



SENATE BILL No. 59

January 17, 1995, Introduced by Senator BERRYMAN 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. 213 of the Public Acts of 1994, 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. 213 of the Public Acts of 1994, 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 (i) It originated before the person became 18 years of age.

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

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

12 (iv) 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 TO PRACTICE PSYCHOTHERA-
24 PY, AND MAY INCLUDE BUT NOT BE LIMITED TO ANY OF THE FOLLOWING:

25 (i) 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 (ii) A MARRIAGE AND FAMILY THERAPIST LICENSED UNDER ARTICLE
4 15 OF THE OCCUPATIONAL CODE, ACT NO. 299 OF THE PUBLIC ACTS OF
5 1980, BEING SECTIONS 339.1501 TO 339.1507 OF THE MICHIGAN
6 COMPILED LAWS.

7 (iii) A CERTIFIED SOCIAL WORKER, SOCIAL WORKER, OR SOCIAL
8 WORKER TECHNICIAN REGISTERED UNDER ARTICLE 16 OF THE OCCUPATIONAL
9 CODE, ACT NO. 299 OF THE PUBLIC ACTS OF 1980, BEING SECTIONS
10 339.1601 TO 339.1610 OF THE MICHIGAN COMPILED LAWS.

11 (iv) A CLERGYPERSON.

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

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

24 (N) ~~(i)~~ "Sexual penetration" means sexual intercourse,
25 cunnilingus, fellatio, anal intercourse, or any other intrusion,
26 however slight, of any part of a person's body or of any object

1 into the genital or anal openings of another person's body, but
2 emission of semen is not required.

3 (O) ~~(m)~~ "Victim" means the person alleging to have been
4 subjected to criminal sexual conduct.

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

9 (a) That other person is at least 13 years of age and under
10 16 years of age.

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

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

17 (D) THE ACTOR IS A PSYCHOTHERAPIST, THE VICTIM IS OR WAS HIS
18 OR HER CLIENT OR PATIENT, AND THE SEXUAL PENETRATION OCCURRED
19 EITHER DURING THE PSYCHOTHERAPY RELATIONSHIP OR AFTER THE PSYCHO-
20 THERAPY RELATIONSHIP WAS TERMINATED WITH THE INTENT TO ENGAGE IN
21 SEXUAL PENETRATION OR SEXUAL CONTACT WITH THE VICTIM.

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

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

1 (a) That other person is at least 13 years of age and under
2 16 years of age ~~—~~ and the actor is 5 or more years older than
3 that other person.

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

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

9 (ii) When the actor coerces the victim to submit by threat-
10 ening to use force or violence on the victim ~~—~~ and the victim
11 believes that the actor has the present ability to execute these
12 threats.

13 (iii) When the actor coerces the victim to submit by threat-
14 ening to retaliate in the future against the victim, or any other
15 person ~~—~~ and the victim believes that the actor has the ability
16 to execute this threat. As used in this subdivision, "to
17 retaliate" includes threats of physical punishment, kidnapping,
18 or extortion.

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

22 (v) When the actor achieves the sexual contact through con-
23 cealment or by the element of surprise.

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

1 (d) That other person is under the jurisdiction of the
2 department of corrections ~~—~~ and the actor is an employee or a
3 contractual employee of, or a volunteer with, the department of
4 corrections who ~~has knowledge~~ KNOWS that the other person is
5 under the jurisdiction of the department of corrections.

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

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

22 (G) THE ACTOR IS A PSYCHOTHERAPIST, THE VICTIM IS OR WAS HIS
23 OR HER CLIENT OR PATIENT, AND THE SEXUAL PENETRATION OCCURRED
24 EITHER DURING THE PSYCHOTHERAPY RELATIONSHIP OR AFTER THE PSYCHO-
25 THERAPY RELATIONSHIP WAS TERMINATED WITH THE INTENT TO ENGAGE IN
26 SEXUAL PENETRATION OR SEXUAL CONTACT WITH THE VICTIM.

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