

SENATE BILL No. 596

September 7, 2011, Introduced by Senators KAHN, PAPPAGEORGE, JONES, SCHUITMAKER, COLBECK, GLEASON and EMMONS 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 years of age.

7 (b) Force or coercion is used to accomplish the sexual
8 penetration. Force or coercion includes but is not limited to any

1 of the circumstances listed in section 520b(1)(f)(i) to (v).

2 (c) The actor knows or has reason to know that the victim is
3 mentally incapable, mentally incapacitated, or physically 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 is
7 an affirmative defense to a prosecution under this subdivision that
8 the other person was in a position of authority over the defendant
9 and used this authority to coerce the defendant to violate this
10 subdivision. The defendant has the burden of proving this defense
11 by a preponderance of the evidence. This subdivision does not apply
12 if both persons are lawfully married to each other at the time of
13 the alleged violation.

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

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

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

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

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

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

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

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

27 Sec. 520e. (1) A person is guilty of criminal sexual conduct

1 in the fourth degree if he or she engages in sexual contact with
2 another person and if any of the following circumstances exist:

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

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

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

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

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

26 (d) That other person is related to the actor by blood or
27 affinity to the third degree and the sexual contact occurs under

1 circumstances not otherwise prohibited by this chapter. It is an
2 affirmative defense to a prosecution under this subdivision that
3 the other person was in a position of authority over the defendant
4 and used this authority to coerce the defendant to violate this
5 subdivision. The defendant has the burden of proving this defense
6 by a preponderance of the evidence. This subdivision does not apply
7 if both persons are lawfully married to each other at the time of
8 the alleged violation.

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

15 (f) That other person is at least 16 years of age ~~but less~~
16 ~~than 18 years of age~~ and **IS** a student at a public school or
17 nonpublic 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 ~~—— (g) 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 (2) Criminal sexual conduct in the fourth degree is a
27 misdemeanor punishable by imprisonment for not more than 2 years or

1 a fine of not more than \$500.00, or both.