

Act No. 155  
Public Acts of 1996  
Approved by the Governor  
April 3, 1996  
Filed with the Secretary of State  
April 3, 1996

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1996**

Introduced by Reps. LeTarte, Hill, Kukuk, Crissman, Horton, Voorhees, Green, Schroer, Goschka, Rocca, Jersevic, Walberg, Middleton, Dolan, Bush, Cropsey, London, Gernaat, Gubow, Geiger, Brewer, Curtis, Fitzgerald, Whyman, Perricone, Jellema, Byl, Brackenridge, McBryde, Pitoniak and Llewellyn  
Reps. Alley, Anthony, Bennane, Cherry, Dalman, DeHart, Freeman, Gnodtke, Hanley, Harder, Kilpatrick, Law, Mathieu, McManus, McNutt, Middaugh, Olshove, Randall, Ryan, Saunders, Sikkema, Tesanovich, Varga, Vaughn, Weeks and Wetters named co-sponsors

# **ENROLLED HOUSE BILL No. 5076**

AN ACT to amend sections 520d and 520e of Act No. 328 of the Public Acts of 1931, entitled as amended "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," section 520d as amended by Act No. 158 of the Public Acts of 1983 and section 520e as amended by Act No. 213 of the Public Acts of 1994, being sections 750.520d and 750.520e of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 520d and 520e of Act No. 328 of the Public Acts of 1931, section 520d as amended by Act No. 158 of the Public Acts of 1983 and section 520e as amended by Act No. 213 of the Public Acts of 1994, being sections 750.520d and 750.520e of the Michigan Compiled Laws, are amended to read as follows:

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

- (a) That other person is at least 13 years of age and under 16 years of age.
- (b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(i) to (v).
- (c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- (d) That other person is related to the actor by blood or affinity to the third degree and the sexual penetration occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

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

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 and under 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:

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

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

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

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

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

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

(d) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.

(e) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county who knows that the other person is under the county's jurisdiction.

(f) The actor knows or has reason to know that the juvenile division of the probate court, the circuit court, or the recorder's court of the city of Detroit has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.

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

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

Section 2. This amendatory act shall take effect June 1, 1996.

Section 3. This amendatory act shall not take effect unless Senate Bill No. 763 of the 88th Legislature is enacted into law.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.