

SFA

BILL ANALYSIS

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Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

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House Bill 4386 (Substitute S-2 as reported)

Sponsor: Representative Floyd Clack

House Committee: Judiciary

Senate Committee: Criminal Justice, Urban Affairs, and Economic Development

Date Completed: 3-1-88

RATIONALE

Occasionally, an employee of the Department of Corrections (DOC) is discovered to have had sexual relations with a prisoner. While the DOC can and does dismiss such employees, the Department maintains that, because of the position of authority that a DOC employee holds, such behavior should be treated as criminal sexual conduct (CSC). Some consider the situation to be analogous to one in which a Department of Mental Health employee has sexual contact with a patient or resident. In such a situation, some contend, the usual notions of "consent" do not apply. The DOC advocates extending fourth degree CSC charges to an employee or volunteer who had sexual contact with a prisoner, regardless of whether the prisoner arguably gave his or her consent.

CONTENT

House Bill 4386 (S-2) would amend the Michigan Penal Code to provide that an employee or contractual employee of the Department of Corrections or a volunteer worker 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. (Fourth degree criminal sexual conduct is a misdemeanor punishable by imprisonment for up to two years, a fine of up to \$500, or both.)

The bill would take effect on June 1, 1988.

MCL 750.520e

Legislative Analyst: P. Affholter

SENATE COMMITTEE ACTION

The Senate Committee on Criminal Justice, Urban Affairs, and Economic Development adopted a substitute (S-2) under which volunteer workers would be subject to the bill's provisions. The Senate substitute also would add an effective date of June 1, 1988, to the bill.

FISCAL IMPACT

The bill would result in an indeterminate expenditure increase for both the State and local government in FY 1987-88. The indeterminate increase would be the result of three primary factors: the date the bill would take effect during FY 1987-88; the number of individuals who would be prosecuted under the provisions of the bill; and the length of sentence imposed by the sentencing judge.

ARGUMENTS**Supporting Argument**

It is a serious abuse of position for a DOC employee or volunteer 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. Too many pressures can be brought to bear on the prisoner in such an arrangement. Currently, the only sanctions that can be imposed on the employee are administrative in nature, unless there is a violation of an existing CSC provision (e.g., the employee used force or coercion). By providing for criminal penalties for any type of sexual contact, the bill would be an added deterrent to any such employee-prisoner activity.

Opposing Argument

It is relatively rare for a DOC employee to have sexual relations with a prisoner, and the Department has dealt with the situation adequately. The DOC reports that since August 1, 1986, eight employees have been dismissed for sexual contact with a prisoner. The threat of dismissal is a strong enough measure to deter sexual activity. Instituting criminal penalties for sexual activity beyond those already in current law would be harsh, inappropriate, and unfair: the proposed penalties would apply to DOC personnel but not the prisoner involved. Further, this measure could encourage prisoners to make accusations, whether truthfully or falsely, in order to establish a position of dominance over employees.

Legislative Analyst: P. Affholter

Fiscal Analyst: B. Burghardt

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.

H.B. 4386 (3-1-88)