

**SUBSTITUTE FOR
SENATE BILL NO. 934**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 520b. (1) A person is guilty of criminal sexual conduct
2 in the first degree if he or she engages in sexual penetration with
3 another person and if any of the following circumstances exists:

4 (a) That other person is under 13 years of age.

5 (b) That other person is at least 13 but less than 16 years of
6 age and any of the following:

7 (i) The actor is a member of the same household as the victim.

8 (ii) The actor is related to the victim by blood or affinity to
9 the fourth degree.

10 (iii) The actor is in a position of authority over the victim

1 and used this authority to coerce the victim to submit.

2 (iv) The actor is a teacher, substitute teacher, or
3 administrator of the public school, nonpublic school, school
4 district, or intermediate school district in which that other
5 person is enrolled.

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

17 (vi) THE ACTOR IS AN EMPLOYEE, CONTRACTUAL SERVICE PROVIDER, OR
18 VOLUNTEER OF A CHILD CARE ORGANIZATION, OR A PERSON LICENSED TO
19 OPERATE A FOSTER FAMILY HOME OR A FOSTER FAMILY GROUP HOME IN WHICH
20 THAT OTHER PERSON IS A RESIDENT, AND THE SEXUAL PENETRATION OCCURS
21 DURING THE PERIOD OF THAT OTHER PERSON'S RESIDENCY. AS USED IN THIS
22 SUBPARAGRAPH, "CHILD CARE ORGANIZATION", "FOSTER FAMILY HOME", AND
23 "FOSTER FAMILY GROUP HOME" MEAN THOSE TERMS AS DEFINED IN SECTION 1
24 OF 1973 PA 116, MCL 722.111.

25 (c) Sexual penetration occurs under circumstances involving
26 the commission of any other felony.

27 (d) The actor is aided or abetted by 1 or more other persons

1 and either of the following circumstances exists:

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

4 (ii) The actor uses force or coercion to accomplish the sexual
5 penetration. Force or coercion includes, but is not limited to, any
6 of the circumstances listed in subdivision (f).

7 (e) The actor is armed with a weapon or any article used or
8 fashioned in a manner to lead the victim to reasonably believe it
9 to be a weapon.

10 (f) The actor causes personal injury to the victim and force
11 or coercion is used to accomplish sexual penetration. Force or
12 coercion includes, but is not limited to, any of the following
13 circumstances:

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

16 (ii) When the actor coerces the victim to submit by threatening
17 to use force or violence on the victim, and the victim believes
18 that the actor has the present ability to execute these threats.

19 (iii) When the actor coerces the victim to submit by threatening
20 to retaliate in the future against the victim, or any other person,
21 and the victim believes that the actor has the ability to execute
22 this threat. As used in this subdivision, "to retaliate" includes
23 threats of physical punishment, kidnapping, or extortion.

24 (iv) When the actor engages in the medical treatment or
25 examination of the victim in a manner or for purposes that are
26 medically recognized as unethical or unacceptable.

27 (v) When the actor, through concealment or by the element of

1 surprise, is able to overcome the victim.

2 (g) The actor causes personal injury to the victim, and the
3 actor knows or has reason to know that the victim is mentally
4 incapable, mentally incapacitated, or physically helpless.

5 (h) That other person is mentally incapable, mentally
6 disabled, mentally incapacitated, or physically helpless, and any
7 of the following:

8 (i) The actor is related to the victim by blood or affinity to
9 the fourth degree.

10 (ii) The actor is in a position of authority over the victim
11 and used this authority to coerce the victim to submit.

12 (2) Criminal sexual conduct in the first degree is a felony
13 punishable as follows:

14 (a) Except as provided in subdivisions (b) and (c), by
15 imprisonment for life or for any term of years.

16 (b) For a violation that is committed by an individual 17
17 years of age or older against an individual less than 13 years of
18 age by imprisonment for life or any term of years, but not less
19 than 25 years.

20 (c) For a violation that is committed by an individual 17
21 years of age or older against an individual less than 13 years of
22 age, by imprisonment for life without the possibility of parole if
23 the person was previously convicted of a violation of this section
24 or section 520c, 520d, 520e, or 520g committed against an
25 individual less than 13 years of age or a violation of law of the
26 United States, another state or political subdivision substantially
27 corresponding to a violation of this section or section 520c, 520d,

1 520e, or 520g committed against an individual less than 13 years of
2 age.

3 (d) In addition to any other penalty imposed under subdivision
4 (a) or (b), the court shall sentence the defendant to lifetime
5 electronic monitoring under section 520n.

6 (3) The court may order a term of imprisonment imposed under
7 this section to be served consecutively to any term of imprisonment
8 imposed for any other criminal offense arising from the same
9 transaction.

10 Sec. 520c. (1) A person is guilty of criminal sexual conduct
11 in the second degree if the person engages in sexual contact with
12 another person and if any of the following circumstances exists:

13 (a) That other person is under 13 years of age.

14 (b) That other person is at least 13 but less than 16 years of
15 age and any of the following:

16 (i) The actor is a member of the same household as the victim.

17 (ii) The actor is related by blood or affinity to the fourth
18 degree to the victim.

19 (iii) The actor is in a position of authority over the victim
20 and the actor used this authority to coerce the victim to submit.

21 (iv) The actor is a teacher, substitute teacher, or
22 administrator of the public school, nonpublic school, school
23 district, or intermediate school district in which that other
24 person is enrolled.

25 (v) The actor is an employee or a contractual service provider
26 of the public school, nonpublic school, school district, or
27 intermediate school district in which that other person is

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

9 (vi) THE ACTOR IS AN EMPLOYEE, CONTRACTUAL SERVICE PROVIDER, OR
10 VOLUNTEER OF A CHILD CARE ORGANIZATION, OR A PERSON LICENSED TO
11 OPERATE A FOSTER FAMILY HOME OR A FOSTER FAMILY GROUP HOME IN WHICH
12 THAT OTHER PERSON IS A RESIDENT AND THE SEXUAL CONTACT OCCURS
13 DURING THE PERIOD OF THAT OTHER PERSON'S RESIDENCY. AS USED IN THIS
14 SUBDIVISION, "CHILD CARE ORGANIZATION", "FOSTER FAMILY HOME", AND
15 "FOSTER FAMILY GROUP HOME" MEAN THOSE TERMS AS DEFINED IN SECTION 1
16 OF 1973 PA 116, MCL 722.111.

17 (c) Sexual contact occurs under circumstances involving the
18 commission of any other felony.

19 (d) The actor is aided or abetted by 1 or more other persons
20 and either of the following circumstances exists:

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

23 (ii) The actor uses force or coercion to accomplish the sexual
24 contact. Force or coercion includes, but is not limited to, any of
25 the circumstances listed in section 520b(1)(f).

26 (e) The actor is armed with a weapon, or any article used or
27 fashioned in a manner to lead a person to reasonably believe it to

1 be a weapon.

2 (f) The actor causes personal injury to the victim and force
3 or coercion is used to accomplish the sexual contact. Force or
4 coercion includes, but is not limited to, any of the circumstances
5 listed in section 520b(1)(f).

6 (g) The actor causes personal injury to the victim and the
7 actor knows or has reason to know that the victim is mentally
8 incapable, mentally incapacitated, or physically helpless.

9 (h) That other person is mentally incapable, mentally
10 disabled, mentally incapacitated, or physically helpless, and any
11 of the following:

12 (i) The actor is related to the victim by blood or affinity to
13 the fourth degree.

14 (ii) The actor is in a position of authority over the victim
15 and used this authority to coerce the victim to submit.

16 (i) That other person is under the jurisdiction of the
17 department of corrections and the actor is an employee or a
18 contractual employee of, or a volunteer with, the department of
19 corrections who knows that the other person is under the
20 jurisdiction of the department of corrections.

21 (j) That other person is under the jurisdiction of the
22 department of corrections and the actor is an employee or a
23 contractual employee of, or a volunteer with, a private vendor that
24 operates a youth correctional facility under section 20g of the
25 corrections code of 1953, 1953 PA 232, MCL 791.220g, who knows that
26 the other person is under the jurisdiction of the department of
27 corrections.

1 (k) That other person is a prisoner or probationer under the
2 jurisdiction of a county for purposes of imprisonment or a work
3 program or other probationary program and the actor is an employee
4 or a contractual employee of or a volunteer with the county or the
5 department of corrections who knows that the other person is under
6 the county's jurisdiction.

7 (l) The actor knows or has reason to know that a court has
8 detained the victim in a facility while the victim is awaiting a
9 trial or hearing, or committed the victim to a facility as a result
10 of the victim having been found responsible for committing an act
11 that would be a crime if committed by an adult, and the actor is an
12 employee or contractual employee of, or a volunteer with, the
13 facility in which the victim is detained or to which the victim was
14 committed.

15 (2) Criminal sexual conduct in the second degree is a felony
16 punishable as follows:

17 (a) By imprisonment for not more than 15 years.

18 (b) In addition to the penalty specified in subdivision (a),
19 the court shall sentence the defendant to lifetime electronic
20 monitoring under section 520n if the violation involved sexual
21 contact committed by an individual 17 years of age or older against
22 an individual less than 13 years of age.

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

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

1 years of age.

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

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

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

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

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

26 (ii) The actor is an employee or a contractual service provider
27 of the public school, nonpublic school, school district, or

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

10 (f) That other person is at least 16 years old but less than
11 26 years of age and is receiving special education services, and
12 either of the following applies:

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

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

1 (G) THE ACTOR IS AN EMPLOYEE, CONTRACTUAL SERVICE PROVIDER, OR
2 VOLUNTEER OF A CHILD CARE ORGANIZATION, OR A PERSON LICENSED TO
3 OPERATE A FOSTER FAMILY HOME OR A FOSTER FAMILY GROUP HOME, IN
4 WHICH THAT OTHER PERSON IS A RESIDENT, THAT OTHER PERSON IS AT
5 LEAST 16 YEARS OF AGE, AND THE SEXUAL PENETRATION OCCURS DURING
6 THAT OTHER PERSON'S RESIDENCY. AS USED IN THIS SUBDIVISION, "CHILD
7 CARE ORGANIZATION", "FOSTER FAMILY HOME", AND "FOSTER FAMILY GROUP
8 HOME" MEAN THOSE TERMS AS DEFINED IN SECTION 1 OF 1973 PA 116, MCL
9 722.111.

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

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

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

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

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

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

26 (iii) When the actor coerces the victim to submit by threatening
27 to retaliate in the future against the victim, or any other person,

1 and the victim believes that the actor has the ability to execute
2 that threat. As used in this subparagraph, "to retaliate" includes
3 threats of physical punishment, kidnapping, or extortion.

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

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

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

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

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

27 (f) That other person is at least 16 years of age but less

1 than 18 years of age and a student at a public school or nonpublic
2 school, and either of the following applies:

3 (i) The actor is a teacher, substitute teacher, or
4 administrator of that public school, nonpublic school, school
5 district, or intermediate school district. This subparagraph does
6 not apply if the other person is emancipated or if both persons are
7 lawfully married to each other at the time of the alleged
8 violation.

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

20 (g) That other person is at least 16 years old but less than
21 26 years of age and is receiving special education services, and
22 either of the following applies:

23 (i) The actor is a teacher, substitute teacher, administrator,
24 employee, or contractual service provider of the public school,
25 nonpublic school, school district, or intermediate school district
26 from which that other person receives the special education
27 services. This subparagraph does not apply if both persons are

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

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

11 (H) THE ACTOR IS AN EMPLOYEE, CONTRACTUAL SERVICE PROVIDER, OR
12 VOLUNTEER OF A CHILD CARE ORGANIZATION, OR A PERSON LICENSED TO
13 OPERATE A FOSTER FAMILY HOME OR A FOSTER FAMILY GROUP HOME, IN
14 WHICH THAT OTHER PERSON IS A RESIDENT, THAT OTHER PERSON IS AT
15 LEAST 16 YEARS OF AGE, AND THE SEXUAL CONTACT OCCURS DURING THAT
16 OTHER PERSON'S RESIDENCY. AS USED IN THIS SUBDIVISION, "CHILD CARE
17 ORGANIZATION", "FOSTER FAMILY HOME", AND "FOSTER FAMILY GROUP HOME"
18 MEAN THOSE TERMS AS DEFINED IN SECTION 1 OF 1973 PA 116, MCL
19 722.111.

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

23 Enacting section 1. This amendatory act takes effect July 1,
24 2012.