

HOUSE BILL No. 4051

January 27, 1999, Introduced by Reps. Faunce, Richardville, Woronchak, DeWeese, Rick Johnson, Garcia, Geiger, Raczkowski and Van Woerkom and referred to the Committee on Criminal Law and Corrections.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 72, 83, 88, 89, 91, 110, 213, 317, 349, 520b, 520c, 520d, 529, and 530 (MCL 750.72, 750.83, 750.88, 750.89, 750.91, 750.110, 750.213, 750.317, 750.349, 750.520b, 750.520c, 750.520d, 750.529, and 750.530), section 110 as amended by 1994 PA 270, sections 520b and 520c as amended by 1983 PA 158, and section 520d as amended by 1996 PA 155, and by adding section 506b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 72. ~~Burning dwelling house--Any~~ A person who
2 ~~wilfully~~ WILLFULLY or maliciously burns ~~any~~ AN OCCUPIED OR
3 UNOCCUPIED dwelling house, ~~either occupied or unoccupied,~~ or
4 the contents ~~thereof~~ OF A DWELLING HOUSE, whether owned by
5 ~~himself~~ THE PERSON or another PERSON, or any building within

1 the curtilage of ~~such~~ THE dwelling house, or the contents
2 ~~thereof, shall be~~ OF THE BUILDING, IS guilty of a felony ~~,~~
3 punishable, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by
4 imprisonment ~~in the state prison~~ FOR not more than 20 years.

5 Sec. 83. ~~Assault with intent to commit murder--Any~~ A
6 person who ~~shall assault~~ ASSAULTS another PERSON with THE
7 intent to commit the crime of murder ~~,~~ ~~shall be~~ IS guilty of a
8 felony ~~,~~ punishable, EXCEPT AS OTHERWISE PROVIDED IN
9 SECTION 506B, by imprisonment ~~in the state prison~~ for life or
10 any ~~number~~ TERM of years.

11 Sec. 88. ~~Assault with intent to rob and steal being~~
12 ~~unarmed--Any~~ A person ~~,~~ not ~~being~~ armed with a dangerous
13 weapon ~~,~~ who ~~shall assault~~ ASSAULTS another PERSON with force
14 and violence, and with THE intent to rob and steal, ~~shall be~~ IS
15 guilty of a felony ~~,~~ punishable, EXCEPT AS OTHERWISE PROVIDED
16 IN SECTION 506B, by imprisonment ~~in the state prison~~ FOR not
17 more than 15 years.

18 Sec. 89. ~~Assault with intent to rob and steal being~~
19 ~~armed--Any~~ A person ~~,~~ ~~being~~ armed with a dangerous weapon ~~,~~
20 or ~~any~~ AN article used or fashioned in a manner to lead a
21 person ~~so~~ WHO IS assaulted reasonably to believe it ~~to be~~ IS
22 a dangerous weapon ~~,~~ who ~~shall assault~~ ASSAULTS another
23 PERSON with THE intent to rob and steal ~~shall be~~ IS guilty of a
24 felony ~~,~~ punishable, EXCEPT AS OTHERWISE PROVIDED IN
25 SECTION 506B, by imprisonment ~~in the state prison~~ for life ~~,~~
26 or ~~for~~ any term of years.

1 Sec. 91. ~~Attempt to murder by poisoning, etc.--Any~~ A
2 person who ~~shall attempt~~ ATTEMPTS to commit the crime of murder
3 by poisoning, drowning, or strangling another person, or by any
4 means not constituting the crime of assault with intent to
5 murder, ~~shall be~~ IS guilty of a felony ~~,~~ punishable, EXCEPT
6 AS OTHERWISE PROVIDED IN SECTION 506B, by imprisonment ~~in the~~
7 ~~state prison~~ for life or any term of years.

8 Sec. 110. A person who breaks and enters, with intent to
9 commit a felony or a larceny therein, a tent, hotel, office,
10 store, shop, warehouse, barn, granary, factory or other building,
11 structure, boat, ship ~~,~~ or railroad car is guilty of a felony
12 ~~,~~ punishable, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by
13 imprisonment for not more than 10 years.

14 Sec. 213. ~~Malicious threats to extort money--Any~~ A person
15 who ~~shall, either~~ orally or by a written or printed communica-
16 tion ~~,~~ maliciously ~~threaten~~ THREATENS to accuse another
17 PERSON of ~~any~~ A crime or offense, or ~~shall~~ orally or by ~~any~~
18 A written or printed communication maliciously ~~threaten any~~
19 THREATENS AN injury to the person or property or mother, father,
20 husband, wife, or child of another PERSON, with THE intent
21 ~~thereby~~ to extort money or any pecuniary advantage, ~~whatever,~~
22 or with THE intent to compel the person ~~so~~ threatened to do or
23 refrain from doing ~~any~~ AN act against ~~his~~ THE PERSON'S will,
24 ~~shall be~~ IS guilty of a felony ~~,~~ punishable, EXCEPT AS OTHER-
25 WISE PROVIDED IN SECTION 506B, by imprisonment ~~in the state~~
26 ~~prison~~ FOR not more than 20 years or ~~by~~ a fine of not more
27 than \$10,000.00, ~~dollars~~ OR BOTH.

1 Sec. 317. ~~Second degree murder--~~ All ~~other kinds of~~
2 murder ~~shall be~~ OTHER THAN MURDER OF THE FIRST DEGREE AS
3 DEFINED IN SECTION 316 IS murder of the second degree, and shall
4 be punished, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by
5 imprisonment ~~in the state prison~~ for life ~~,~~ or any term of
6 years. ~~, in the discretion of the court trying the same.~~

7 Sec. 349. (1) ~~Confining person against will, etc.--~~ Any A
8 person who ~~wilfully~~ WILLFULLY, maliciously, and without lawful
9 authority ~~shall~~ forcibly or secretly ~~confine or imprison~~
10 CONFINES OR IMPRISONS any other person within this state against
11 ~~his~~ THE PERSON'S will, ~~or shall~~ forcibly ~~carry~~ CARRIES or
12 ~~send such~~ SENDS THE person out of this state, or ~~shall~~ forc-
13 ibly ~~seize or confine, or shall inveigle or kidnap~~ SEIZES, CON-
14 FINES, INVEIGLES, OR KIDNAPS any other person with THE intent to
15 extort money or ANY other valuable thing ~~thereby~~ or with THE
16 intent either to cause ~~such~~ THE person to be secretly confined
17 or imprisoned in this state against ~~his~~ THE PERSON'S will, or
18 in any way held to service against ~~his~~ THE PERSON'S will,
19 ~~shall be~~ IS guilty of a felony ~~,~~ punishable, EXCEPT AS OTHER-
20 WISE PROVIDED IN SECTION 506B, by imprisonment ~~in the state~~
21 ~~prison~~ for life or ~~for~~ any term of years.

22 (2) ~~Every offense mentioned~~ AN OFFENSE DESCRIBED in this
23 section may be tried either in the county in which the ~~same may~~
24 ~~have been~~ OFFENSE WAS committed or in any county in or through
25 which the person ~~so~~ seized, taken, inveigled, OR kidnaped, or
26 whose services ~~shall be~~ WERE sold or transferred, ~~shall have~~
27 ~~been~~ WAS taken, confined, held, carried, or brought. ~~and~~

1 ~~upon the trial of any such~~ IN A TRIAL FOR AN offense UNDER THIS
2 SECTION, the consent ~~thereto~~ of the person ~~, so~~ TO BEING
3 taken, inveigled, kidnaped, or confined, ~~shall~~ OR HAVING HIS OR
4 HER SERVICES SOLD OR TRANSFERRED, IS not ~~be~~ a defense ~~,~~
5 unless ~~it shall be made satisfactorily to appear to the jury~~
6 ~~that such~~ THE consent was not obtained by fraud ~~nor~~ OR
7 extorted by duress or by ~~threats~~ A THREAT.

8 SEC. 506B. (1) A PERSON WHO IS CONVICTED OF A VIOLATION OF
9 SECTION 72, 83, 88, 89, 91, 110, 213, 317, 349, 520B, 520C, 520D,
10 529, OR 530 IN WHICH A VICTIM IS AN ELDERLY PERSON AND WHO HAS 1
11 OR MORE PRIOR CONVICTIONS SHALL BE PUNISHED AS FOLLOWS:

12 (A) IF THE PERSON HAS 1 PRIOR CONVICTION, BY IMPRISONMENT
13 FOR A MINIMUM TERM OF NOT LESS THAN 5 YEARS.

14 (B) IF THE PERSON HAS 2 PRIOR CONVICTIONS, BY IMPRISONMENT
15 FOR A MINIMUM TERM OF NOT LESS THAN 10 YEARS.

16 (C) IF THE PERSON HAS 3 OR MORE PRIOR CONVICTIONS, BY
17 IMPRISONMENT FOR LIFE.

18 (2) A PERSON DESCRIBED IN SUBSECTION (1)(A) OR (B) MAY BE
19 SENTENCED TO IMPRISONMENT FOR LIFE IF THAT PUNISHMENT IS PERMIT-
20 TED BY LAW FOR THAT OFFENSE. A PERSON SENTENCED TO A MINIMUM
21 TERM OF IMPRISONMENT UNDER SUBSECTION (1)(A) OR (B) SHALL BE SEN-
22 TENCED TO A MAXIMUM TERM AS PROVIDED BY LAW FOR THAT OFFENSE.

23 (3) A MANDATORY TERM OF IMPRISONMENT IMPOSED UNDER
24 SUBSECTION (1) SHALL NOT BE SUSPENDED. A PERSON SENTENCED TO A
25 MANDATORY TERM OF IMPRISONMENT UNDER SUBSECTION (1) IS NOT ELIGI-
26 BLE FOR PROBATION OR PAROLE DURING THAT MANDATORY TERM.

1 (4) A SENTENCE IMPOSED UNDER THIS SECTION SHALL RUN
2 CONSECUTIVELY TO ANY OTHER SENTENCE IMPOSED AGAINST THE PERSON
3 THAT ARISES OUT OF THE SAME TRANSACTION OR OCCURRENCE FROM WHICH
4 THE SENTENCE UNDER THIS SECTION AROSE.

5 (5) AS USED IN THIS SECTION:

6 (A) "ELDERLY PERSON" MEANS A PERSON 60 YEARS OF AGE OR
7 OLDER.

8 (B) "PRIOR CONVICTION" MEANS A PREVIOUS CONVICTION FOR A
9 VIOLATION OF SECTION 72, 83, 88, 89, 91, 110, 213, 317, 349,
10 520B, 520C, 520D, 529, OR 530 IN WHICH THE VICTIM WAS AN ELDERLY
11 PERSON.

12 (C) "VICTIM" MEANS AN INDIVIDUAL WHO SUFFERS DIRECT OR
13 THREATENED PHYSICAL, FINANCIAL, OR EMOTIONAL HARM AS A RESULT OF
14 THE VIOLATION.

15 Sec. 520b. (1) A person is guilty of criminal sexual con-
16 duct in the first degree if he or she engages in sexual penetra-
17 tion with another person and ~~if~~ any of the following circum-
18 stances ~~exists~~ EXIST:

19 (a) That other person is under 13 years of age.

20 (b) That other person is at least 13 but less than 16 years
21 of age and any of the following CIRCUMSTANCES EXIST:

22 (i) The actor is a member of the same household as the
23 victim.

24 (ii) The actor is related to the victim by blood or affinity
25 to the fourth degree.

26 (iii) The actor is in a position of authority over the
27 victim and used this authority to coerce the victim to submit.

1 (c) Sexual penetration occurs under circumstances involving
2 the commission of any other felony.

3 (d) The actor is aided or abetted by 1 or more other persons
4 and either of the following circumstances exists:

5 (i) The actor knows or has reason to know that the victim is
6 mentally incapable, mentally incapacitated, or physically
7 helpless.

8 (ii) The actor uses force or coercion to accomplish the
9 sexual penetration. Force or coercion includes but is not
10 limited to any of the circumstances listed in subdivision (f)(i)
11 to (v).

12 (e) The actor is armed with a weapon or any article used or
13 fashioned in a manner to lead the victim ~~to~~ reasonably TO
14 believe it to be a weapon.

15 (f) The actor causes personal injury to the victim and force
16 or coercion is used to accomplish sexual penetration. Force or
17 coercion includes but is not limited to any of the following
18 circumstances:

19 (i) When the actor overcomes the victim through the actual
20 application of physical force or physical violence.

21 (ii) When the actor coerces the victim to submit by threat-
22 ening to use force or violence on the victim, and the victim
23 believes that the actor has the present ability to execute these
24 threats.

25 (iii) When the actor coerces the victim to submit by threat-
26 ening to retaliate in the future against the victim, or any other
27 person, and the victim believes that the actor has the ability to

1 execute this threat. As used in this subdivision, "to retaliate"
2 includes threats of physical punishment, kidnapping, or
3 extortion.

4 (iv) When the actor engages in the medical treatment or
5 examination of the victim in a manner or for purposes ~~which~~
6 THAT are medically recognized as unethical or unacceptable.

7 (v) When the actor, through concealment or by the element of
8 surprise, is able to overcome the victim.

9 (g) The actor causes personal injury to the victim, and the
10 actor knows or has reason to know that the victim is mentally
11 incapable, mentally incapacitated, or physically helpless.

12 (h) That other person is mentally incapable, mentally dis-
13 abled, mentally incapacitated, or physically helpless, and any of
14 the following CIRCUMSTANCES EXIST:

15 (i) The actor is related to the victim by blood or affinity
16 to the fourth degree.

17 (ii) The actor is in a position of authority over the victim
18 and used this authority to coerce the victim to submit.

19 (2) Criminal sexual conduct in the first degree is a felony
20 punishable, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by
21 imprisonment ~~in the state prison~~ for life or ~~for~~ any term of
22 years.

23 Sec. 520c. (1) A person is guilty of criminal sexual con-
24 duct in the second degree if the person engages in sexual contact
25 with another person and if any of the following circumstances
26 ~~exists~~ EXIST:

- 1 (a) That other person is under 13 years of age.
- 2 (b) That other person is at least 13 but less than 16 years
3 of age and any of the following CIRCUMSTANCES EXIST:
- 4 (i) The actor is a member of the same household as the
5 victim.
- 6 (ii) The actor is related by blood or affinity to the fourth
7 degree to the victim.
- 8 (iii) The actor is in a position of authority over the
9 victim and the actor used this authority to coerce the victim to
10 submit.
- 11 (c) Sexual contact occurs under circumstances involving the
12 commission of any other felony.
- 13 (d) The actor is aided or abetted by 1 or more other persons
14 and either of the following circumstances exists:
- 15 (i) The actor knows or has reason to know that the victim is
16 mentally incapable, mentally incapacitated, or physically
17 helpless.
- 18 (ii) The actor uses force or coercion to accomplish the
19 sexual contact. Force or coercion includes but is not limited to
20 any of the circumstances listed in ~~sections~~
21 SECTION 520b(1)(f)(i) to (v).
- 22 (e) The actor is armed with a weapon, or any article used or
23 fashioned in a manner to lead a person ~~to~~ reasonably TO believe
24 it to be a weapon.
- 25 (f) The actor causes personal injury to the victim and force
26 or coercion is used to accomplish the sexual contact. Force or

1 coercion includes but is not limited to any of the circumstances
2 listed in section 520b(1)(f)(i) to (v).

3 (g) The actor causes personal injury to the victim and the
4 actor knows or has reason to know that the victim is mentally
5 incapable, mentally incapacitated, or physically helpless.

6 (h) That other person is mentally incapable, mentally dis-
7 abled, mentally incapacitated, or physically helpless, and any of
8 the following CIRCUMSTANCES EXIST:

9 (i) The actor is related to the victim by blood or affinity
10 to the fourth degree.

11 (ii) The actor is in a position of authority over the victim
12 and used this authority to coerce the victim to submit.

13 (2) Criminal sexual conduct in the second degree is a felony
14 punishable, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by
15 imprisonment for not more than 15 years.

16 Sec. 520d. (1) A person is guilty of criminal sexual con-
17 duct in the third degree if the person engages in sexual penetra-
18 tion with another person and if any of the following circum-
19 stances exist:

20 (a) That other person is at least 13 years of age and under
21 16 years of age.

22 (b) Force or coercion is used to accomplish the sexual
23 penetration. Force or coercion includes but is not limited to
24 any of the circumstances listed in section 520b(1)(f)(i) to (v).

25 (c) The actor knows or has reason to know that the victim is
26 mentally incapable, mentally incapacitated, or physically
27 helpless.

1 (d) That other person is related to the actor by blood or
 2 affinity to the third degree and the sexual penetration occurs
 3 under circumstances not otherwise prohibited by this chapter. It
 4 is an affirmative defense to a prosecution under this subdivision
 5 that the other person was in a position of authority over the
 6 defendant and used this authority to coerce the defendant to vio-
 7 late this subdivision. The defendant has the burden of proving
 8 this defense by a preponderance of the evidence. This subdivi-
 9 sion does not apply if both persons are lawfully married to each
 10 other at the time of the alleged violation.

11 (2) Criminal sexual conduct in the third degree is a felony
 12 punishable, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by
 13 imprisonment for not more than 15 years.

14 Sec. 529. ~~Any~~ A person who ~~shall assault~~ ASSAULTS
 15 another ~~,~~ PERSON and ~~shall~~ feloniously ~~rob, steal and take~~
 16 ~~from his~~ ROBS, STEALS, AND TAKES FROM THE OTHER person, or in
 17 ~~his~~ THE OTHER PERSON'S presence, any money or other property ~~,~~
 18 ~~which~~ THAT may be the subject of larceny ~~,~~ ~~such robber being~~
 19 WHILE armed with a dangerous weapon ~~,~~ or any article used or
 20 fashioned in a manner to lead the person ~~so~~ assaulted ~~to~~ rea-
 21 sonably TO believe it to be a dangerous weapon ~~,~~ ~~shall be~~ IS
 22 guilty of a felony ~~,~~ punishable, EXCEPT AS OTHERWISE PROVIDED
 23 IN SECTION 506B, by imprisonment ~~in the state prison~~ for life
 24 or ~~for~~ any term of years. If an aggravated assault or serious
 25 injury is inflicted by any person while ~~committing an armed rob-~~
 26 ~~bery as defined in~~ VIOLATING this section, EXCEPT AS OTHERWISE
 27 PROVIDED IN SECTION 506B, the ~~sentence~~ PERSON shall be

1 SENTENCED TO IMPRISONMENT FOR not less than 2 YEARS. ~~years~~
2 ~~imprisonment in the state prison.~~

3 Sec. 530. ~~Robbery unarmed--Any~~ A person who ~~shall,~~ by
4 force and violence ~~,~~ or by assault or putting in fear ~~,~~ felo-
5 niously ~~rob, steal and take~~ ROBS, STEALS, AND TAKES from the
6 person of another, or in ~~his~~ THE OTHER PERSON'S presence, any
7 money or other property ~~which~~ THAT may be the subject of larcen-
8 ny, ~~such robber~~ WHILE not ~~being~~ armed with a dangerous
9 weapon, ~~shall be~~ IS guilty of a felony ~~,~~ punishable, EXCEPT
10 AS OTHERWISE PROVIDED IN SECTION 506B, by imprisonment ~~in the~~
11 ~~state prison~~ FOR not more than 15 years.