



**House
Legislative
Analysis
Section**

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**CRIMINAL SEXUAL CONDUCT WITH PRISONER
RECEIVED**

House Bill 4386 as enrolled
Second Analysis (6-29-88)

AUG 04 1988

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Sponsor: Rep. Floyd Clack
House Committee: Judiciary
Senate Committee: Criminal Justice, Urban Affairs,
and Economic Development

THE APPARENT PROBLEM:

Occasionally an employee of the Department of Corrections is discovered to have had sexual relations with a prisoner. While the department can and does dismiss such employees, the department maintains that because of the position of authority that a corrections employee holds, such behavior should be treated as criminal sexual conduct. The situation is considered analogous to that where a Department of Mental Health employee has sexual contact with a patient or resident—that is, the usual notions of consent do not apply. The corrections department seeks to have the law on criminal sexual conduct extended to apply to a corrections employee who has sex with a prisoner, irrespective of whether the prisoner is argued to have given consent.

THE CONTENT OF THE BILL:

Fourth-degree criminal sexual conduct is a misdemeanor punishable by imprisonment for up to two years, a fine of up to \$500, or both. Under the bill, an employee, contractual employee, or volunteer with the Department of Corrections who had sexual contact with a person under the department's jurisdiction (which would include a parolee) would be guilty of fourth-degree criminal sexual conduct, providing the employee knew that the person was under the department's jurisdiction.

The bill would take effect June 1, 1988.

MCL 750.520e

FISCAL IMPLICATIONS:

The Department of Corrections reports that the bill would have no fiscal implications. (10-13-87)

ARGUMENTS:

For:

It is a serious abuse of position for a corrections employee, especially a guard, to have sexual contact with a prisoner. Not only does such activity risk compromising the security of a prison, but the position of authority held by the employee makes the notion of consent on the part of the prisoner inapplicable. There are too many pressures—subtle and otherwise—that can be brought to bear on the prisoner. At present, the only sanctions that can be imposed on the employee are administrative ones. The bill would provide for criminal penalties.

Against:

It is relatively rare for a corrections employee to have sexual relations with a prisoner. The department reported that during the 14-month period between August 1986 and October 1987, eight employees were dismissed for sexual contact with a prisoner. According to testimony in committee, the problem occurs more often with non-guard employees such as teachers and nurses than with guards. Dismissal is a strong measure adequate for the problem; criminal penalties would be overly harsh and inappropriate. Further, the bill might encourage prisoners to make or threaten false accusations in order to harass or manipulate a corrections worker.

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