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## CSC: SCHOOL EMPLOYEES & VOLUNTEERS

### Senate Bill 1127 as passed by the Senate First Analysis (12-11-02)

**Sponsor: Sen. Joanne G. Emmons**  
**House Committee: Criminal Justice**  
**Senate Committee: Judiciary**

#### ***THE APPARENT PROBLEM:***

Reportedly, a teacher was recently involved with a student who was over the age of consent but still in high school. Since the relationship was consensual, no prosecution could go forth. Some believe that the law should be changed to prohibit sexual contact of any kind between students and teachers or school administrators, even if the student is over the age of consent.

#### ***THE CONTENT OF THE BILL:***

The bill would amend the Michigan Penal Code to prohibit as criminal sexual conduct (CSC) sexual penetration or sexual contact with another person, if the actor (the person accused) were a teacher, substitute teacher, or administrator of a public or nonpublic school in which the other person was enrolled.

The violation would be first-degree CSC if the act involved sexual penetration, or second degree if it involved sexual contact and the other person were at least 13 but less than 16 years old. The violation would be third-degree CSC if the act involved sexual penetration, or fourth-degree CSC if it involved sexual contact and the other person were at least 16 but less than 18 years old. However, the third- and fourth-degree violations would not apply if the other person were emancipated or if the two people were lawfully married to each other at the time of the alleged violation.

Under the code, 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. 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 750.520a-750.520e

#### ***HOUSE COMMITTEE ACTION:***

The committee adopted a substitute bill that restricted the application of the bill only to teachers, substitute teachers, and administrators of the student's school. Therefore, the bill would no longer apply to other school employees, volunteers, or contractual services providers. The bill also would eliminate the reference to intermediate school districts. Further, the substitute bill added an effective date of April 1, 2003.

#### ***FISCAL IMPLICATIONS:***

Fiscal information is not available.

#### ***ARGUMENTS:***

##### ***For:***

Parents need to have trust in those who are entrusted with the education of their children, and children should be able to attend school without fear of being lured into a relationship with a teacher or school administrator. Though current law does allow prosecution of those in a position of authority who use that authority to coerce intercourse or sexual contact, a prosecutor must establish that the teacher is indeed in a position of authority over that student, and that he or she used that authority to force or coerce the sexual activity; the bill would relieve a prosecutor of that burden. This is important because, in the case of consensual sex, it is difficult to prove that the teacher or administrator used the power inherent in his or her position to force that relationship. Further, even though the age of consent is 16 years old, it is inappropriate that teachers or administrators engage in liaisons with students. The bill would create a strong deterrent to any teacher or administrator considering such an ill-advised action.

##### ***Against:***

The current CSC laws are sufficient to deal with sexual predators and others who would victimize school children or any other person. The bill is not

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needed. Furthermore, the bill would subject a person to up to 15 years in prison for having sex with a person who has reached the age of consent! Such a punishment is overly harsh given that this punishment would be meted out for a consensual relationship. And the bill's exception for people who are lawfully wedded to each other at the time of the sexual intercourse or contact is ridiculous, for it means that a couple must marry without even so much as a good night kiss during courtship or risk many years of imprisonment for the one who happens also to be a teacher or school administrator. A far better approach would be to encourage school districts to develop strict policies on teacher/student relationships and adhere to them – as well as including such information in a teacher's or administrator's file when he or she transfers to another school.

***Against:***

The bill as it passed the Senate would have also applied to school volunteers, other school employees, and contractual services providers. The elimination of these people means that others who come into daily or weekly contact with school children will be treated differently. For instance, bus drivers and custodial staff – both employed by school districts and those whose services have been privatized – would not come under the bill. Neither would school counselors, school nurses, lunch room assistants, security personnel, or anyone who volunteers at the school, even though some volunteers are regular participants in school activities, be prosecuted for engaging in sexual relationships with students aged 16-18 years old.

***POSITIONS:***

There are no positions on the bill.

Analyst: S. Stutzky

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■ 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.