

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1127

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 520a, 520b, 520c, 520d, and 520e (MCL 750.520a, 750.520b, 750.520c, 750.520d, and 750.520e), sections 520a and 520e as amended by 2000 PA 505, section 520b as amended by 1983 PA 158, section 520c as amended by 2000 PA 227, and section 520d as amended by 1996 PA 155.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 520a. As used in this chapter:

2 (a) "Actor" means a person accused of criminal sexual
3 conduct.

4 (b) "Developmental disability" means an impairment of gen-
5 eral intellectual functioning or adaptive behavior which meets
6 the following criteria:

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1 (i) It originated before the person became 18 years of age.

2 (ii) It has continued since its origination or can be
3 expected to continue indefinitely.

4 (iii) It constitutes a substantial burden to the impaired
5 person's ability to perform in society.

6 (iv) It is attributable to 1 or more of the following:

7 (A) Mental retardation, cerebral palsy, epilepsy, or
8 autism.

9 (B) Any other condition of a person found to be closely
10 related to mental retardation because it produces a similar
11 impairment or requires treatment and services similar to those
12 required for a person who is mentally retarded.

13 (c) "Intimate parts" includes the primary genital area,
14 groin, inner thigh, buttock, or breast of a human being.

15 (d) "Mental health professional" means that term as defined
16 in section 100b of the mental health code, 1974 PA 258,
17 MCL 330.1100b.

18 (e) "Mental illness" means a substantial disorder of thought
19 or mood which significantly impairs judgment, behavior, capacity
20 to recognize reality, or ability to cope with the ordinary
21 demands of life.

22 (f) "Mentally disabled" means that a person has a mental
23 illness, is mentally retarded, or has a developmental
24 disability.

25 (g) "Mentally incapable" means that a person suffers from a
26 mental disease or defect which renders that person temporarily or

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1 permanently incapable of appraising the nature of his or her
2 conduct.

3 (h) "Mentally incapacitated" means that a person is rendered
4 temporarily incapable of appraising or controlling his or her
5 conduct due to the influence of a narcotic, anesthetic, or other
6 substance administered to that person without his or her consent,
7 or due to any other act committed upon that person without his or
8 her consent.

9 (i) "Mentally retarded" means significantly subaverage gen-
10 eral intellectual functioning which originates during the devel-
11 opmental period and is associated with impairment in adaptive
12 behavior.

13 (J) "NONPUBLIC SCHOOL" MEANS THAT TERM AS DEFINED IN SECTION
14 5 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.5.

15 (K) ~~(j)~~ "Physically helpless" means that a person is
16 unconscious, asleep, or for any other reason is physically unable
17 to communicate unwillingness to an act.

18 (l) ~~(k)~~ "Personal injury" means bodily injury, disfigure-
19 ment, mental anguish, chronic pain, pregnancy, disease, or loss
20 or impairment of a sexual or reproductive organ.

21 (M) "PUBLIC SCHOOL" MEANS THAT TERM AS DEFINED IN SECTION 5
22 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.5.

23 (N) ~~(l)~~ "Sexual contact" includes the intentional touching
24 of the victim's or actor's intimate parts or the intentional
25 touching of the clothing covering the immediate area of the
26 victim's or actor's intimate parts, if that intentional touching
27 can reasonably be construed as being for the purpose of sexual

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1 arousal or gratification, done for a sexual purpose, or in a
2 sexual manner for:

3 (i) Revenge.

4 (ii) To inflict humiliation.

5 (iii) Out of anger.

6 (O) ~~(m)~~ "Sexual penetration" means sexual intercourse,
7 cunnilingus, fellatio, anal intercourse, or any other intrusion,
8 however slight, of any part of a person's body or of any object
9 into the genital or anal openings of another person's body, but
10 emission of semen is not required.

11 (P) ~~(n)~~ "Victim" means the person alleging to have been
12 subjected to criminal sexual conduct.

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

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

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

20 (i) The actor is a member of the same household as the
21 victim.

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

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

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1 (iv) THE ACTOR IS A TEACHER, SUBSTITUTE TEACHER, OR
2 ADMINISTRATOR OF THE PUBLIC OR NONPUBLIC SCHOOL IN WHICH THAT
3 OTHER PERSON IS ENROLLED.

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

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

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

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

15 (e) The actor is armed with a weapon or any article used or
16 fashioned in a manner to lead the victim to reasonably believe it
17 to be a weapon.

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

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

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

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1 (iii) When the actor coerces the victim to submit by
2 threatening to retaliate in the future against the victim, or any
3 other person, and the victim believes that the actor has the
4 ability to execute this threat. As used in this subdivision, "to
5 retaliate" includes threats of physical punishment, kidnapping,
6 or extortion.

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

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

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

15 (h) That other person is mentally incapable, mentally dis-
16 abled, mentally incapacitated, or physically helpless, and any of
17 the following:

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

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

22 (2) Criminal sexual conduct in the first degree is a felony
23 punishable by imprisonment in the state prison for life or for
24 any term of years.

25 Sec. 520c. (1) A person is guilty of criminal sexual con-
26 duct in the second degree if the person engages in sexual contact

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1 with another person and if any of the following circumstances
2 exists:

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

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

6 (i) The actor is a member of the same household as the
7 victim.

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

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

13 (iv) THE ACTOR IS A TEACHER, SUBSTITUTE TEACHER, OR ADMINIS-
14 TRATOR OF THE PUBLIC OR NONPUBLIC SCHOOL IN WHICH THAT OTHER
15 PERSON IS ENROLLED.

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

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

20 (i) The actor knows or has reason to know that the victim is
21 mentally incapable, mentally incapacitated, or physically
22 helpless.

23 (ii) The actor uses force or coercion to accomplish the
24 sexual contact. Force or coercion includes, but is not limited
25 to, any of the circumstances listed in sections 520b(1)(f)(i) to

26 (v).

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

4 (f) The actor causes personal injury to the victim and force
5 or coercion is used to accomplish the sexual contact. Force or
6 coercion includes, but is not limited to, any of the circum-
7 stances listed in section 520b(1)(f)(i) to (v).

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

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

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

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

18 (i) That other person is under the jurisdiction of the
19 department of corrections and the actor is an employee or a con-
20 tractual employee of, or a volunteer with, the department of cor-
21 rections who knows that the other person is under the jurisdic-
22 tion of the department of corrections.

23 (j) That other person is under the jurisdiction of the
24 department of corrections and the actor is an employee or a con-
25 tractual employee of, or a volunteer with, a private vendor that
26 operates a youth correctional facility under section 20g of 1953

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1 PA 232, MCL 791.220g, who knows that the other person is under
2 the jurisdiction of the department of corrections.

3 (k) That other person is a prisoner or probationer under the
4 jurisdiction of a county for purposes of imprisonment or a work
5 program or other probationary program and the actor is an
6 employee or a contractual employee of or a volunteer with the
7 county or the department of corrections who knows that the other
8 person is under the county's jurisdiction.

9 (l) The actor knows or has reason to know that a court has
10 detained the victim in a facility while the victim is awaiting a
11 trial or hearing, or committed the victim to a facility as a
12 result of the victim having been found responsible for committing
13 an act that would be a crime if committed by an adult, and the
14 actor is an employee or contractual employee of, or a volunteer
15 with, the facility in which the victim is detained or to which
16 the victim was committed.

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

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

23 (a) That other person is at least 13 years of age and under
24 16 years of age.

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

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

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

14 (E) THAT OTHER PERSON IS AT LEAST 16 YEARS OF AGE BUT LESS
15 THAN 18 YEARS OF AGE AND A STUDENT AT A PUBLIC OR NONPUBLIC
16 SCHOOL, AND THE ACTOR IS A TEACHER, SUBSTITUTE TEACHER, OR ADMIN-
17 ISTRATOR OF THAT PUBLIC OR NONPUBLIC SCHOOL. THIS SUBDIVISION
18 DOES NOT APPLY IF THE OTHER PERSON IS EMANCIPATED OR IF BOTH PER-
19 SONS ARE LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE
20 ALLEGED VIOLATION.

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

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

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1 (a) That other person is at least 13 years of age but less
2 than 16 years of age, and the actor is 5 or more years older than
3 that other person.

4 (b) Force or coercion is used to accomplish the sexual
5 contact. Force or coercion includes, but is not limited to, any
6 of the following circumstances:

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

9 (ii) When the actor coerces the victim to submit by threat-
10 ening to use force or violence on the victim, and the victim
11 believes that the actor has the present ability to execute that
12 threat.

13 (iii) When the actor coerces the victim to submit by threat-
14 ening to retaliate in the future against the victim, or any other
15 person, and the victim believes that the actor has the ability to
16 execute that threat. As used in this subparagraph, "to
17 retaliate" includes threats of physical punishment, kidnapping,
18 or extortion.

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

22 (v) When the actor achieves the sexual contact through con-
23 cealment or by the element of surprise.

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

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1 (d) That other person is related to the actor by blood or
2 affinity to the third degree and the sexual contact occurs under
3 circumstances not otherwise prohibited by this chapter. It is an
4 affirmative defense to a prosecution under this subdivision that
5 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 (e) The actor is a mental health professional and the sexual
12 contact occurs during or within 2 years after the period in which
13 the victim is his or her client or patient and not his or her
14 spouse. The consent of the victim is not a defense to a prosecu-
15 tion under this subdivision. ~~This does not indicate~~ A PROSECU-
16 TION UNDER THIS SUBSECTION SHALL NOT BE USED AS EVIDENCE that the
17 victim is mentally incompetent.

18 (F) THAT OTHER PERSON IS AT LEAST 16 YEARS OF AGE BUT LESS
19 THAN 18 YEARS OF AGE AND A STUDENT AT A PUBLIC OR NONPUBLIC
20 SCHOOL, AND THE ACTOR IS A TEACHER, SUBSTITUTE TEACHER, OR ADMIN-
21 ISTRATOR OF THAT PUBLIC OR NONPUBLIC SCHOOL. THIS SUBDIVISION
22 DOES NOT APPLY IF THE OTHER PERSON IS EMANCIPATED OR IF BOTH PER-
23 SONS ARE LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE
24 ALLEGED VIOLATION.

25 (2) Criminal sexual conduct in the fourth degree is a misde-
26 meanor punishable by imprisonment for not more than 2 years or a
27 fine of not more than \$500.00, or both.

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- 1 Enacting section 1. This amendatory act takes effect
- 2 April 1, 2003.