

# SENATE BILL No. 1127

February 21, 2002, Introduced by Senators EMMONS, HAMMERSTROM and JOHNSON and referred to the Committee on Judiciary.

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

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) ~~(t)~~ "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

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.

26 (iv) THE ACTOR IS A TEACHER OR ADMINISTRATOR OR OTHER  
27 EMPLOYEE, VOLUNTEER, OR CONTRACTUAL SERVICES PROVIDER OF THE

1 PUBLIC OR NONPUBLIC SCHOOL IN WHICH THAT OTHER PERSON IS ENROLLED  
2 OR OF THE LOCAL OR INTERMEDIATE SCHOOL DISTRICT THAT OPERATES THE  
3 SCHOOL AND PROVIDES SERVICES TO STUDENTS OF THAT PUBLIC OR NON-  
4 PUBLIC SCHOOL.

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

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

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

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

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

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

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

25 (ii) When the actor coerces the victim to submit by threat-  
26 ening to use force or violence on the victim, and the victim

1 believes that the actor has the present ability to execute these  
2 threats.

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

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

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

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

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

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

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

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

1       Sec. 520c. (1) A person is guilty of criminal sexual  
2 conduct in the second degree if the person engages in sexual  
3 contact with another person and if any of the following circum-  
4 stances 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.

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

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

15       (iv) THE ACTOR IS A TEACHER OR ADMINISTRATOR OR OTHER  
16 EMPLOYEE, VOLUNTEER, OR CONTRACTUAL SERVICES PROVIDER OF THE  
17 PUBLIC OR NONPUBLIC SCHOOL IN WHICH THAT OTHER PERSON IS ENROLLED  
18 OR OF THE LOCAL OR INTERMEDIATE SCHOOL DISTRICT THAT OPERATES THE  
19 SCHOOL AND PROVIDES SERVICES TO STUDENTS OF THAT PUBLIC OR NON-  
20 PUBLIC SCHOOL.

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

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

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

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

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

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

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           (i) That other person is under the jurisdiction of the  
23 department of corrections and the actor is an employee or a con-  
24 tractual employee of, or a volunteer with, the department of cor-  
25 rections who knows that the other person is under the jurisdic-  
26 tion of the department of corrections.



1 (j) That other person is under the jurisdiction of the  
2 department of corrections and the actor is an employee or a  
3 contractual employee of, or a volunteer with, a private vendor  
4 that operates a youth correctional facility under section 20g of  
5 1953 PA 232, MCL 791.220g, who knows that the other person is  
6 under the jurisdiction of the department of corrections.

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

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

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

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

1 (a) That other person is at least 13 years of age and under  
2 16 years of age.

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

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

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

19 (E) THAT OTHER PERSON IS AT LEAST 16 YEARS OF AGE BUT LESS  
20 THAN 18 YEARS OF AGE AND A STUDENT AT A PUBLIC OR NONPUBLIC  
21 SCHOOL, AND THE ACTOR IS A TEACHER OR ADMINISTRATOR OR OTHER  
22 EMPLOYEE, VOLUNTEER, OR CONTRACTUAL SERVICES PROVIDER OF THAT  
23 PUBLIC OR NONPUBLIC SCHOOL OR OF THE LOCAL OR INTERMEDIATE SCHOOL  
24 DISTRICT THAT OPERATES THE SCHOOL AND PROVIDES SERVICES TO STU-  
25 DENTS OF THAT PUBLIC OR NONPUBLIC SCHOOL. THIS SUBDIVISION DOES  
26 NOT APPLY IF THE OTHER PERSON IS EMANCIPATED OR IF BOTH PERSONS

1 ARE LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED  
2 VIOLATION.

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

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

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

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

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

17 (ii) When the actor coerces the victim to submit by threat-  
18 ening to use force or violence on the victim, and the victim  
19 believes that the actor has the present ability to execute that  
20 threat.

21 (iii) When the actor coerces the victim to submit by threat-  
22 ening to retaliate in the future against the victim, or any other  
23 person, and the victim believes that the actor has the ability to  
24 execute that threat. As used in this subparagraph, "to  
25 retaliate" includes threats of physical punishment, kidnapping,  
26 or extortion.

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

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

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

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

19 (e) The actor is a mental health professional and the sexual  
20 contact occurs during or within 2 years after the period in which  
21 the victim is his or her client or patient and not his or her  
22 spouse. The consent of the victim is not a defense to a prosecu-  
23 tion under this subdivision. ~~This does not indicate~~ A PROSECU-  
24 TION UNDER THIS SUBSECTION SHALL NOT BE USED AS EVIDENCE that the  
25 victim is mentally incompetent.

26 (F) THAT OTHER PERSON IS AT LEAST 16 YEARS OF AGE BUT LESS  
27 THAN 18 YEARS OF AGE AND A STUDENT AT A PUBLIC OR NONPUBLIC

1 SCHOOL, AND THE ACTOR IS A TEACHER OR ADMINISTRATOR OR OTHER  
2 EMPLOYEE, VOLUNTEER, OR CONTRACTUAL SERVICES PROVIDER OF THAT  
3 PUBLIC OR NONPUBLIC SCHOOL OR OF THE LOCAL OR INTERMEDIATE SCHOOL  
4 DISTRICT THAT OPERATES THE SCHOOL AND PROVIDES SERVICES TO STU-  
5 DENTS OF THAT PUBLIC OR NONPUBLIC SCHOOL. THIS SUBDIVISION DOES  
6 NOT APPLY IF THE OTHER PERSON IS EMANCIPATED OR IF BOTH PERSONS  
7 ARE LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED  
8 VIOLATION.

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