-, second-, third-, or fourth-degree criminal sexual conduct (CSC) depending on various factors, including the perpetrator's relationship with the victim. Because teachers and school administrators are in a position of authority over their students, one of the CSC factors is whether the perpetrator is a teacher or administrator of the school in which the other person is enrolled as a student. Under provisions added to the Michigan Penal Code by Public Act 714 of 2002, the offense is first- or second-degree CSC if the student is under 16, and third- or fourth-degree CSC if the student is 16 or 17. While most school districts apparently had employment policies prohibiting sexual relations between teachers or administrators and students, that conduct previously was not illegal if it was consensual and the student was at least 16.

The Penal Code does not address, however, situations in which other adults working in schools engage in sexual relations with students. Consequently, there is what some consider to be a loophole in the law, because contract service providers and volunteers working in schools, and employees other than teachers or administrators, are not subject to CSC prohibitions if they engage in consensual sexual relations with a student who is at least 16. Some people believe the CSC prohibitions added by Public Act 714 should be extended to those workers. In addition, special education students may remain in school up to the age of 26. Although they may be well past Michigan's 18-year-old age of majority, many are as

emotionally, mentally, and physically vulnerable as young children. It has been suggested that the Penal Code also should prohibit sexual relations between school employees, contractors, or volunteers and those special education students.

CONTENT

The bill would amend the Michigan Penal Code to include in criminal sexual conduct offenses, sexual penetration or sexual contact involving an actor who was an employee or contractual service provider of a school in which the other person was enrolled or an actor who was a volunteer who was not a student in any school in kindergarten through 12th grade. Also, sexual penetration or sexual contact with a special education student who was at least 16 years old but under 26 would be CSC if the actor were a teacher, administrator, employee, or contractual service provider of the school or district from which the other person received special education services or if the actor were a volunteer who was not a student in any school in kindergarten through 12th grade.

Under the Code, a person is guilty of first-degree CSC if he or she engages in sexual penetration with another person and any of the circumstances listed in the Code exist. A person is guilty of second-degree CSC if he or she engages in sexual contact and any of the listed circumstances exist. For both first- and second-degree CSC, the circumstances include situations in which the other person is at least 13 years old but

under 16 and the actor (the person accused) is a teacher, substitute teacher, or administrator of the public or nonpublic school in which the other person is enrolled.

Third- or fourth-degree CSC is committed if a person engages in sexual penetration or sexual contact, respectively, with another person under other circumstances described in the Code. These include situations in which the other person is 16 or 17 years old and a student at a public or nonpublic school, and the actor is a teacher, substitute teacher, or administrator of that school.

In all of these provisions, the bill would include an actor who was an employee or contractual service provider of the school in which the other person was enrolled, or who was a volunteer who was not a student in any school in kindergarten through 12th grade. The bill also would include in first- or second-degree CSC a situation in which the other person was at least 16 but under 26 and was receiving special education services and the actor was a teacher, substitute teacher, administrator, employee, or contractual service provider of the public or nonpublic school, school district, or intermediate school district from which the victim received special education services or the actor was a volunteer who was not a student in any school in kindergarten through 12th grade.

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. Enhanced penalties apply if first- or second-degree CSC is committed by a person who is at least 17 against someone under 13.

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.

The bill would take effect 90 days after its enactment.

MCL 750.520b-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

Under most circumstances, a person cannot be charged criminally for having sexual relations with someone who is 16 or older because the age of consent in Michigan is 16. Recognizing the impropriety of a teacher or administrator engaging in a sexual relationship with a student, even if the student was 16 or older, the Legislature passed and the Governor signed into law Public Act 714 of 2002, prohibiting sexual penetration or sexual contact under these circumstances. This CSC prohibition, however, does not apply to adults working at a school in a capacity other than as a teacher or administrator.

Reportedly, there have been recent incidents in which adult school workers, such as coaches and police liaison officers, engaged in relationships with 16- and 17-year-olds at the schools where they worked or volunteered their services. The Senate Judiciary Committee heard testimony from a woman whose 17-year-old daughter evidently was enticed into a relationship with a police liaison officer working in her school. When the relationship became public knowledge, the girl, who had been a good student and was very involved in school activities, left the school for homebound classes. Since the girl had reached the age of consent and the school's police liaison officer was not a teacher or administrator, he could not be charged with CSC. Reportedly, although the officer was fired from his job, he was recently hired by a police department in a neighboring community.

Like teachers and administrators, other school employees, contractors, and volunteers are in a position of authority over students, even if they have reached an age that the law otherwise recognizes as being mature enough to consent to sex. Any adult working in a school should be criminally liable for engaging in sexual relations with a student, even if the student has reached the legal age of consent.

Response: The bill may not be written broadly enough to cover the incident described above that involved a school liaison officer. Apparently, in some districts such a service is provided under a service contract between the police department and the school, which the bill would apply to. In other districts, though, a law enforcement agency simply assigns a police officer to

work in the schools. In that situation, the officer is not a school employee, volunteer, or contractual service provider.

Also, the proposed CSC prohibition involving special education students refers to teachers, administrators, employees, service providers, and volunteers of the school, school district, or intermediate school district (ISD). The current prohibition addressing teachers and administrators, and the proposed expansion of that provision to employees, contract service providers, and volunteers, refers only to the school at which the other person is a student, not the district or ISD. The two provisions not only would be inconsistent, but would fail to prohibit sexual relations between a district employee, such as a bus driver or coach, and a 16- or 17-year-old student. Also, neither the current provision nor the bill addresses a situation in which a teacher engages in a sexual relationship with a student at another school in the same district.

Supporting Argument

Special education students may continue to receive educational services through the age of 26. These students, regardless of their age, deserve at least as much legal protection as that extended to mainstream high school students. By criminalizing sexual penetration or sexual contact with a special education student when the actor was a teacher, administrator, employee, contractual service provider, or volunteer of the school or district where the other person received special education services, the bill would protect those students and hold the adults serving them to as high a standard as that applied to school employees dealing with mainstream students.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of CSC under the proposed circumstances. In 2005, 2,976 offenders were convicted of first-, second-, third, and fourth degree CSC. Of these offenders, 1,860 were sentenced to prison, 770 to probation, and 208 to jail, and 138 received other types of sentences, such as delayed and suspended sentences, or

Holmes Youthful Trainee Act probation. To the extent that the bill resulted in increased incarceration time, local governments would incur increased costs of incarceration in local facilities, which vary by county. The State would incur increased costs of incarceration in a State facility at an average annual cost of \$31,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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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.