

HOUSE BILL No. 5017

July 8, 1997, Introduced by Rep. DeVuyst and referred to the Committee on Judiciary.

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), sections 520b and 520c as amended by 1983 PA 158 and sections 520d and 520e as amended by 1996 PA 155.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 520b. (1) A person is guilty of criminal sexual con-
2 duct in the first degree if he or she engages in sexual penetra-
3 tion with another person and if any of the following circum-
4 stances ~~exists~~ EXIST:
- 5 (a) That other person is ~~under~~ LESS THAN 13 years of age.
6 (b) That other person is at least 13 YEARS OF AGE but less
7 than ~~16~~ 17 years of age and THE ACTOR IS any of the following:

1 (i) ~~The actor is a~~ A member of the same household as the
2 victim. THIS SUBPARAGRAPH DOES NOT APPLY IF BOTH PERSONS ARE
3 LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED
4 VIOLATION.

5 (ii) ~~The actor is related~~ RELATED to the victim by blood
6 or affinity to the fourth degree. THIS SUBPARAGRAPH DOES NOT
7 APPLY IF BOTH PERSONS ARE LAWFULLY MARRIED TO EACH OTHER AT THE
8 TIME OF THE ALLEGED VIOLATION.

9 (iii) ~~The actor is in~~ IN a position of authority over the
10 victim and used this authority to coerce the victim to submit.

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

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

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

18 (ii) The actor uses force or coercion to accomplish the
19 sexual penetration. Force or coercion includes but is not
20 limited to any of the circumstances listed in subdivision (f)(i)
21 to (v).

22 (e) The actor is armed with a weapon or any article used or
23 fashioned in a manner to lead the victim to reasonably believe it
24 ~~to be~~ IS a weapon.

25 (f) The actor causes personal injury to the victim and force
26 or coercion is used to accomplish sexual penetration. Force or

1 coercion includes but is not limited to any of the following
2 circumstances:

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

5 (ii) When the actor coerces the victim to submit by threat-
6 ening to use force or violence on the victim ~~,~~ and the victim
7 believes ~~that~~ the actor has the present ability to execute
8 ~~these threats~~ THAT THREAT.

9 (iii) When the actor coerces the victim to submit by threat-
10 ening to retaliate in the future against the victim ~~,~~ or any
11 other person ~~,~~ and the victim believes ~~that~~ the actor has the
12 ability to execute ~~this~~ THAT threat. As used in this
13 ~~subdivision,~~ SUBPARAGRAPH, "THREATENING to retaliate"
14 includes BUT IS NOT LIMITED TO threats of physical punishment,
15 kidnapping, or extortion.

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

19 (v) When the actor, through concealment or by the element of
20 surprise, is able to overcome the victim.

21 (g) The actor causes personal injury to the victim ~~,~~ and
22 ~~the actor~~ knows or has reason to know that the victim is men-
23 tally incapable, mentally incapacitated, or physically helpless.

24 (h) That other person is mentally incapable, mentally dis-
25 abled, mentally incapacitated, or physically helpless, and THE
26 ACTOR IS any of the following:

1 (i) ~~The actor is related~~ RELATED to the victim by blood or
2 affinity to the fourth degree.

3 (ii) ~~The actor is in~~ IN a position of authority over the
4 victim and used this authority to coerce the victim to submit.

5 (2) Criminal sexual conduct in the first degree is a felony
6 punishable by imprisonment ~~in the state prison~~ for life or
7 ~~for~~ any term of years.

8 Sec. 520c. (1) A person is guilty of criminal sexual con-
9 duct in the second degree if the person engages in sexual contact
10 with another person and if any of the following circumstances
11 ~~exists~~ EXIST:

12 (a) That other person is ~~under~~ LESS THAN 13 years of age.

13 (b) That other person is at least 13 YEARS OF AGE but less
14 than ~~16~~ 17 years of age and THE ACTOR IS any of the following:

15 (i) ~~The actor is a~~ A member of the same household as the
16 victim. THIS SUBPARAGRAPH DOES NOT APPLY IF BOTH PERSONS ARE
17 LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED
18 VIOLATION.

19 (ii) ~~The actor is related~~ RELATED by blood or affinity to
20 the fourth degree to the victim. THIS SUBPARAGRAPH DOES NOT
21 APPLY IF BOTH PERSONS ARE LAWFULLY MARRIED TO EACH OTHER AT THE
22 TIME OF THE ALLEGED VIOLATION.

23 (iii) ~~The actor is in~~ IN a position of authority over the
24 victim and ~~the actor~~ used this authority to coerce the victim
25 to submit.

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

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

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

6 (ii) The actor uses force or coercion to accomplish the
7 sexual contact. Force or coercion includes but is not limited to
8 any of the circumstances listed in ~~sections~~ SECTION
9 520b(1)(f)(i) to (v).

10 (e) The actor is armed with a weapon ~~,~~ or any article used
11 or fashioned in a manner to lead ~~a person~~ THE VICTIM to reason-
12 ably believe it ~~to be~~ IS a weapon.

13 (f) The actor causes personal injury to the victim and force
14 or coercion is used to accomplish the sexual contact. Force or
15 coercion includes but is not limited to any of the circumstances
16 listed in section 520b(1)(f)(i) to (v).

17 (g) The actor causes personal injury to the victim and ~~the~~
18 ~~actor~~ knows or has reason to know that the victim is mentally
19 incapable, mentally incapacitated, or physically helpless.

20 (h) That other person is mentally incapable, mentally dis-
21 abled, mentally incapacitated, or physically helpless, and THE
22 ACTOR IS any of the following:

23 (i) ~~The actor is related~~ RELATED to the victim by blood or
24 affinity to the fourth degree.

25 (ii) ~~The actor is in~~ IN a position of authority over the
26 victim and used this authority to coerce the victim to submit.

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

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 exist:

7 (a) That other person is at least 13 years of age ~~and under~~
8 ~~16~~ BUT LESS THAN 17 years of age. THIS SUBDIVISION DOES NOT
9 APPLY IF BOTH PERSONS ARE LAWFULLY MARRIED TO EACH OTHER AT THE
10 TIME OF THE ALLEGED VIOLATION.

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

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

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

7 (a) That other person is at least 13 years of age ~~and under~~
8 ~~16~~ BUT LESS THAN 17 years of age ~~,~~ and the actor is 5 or more
9 years older than that other person. THIS SUBDIVISION DOES NOT
10 APPLY IF BOTH PERSONS ARE LAWFULLY MARRIED TO EACH OTHER AT THE
11 TIME OF THE ALLEGED VIOLATION.

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

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

17 (ii) When the actor coerces the victim to submit by threat-
18 ening to use force or violence on the victim ~~,~~ and the victim
19 believes ~~that~~ the actor has the present ability to execute
20 ~~these threats~~ THAT THREAT.

21 (iii) When the actor coerces the victim to submit by threat-
22 ening to retaliate in the future against the victim ~~,~~ or any
23 other person ~~,~~ and the victim believes ~~that~~ the actor has the
24 ability to execute ~~this~~ THAT threat. As used in this
25 ~~subdivision,~~ SUBPARAGRAPH, "THREATENING to retaliate"
26 includes BUT IS NOT LIMITED TO threats of physical punishment,
27 kidnapping, or extortion.

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

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

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

9 (d) That other person is under the jurisdiction of the
10 department of corrections and the actor is an employee or a con-
11 tractual employee of —, or a volunteer with — the department
12 of corrections who knows that the other person is under the
13 jurisdiction of the department of corrections.

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

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

1 in which the victim is detained or to which the victim was
2 committed.

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

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