

Legislative Analysis



MODIFY DEFINITION OF 2ND DEGREE CSC

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House Bill 4315 (Substitute H-1)
Sponsor: Rep. Mark Meadows
Committee: Judiciary

First Analysis (3-4-09)

BRIEF SUMMARY: The bill would modify the conditions under which certain conduct by an employee or volunteer with a county or the Department of Corrections would constitute criminal sexual conduct in the second degree, when prisoners or probationers were involved.

FISCAL IMPACT: The bill likely would have a minimal fiscal impact on the state and local units of government. In 2008, there were four offenders sentenced for second-degree criminal sexual conduct where the other person was a county prisoner or probationer; all were sentenced to prison. In addition, there were 128 offenders sentenced for second-degree criminal sexual conduct where there were multiple variables or where no variable was specified. It is possible that some of those cases involved offenses where the other persons were county prisoners or probationers. To the extent that the bill reduced the number of people convicted of second-degree criminal sexual conduct, it could reduce state or local correctional costs. State costs of prison incarceration average about \$33,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs of parole and probation supervision average about \$2,100 per supervised offender per year. Local costs of jail incarceration vary by county.

THE APPARENT PROBLEM:

Under current law, an employee or volunteer with a county or the Department of Corrections is guilty of criminal sexual contact in the second degree if he or she has sexual contact with a person under the county's jurisdiction (e.g., a probationer or prisoner in a county jail). A conviction is a felony punishable by up to 15 years imprisonment and registration on the Sex Offenders Registry for at least 25 years.

Apparently, this provision is capturing unintended persons. In one case, a DOC corrections officer engaged in a consensual relationship with a former prisoner who, at the time of the affair, was on parole. The employee, a single mother, pled guilty to a reduced charge. However, she still is required to be on the Sex Offender Registry for 25 years. According to her testimony, this has affected her ability to find housing and subjects her to the daily fear that someone, if they have seen her picture on the Internet, will mistake her as a pedophile and report her to the police if they see her walking with her daughter. In another case, a deputy sheriff was charged under the statute when his live-in girlfriend was placed on probation after being convicted of a misdemeanor offense.

Some believe the law should only apply to those who use their positions of authority to victimize a person while under county or state jurisdiction, and not to automatically criminalize consensual relationships between adults (such as a spouse or lover) if one party is on probation.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code (MCL 750.520c) to modify one of the listed scenarios that constitutes criminal sexual conduct (CSC) in the second degree. Currently, a person who is affiliated as an employee or volunteer with the county or the state Department of Corrections is guilty of second degree CSC if the victim is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program (and the person engaging in the conduct knows that the victim is under the county's jurisdiction).

House Bill 4315 would modify the above definition so that it would apply to an employee or volunteer "who engaged in sexual contact with the victim while the victim was imprisoned or who uses his or her position of authority over the victim to gain access to or to coerce or otherwise encourage the victim to engage in sexual contact during any term of supervision." The bill would take effect April 1, 2010.

BACKGROUND INFORMATION:

The bill is similar to House Bill 5041 from last session. It was passed by the House but died on the Senate floor in the closing days of the two-year legislative cycle.

ARGUMENTS:

For:

The stated intent of the legislation is to close a loophole in the criminal sexual conduct (2nd degree) statute that is having unintended consequences. The statute in question makes it a per se offense for an employee, contract employee, or volunteer with a county or the Department of Corrections to engage in sexual contact with a parolee or probationer. The bill as reported from committee (Substitute H-1) would clarify that only acts in which the actor used his or her position of authority to gain access to, coerce, or otherwise encourage a relationship would fall under the provision. This change would provide the protection to the vulnerable as intended, without inadvertently criminalizing consensual relationships between adults (and even spouses).

Response:

The bill may not do what some supporters think it will. First of all, the bill would only apply to cases involving a person under a county's jurisdiction for purposes of imprisonment, a work program, or a probationary program. Therefore, it probably would not apply in the situation of the DOC officer who had an affair with a parolee, as a parolee would be under the state's jurisdiction and this scenario is prohibited under a different subsection in the act. The bill also may not apply to a person convicted of a felony but placed on probation instead of imprisonment because in that instance, the

person is under the court's jurisdiction, with supervision by the DOC. Secondly, since the bill would not be applied retroactively, enactment would not help the former DOC officer, nor would enactment enable her to be released from registering on the Sex Offenders Registry. The bill would only apply to cases arising after the bill's effective date.

Against:

The bill appears to sanction consensual relationships between local corrections and probation officers and probationers – a clear departure from the original intent of the provision.

POSITIONS:

A representative of the Police Officers Association of Michigan testified in support of the bill. (3-4-09)

The Department of Corrections indicated it is neutral on the bill. (3-4-09)

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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.