

# HOUSE BILL NO. 5652

December 15, 2021, Introduced by Reps. Bollin, Beeler, Calley and Outman and referred to the Committee on Judiciary.

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

1 **recognized by a religious or spiritual community as ritual or**  
 2 **spiritual leaders.**

3 (c) ~~(b)~~—"Developmental disability" means an impairment of  
 4 general intellectual functioning or adaptive behavior that meets  
 5 all of the following criteria:

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

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

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

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

12 (A) Intellectual disability, cerebral palsy, epilepsy, or  
 13 autism.

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

17 (d) ~~(e)~~—"Electronic monitoring" means that term as defined in  
 18 section 85 of the corrections code of 1953, 1953 PA 232, MCL  
 19 791.285.

20 (e) ~~(d)~~—"Intellectual disability" means that term as defined  
 21 in section 100b of the mental health code, 1974 PA 258, MCL  
 22 330.1100b.

23 (f) ~~(e)~~—"Intermediate school district" means a corporate body  
 24 established under part 7 of the revised school code, 1976 PA 451,  
 25 MCL 380.601 to 380.705.

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

28 (h) ~~(g)~~—"Mental health professional" means that term as  
 29 defined in section 100b of the mental health code, 1974 PA 258, MCL

1 330.1100b.

2 (i) ~~(h)~~—"Mental illness" means a substantial disorder of  
3 thought or mood that significantly impairs judgment, behavior,  
4 capacity to recognize reality, or ability to cope with the ordinary  
5 demands of life.

6 (j) ~~(i)~~—"Mentally disabled" means that a person has a mental  
7 illness, is intellectually disabled, or has a developmental  
8 disability.

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

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

19 (m) ~~(l)~~—"Nonpublic school" means a private, denominational, or  
20 parochial elementary or secondary school.

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

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

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

**(q)** ~~(p)~~—"School district" means a general powers school district organized under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

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

(i) Revenge.

(ii) To inflict humiliation.

(iii) Out of anger.

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

**(t)** ~~(s)~~—"Victim" means the person alleging to have been subjected to criminal sexual conduct.

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

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

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

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

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

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

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

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

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

18           (d) That other person is related to the actor by blood or  
19 affinity to the third degree and the sexual contact occurs under  
20 circumstances not otherwise prohibited by this chapter. It is an  
21 affirmative defense to a prosecution under this subdivision that  
22 the other person was in a position of authority over the defendant  
23 and used this authority to coerce the defendant to violate this  
24 subdivision. The defendant has the burden of proving this defense  
25 by a preponderance of the evidence. This subdivision does not apply  
26 if both persons are lawfully married to each other at the time of  
27 the alleged violation.

28           (e) The actor is a mental health professional and the sexual  
29 contact occurs during or within 2 years after the period in which

1 the victim is his or her client or patient and not his or her  
2 spouse. The consent of the victim is not a defense to a prosecution  
3 under this subdivision. A prosecution under this subsection ~~shall~~  
4 **must** not be used as evidence that the victim is mentally  
5 incompetent.

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

9 (i) The actor is a teacher, substitute teacher, or  
10 administrator of that public school, nonpublic school, school  
11 district, or intermediate school district. This subparagraph does  
12 not apply if the other person is emancipated or if both persons are  
13 lawfully married to each other at the time of the alleged  
14 violation.

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

26 (g) That other person is at least 16 years old but less than  
27 26 years of age and is receiving special education services, and  
28 either of the following applies:

29 (i) The actor is a teacher, substitute teacher, administrator,

1 employee, or contractual service provider of the public school,  
2 nonpublic school, school district, or intermediate school district  
3 from which that other person receives the special education  
4 services. This subparagraph does not apply if both persons are  
5 lawfully married to each other at the time of the alleged  
6 violation.

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

15 (h) The actor is an employee, contractual service provider, or  
16 volunteer of a child care organization, or a person licensed to  
17 operate a foster family home or a foster family group home, in  
18 which that other person is a resident, that other person is at  
19 least 16 years of age, and the sexual contact occurs during that  
20 other person's residency. As used in this subdivision, "child care  
21 organization", "foster family home", and "foster family group home"  
22 mean those terms as defined in section 1 of 1973 PA 116, MCL  
23 722.111.

24 (i) The actor is or purports to be a member of the clergy and  
25 is not lawfully married to the victim and 1 or both of the  
26 following apply:

27 (i) The sexual contact occurred during the course of a meeting,  
28 or within 2 years after a meeting, in which the other person sought  
29 or received religious or spiritual direction or counseling from the

1 actor.

2 (ii) The sexual contact occurred during a period of time, or  
3 within 2 years after a period of time, in which the other person  
4 was meeting on an ongoing basis with the actor to seek or receive  
5 religious or spiritual direction or counseling in a private  
6 setting.

7 (2) The consent of the victim is not a defense to a  
8 prosecution under subsection (1)(i).

9 (3) A prosecution under subsection (1)(i) must not be used as  
10 evidence that the victim is mentally incompetent.

11 (4) ~~(2)~~—Criminal sexual conduct in the fourth degree is a  
12 misdemeanor punishable by imprisonment for not more than 2 years or  
13 a fine of not more than \$500.00, or both.

14 (5) Notwithstanding any other provision of law, any legally  
15 recognized privileged communication, except that between an  
16 attorney and his or her client or that made to a member of the  
17 clergy in his or her professional character in a confession or  
18 similarly confidential communication, is abrogated and does not  
19 constitute grounds for excusing a report otherwise required to be  
20 made by law or for excluding evidence in a proceeding resulting  
21 from a report regarding an alleged violation of this section.

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