



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 607 (Substitute S-1 as reported)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 11-15-17

RATIONALE

Under Michigan's criminal sexual conduct (CSC) statutory provisions, certain individuals who, by virtue of their occupation, are in a position to exercise influence or authority over another individual are criminally liable when they use that position to engage in sexual relations with the other person, regardless of whether he or she has reached the age of consent (16 years of age). These professionals include, for example, mental health workers and school employees, such as teachers and administrators. It has been suggested that the CSC provisions should be extended to members of the clergy, under certain circumstances.

Recently, a St. Clair County pastor allegedly used his position as a member of the clergy to take advantage of a woman under the guise of a religious ceremony. Since the woman apparently consented to the activity, no CSC charges could be brought against the pastor. Some people believe that individuals who approach members of the clergy for the purpose of spiritual guidance or counseling do so in a vulnerable state of mind, which negates the ability of those individuals to consent to sexual activity. Accordingly, it has been suggested that, regardless of whether consent is given, sexual relations between a member (or purported member) of the clergy and an individual seeking his or her spiritual advice or counsel should be considered criminal sexual conduct.

CONTENT

The bill would amend the Michigan Penal Code to prohibit as criminal sexual conduct sexual penetration or sexual contact with another individual, if the actor were a member of the clergy, the act occurred during the course of a meeting in which the other individual sought religious or spiritual advice, or during a period of time in which the actor and the other individual were meeting on an ongoing basis for that purpose, and the actor used his or her position to accomplish the act.

Under the Code, a person is guilty of third- or fourth-degree CSC if he or she engages in sexual penetration or sexual contact, respectively, with another individual and any of the circumstances listed in the Code exist. Third-degree CSC is a felony punishable by up to 15 years' imprisonment. Fourth-degree CSC is a misdemeanor punishable by up to two years' imprisonment, a maximum fine of \$500, or both.

Under the bill, the listed circumstances would include that the actor was, or purported to be, a member of the clergy and either of the following applied: a) the sexual penetration or sexual contact occurred during the course of a meeting in which the other individual sought or received religious or spiritual advice, aid, or comfort from the actor and the actor used his or her position or purported position as a member of the clergy to accomplish the sexual penetration or sexual contact; or b) the sexual penetration or sexual contact occurred during a period of time in which the other individual was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in a private setting and the actor used his or her position or purported position as a member of the clergy to accomplish the sexual penetration or sexual

contact. ("Clergy" would mean the group of individuals ordained or recognized by a religious or spiritual community as ritual or spiritual leaders.)

The bill specifies that the consent of the victim would not be a defense to a prosecution for either third- or fourth-degree CSC under the circumstances described above.

The bill would take effect 90 days after its enactment.

("Sexual contact" includes 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, done for a sexual purpose, or in a sexual manner for: i) revenge, ii) to inflict humiliation, or iii) out of anger. "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.)

MCL 750.520a et al.

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

Michigan's CSC laws give children, patients, clients of mental health professionals, and others special protections from those who might use their position and authority to take advantage of them. An individual who consults with a member of the clergy for counseling or spiritual guidance often does so in a vulnerable state of mind and in the belief that the clergy member will act in that individual's best interests. The use of this relationship to influence a congregant to engage in sexual activity with the religious or spiritual leader is tantamount to a mental health provider's abusing his or her position with a client or patient for similar purposes.

The bill could prevent a member of the clergy who is in a position of authority over a vulnerable congregant from using his or her position to coerce or influence that congregant to engage in sexual acts. According to testimony before the Senate Committee on Judiciary, 13 states, including Arkansas, Minnesota, and Texas, have amended their CSC statutes to include members of the clergy. The bill would ensure that an individual who used his or her position (or purported position) as a member of the clergy to induce a parishioner to engage in sexual activity would be treated the same as another professional who uses his or her position or influence to engage in sexual acts with a vulnerable individual under his or her charge or care.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill could have a negative fiscal impact on State and local government. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. Any associated increase in fine revenue increases funding to public libraries.

Fiscal Analyst: Ryan Bergan

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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.