

SUBSTITUTE FOR
SENATE BILL NO. 607

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 520a, 520d, and 520e (MCL 750.520a, 750.520d,
and 750.520e), section 520a as amended by 2014 PA 64 and sections
520d and 520e as amended by 2012 PA 372.

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 conduct.

3 **(B) "CLERGY" MEANS THE GROUP OF INDIVIDUALS ORDAINED OR**
4 **RECOGNIZED BY A RELIGIOUS OR SPIRITUAL COMMUNITY AS RITUAL OR**
5 **SPIRITUAL LEADERS.**

6 (C) ~~(b)~~—"Developmental disability" means an impairment of
7 general intellectual functioning or adaptive behavior that meets
8 all of the following criteria:

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

2 (ii) It has continued since its origination or can be expected
3 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) Intellectual disability, cerebral palsy, epilepsy, or
8 autism.

9 (B) Any other condition of a person that produces a similar
10 impairment or requires treatment and services similar to those
11 required for a person described in this subdivision.

12 (D) ~~(e)~~—"Electronic monitoring" means that term as defined in
13 section 85 of the corrections code of 1953, 1953 PA 232, MCL
14 791.285.

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

18 (F) ~~(e)~~—"Intermediate school district" means a corporate body
19 established under part 7 of the revised school code, 1976 PA 451,
20 MCL 380.601 to 380.705.

21 (G) ~~(f)~~—"Intimate parts" includes the primary genital area,
22 groin, inner thigh, buttock, or breast of a human being.

23 (H) ~~(g)~~—"Mental health professional" means that term as
24 defined in section 100b of the mental health code, 1974 PA 258, MCL
25 330.1100b.

26 (I) ~~(h)~~—"Mental illness" means a substantial disorder of
27 thought or mood that significantly impairs judgment, behavior,

1 capacity to recognize reality, or ability to cope with the ordinary
2 demands of life.

3 (J) ~~(i)~~—"Mentally disabled" means that a person has a mental
4 illness, is intellectually disabled, or has a developmental
5 disability.

6 (K) ~~(j)~~—"Mentally incapable" means that a person suffers from
7 a mental disease or defect that renders that person temporarily or
8 permanently incapable of appraising the nature of his or her
9 conduct.

10 (L) ~~(k)~~—"Mentally incapacitated" means that a person is
11 rendered temporarily incapable of appraising or controlling his or
12 her conduct due to the influence of a narcotic, anesthetic, or
13 other substance administered to that person without his or her
14 consent, or due to any other act committed upon that person without
15 his or her consent.

16 (M) ~~(l)~~—"Nonpublic school" means a private, denominational, or
17 parochial elementary or secondary school.

18 (N) ~~(m)~~—"Physically helpless" means that a person is
19 unconscious, asleep, or for any other reason is physically unable
20 to communicate unwillingness to an act.

21 (O) ~~(n)~~—"Personal injury" means bodily injury, disfigurement,
22 mental anguish, chronic pain, pregnancy, disease, or loss or
23 impairment of a sexual or reproductive organ.

24 (P) ~~(o)~~—"Public school" means a public elementary or secondary
25 educational entity or agency that is established under the revised
26 school code, 1976 PA 451, MCL 380.1 to 380.1852.

27 (Q) ~~(p)~~—"School district" means a general powers school

1 district organized under the revised school code, 1976 PA 451, MCL
2 380.1 to 380.1852.

3 (R) ~~(q)~~—"Sexual contact" includes the intentional touching of
4 the victim's or actor's intimate parts or the intentional touching
5 of the clothing covering the immediate area of the victim's or
6 actor's intimate parts, if that intentional touching can reasonably
7 be construed as being for the purpose of sexual arousal or
8 gratification, done for a sexual purpose, or in a sexual manner
9 for:

10 (i) Revenge.

11 (ii) To inflict humiliation.

12 (iii) Out of anger.

13 (S) ~~(r)~~—"Sexual penetration" means sexual intercourse,
14 cunnilingus, fellatio, anal intercourse, or any other intrusion,
15 however slight, of any part of a person's body or of any object
16 into the genital or anal openings of another person's body, but
17 emission of semen is not required.

18 (T) ~~(s)~~—"Victim" means the person alleging to have been
19 subjected to criminal sexual conduct.

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

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

26 (b) Force or coercion is used to accomplish the sexual
27 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 a student at a public school or nonpublic
16 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
24 provider of the public school, nonpublic school, school district,
25 or 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 (g) The actor is an employee, contractual service provider, or
26 volunteer of a child care organization, or a person licensed to
27 operate a foster family home or a foster family group home, in

1 which that other person is a resident, that other person is at
2 least 16 years of age, and the sexual penetration occurs during
3 that other person's residency. As used in this subdivision, "child
4 care organization", "foster family home", and "foster family group
5 home" mean those terms as defined in section 1 of 1973 PA 116, MCL
6 722.111.

7 (H) THE ACTOR IS OR PURPORTS TO BE A MEMBER OF THE CLERGY AND
8 EITHER OF THE FOLLOWING APPLIES:

9 (i) THE SEXUAL PENETRATION OCCURRED DURING THE COURSE OF A
10 MEETING IN WHICH THE OTHER PERSON SOUGHT OR RECEIVED RELIGIOUS OR
11 SPIRITUAL ADVICE, AID, OR COMFORT FROM THE ACTOR AND THE ACTOR USED
12 HIS OR HER POSITION OR PURPORTED POSITION AS A MEMBER OF THE CLERGY
13 TO ACCOMPLISH THE SEXUAL PENETRATION.

14 (ii) THE SEXUAL PENETRATION OCCURRED DURING A PERIOD OF TIME
15 IN WHICH THE OTHER PERSON WAS MEETING ON AN ONGOING BASIS WITH THE
16 ACTOR TO SEEK OR RECEIVE RELIGIOUS OR SPIRITUAL ADVICE, AID, OR
17 COMFORT IN A PRIVATE SETTING AND THE ACTOR USED HIS OR HER POSITION
18 OR PURPORTED POSITION AS A MEMBER OF THE CLERGY TO ACCOMPLISH THE
19 SEXUAL PENETRATION.

20 (2) THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A
21 PROSECUTION UNDER SUBSECTION (1) (H).

22 (3) ~~(2)~~—Criminal sexual conduct in the third degree is a
23 felony punishable by imprisonment for not more than 15 years.

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

27 (a) That other person is at least 13 years of age but less

1 than 16 years of age, and the actor is 5 or more years older than
2 that other person.

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

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

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

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

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

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

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

25 (d) That other person is related to the actor by blood or
26 affinity to the third degree and the sexual contact occurs under
27 circumstances not otherwise prohibited by this chapter. It is an

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

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

15 (f) 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
25 provider of the public school, nonpublic school, school district,
26 or 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 (h) The actor is an employee, contractual service provider, or
27 volunteer of a child care organization, or a person licensed to

1 operate a foster family home or a foster family group home, in
2 which that other person is a resident, that other person is at
3 least 16 years of age, and the sexual contact occurs during that
4 other person's residency. As used in this subdivision, "child care
5 organization", "foster family home", and "foster family group home"
6 mean those terms as defined in section 1 of 1973 PA 116, MCL
7 722.111.

8 (I) THE ACTOR IS OR PURPORTS TO BE A MEMBER OF THE CLERGY AND
9 EITHER OF THE FOLLOWING APPLIES:

10 (i) THE SEXUAL CONTACT OCCURRED DURING THE COURSE OF A MEETING
11 IN WHICH THE OTHER PERSON SOUGHT OR RECEIVED RELIGIOUS OR SPIRITUAL
12 ADVICE, AID, OR COMFORT FROM THE ACTOR AND THE ACTOR USED HIS OR
13 HER POSITION OR PURPORTED POSITION AS A MEMBER OF THE CLERGY TO
14 ACCOMPLISH THE SEXUAL CONTACT.

15 (ii) THE SEXUAL CONTACT OCCURRED DURING A PERIOD OF TIME IN
16 WHICH THE OTHER PERSON WAS MEETING ON AN ONGOING BASIS WITH THE
17 ACTOR TO SEEK OR RECEIVE RELIGIOUS OR SPIRITUAL ADVICE, AID, OR
18 COMFORT IN A PRIVATE SETTING AND THE ACTOR USED HIS OR HER POSITION
19 OR PURPORTED POSITION AS A MEMBER OF THE CLERGY TO ACCOMPLISH THE
20 SEXUAL CONTACT.

21 (2) THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A
22 PROSECUTION UNDER SUBSECTION (1)(I).

23 (3) ~~(2)~~—Criminal sexual conduct in the fourth degree is a
24 misdemeanor punishable by imprisonment for not more than 2 years or
25 a fine of not more than \$500.00, or both.

26 Enacting section 1. This amendatory act takes effect 90 days
27 after the date it is enacted into law.