House
Legislative
Analysis
Section

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4TH DEGREE CSC

House Bill 5389 as enrolled
Public Act 213 of 1994
Second Analysis (1-11-95)

Sponsor: Rep. Dan Gustafson
House Committee: Judiciary
Senate Committee: Judiciary

THE APPARENT PROBLEM:

The Michigan Penal Code provides for four degrees of criminal sexual conduct (CSC), the lowest of which is fourth-degree CSC, defined as sexual contact in which force or coercion was used, in which the victim was mentally incapable or physically helpless, or in which one person was a corrections department employee and the other a prisoner. Several deficiencies of the statute have been identified.

Although "force or coercion" in the context of other degrees of CSC explicitly includes situations where the sexual contact was achieved by concealment or the element of surprise, there is no such explicit inclusion in the context of fourth-degree CSC. As a result, the Michigan Supreme Court and the court of appeals have issued decisions that have stymied prosecutions for offenses that otherwise might constitute fourth-degree CSC. In People v. Patterson (428 Mich 502; 1987), the supreme court overturned the conviction of a man who had been convicted of fourth-degree CSC following an incident where he entered the room of a sleeping teenage girl (the daughter of an acquaintance), touched her sexually, and withdrew his hand as soon as she awoke.

In People v. Berlin (202 Mich App 214, decided 10-19-93), the court of appeals upheld a lower court's refusal to bind a defendant over for trial in a case where a gynecologist took a patient's hand and placed it on his crotch, and the patient quickly removed her hand. However, as no particular force was exercised in taking and moving the patient's hand, rather only the element of surprise, the court of appeals, citing Patterson, held that the district court was correct in determining that the required element of force or coercion was missing.

The House Judiciary Committee heard testimony regarding cases in which nonconsensual touching of teenage girls' breasts (one by an adult coworker, another by someone who had hired her to babysit) could not be prosecuted as fourth-degree CSC because the requisite element of force was lacking, although the element of surprise was not. Many have urged that the meaning of "force or coercion" in the context of fourth-degree CSC be expanded to include the element of surprise, as it does in the context of other degrees of criminal sexual conduct.

Another recurring concern about the fourth-degree CSC statute is that it fails to address "consensual" sexual contact between an adult and a teenager. It is at present second-degree CSC to have sexual contact with a child under age 13 under any circumstances; sexual contact with a child between 13 and 16 years of age is second-degree CSC if the actor is a member of the victim's household, is a close relative of the victim, or is in a position of authority over the victim and used this authority to coerce the victim. If penetration occurs under any of these circumstances, the offense is first-degree CSC. What is lacking, many argue, is criminalization of sexual contact between an adult and a teenager where there is none of the specified relationships between the adult and the teen. Many people find it insupportable that the law might countenance a forty-year old having sexual contact with a fourteen-year-old, and have urged that the law be amended to bar people much older than a young teen from having sexual contact with that teen.

Finally, Public Act 86 of 1988 amended the penal code to make sexual contact between a corrections employee and a prison inmate fourth-degree criminal sexual conduct. However, it has been pointed out that similar concerns about fraternization and unequal power can exist between jail guards and inmates, and that the law should similarly criminalize sexual contact between county

employees and county prisoners and probationers.

Amendments to meet these various concerns have been proposed.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code to make sexual contact under any of the following circumstances fourth-degree criminal sexual conduct, which is a misdemeanor punishable by imprisonment for up to two years, a fine of up to $500, or both:

** When the actor was five or more years older than the other person, and that other person was between 13 and 16 years of age;

** When the actor achieved the sexual contact through concealment or the element of surprise;

** When the actor was a county employee or volunteer and the other person was a county prisoner or probationer.

** When the actor was a juvenile facility employee and the other person was a juvenile committed to or detained in that facility.

(The penal code defines "sexual contact" to include "the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification." "Intimate parts" include "the primary genital area, groin, inner thigh, buttock, or breast of a human being.")

The bill would take effect October 1, 1994.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency reported that the bill would have an indeterminate impact on state and local government. If the new provisions increased the number of fourth-degree criminal sexual conduct violations, then costs of apprehension, adjudication, and sanctioning would increase. In 1993, there were 29 prison commitments for fourth-degree criminal sexual conduct, receiving an average minimum sentence of just over one year. If, for example, the bill resulted in a five percent increase in annual commitments, then costs for the Department of Corrections could increase by $10,000 to $15,000 per year. (5-26-94)

ARGUMENTS:

For:

The bill would extend the fourth-degree criminal sexual conduct statute to apply to various additional situations where the requisite element of consent may be said to be lacking. It would address sexual contact accomplished by the element of concealment or surprise, it would criminalize sexual contact between young teens and people significantly older than them, and it would criminalize sexual contact between jailers and their prisoners. The bill would enable sexual predators to be prosecuted as such, make it clear to all that society does not approve of adults having sexual relationships with children, and help to ensure that county employees and juvenile facility employees maintain a professional distance from county inmates, probationers, and juvenile offenders.

Against:

To criminalize minor sexual contact between teenagers and older people is fraught with difficulty. Any age difference that the law uses as a threshold figure is necessarily arbitrary. And, as distasteful as many find the idea of older teens and adults having relationships with younger teens, it is a fact of life in many cultures, including, sometimes, our own. The line between the acceptable and the unacceptable in these situations may be better left to societal pressures, rather than being imposed by criminal law.

Response:

The law on criminal sexual conduct offers some protection for legitimate relationships by saying that a person may not be charged or convicted solely because his or her legal spouse is under the age of 16.

Against:

When the offense was extended to apply to sexual contact between state prison guards and prisoners, various concerns were raised that may also be applicable to local situations. For one thing, dismissal of any employee involved with a county inmate would be a strong measure that should be adequate for the problem; criminal penalties might be overly harsh and inappropriate. Further, the provision might encourage prisoners and detainees

to make or threaten false accusations in order to harass or manipulate a worker.