

CSC: SCHOOL PERSONNEL & STUDENTS

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Senate Bill 135 (Substitute S-2)

Sponsor: Sen. Rick Jones

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 5-31-13

A SUMMARY OF SENATE BILL 135 AS PASSED BY THE SENATE 2-21-13

The bill would amend the Michigan Penal Code make sexual conduct or contact by certain school personnel or volunteers with a student within the same school or school district who was under 21 years of age a crime of criminal sexual conduct (CSC) in the 3rd (penetration) or 4th (contact) degree. Emancipated minors would be included. Currently, the penal code applies these offenses when a student is less than 18 years old, and they do not apply to an emancipated minor. As now, the provisions apply to public and nonpublic schools.

Currently, there are several sets of circumstances for which sexual penetration or sexual contact constitutes a crime of criminal sexual conduct in the third-degree (penetration) or fourth-degree (contact). One set of circumstances involves conduct between a student at a public or nonpublic school who is at least 16 years of age but less than 18 years of age and a person who is one of the following:

- A teacher, substitute teacher, or administrator of the same school, school district, or ISD, unless the other person (the student) is emancipated or the two people are married to each other at the time of the violation.
- An employee of the same school, school district, or ISD in which the student is enrolled; a volunteer who is not a public or nonpublic school student; or a state, local, or federal governmental employee assigned to provide any service to that public or nonpublic school, school district, or ISD, and the person uses his or her employment, contractual service, or volunteer status to gain access to, or to establish a relationship with, the student.

Senate Bill 135 would amend the above provisions so they would apply to a person who engaged in the prohibited conduct with a student enrolled in primary or secondary education who was at least 16 years old but younger than 21 years old. The bill would also remove the exception regarding an emancipated minor. The only exception remaining would be for two persons who were married at the time of the sexual conduct or contact. The bill would take effect 90 days after enactment

MCL 750. 520d & 520e

FISCAL IMPACT:

Information is not available on the number of persons that would be convicted under the expanded definition of criminal sexual conduct. Therefore, the bill would have an indeterminate fiscal impact on state and local governments. Costs on state and local correctional systems would be increased, based on the number of additional convictions and incarcerations. New felony convictions would result in increased costs related to state prisons, county jails, and/or state probation supervision. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,500 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,000 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

BACKGROUND INFORMATION:

Senate Bill 135 is similar to Senate Bill 596 of the 2011-2012 legislative session. That bill was passed by the Senate but died on the House floor at the close of session in December.

Supporters of the bill say that some teachers, school personnel, and volunteers are violating the spirit of the criminal sexual conduct laws—which include prohibiting a person in a position of authority or power from using that position to establish a sexual relationship with another person who is subject to that authority—by waiting until students turn 18 to seduce them. Reportedly, there have been several cases of adults working or volunteering in public and nonpublic schools who have deliberately waited until a student's 18th birthday to initiate sexual conduct as a way to avoid criminal prosecution. However, even though a student may technically be of legal age to consent to sexual activity, it is inappropriate for students to be subjected to the advances of a person who wields a level of authority in the school setting.

On the other hand, some school volunteers or contractual workers, such as janitorial or landscape workers or assistant coaches, may be recent graduates and have had a preexisting relationship with a student before graduating or be of close enough age to have a dating relationship. Yet, as written, the bill could capture and criminalize consensual relationships between boyfriends and girlfriends of the same or nearly same age. In addition, in large high schools, where the student population is in the upper hundreds or thousands, a student and a worker/volunteer who had no contact at the school may not be aware that they are breaking the law. Perhaps a better way would be to encourage, or require, primary and secondary schools to adopt strict policies, with clear repercussions, prohibiting school personnel and volunteers from engaging in any inappropriate conduct with a student enrolled in that school.

POSITIONS:

The Prosecuting Attorneys Association of Michigan indicated support for the bill. (5-16-13)

The Department of State Police indicated support for the bill. (5-16-13)

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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.