

Legislative Analysis



CSC: SCHOOL EMPLOYEES AND VOLUNTEERS

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Senate Bill 386 (Substitute H-1)

Sponsor: Sen. Bruce Patterson

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (8-7-07)

BRIEF SUMMARY: The bill would prohibit, and classify as criminal sexual conduct, sexual penetration or sexual contact with a student by a school employee, contractual worker, volunteer, or government employee assigned to a school. The bill would also prohibit, and classify as third- and fourth-degree CSC, sexual penetration and sexual conduct with certain special education students by a teacher, substitute teacher, school administrator, school employee, contractual worker, volunteer, or government employee assigned to the school.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local governments. A more detailed discussion follows later in the analysis.

THE APPARENT PROBLEM:

After several incidents involving sexual relationships between students and teachers came to light a few years ago, legislation was introduced in and passed by the Senate to make it a criminal offense for a teacher, school administrator, and other school personnel and volunteers to engage in a sexual relationship with a student, including consensual relationships involving students over the age of consent but younger than 18 years of age. The legislation was later amended in the House prior to enactment to only apply to teachers, substitute teachers, and administrators of the school in which the student was enrolled (Public Act 714 of 2002, enrolled Senate Bill 1127).

Since PA 714 took effect, several incidents have been reported by the media in which school personnel other than teachers and administrators have had sexual relations with students at the schools in which they worked, volunteered, or were assigned. In testimony given before the Senate and House Judiciary Committees, one mother related how her 17-year-old daughter had been enticed into a sexual relationship with a married school liaison police officer. Since then, according to the testimony, the daughter has had to undergo medical tests for sexually transmitted diseases, had to withdraw from school, and has endured threats and harassment from the officer's family. According to the mother, even though 16 and 17 year olds may be too young to realize they are a victim, research shows that such relationships can predispose a young person to depression, post-traumatic stress syndrome, multiple partners, and even future victimization. However, since Public Act 714 did not apply to individuals other than teachers and administrators, and since the student was over the age of majority, the officer's conduct did not constitute a crime. It has been suggested that the law be amended to expand the CSC provisions

prohibiting sexual relationships between teachers and students to apply to other school personnel, volunteers, and government workers assigned to a school, i.e., school safety officers.

In a related matter, some feel that special education students, who may remain in school up to the age of 26, are as mentally, physically, or emotionally vulnerable to inappropriate actions on the part of unscrupulous individuals as a younger child. Therefore, some would also like to see the current and proposed prohibition on sexual relationships between students and school personnel be extended to special education students.

THE CONTENT OF THE BILL:

Public Act 714 of 2002 (enrolled Senate Bill 1127) amended 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) is a teacher, substitute teacher, or administrator of a public or nonpublic school in which the other person is enrolled. The intent of the legislation was to prohibit sexual relations between teachers or school administrators and students, and it applied also to consensual situations involving students 16 and 17 years of age.

Under the CSC provisions, when the other person is at least 13 but less than 16 years old, a violation involving sexual penetration is first-degree CSC and a violation involving sexual contact is second degree CSC. When the other person is at least 16 but less than 18, a violation involving sexual penetration is third degree CSC and a violation involving sexual contact is fourth degree CSC.

However, the third- and fourth-degree violations do not apply if the other person is emancipated or if the two people are lawfully married to each other at the time of the alleged violation. (Sexual conduct with a person 12 years of age and younger constitutes first-degree CSC.)

Senate Bill 386 would amend the penal laws (MCL 750.520b et al.) to expand the prohibitions of and apply the penalties of PA 714 to those situations in which the "actor" is a school employee or contractual services provider of the public school, nonpublic school, school district, or intermediate school district in which the other person (student) is enrolled, or is a volunteer who was not a student in any public or nonpublic school, or an individual who is a state, municipal, or federal employee assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district. The provisions would apply in circumstances in which the actor (the person accused) used his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person (student).

The penalty for a violation would be the same as it is currently for teachers, substitute teachers, and school administrators: a violation involving a student at least 13 but less than 16 years of age would be first-degree CSC if the violation involved sexual

penetration and second-degree CSC if the violation involved sexual contact. A violation involving a student 16 years of age or older by the listed actors would be third-degree CSC (sexual penetration) and fourth-degree CSC (sexual contact). [A similar provision pertaining to teachers, substitute teachers, and school administrators is restricted to violations involving students who are at least 16 but less than 18 years of age.]

Also, sexual penetration or sexual conduct with a special education student who was at least 16 years old but less than 26 years of age and who was receiving special education services would be CSC in the third (sexual penetration) or fourth degree (sexual contact) if the actor was a teacher, substitute teacher, administrator, employee, or contractual service provider of the public or nonpublic school, school district, or intermediate school district in which the other person (student) receives the special education services, or if the actor was a volunteer who was not a student in any public or nonpublic school, or was a state, municipal, or federal employee (i.e., a school liaison officer employed by a law enforcement agency) assigned to provide any service to that public or nonpublic school, school district, or intermediate school district, and the actor used his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

The bill would also define two new terms and revise two others. "Intermediate school district" would mean a corporate body established under Part 7 of the Revised School Code and "School district" would mean a general powers school district organized under the Revised School Code. The term "nonpublic school" would be revised to mean a private, denominational, or parochial elementary or secondary school and "public school" would be revised to mean a public elementary or secondary educational entity or agency that is established under the Revised School Code.

(Currently, "nonpublic school" and "public school" mean those terms as defined in Sec. 5 of the Revised School Code. "Nonpublic school" is defined in the code to mean a private, denominational, or parochial school. "Public school" is defined as a public elementary or secondary educational entity or agency that is established under the code, has as its primary mission the teaching and learning of academic and vocational-technical skills and knowledge, and is operated by a school district, local act school district, special act school district, intermediate school district, public school academy corporation, strict discipline academy corporation, urban laboratory school or other elementary or secondary school that is controlled and operated by a state public university described in Section 4, 5, or 6 of Article VIII of the state constitution.)

HOUSE COMMITTEE ACTION:

The committee substitute separated the provisions relating to school employees, contractual workers, volunteers, and governmental employees assigned to a school from the provisions pertaining to teachers, substitute teachers, and administrators. (This inadvertently eliminated the "at least 16 years of age but less than 18 years of age" restriction for third- and fourth-degree CSC, and thus could be read to apply to any student regardless of age.)

The substitute also restricted the applicability of the new prohibition pertaining to school employees, contractual workers, or volunteers to those who used their work or volunteer status as a means to gain access to, or establish a relationship with, a student.

Further, the H-1 substitute made sexual penetration or sexual conduct with a special education student by school employees, contractual workers, volunteers, and governmental employees assigned to a school CSC in the third (sexual penetration) and fourth degree (sexual contact) instead of first or second degree. The bill also added definitions for "intermediate school district" and "school district" and revised the definitions for "nonpublic school" and "public school."

FISCAL INFORMATION:

The bill's fiscal impact would depend on how it affected convictions and sentences for criminal sexual conduct. To the extent that the bill increased numbers of convictions or severity of sentences, it could increase state or local correctional costs. The average appropriated cost of incarceration in a state prison is about \$31,000 per prisoner annually, a figure that includes allocated portions of various fixed costs. Costs of additional offenders placed on probation would be borne by the state (although fourth-degree criminal sexual conduct is a misdemeanor, it is a two-year misdemeanor, and violators placed on probation for the offense are supervised by MDOC field agents, not local district court probation staff); the state's average cost of parole and probation supervision is about \$2,000 per supervised offender per year. Costs of any jail incarceration would be borne by the affected county and vary with jurisdiction. Any increase in penal fine revenue could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

There are no data to indicate how many offenders might be convicted under the proposed circumstances. However, in 2005, there were 2,976 dispositions for first-, second-, third-, and fourth-degree criminal sexual conduct. Of those, 1,860 were sentenced to prison, 770 to probation, 208 to jail, and 138 to some "other" sanction, such as a delayed or suspended sentence or a commitment under the Holmes Youthful Trainee Act.

ARGUMENTS:

For:

Current law allows the prosecution of teachers, substitute teachers, and school administrators who engage in sexual conduct with students up to the age of 18 years old, but not for the prosecution of other school personnel and volunteers even though some of these individuals, such as coaches, have a significant amount of contact with students and can be perceived by students as having a similar level of authority as teachers and administrative staff such as principals. The bill would correct this oversight in the law by extending the same prohibition on teachers and administrators to other school employees or contract workers such as bus drivers and custodial staff (both employed by school districts and those whose services have been privatized), school counselors, school nurses, lunch room assistants, coaches, and security personnel. The bill would also apply

to government workers, such as police officers who are assigned as school safety officers, and to anyone who volunteers at a school. A similar provision was stripped from the 2002 legislation before enactment with tragic results: several incidents involving these individuals occurring in the last few years could not be prosecuted as criminal offenses.

The bill would also add needed protection for special education students. These students are eligible for services up to the age of 26 years, but due to physical, mental, or emotional disabilities, are especially vulnerable to the inappropriate advances of adults working or volunteering in schools.

For:

The bill is needed. Though current law allows prosecution of those in a position of authority who use that authority to coerce intercourse or sexual contact, a prosecutor must establish that the actor (person accused) was indeed in a position of authority over the student – a hard task if the accused worked or volunteered in a support position. It is also difficult to prove that the accused used his or her authority (real or perceived) to force the relationship, and especially so in the case of consensual sex involving students over the age of 16, which is the legal age of consent.

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 illicit relationships by adults working or volunteering in their schools.

Against:

Once again, a bill that would increase the number of people on the Sex Offenders Registry has been introduced before necessary reforms have been made to the registry. According to the ACLU-Michigan, the state's sex offender registry laws are broader than mandated by the federal government. As a result, these laws have swept up too many young people whose relationships were unduly criminalized. Since the registry does not distinguish what is referred to as "Romeo and Juliet relationships" from the truly dangerous and predatory offenses, the ACLU notes that all convicted offenders are effectively determined to be dangerous even after they have paid their debt through the criminal justice system and without regard to an independent assessment of risk.

The concern is that though the bill in its current form, as well as the H-2 floor substitute, is more narrowly focused than its Senate-passed version, it still has the potential to capture recent high school graduates who volunteer or work at their former campuses and who may be dating a former classmate who, though of the age of consent, is not yet 18.

Against:

The H-1 substitute has a few technical problems. The intent, as discussed in committee, was to narrow the focus from relations with any student to relations with a student who attended the school or schools in which the accused works or volunteers. As written, it is clear that a school employee and contractual services provider is prohibited from having sexual relations with a student enrolled in the same school or schools in which they work.

However, as written, it is not clear if the same narrow focus is true for volunteers and governmental employees assigned to a school. Some feel that the phrase "in which the student is enrolled," due to its placement within the amending language, could be interpreted to only apply to school employees and contractual services providers. The concern is that someone may try to apply a broader reach for the volunteer/governmental employee category of school workers than originally intended.

Secondly, the bill as passed by the Senate clearly limited third- and fourth-degree CSC offenses to violations involving one of the listed school personnel and a student who was at least 16 but less than 18 years of age. The H-1 substitute, as reported from the House Judiciary Committee, seems to have inadvertently removed this age qualifier. An H-2 Substitute, which would correct this problem, has been offered on the House floor but has not yet been adopted.

In addition, if a student is emancipated or married to the accused at the time of the alleged violation, a teacher or school administrator is exempted from charges of third- or fourth-degree CSC. However, the same exception is not extended in the committee-passed version (H-1) to other school employees, contractual services providers, volunteers, and governmental employees, either in the case of a violation involving a regular student or a special education student. The floor substitute (H-2) partially corrects the unequal status by extending this exception to all of the individuals mentioned above in cases involving a special education student who was at least 16 but less than 26 years of age, but does not extend it to cases involving other school employees, contract workers, and governmental employees who engage in the prohibited conduct with regular students who are at least 16 but less than 18 years of age.

POSITIONS:

The Department of State Police supports the bill. (7-18-07)

Michigan Coalition Against Domestic and Sexual Violence supports the bill. (8-3-07)

ACLU of Michigan is neutral on both the committee-passed (H-1) and floor substitute (H-2) versions of the bill. However, the organization continues to be concerned with the lack of attention to the unintended and unfair consequences of the state's sex offender registry legislation. (8-2-07)

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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.