

HOUSE BILL No. 5066

June 9, 2009, Introduced by Rep. Lemmons and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 520d and 520e (MCL 750.520d and 750.520e), as
amended by 2007 PA 163.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 (a) That other person is at least 13 years of age ~~and under 16~~
6 **BUT LESS THAN 16** years of age.

7 (b) Force or coercion is used to accomplish the sexual

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

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

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

15 (e) That other person is at least 16 years of age but less
16 than 18 years of age and a student at a public school or nonpublic
17 school, and either of the following applies:

18 (i) The actor is a teacher, substitute teacher, or
19 administrator of that public school, nonpublic school, school
20 district, or intermediate school district. This subparagraph does
21 not apply if the other person is emancipated or if both persons are
22 lawfully married to each other at the time of the alleged
23 violation.

24 (ii) The actor is an employee or a contractual service provider
25 of the public school, nonpublic school, school district, or
26 intermediate school district in which that other person is
27 enrolled, or is a volunteer who is not a student in any public

1 school or nonpublic school, or is an employee of this state or of a
2 local unit of government of this state or of the United States
3 assigned to provide any service to that public school, nonpublic
4 school, school district, or intermediate school district, and the
5 actor uses his or her employee, contractual, or volunteer status to
6 gain access to, or to establish a relationship with, that other
7 person.

8 (f) That other person is at least 16 years old but less than
9 26 years of age and is receiving special education services, and
10 either of the following applies:

11 (i) The actor is a teacher, substitute teacher, administrator,
12 employee, or contractual service provider of the public school,
13 nonpublic school, school district, or intermediate school district
14 from which that other person receives the special education
15 services. This subparagraph does not apply if both persons are
16 lawfully married to each other at the time of the alleged
17 violation.

18 (ii) The actor is a volunteer who is not a student in any
19 public school or nonpublic school, or is an employee of this state
20 or of a local unit of government of this state or of the United
21 States assigned to provide any service to that public school,
22 nonpublic school, school district, or intermediate school district,
23 and the actor uses his or her employee, contractual, or volunteer
24 status to gain access to, or to establish a relationship with, that
25 other person.

26 **(G) THE ACTOR IS 21 YEARS OF AGE OR OLDER AND THAT OTHER**
27 **PERSON IS LESS THAN 18 YEARS OF AGE. THIS SUBDIVISION DOES NOT**

1 APPLY IF THE OTHER PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE
2 LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED
3 VIOLATION.

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

6 Sec. 520e. (1) A person is guilty of criminal sexual conduct
7 in the fourth degree if he or she engages in sexual contact with
8 another person and if any of the following circumstances 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 of
14 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 threatening
18 to use force or violence on the victim, and the victim believes
19 that the actor has the present ability to execute that threat.

20 (iii) When the actor coerces the victim to submit by threatening
21 to retaliate in the future against the victim, or any other person,
22 and the victim believes that the actor has the ability to execute
23 that threat. As used in this subparagraph, "to retaliate" includes
24 threats of physical punishment, 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~~ **THAT**
27 are 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 helpless.

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

15 (e) The actor is a mental health professional and the sexual
16 contact occurs during or within 2 years after the period in which
17 the victim is his or her client or patient and not his or her
18 spouse. The consent of the victim is not a defense to a prosecution
19 under this subdivision. A prosecution under this subsection shall
20 not be used as evidence that the victim is mentally incompetent.

21 (f) That other person is at least 16 years of age but less
22 than 18 years of age and a student at a public school or nonpublic
23 school, and either of the following applies:

24 (i) The actor is a teacher, substitute teacher, or
25 administrator of that public school, nonpublic school, school
26 district, or intermediate school district. This subparagraph does
27 not apply if the other person is emancipated or if both persons are

1 lawfully married to each other at the time of the alleged
2 violation.

3 (ii) The actor is an employee or a contractual service provider
4 of the public school, nonpublic school, school district, or
5 intermediate school district in which that other person is
6 enrolled, or is a volunteer who is not a student in any public
7 school or nonpublic school, or is an employee of this state or of a
8 local unit of government of this state or of the United States
9 assigned to provide any service to that public school, nonpublic
10 school, school district, or intermediate school district, and the
11 actor uses his or her employee, contractual, or volunteer status to
12 gain access to, or to establish a relationship with, that other
13 person.

14 (g) That other person is at least 16 years old but less than
15 26 years of age and is receiving special education services, and
16 either of the following applies:

17 (i) The actor is a teacher, substitute teacher, administrator,
18 employee, or contractual service provider of the public school,
19 nonpublic school, school district, or intermediate school district
20 from which that other person receives the special education
21 services. This subparagraph does not apply if both persons are
22 lawfully married to each other at the time of the alleged
23 violation.

24 (ii) The actor is a volunteer who is not a student in any
25 public school or nonpublic school, or is an employee of this state
26 or of a local unit of government of this state or of the United
27 States assigned to provide any service to that public school,

1 nonpublic school, school district, or intermediate school district,
2 and the actor uses his or her employee, contractual, or volunteer
3 status to gain access to, or to establish a relationship with, that
4 other person.

5 (H) THE ACTOR IS 21 YEARS OF AGE OR OLDER AND THAT OTHER
6 PERSON IS LESS THAN 18 YEARS OF AGE. THIS SUBDIVISION DOES NOT
7 APPLY IF THE OTHER PERSON IS EMANCIPATED OR IF BOTH PERSONS ARE
8 LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED
9 VIOLATION.

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