



SENATE BILL No. 959

December 18, 1993, Introduced by Senators Berryman, Conroy, Pollack, Kelly, Carl, Cherry, Faust, Smith and O'Brien and referred to the Committee on Judiciary

A bill to amend sections 520a, 520d, and 520e of Act No 328 of the Public Acts of 1931, entitled as amended

"The Michigan penal code,"

sections 520a and 520d as amended by Act No 158 of the Public Acts of 1983 and section 520e as amended by Act No 86 of the Public Acts of 1988, being sections 750 520a, 750 520d, and 750 520e of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 520a, 520d, and 520e of Act No 328 of
2 the Public Acts of 1931, sections 520a and 520d as amended by Act
3 No 158 of the Public Acts of 1983 and section 520e as amended by
4 Act No 86 of the Public Acts of 1988, being sections 750 520a,
5 750 520d, and 750 520e of the Michigan Compiled Laws, are amended
6 to read as follows

1 Sec 520a As used in sections 520a to 520l

2 (a) "Actor" means a person accused of criminal sexual
3 conduct

4 (b) "Developmental disability" means an impairment of gen-
5 eral intellectual functioning or adaptive behavior which meets
6 the following criteria

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

8 (11) It has continued since its origination or can be
9 expected to continue indefinitely

10 (111) It constitutes a substantial burden to the impaired
11 person's ability to perform in society

12 (1v) It is attributable to 1 or more of the following

13 (A) Mental retardation, cerebral palsy, epilepsy, or
14 autism

15 (B) Any other condition of a person found to be closely
16 related to mental retardation because it produces a similar
17 impairment or requires treatment and services similar to those
18 required for a person who is mentally retarded

19 (c) "Intimate parts" includes the primary genital area,
20 groin, inner thigh, buttock, or breast of a human being

21 (d) "Mental illness" means a substantial disorder of thought
22 or mood which significantly impairs judgment, behavior, capacity
23 to recognize reality, or ability to cope with the ordinary
24 demands of life

25 (e) "Mentally disabled" means that a person has a mental
26 illness, is mentally retarded, or has a developmental
27 disability

1 (f) "Mentally incapable" means that a person suffers from a
2 mental disease or defect which renders that person temporarily or
3 permanently incapable of appraising the nature of his or her
4 conduct

5 (g) "Mentally incapacitated" means that a person is rendered
6 temporarily incapable of appraising or controlling his or her
7 conduct due to the influence of a narcotic, anesthetic, or other
8 substance administered to that person without his or her consent,
9 or due to any other act committed upon that person without his or
10 her consent

11 (h) "Mentally retarded" means significantly subaverage gen-
12 eral intellectual functioning which originates during the devel-
13 opmental period and is associated with impairment in adaptive
14 behavior

15 (i) "Physically helpless" means that a person is uncon-
16 scious, asleep, or for any other reason is physically unable to
17 communicate unwillingness to an act

18 (j) "Personal injury" means bodily injury, disfigurement,
19 mental anguish, chronic pain pregnancy, disease, or loss or
20 impairment of a sexual or reproductive organ

21 (K) "PSYCHOTHERAPIST" MEANS AN INDIVIDUAL WHO PERFORMS OR
22 PURPORTS TO PERFORM PSYCHOTHERAPY WHETHER OR NOT THE INDIVIDUAL
23 IS LICENSED OR REGISTERED IN THIS STATE, AND MAY INCLUDE BUT NOT
24 BE LIMITED TO ANY OF THE FOLLOWING

25 (1) A PHYSICIAN, NURSE, PSYCHOLOGIST, OR COUNSELOR LICENSED
26 UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, ACT NO 368 OF THE

1 PUBLIC ACTS OF 1978, BEING SECTIONS 333 16101 TO 333 18838 OF THE
2 MICHIGAN COMPILED LAWS

3 (11) A MARRIAGE COUNSELOR REGISTERED UNDER ARTICLE 15 OF THE
4 OCCUPATIONAL CODE, ACT NO 299 OF THE PUBLIC ACTS OF 1980, BEING
5 SECTIONS 339 1501 TO 339 1507 OF THE MICHIGAN COMPILED LAWS

6 (111) A CERTIFIED SOCIAL WORKER, SOCIAL WORKER, OR SOCIAL
7 WORKER TECHNICIAN REGISTERED UNDER ARTICLE 16 OF THE OCCUPATIONAL
8 CODE, ACT NO 299 OF THE PUBLIC ACTS OF 1980, BEING SECTIONS
9 339 1601 TO 339 1610 OF THE MICHIGAN COMPILED LAWS

10 (1V) A CLERGYPERSON

11 (1) "PSYCHOTHERAPY" MEANS ASSESSMENT, DIAGNOSIS, TREATMENT,
12 OR COUNSELING OF A CLIENT OR PATIENT FOR A MENTAL OR EMOTIONAL
13 ILLNESS, SYMPTOM, OR DISORDER OR TO UNDERSTAND UNCONSCIOUS OR
14 CONSCIOUS MOTIVATION, RESOLVE EMOTIONAL, RELATIONSHIP, OR ATTITU-
15 DINAL CONFLICTS, OR MODIFY BEHAVIORS THAT INTERFERE WITH EFFEC-
16 TIVE EMOTIONAL, SOCIAL, OR INTELLECTUAL FUNCTIONING

17 (M) ~~(K)~~ "Sexual contact" includes the intentional touching
18 of the victim's or actor's intimate parts or the intentional
19 touching of the clothing covering the immediate area of the
20 victim's or actor's intimate parts, if that intentional touching
21 can reasonably be construed as being for the purpose of sexual
22 arousal or gratification

23 (N) ~~(I)~~ "Sexual penetration" means sexual intercourse,
24 cunnilingus, fellatio, anal intercourse, or any other intrusion,
25 however slight, of any part of a person's body or of any object
26 into the genital or anal openings of another person's body, but
27 emission of semen is not required

1 (O) ~~(m)~~ "Victim" means the person alleging to have been
2 subjected to criminal sexual conduct

3 Sec 520d (1) A person is guilty of criminal sexual con-
4 duct in the third degree if the person engages in sexual penetra-
5 tion with another person and if any of the following circum-
6 stances exists

7 (a) That other person is at least 13 years of age and under
8 16 years of age

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

12 (c) The actor knows or has reason to know that the victim is
13 mentally incapable, mentally incapacitated, or physically
14 helpless

15 (D) THE ACTOR IS A PSYCHOTHERAPIST, THE VICTIM IS HIS OR HER
16 CLIENT OR PATIENT, AND THE SEXUAL PENETRATION OCCURRED DURING THE
17 PSYCHOTHERAPY RELATIONSHIP

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

20 Sec 520e (1) A person is guilty of criminal sexual con-
21 duct in the fourth degree if he or she engages in sexual contact
22 with another person and if any of the following circumstances
23 exists

24 (a) Force or coercion is used to accomplish the sexual
25 contact Force or coercion includes but is not limited to any of
26 the circumstances listed in section 520b(1)(f)(i) to (iv)

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

4 (c) That other person is under the jurisdiction of the
5 department of corrections ~~—~~ and the actor is an employee or a
6 contractual employee of, or a volunteer with, the department of
7 corrections who ~~has knowledge~~ KNOWS that the other person is
8 under the jurisdiction of the department of corrections

9 (D) THE ACTOR IS A PSYCHOTHERAPIST, THE VICTIM IS HIS OR HER
10 CLIENT OR PATIENT, AND THE SEXUAL CONTACT OCCURRED DURING THE
11 PSYCHOTHERAPY RELATIONSHIP

12 (2) Criminal sexual conduct in the fourth degree is a misde-
13 meanor punishable by imprisonment for not more than 2 years ~~—~~
14 or ~~by~~ a fine of not more than \$500 00, or both