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CRIMINAL SEXUAL CONDUCT WITH PRISONERS

House Bill 4881 as enrolled
Public Act 227 of 2000
Second Analysis (7-5-00)

Sponsor: Rep. Jennifer Faunce
House Committee: Criminal Law and Corrections
Senate Committee: Judiciary

THE APPARENT PROBLEM:

In 1988, the state of Michigan made it a misdemeanor, punishable by no more than two years in prison, for an employee, contractual employee, or volunteer with the Department of Corrections to have sexual contact with a person under the DOC's jurisdiction (including parolees). Sexual contact includes certain touching and differs from sexual penetration (a higher standard). The employee is guilty of fourth-degree criminal sexual conduct if he or she engages in sexual contact with the victim and he or she knows that the victim is under the jurisdiction of the department.

The law prohibiting this conduct was enacted because it was and is considered a serious abuse of authority for a corrections employee, especially a guard, to have sexual contact with a prisoner. In light of recent serious allegations of widespread sexual abuse of women prisoners in Michigan prisons, legislation has been proposed to increase the penalty for such behavior from a misdemeanor to a felony -- from fourth degree CSC to second degree CSC.

THE CONTENT OF THE BILL:

Under current law, sexual contact by an employee or volunteer of the Department of Corrections, a county, or a juvenile facility with a prisoner or probationer or other person under the jurisdiction of those entities is defined as fourth degree criminal sexual conduct, a misdemeanor punishable by up to two years imprisonment, a fine of up to \$500, or both. House Bill 4881 would amend the Michigan Penal Code to, instead, define such contact as second degree criminal sexual conduct, a felony punishable by up to 15 years imprisonment. In addition, instances of sexual contact

where the victim was under DOC jurisdiction and the offender was an employee or contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility would also be defined as second degree CSC.

The bill would take effect October 1, 2000.

MCL 750.520c and 750.520e

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, to the extent that the bill led to increased state or local sanctions, it could increase state or local correctional costs. Also, since fourth degree CSC carries a fine of up to \$500 but no fine is attached to second degree CSC, the bill could conceivably reduce fine revenues going to local libraries. (11-8-99)

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 the activity risk compromising the security of the 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. Thus, the crime of sexual contact by a prison guard or DOC employee against a prisoner or other person under their authority is deserving of greater punishment than a misdemeanor. The state has

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entrusted corrections employees with a significant amount of power and it is not too much to ask that they refrain from abusing that trust and engaging in such reprehensible conduct. The bill will provide a significant punishment because that is what is deserved in these cases. It is a violation of trust and of basic humanity to abuse prisoners in this fashion, and thus a harsher penalty than two years and or \$500 is warranted.

Analyst: W. Flory

■ 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.