



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 596 (Substitute S-1 as reported)
Senate Bill 755 (as reported without amendment)
Sponsor: Senator Roger Kahn, M.D. (S.B. 596)
Senator Rick Jones (S.B. 755)
Committee: Judiciary

Date Completed: 4-3-12

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 regardless of the student's age.

CONTENT

Senate Bill 596 (S-1) would amend the Michigan Penal Code to eliminate the maximum age of a student in third- and fourth-degree criminal sexual conduct 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), and to delete an exception to those

prohibitions for a situation in which the student is emancipated.

Senate Bill 755 would amend Public Act 189 of 1966, which prescribes search warrant procedures, to remove reference to a fourth-degree CSC violation involving special education students, from a provision requiring the court to authorize the search and seizure of hair, tissue, blood, or other fluids.

Senate Bill 755 is tie-barred to Senate Bill 596.

Senate Bill 596 (S-1)

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.

The bill would delete the qualifier that the other person be less than 18, and the exception for an emancipated minor.

The Code also contains similar provisions under which a violation is third- or fourth-degree CSC when the other person is at least 16 but less than 26 and is receiving special education services. The bill would delete those provisions.

Senate Bill 755

Under Public Act 189 of 1966, if the court has probable cause to believe that an individual committed a CSC violation listed in the Act, the court must, upon proper petition for a search warrant, authorize the search and seizure of hair or tissue, or blood or other fluid samples from all of the following:

- Any individual whom the court has probable cause to believe committed the violation.
- A child, if the court has probable cause to believe that the violation resulted in the birth of a child.
- The remains of an unborn child, if the court has probable cause to believe that the violation resulted in a terminated pregnancy.

The bill would delete from that requirement reference to a fourth-degree CSC violation in which the other person is at least 16 but less than 26 and is receiving special education services and the actor is either of the following:

- A teacher, substitute teacher, administrator, employee, or contractual service provider of the school, district, or ISD, and is not lawfully married to the other person.
- A nonstudent volunteer or a government employee assigned to provide any service to the school, district, or ISD who uses his or her status to gain access to or establish a relationship with the other person.

(As noted above, Senate Bill 596 (S-1) would delete that fourth-degree CSC violation from the Penal Code.)

MCL 750.520d & 750.520e (S.B. 596)
780.652a (S.B. 755)

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 of age, and sexual relationships between them and their teachers or other school officials or employees continue to be inappropriate. The Senate Judiciary Committee heard testimony 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 eliminating the maximum age in the prohibition against these types of relationships, the bills would hold those entrusted with the education and care of students to a higher standard.

Opposing Argument

Senate Bill 596 (S-1) 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.

In addition, the bill would not be limited to traditional school situations, but also could apply in the case of an adult education student and instructor. In that instance, both the student and the teacher could be well over 18. Indeed, the student could even be older than the teacher.

Response: The issue is more about power and the dynamics of the student-teacher relationship than it is about age. 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.

Presumably, the bill would not apply in the case of adult education, because the Penal Code's definitions of "public school" and "nonpublic school" refer to an elementary or secondary school or educational agency or entity.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate impact on State and local government. There are no data that would indicate how

many new convictions would occur under the expanded definition contained in Senate Bill 596 (S-1). Additional charges and convictions would lead to an increase in State and local incarceration costs.

Fiscal Analyst: Steve Angelotti

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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.