

# HOUSE BILL No. 4652

April 21, 2005, Introduced by Reps. Lemmons, III, Lemmons, Jr., Hunter, Clack, Murphy, Gosselin, Whitmer and Cheeks and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending sections 520b, 520c, 520d, and 520e (MCL 750.520b,  
750.520c, 750.520d, and 750.520e), as amended by 2002 PA 714.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 520b. (1) A person is guilty of criminal sexual conduct  
2       in the first degree if he or she engages in sexual penetration with  
3       another person and if any of the following circumstances exists:

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

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

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

8       **THIS SUBPARAGRAPH DOES NOT APPLY IF THE OTHER PERSON IS EMANCIPATED**  
9       **OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO EACH OTHER AT THE TIME**

1   **OF THE ALLEGED VIOLATION.**

2           (ii) The actor is related to the victim by blood or affinity to  
3 the fourth degree. **THIS SUBPARAGRAPH DOES NOT APPLY IF THE OTHER**  
4 **PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO**  
5 **EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.**

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

8           (iv) The actor is a teacher, substitute teacher, or  
9 administrator of the public or nonpublic school in which that other  
10 person is enrolled. **THIS SUBPARAGRAPH DOES NOT APPLY IF THE OTHER**  
11 **PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO**  
12 **EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.**

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

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

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

19           (ii) The actor uses force or coercion to accomplish the sexual  
20 penetration. Force or coercion includes but is not limited to any  
21 of the circumstances listed in subdivision (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 the victim to reasonably believe it  
24 to be a weapon.

25           (f) The actor causes personal injury to the victim and force  
26 or coercion is used to accomplish sexual penetration. Force or  
27 coercion includes but is not limited to any of the following

1 circumstances:

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

4 (ii) When the actor coerces the victim to submit by threatening  
5 to use force or violence on the victim, and the victim believes  
6 that the actor has the present ability to execute these threats.

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

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

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

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

20 (h) That other person is mentally incapable, mentally  
21 disabled, mentally incapacitated, or physically helpless, and any  
22 of the following **APPLY**:

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

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

27 (2) Criminal sexual conduct in the first degree is a felony

1 punishable by imprisonment in the state prison for life or for any  
2 term of years.

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

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

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

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

10 **THIS SUBPARAGRAPH DOES NOT APPLY IF THE OTHER PERSON IS EMANCIPATED**  
11 **OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO EACH OTHER AT THE TIME**  
12 **OF THE ALLEGED VIOLATION.**

13 (ii) The actor is related by blood or affinity to the fourth  
14 degree to the victim. **THIS SUBPARAGRAPH DOES NOT APPLY IF THE OTHER**  
15 **PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO**  
16 **EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.**

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

19 (iv) The actor is a teacher, substitute teacher, or  
20 administrator of the public or nonpublic school in which that other  
21 person is enrolled. **THIS SUBPARAGRAPH DOES NOT APPLY IF THE OTHER**  
22 **PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO**  
23 **EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.**

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

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

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

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

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

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

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

16           (h) That other person is mentally incapable, mentally  
17 disabled, mentally incapacitated, or physically helpless, and any  
18 of the following:

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

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

23           (i) That other person is under the jurisdiction of the  
24 department of corrections and the actor is an employee or a  
25 contractual employee of, or a volunteer with, the department of  
26 corrections who knows that the other person is under the  
27 jurisdiction 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 that  
4 operates a youth correctional facility under section 20g of **THE**  
5 **CORRECTIONS CODE OF 1953**, 1953 PA 232, MCL 791.220g, who knows that  
6 the other person is under the jurisdiction of the department of  
7 corrections.

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

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

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

24       Sec. 520d. (1) A person is guilty of criminal sexual conduct  
25 in the third degree if the person engages in sexual penetration  
26 with another person and if any of the following circumstances  
27 exist:

1 (a) That other person is at least 13 years of age ~~and under~~  
2 ~~16~~ **BUT LESS THAN 18** years of age. **THIS SUBDIVISION DOES NOT APPLY**  
3 **IF THE OTHER PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE LAWFULLY**  
4 **MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.**

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

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

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

20 (e) That other person is at least 16 years of age but less  
21 than 18 years of age and a student at a public or nonpublic school,  
22 and the actor is a teacher, substitute teacher, or administrator of  
23 that public or nonpublic school. This subdivision does not apply if  
24 the other person is emancipated or if both persons are lawfully  
25 married to each other at the time of the alleged violation.

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

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

4           (a) That other person is at least 13 years of age but less  
5 than ~~16~~ 18 years of age, and the actor is 5 or more years older  
6 than that other person. **THIS SUBDIVISION DOES NOT APPLY IF THE**  
7 **OTHER PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE LAWFULLY MARRIED**  
8 **TO EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.**

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

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

14           (ii) When the actor coerces the victim to submit by threatening  
15 to use force or violence on the victim, and the victim believes  
16 that the actor has the present ability to execute that threat.

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

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

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

27           (c) The actor knows or has reason to know that the victim is



1 mentally incapable, mentally incapacitated, or physically helpless.

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

12 (e) The actor is a mental health professional and the sexual  
13 contact occurs during or within 2 years after the period in which  
14 the victim is his or her client or patient and not his or her  
15 spouse. The consent of the victim is not a defense to a prosecution  
16 under this subdivision. A prosecution under this subsection shall  
17 not be used as evidence that the 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 school,  
20 and the actor is a teacher, substitute teacher, or administrator of  
21 that public or nonpublic school. This subdivision does not apply if  
22 the other person is emancipated or if both persons are lawfully  
23 married to each other at the time of the alleged violation.

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