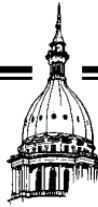




Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 135 (Substitute S-1 as reported)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 2-15-13

RATIONALE

Under Michigan law, the age of consent for sexual relations typically is 16. Sexual contact or sexual penetration with a person under 16 may be first-, second-, third-, or fourth-degree criminal sexual conduct (CSC) depending on various factors, including the perpetrator's relationship with the victim. Because teachers and school administrators, as well as other school or school district employees, contractors, or volunteers, may be in a position of authority over students, one of the CSC factors is whether the perpetrator holds such a position in a school or district where the other person is enrolled as a student, even if the student is 16 or older but younger than 18. (For a special education student, who may receive services through the age of 26, the age parameter is 16 or older but younger than 26.) Since many high school students turn 18 before they graduate, it has been suggested that the third- and fourth-degree CSC factors involving a school teacher, administrator, employee, or volunteer and a student should apply when the student is under 20 years of age.

CONTENT

The bill would amend the Michigan Penal Code to raise the maximum age of a student in third- and fourth-degree CSC violations involving a student and a school official, employee, contractor, or volunteer or a government employee providing service to a school, district, or intermediate school district (ISD).

Under the Penal Code, a person is guilty of third-degree CSC if he or she engages in sexual penetration with another person, or is guilty of fourth-degree CSC if he or she

engages in sexual contact with another person, and any of certain sets of circumstances exists. Under one set of circumstances, the other person is at least 16 years of age, but less than 18, and is a student at a public school or nonpublic school, and either of the following applies:

- The actor is a teacher, substitute teacher, or administrator of the school, district, or ISD, unless the other person is emancipated or the two people are lawfully married to each other at the time of the alleged violation.
- The actor is an employee or contractual service provider of the school, district, or ISD in which the other person is enrolled, is a nonstudent volunteer, or is a government employee assigned to provide any service to the school, district, or ISD and uses his or her status to gain access to or establish a relationship with the other person.

Under the bill, the violation would apply if the other person were less than 20 and a student enrolled in secondary education at a public or nonpublic school. The bill also would delete the exception for an emancipated minor.

MCL 750.520d & 750.520e

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

In response to a situation in Big Rapids in which a 37-year-old teacher was intimately involved with a 16-year-old student, Public Act 714 of 2002 amended the Penal Code to prohibit as CSC sexual penetration or sexual contact with another person, if the actor is a teacher, substitute teacher, or administrator of a public or nonpublic school in which the other person is enrolled. In 2007, that provision was extended to a teacher or administrator in the district (rather than just the school) where the student is enrolled and the prohibition was extended to situations in which the actor is an employee or contractual service provider of the school or district, a nonstudent volunteer, or a government employee assigned to provide a service to a school or district, as described above. This prohibition applies, however, only when the student is under 18 years of age.

It is not unusual for high school seniors to be 18 or even 19 years old, and sexual relationships between them and their teachers or other school officials or employees continue to be inappropriate. The Senate Judiciary Committee heard testimony on a similar proposal in the 2011-2012 legislative session from individuals from two different parts of the State, Ionia County and Saginaw County, where teachers were intimately involved with high school students but the teachers could not be held criminally liable because the students were 18 or 19. It should not be considered acceptable for a teacher or other school official or employee to be sexually active with a student just because the student has reached the age of majority. By raising the maximum age in the prohibition against these types of relationships, the bill would hold those entrusted with the education and care of students to a higher standard.

Opposing Argument

The bill would criminalize actions between consenting adults. After reaching the age of majority, a person is empowered to make certain decisions on his or her own, and the State should not intervene with criminal penalties. Perhaps the issue of relations between a student who has reached adulthood and a teacher should be addressed, instead, in the same manner as sexual harassment in the case of an inappropriate workplace relationship between a supervisor and his or her subordinate.

Also, the bill's application would be too broad because it would criminalize a sexual relationship between an adult student and a school volunteer or contractual employee who might be close to the student's age. It would apply, for instance, in the case of an 18-year-old student and his or her 19-year-old boyfriend or girlfriend who helped out with coaching a sports team at the school or worked for a janitorial or landscape contractor that supplied services to the school district.

Response: The issue is more about power and the dynamics of the student-teacher relationship than it is about age. A student cannot truly give consent when a school employee has some degree of authority over him or her. Students, regardless of their age, should be able to pursue their educational goals without having to fend off advances from someone in a position of authority over them.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate impact on State and local government. There are no data to indicate how many new convictions would occur under the expanded definition of criminal sexual conduct contained in the bill. Additional charges and convictions would lead to an increase in State and local incarceration and community supervision costs. Additional fine revenue would benefit public libraries.

Fiscal Analyst: Dan O'Connor

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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.