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**BILL ANALYSIS**

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Senate Bill 386 (as enacted)  
Sponsor: Senator Bruce Patterson  
Senate Committee: Judiciary  
House Committee: Judiciary

**PUBLIC ACT 163 of 2007**

Date Completed: 1-26-09

**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, before Public Act 714 that conduct was not illegal if it was consensual and the student was at least 16.

Neither the Penal Code nor Public Act 714, however, addressed situations in which other adults working in schools engage in sexual relations with students. Consequently, this left what some considered to be a loophole in the law, because contract service providers, volunteers working in schools, public employees assigned to work in schools, and school employees other than teachers or administrators, were not subject to criminal penalties if they engaged in consensual sexual relations with a student who was at least 16. It was suggested that the CSC

prohibitions added by Public Act 714 be extended to those workers. Also, the prohibition enacted in 2002 applied only to teachers and administrators of the school in which the other person was enrolled; it did not include adults working in the same school district or intermediate school district (ISD).

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 age of majority, many are as emotionally, mentally, and physically vulnerable as young children. It was suggested that the Penal Code also should prohibit sexual relations between school, district, or ISD employees, contractors, or volunteers, or public employees assigned to work in schools, and those special education students.

**CONTENT**

**The bill amended the Michigan Penal Code to include in criminal sexual conduct offenses, sexual penetration or sexual contact involving an actor who is a teacher, substitute teacher, or administrator of a school, district, or ISD in which the other person is enrolled, rather than just the school of enrollment. The bill also includes in CSC offenses an actor who is an employee or contractual service provider of the school, district, or ISD in which the other person is enrolled, a nonstudent volunteer, or a government employee assigned to provide a service**

**to a school, district, or ISD, who uses his or her status to gain access to, or to establish a relationship with, that other person.**

**In addition, under the bill, sexual penetration or sexual contact with a special education student who is at least 16 years old but under 26 is third- or fourth-degree CSC if the actor is a teacher, administrator, employee, or contractual service provider of the school, district, or ISD from which the other person receives special education services, or if the actor is a nonstudent volunteer or a government employee assigned to provide a service to a school, district, or ISD and uses his or her status to gain access to, or to establish a relationship with, that other person.**

The bill took effect on July 1, 2008.

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 CSC prohibitions, the bill includes an actor who is an employee or contractual service provider of the school in which the other person is enrolled, a volunteer who is not a student in any public or nonpublic school, or a State, local, or U.S. employee assigned to the school, if the actor uses his or her status to gain access to, or to establish a relationship with, that other person. Also, under the bill, the prohibitions

regarding school teachers and administrators working in the school in which the student is enrolled also apply to teachers and administrators working in the school district or ISD in which the student is enrolled.

In addition, the bill includes in third- or fourth-degree CSC a situation in which the other person is at least 16 but under 26 and is receiving special education services and the actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public or nonpublic school, school district, or ISD from which the victim receives special education services, or the actor is a volunteer who is not a student in any public or nonpublic school or is a State, local, or U.S. employee assigned to provide any service to the school, district, or ISD and uses his or her status to gain access to, or to establish a relationship with, that other person.

The prohibitions involving a person receiving special education services and a teacher, substitute teacher, administrator, employee, or contractual service provider do not apply if the people are legally married to each other at the time of the alleged violation.

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.

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 is 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, did not apply to adults working at a school in a capacity other than as a teacher or administrator.

Reportedly, there have been 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 she 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 hired by a police department in a neighboring community.

Like teachers and administrators, other school employees, contractors, and volunteers, as well as other public employees assigned to work in schools, are in a position of authority over students, even those who 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.

### **Supporting Argument**

The 2002 prohibition addressing teachers and administrators referred only to the school in which the other person was a student, not the district or ISD. This failed to prohibit sexual relations between a district employee, such as a bus driver or coach, and a 16- or 17-year-old student, or to address a situation in which a teacher engaged in a sexual relationship with a student at another school in the same district. By applying the prohibition to teachers, administrators, employees,

contractors, and volunteers in a school, district, or ISD in which the student is enrolled, the bill covers those situations.

### **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 is a teacher, administrator, employee, contractual service provider, or volunteer of the school or district where the other person receives special education services, or a government employee assigned to work in a school, district, or ISD, the bill protects those students and holds the adults serving them to as high a standard as that applied to employees and volunteers dealing with mainstream students.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of CSC under the circumstances described in the bill. In 2006, 2,840 offenders were convicted of first-, second-, third-, and fourth-degree CSC. Of these offenders, 1,828 were sentenced to prison, 718 to probation, and 173 to jail, and 121 received other types of sentences, such as delayed and suspended sentences, or Holmes Youthful Trainee Act probation. To the extent that the bill results in increased incarceration time, local governments will incur increased costs of incarceration in local facilities, which vary by county. The State will incur increased costs of incarceration in a State facility at an average annual cost of \$32,000. Additional penal fine revenue will 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.