



HOUSE BILL No. 4881

September 28, 1999, Introduced by Reps. Faunce, Baird, Toy, Voorhees, Brater, LaForge, Jacobs, Ruth Johnson, Pestka, LaSata, Kukuk, Woronchak, Martinez, Kowall, Tabor, Hager, Gosselin, Julian, Mortimer, Lemmons, Jellema and Howell 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 520c and 520e (MCL 750.520c and 750.520e), section 520c as amended by 1983 PA 158 and section 520e as amended by 1996 PA 155.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 520c. (1) A person is guilty of criminal sexual con-
2 duct in the second degree if the person engages in sexual contact
3 with another person and if any of the following circumstances
4 exists:

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

6 (b) That other person is at least 13 but less than 16 years
7 of age and any of the following:

8 (i) The actor is a member of the same household as the
9 victim.

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

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

6 (c) Sexual contact occurs under circumstances involving the
7 commission of any other felony.

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

10 (i) The actor knows or has reason to know that the victim is
11 mentally incapable, mentally incapacitated, or physically
12 helpless.

13 (ii) The actor uses force or coercion to accomplish the
14 sexual contact. Force or coercion includes but is not limited to
15 any of the circumstances listed in sections 520b(1)(f)(i) to
16 (v).

17 (e) The actor is armed with a weapon, or any article used or
18 fashioned in a manner to lead a person to reasonably believe it
19 to be a weapon.

20 (f) The actor causes personal injury to the victim and force
21 or coercion is used to accomplish the sexual contact. Force or
22 coercion includes but is not limited to any of the circumstances
23 listed in section 520b(1)(f)(i) to (v).

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

1 (h) That other person is mentally incapable, mentally
2 disabled, mentally incapacitated, or physically helpless, and any
3 of the following:

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

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

8 (I) THAT OTHER PERSON IS UNDER THE JURISDICTION OF THE
9 DEPARTMENT OF CORRECTIONS AND THE ACTOR IS AN EMPLOYEE OR A CON-
10 TRACTUAL EMPLOYEE OF, OR A VOLUNTEER WITH, THE DEPARTMENT OF COR-
11 RECTIONS WHO KNOWS THAT THE OTHER PERSON IS UNDER THE JURISDIC-
12 TION OF THE DEPARTMENT OF CORRECTIONS.

13 (J) THAT OTHER PERSON IS A PRISONER OR PROBATIONER UNDER THE
14 JURISDICTION OF A COUNTY FOR PURPOSES OF IMPRISONMENT OR A WORK
15 PROGRAM OR OTHER PROBATIONARY PROGRAM AND THE ACTOR IS AN
16 EMPLOYEE OR A CONTRACTUAL EMPLOYEE OF OR A VOLUNTEER WITH THE
17 COUNTY OR THE DEPARTMENT OF CORRECTIONS WHO KNOWS THAT THE OTHER
18 PERSON IS UNDER THE COUNTY'S JURISDICTION.

19 (K) THE ACTOR KNOWS OR HAS REASON TO KNOW THAT A COURT HAS
20 DETAINED THE VICTIM IN A FACILITY WHILE THE VICTIM IS AWAITING A
21 TRIAL OR HEARING, OR COMMITTED THE VICTIM TO A FACILITY AS A
22 RESULT OF THE VICTIM HAVING BEEN FOUND RESPONSIBLE FOR COMMITTING
23 AN ACT THAT WOULD BE A CRIME IF COMMITTED BY AN ADULT, AND THE
24 ACTOR IS AN EMPLOYEE OR CONTRACTUAL EMPLOYEE OF, OR A VOLUNTEER
25 WITH, THE FACILITY IN WHICH THE VICTIM IS DETAINED OR TO WHICH
26 THE VICTIM WAS COMMITTED.

1 (2) Criminal sexual conduct in the second degree is a felony
2 punishable by imprisonment for not more than 15 years.

3 Sec. 520e. (1) A person is guilty of criminal sexual con-
4 duct in the fourth degree if he or she engages in sexual contact
5 with another person and if any of the following circumstances
6 exist:

7 (a) That other person is at least 13 years of age ~~and~~
8 ~~under~~ BUT LESS THAN 16 years of age, and the actor is 5 or more
9 years older than that other person.

10 (b) Force or coercion is used to accomplish the sexual
11 contact. Force or coercion includes but is not limited to any of
12 the following circumstances:

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

15 (ii) When the actor coerces the victim to submit by threat-
16 ening to use force or violence on the victim, and the victim
17 believes that the actor has the present ability to execute ~~these~~
18 ~~threats~~ THAT THREAT.

19 (iii) When the actor coerces the victim to submit by threat-
20 ening to retaliate in the future against the victim, or any other
21 person, and the victim believes that the actor has the ability to
22 execute ~~this~~ THAT threat. As used in this ~~subdivision~~
23 SUBPARAGRAPH, "to retaliate" includes threats of physical punish-
24 ment, kidnapping, or extortion.

25 (iv) When the actor engages in the medical treatment or
26 examination of the victim in a manner or for purposes which are
27 medically recognized as unethical or unacceptable.

1 (v) When the actor achieves the sexual contact through
2 concealment or by the element of surprise.

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

6 ~~(d) That other person is under the jurisdiction of the
7 department of corrections and the actor is an employee or a con-
8 tractual employee of, or a volunteer with, the department of cor-
9 rections who knows that the other person is under the jurisdic-
10 tion of the department of corrections.~~

11 ~~(e) That other person is a prisoner or probationer under the
12 jurisdiction of a county for purposes of imprisonment or a work
13 program or other probationary program and the actor is an
14 employee or a contractual employee of or a volunteer with the
15 county who knows that the other person is under the county's
16 jurisdiction.~~

17 ~~(f) The actor knows or has reason to know that the juvenile
18 division of the probate court, the circuit court, or the
19 recorder's court of the city of Detroit has detained the victim
20 in a facility while the victim is awaiting a trial or hearing, or
21 committed the victim to a facility as a result of the victim
22 having been found responsible for committing an act that would be
23 a crime if committed by an adult, and the actor is an employee or
24 contractual employee of, or a volunteer with, the facility in
25 which the victim is detained or to which the victim was
26 committed.~~

1 (D) ~~(g)~~ That other person is related to the actor by blood
2 or affinity to the third degree and the sexual contact 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 fourth degree is a misde-
12 meanor punishable by imprisonment for not more than 2 years or a
13 fine of not more than \$500.00, or both.