

# SENATE BILL No. 607

October 4, 2017, Introduced by Senators JONES, PAVLOV, CONYERS and HERTEL and referred to the Committee on Judiciary.

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

1 all of the following criteria:

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

3 (ii) It has continued since its origination or can be expected  
4 to continue indefinitely.

5 (iii) It constitutes a substantial burden to the impaired  
6 person's ability to perform in society.

7 (iv) It is attributable to 1 or more of the following:

8 (A) Intellectual disability, cerebral palsy, epilepsy, or  
9 autism.

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

13 (D) ~~(e)~~ "Electronic monitoring" means that term as defined in  
14 section 85 of the corrections code of 1953, 1953 PA 232, MCL  
15 791.285.

16 (E) ~~(d)~~ "Intellectual disability" means that term as defined  
17 in section 100b of the mental health code, 1974 PA 258, MCL  
18 330.1100b.

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

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

24 (H) ~~(g)~~ "Mental health professional" means that term as  
25 defined in section 100b of the mental health code, 1974 PA 258, MCL  
26 330.1100b.

27 (I) ~~(h)~~ "Mental illness" means a substantial disorder of

1 thought or mood that significantly impairs judgment, behavior,  
2 capacity to recognize reality, or ability to cope with the ordinary  
3 demands of life.

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

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

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

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

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

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

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

1           (Q) ~~(p)~~ "School district" means a general powers school  
2 district organized under the revised school code, 1976 PA 451, MCL  
3 380.1 to 380.1852.

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

11           (i) Revenge.

12           (ii) To inflict humiliation.

13           (iii) Out of anger.

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

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

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

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

27           (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  
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 (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 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 penetration occurs during  
4 that other person's residency. As used in this subdivision, "child  
5 care organization", "foster family home", and "foster family group  
6 home" mean those terms as defined in section 1 of 1973 PA 116, MCL  
7 722.111.

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

10 (i) THE SEXUAL PENETRATION OCCURRED DURING THE COURSE OF A  
11 MEETING IN WHICH THE OTHER PERSON SOUGHT OR RECEIVED RELIGIOUS OR  
12 SPIRITUAL ADVICE, AID, OR COMFORT FROM THE ACTOR.

13 (ii) THE SEXUAL PENETRATION OCCURRED DURING A PERIOD OF TIME  
14 IN WHICH THE OTHER PERSON WAS MEETING ON AN ONGOING BASIS WITH THE  
15 ACTOR TO SEEK OR RECEIVE RELIGIOUS OR SPIRITUAL ADVICE, AID, OR  
16 COMFORT IN A PRIVATE SETTING.

17 (2) THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A  
18 PROSECUTION UNDER SUBDIVISION (H).

19 (3) ~~(2)~~—Criminal sexual conduct in the third degree is a  
20 felony punishable by imprisonment for not more than 15 years.

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

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

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

1 contact. Force or coercion includes, but is not limited to, any of  
2 the following circumstances:

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

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

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

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

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

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

22 (d) That other person is related to the actor by blood or  
23 affinity to the third degree and the sexual contact occurs under  
24 circumstances not otherwise prohibited by this chapter. It is an  
25 affirmative defense to a prosecution under this subdivision that  
26 the other person was in a position of authority over the defendant  
27 and used this authority to coerce the defendant to violate this

1 subdivision. The defendant has the burden of proving this defense  
2 by a preponderance of the evidence. This subdivision does not apply  
3 if both persons are lawfully married to each other at the time of  
4 the alleged violation.

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

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

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

21 (ii) The actor is an employee or a contractual service  
22 provider of the public school, nonpublic school, school district,  
23 or intermediate school district in which that other person is  
24 enrolled, or is a volunteer who is not a student in any public  
25 school or nonpublic school, or is an employee of this state or of a  
26 local unit of government of this state or of the United States  
27 assigned to provide any service to that public school, nonpublic

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

5 (g) That other person is at least 16 years old but less than  
6 26 years of age and is receiving special education services, and  
7 either of the following applies:

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

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

23 (h) The actor is an employee, contractual service provider, or  
24 volunteer of a child care organization, or a person licensed to  
25 operate a foster family home or a foster family group home, in  
26 which that other person is a resident, that other person is at  
27 least 16 years of age, and the sexual contact occurs during that

1 other person's residency. As used in this subdivision, "child care  
2 organization", "foster family home", and "foster family group home"  
3 mean those terms as defined in section 1 of 1973 PA 116, MCL  
4 722.111.

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

7 (i) THE SEXUAL CONTACT OCCURRED DURING THE COURSE OF A MEETING  
8 IN WHICH THE OTHER PERSON SOUGHT OR RECEIVED RELIGIOUS OR SPIRITUAL  
9 ADVICE, AID, OR COMFORT FROM THE ACTOR.

10 (ii) THE SEXUAL CONTACT OCCURRED DURING A PERIOD OF TIME IN  
11 WHICH THE OTHER PERSON WAS MEETING ON AN ONGOING BASIS WITH THE  
12 ACTOR TO SEEK OR RECEIVE RELIGIOUS OR SPIRITUAL ADVICE, AID, OR  
13 COMFORT IN A PRIVATE SETTING.

14 (2) THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A  
15 PROSECUTION UNDER SUBDIVISION (I).

16 (3) ~~(2)~~—Criminal sexual conduct in the fourth degree is a  
17 misdemeanor punishable by imprisonment for not more than 2 years or  
18 a fine of not more than \$500.00, or both.

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