

SUBSTITUTE FOR
HOUSE BILL NO. 4525

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 520a, 520d, and 520e (MCL 750.520a,
750.520d, and 750.520e), section 520a as amended by 1983 PA 158
and sections 520d and 520e as amended by 1996 PA 155, and by
adding section 520n.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 520a. As used in ~~sections 520a to 520i~~ THIS

2 CHAPTER:

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

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

HB4525, As Passed House, December 8, 1999

House Bill No. 4525

2

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

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

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

6 (iv) It is attributable to 1 or more of the following:

7 (A) Mental retardation, cerebral palsy, epilepsy, or
8 autism.

9 (B) Any other condition of a person found to be closely
10 related to mental retardation because it produces a similar
11 impairment or requires treatment and services similar to those
12 required for a person who is mentally retarded.

13 (C) "EMOTIONAL OR MENTAL HEALTH SERVICES OR TREATMENT" MEANS
14 ASSESSING, DIAGNOSING, TREATING, OR COUNSELING A CLIENT OR
15 PATIENT FOR A MENTAL OR EMOTIONAL ILLNESS, SYMPTOM, OR DISORDER,
16 TO UNDERSTAND AN UNCONSCIOUS OR CONSCIOUS MOTIVATION, TO RESOLVE
17 AN EMOTIONAL, RELATIONSHIP, OR ATTITUDINAL CONFLICT, OR TO MODIFY
18 A BEHAVIOR THAT INTERFERES WITH EFFECTIVE EMOTIONAL, SOCIAL, OR
19 INTELLECTUAL FUNCTIONING.

20 (D) ~~—(c)—~~ "Intimate parts" includes the primary genital
21 area, groin, inner thigh, buttock, or breast of a human being.

22 (E) "MEMBER OF THE CLERGY" MEANS ANY OF THE FOLLOWING:

23 (i) AN INDIVIDUAL WHO IS ORDAINED OR OTHERWISE OFFICIALLY
24 RECOGNIZED BY A CHURCH, DENOMINATION, RELIGIOUS ASSOCIATION, OR
25 RELIGIOUS SECT AS BEING A RELIGIOUS LEADER OF THAT CHURCH, DENOM-
26 INATION, RELIGIOUS ASSOCIATION, OR RELIGIOUS SECT.

HB4525, As Passed House, December 8, 1999

House Bill No. 4525

3

1 (ii) A LAYPERSON WHO IS DESIGNATED TO PROVIDE SPIRITUAL
2 COUNSELING OR ADVICE ON BEHALF OF A CHURCH, DENOMINATION,
3 RELIGIOUS ASSOCIATION, OR RELIGIOUS SECT.

4 (iii) AN INDIVIDUAL WHO HOLDS HIMSELF OR HERSELF OUT AS
5 BEING AN INDIVIDUAL DESCRIBED IN SUBPARAGRAPHS (i) TO (ii).

6 (F) "MENTAL HEALTH PROFESSIONAL" MEANS EITHER OF THE
7 FOLLOWING:

8 (i) THAT TERM AS DEFINED IN SECTION 100B OF THE MENTAL
9 HEALTH CODE, 1974 PA 258, MCL 330.1100B.

10 (ii) AN INDIVIDUAL WHO HOLDS HIMSELF OR HERSELF OUT AS BEING
11 A MENTAL HEALTH PROFESSIONAL AS DEFINED IN SECTION 100B OF THE
12 MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1100B.

13 (G) ~~(d)~~ "Mental illness" means a substantial disorder of
14 thought or mood which significantly impairs judgment, behavior,
15 capacity to recognize reality, or ability to cope with the ordi-
16 nary demands of life.

17 (H) ~~(e)~~ "Mentally disabled" means that a person has a
18 mental illness, is mentally retarded, or has a developmental
19 disability.

20 (I) ~~(f)~~ "Mentally incapable" means that a person suffers
21 from a mental disease or defect which renders that person tempo-
22 rarily or permanently incapable of appraising the nature of his
23 or her conduct.

24 (J) ~~(g)~~ "Mentally incapacitated" means that a person is
25 rendered temporarily incapable of appraising or controlling his
26 or her conduct due to the influence of a narcotic, anesthetic, or
27 other substance administered to that person without his or her

HB4525, As Passed House, December 8, 1999

House Bill No. 4525

4

1 consent, or due to any other act committed upon that person
2 without his or her consent.

3 (K) ~~-(h)-~~ "Mentally retarded" means significantly subaverage
4 general intellectual functioning which originates during the
5 developmental period and is associated with impairment in adap-
6 tive behavior.

7 (l) ~~-(i)-~~ "Physically helpless" means that a person is
8 unconscious, asleep, or for any other reason is physically unable
9 to communicate unwillingness to an act.

10 (M) ~~-(j)-~~ "Personal injury" means bodily injury, disfigure-
11 ment, mental anguish, chronic pain, pregnancy, disease, or loss
12 or impairment of a sexual or reproductive organ.

13 (N) ~~-(k)-~~ "Sexual contact" includes the intentional touching
14 of the victim's or actor's intimate parts or the intentional
15 touching of the clothing covering the immediate area of the
16 victim's or actor's intimate parts, if that intentional touching
17 can reasonably be construed as being for the purpose of sexual
18 arousal or gratification.

19 (O) ~~-(l)-~~ "Sexual penetration" means sexual intercourse,
20 cunnilingus, fellatio, anal intercourse, or any other intrusion,
21 however slight, of any part of a person's body or of any object
22 into the genital or anal openings of another person's body, but
23 emission of semen is not required.

24 (P) "SPIRITUAL COUNSELING OR ADVICE" MEANS ASSESSING, DIAG-
25 NOSING, TREATING, OR COUNSELING AN INDIVIDUAL IN A SPIRITUAL OR
26 RELIGIOUS CONTEXT FOR A MENTAL OR EMOTIONAL ILLNESS, SYMPTOM, OR
27 DISORDER, TO UNDERSTAND AN UNCONSCIOUS OR CONSCIOUS MOTIVATION,

HB4525, As Passed House, December 8, 1999

House Bill No. 4525

5

1 TO RESOLVE AN EMOTIONAL, RELATIONSHIP, OR ATTITUDINAL CONFLICT,
2 OR TO MODIFY A BEHAVIOR THAT INTERFERES WITH EFFECTIVE EMOTIONAL,
3 SOCIAL, OR INTELLECTUAL FUNCTIONING.

4 (Q) ~~—(m)—~~ "Victim" means the person alleging to have been
5 subjected to criminal sexual conduct.

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

10 (a) That other person is at least 13 years of age and under
11 16 years of age.

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

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

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

HB4525, As Passed House, December 8, 1999

House Bill No. 4525

6

1 (E) THE ACTOR IS A MENTAL HEALTH PROFESSIONAL AND THE SEXUAL
2 PENETRATION OCCURS DURING OR WITHIN 2 YEARS AFTER THE PERIOD IN
3 WHICH THE VICTIM IS HIS OR HER CLIENT OR PATIENT AND NOT HIS OR
4 HER SPOUSE. THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A
5 PROSECUTION UNDER THIS SUBDIVISION.

6 (F) THE ACTOR IS A MEMBER OF THE CLERGY AND THE SEXUAL PENE-
7 TRATION OCCURS DURING OR WITHIN 2 YEARS AFTER THE PERIOD IN WHICH
8 THE ACTOR IS PROVIDING EMOTIONAL OR MENTAL HEALTH SERVICES OR
9 TREATMENT OR SPIRITUAL COUNSELING OR ADVICE TO THE VICTIM, WHO IS
10 NOT HIS OR HER SPOUSE, AS PART OF HIS OR HER DUTIES AS A MEMBER
11 OF THE CLERGY. THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A
12 PROSECUTION UNDER THIS SUBDIVISION.

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

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

19 (a) That other person is at least 13 years of age and under
20 16 years of age, and the actor is 5 or more years older than that
21 other person.

22 (b) Force or coercion is used to accomplish the sexual
23 contact. Force or coercion includes but is not limited to any of
24 the following circumstances:

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

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

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

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

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

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

19 (d) That other person is under the jurisdiction of the
20 department of corrections and the actor is an employee or a con-
21 tractual employee of, or a volunteer with, the department of cor-
22 rections who knows that the other person is under the jurisdic-
23 tion of the department of corrections.

24 (e) That other person is a prisoner or probationer under the
25 jurisdiction of a county for purposes of imprisonment or a work
26 program or other probationary program and the actor is an
27 employee or a contractual employee of or a volunteer with the

HB4525, As Passed House, December 8, 1999

House Bill No. 4525

8

1 county who knows that the other person is under the county's
2 jurisdiction.

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

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

23 (H) THE ACTOR IS A MENTAL HEALTH PROFESSIONAL AND THE SEXUAL
24 CONTACT OCCURS DURING OR WITHIN 2 YEARS AFTER THE PERIOD IN WHICH
25 THE VICTIM IS HIS OR HER CLIENT OR PATIENT AND NOT HIS OR HER
26 SPOUSE. THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A
27 PROSECUTION UNDER THIS SUBDIVISION.

HB4525, As Passed House, December 8, 1999

House Bill No. 4525

9

1 (1) THE ACTOR IS A MEMBER OF THE CLERGY AND THE SEXUAL
2 CONTACT OCCURS DURING OR WITHIN 2 YEARS AFTER THE PERIOD IN WHICH
3 THE ACTOR IS PROVIDING EMOTIONAL OR MENTAL HEALTH SERVICES OR
4 TREATMENT OR SPIRITUAL COUNSELING OR ADVICE TO THE VICTIM, WHO IS
5 NOT HIS OR HER SPOUSE, AS PART OF HIS OR HER DUTIES AS A MEMBER
6 OF THE CLERGY. THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A
7 PROSECUTION UNDER THIS SECTION.

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

11 SEC. 520N. (1) IF A MENTAL HEALTH PROFESSIONAL OR MEMBER OF
12 THE CLERGY HAS REASON TO BELIEVE THAT AN INDIVIDUAL HE OR SHE IS
13 TREATING, COUNSELING, OR ADVISING IS A VICTIM OF A VIOLATION OF
14 SECTION 520B, 520C, 520D, 520E, OR 520G AND THAT THE VIOLATION
15 WAS COMMITTED BY A MENTAL HEALTH PROFESSIONAL OR MEMBER OF THE
16 CLERGY, THE MENTAL HEALTH PROFESSIONAL OR MEMBER OF THE CLERGY
17 SHALL PROMPTLY ASK THE INDIVIDUAL IF HE OR SHE WANTS HIM OR HER
18 TO MAKE A REPORT UNDER THIS SUBSECTION. THE MENTAL HEALTH PRO-
19 FESSIONAL OR MEMBER OF THE CLERGY SHALL INFORM THE INDIVIDUAL
20 THAT THE REPORT DOES NOT REQUIRE THE IDENTIFICATION OF THE INDI-
21 VIDUAL AS THE VICTIM OF THE VIOLATION. IF THE INDIVIDUAL INFORMS
22 THE MENTAL HEALTH PROFESSIONAL OR MEMBER OF THE CLERGY THAT HE OR
23 SHE WOULD LIKE HIM OR HER TO MAKE THE REPORT, THE INDIVIDUAL
24 SHALL PROVIDE THE MENTAL HEALTH PROFESSIONAL OR MEMBER OF THE
25 CLERGY WITH A WRITTEN CONSENT TO THE REPORT AND SHALL SPECIFY
26 WHETHER THE INDIVIDUAL'S IDENTITY MAY BE INCLUDED IN THE REPORT.

HB4525, As Passed House, December 8, 1999

House Bill No. 4525

10

1 (2) WITHIN 30 DAYS AFTER THE INDIVIDUAL PROVIDES THE MENTAL
2 HEALTH PROFESSIONAL OR MEMBER OF THE CLERGY A REPORT UNDER
3 SUBSECTION (1), THE MENTAL HEALTH PROFESSIONAL OR MEMBER OF THE
4 CLERGY SHALL REPORT THE SUSPECTED VIOLATION TO BOTH OF THE
5 FOLLOWING:

6 (A) THE DEPARTMENT OF STATE POLICE. IF THE DEPARTMENT
7 DETERMINES THE INDIVIDUAL ALLEGED TO HAVE COMMITTED THE VIOLATION
8 IS IN A LICENSED OCCUPATION, THE DEPARTMENT SHALL PROMPTLY NOTIFY
9 THE APPROPRIATE LICENSING OR REGISTRATION BOARD OF THE ALLEGED
10 VIOLATION.

11 (B) THE POLICE DEPARTMENT OF THE LOCAL UNIT OF GOVERNMENT IN
12 WHICH THE VIOLATION ALLEGEDLY OCCURRED.

13 (3) A REPORT UNDER THIS SECTION SHALL CONTAIN ONLY INFORMA-
14 TION THAT IS NECESSARY TO IDENTIFY THE MENTAL HEALTH PROFESSIONAL
15 OR MEMBER OF THE CLERGY PROVIDING THE REPORT AND THE INDIVIDUAL
16 ALLEGED TO HAVE COMMITTED THE VIOLATION AND INFORMATION REGARDING
17 THE ALLEGED VIOLATION. THE REPORT SHALL NOT CONTAIN INFORMATION
18 IDENTIFYING THE ALLEGED VICTIM UNLESS THE VICTIM HAS REQUESTED
19 THAT HIS OR HER IDENTITY BE INCLUDED.

20 (4) A MENTAL HEALTH PROFESSIONAL OR MEMBER OF THE CLERGY WHO
21 INTENTIONALLY FAILS TO FILE A REPORT UNDER THIS SECTION IS GUILTY
22 OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93
23 DAYS OR A FINE OF NOT MORE THAN \$500.00, OR BOTH.

24 (5) A REPORT AND A RECORD MADE FROM A REPORT UNDER THIS SEC-
25 TION THAT IS MAINTAINED BY THE DEPARTMENT OF STATE POLICE, A
26 LOCAL POLICE DEPARTMENT, A LICENSING OR REGISTRATION BOARD, A
27 PROSECUTING ATTORNEY, OR OTHER PERSON, OFFICIAL, OR INSTITUTION

HB4525, As Passed House, December 8, 1999

House Bill No. 4525

11

1 IS CONFIDENTIAL AND IS EXEMPT FROM DISCLOSURE UNDER THE FREEDOM
2 OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

3 (6) INFORMATION REGARDING THE IDENTITY OF A VICTIM OR
4 ALLEGED VICTIM OF SEXUAL CONTACT BY A MENTAL HEALTH PROFESSIONAL
5 OR MEMBER OF THE CLERGY SHALL NOT BE DISCLOSED BY AN INDIVIDUAL
6 REQUIRED TO REPORT THE VIOLATION OR BY ANY OTHER PERSON WHO HAS
7 RECEIVED OR HAS ACCESS TO A REPORT OR RECORD UNDER THIS SECTION
8 UNLESS THAT DISCLOSURE IS WITH THE CONSENT IN WRITING OF THE
9 VICTIM OR ALLEGED VICTIM. THIS SUBSECTION DOES NOT PROHIBIT THE
10 DEPARTMENT OF STATE POLICE, A LOCAL POLICE DEPARTMENT, A PROSE-
11 CUTING ATTORNEY, OR A LICENSING OR REGISTRATION BOARD WITHIN THIS
12 STATE FROM EXCHANGING INFORMATION FROM A REPORT OR RECORD REGARD-
13 ING A MENTAL HEALTH PROFESSIONAL OR MEMBER OF THE CLERGY.

14 (7) IF THE DEPARTMENT OF STATE POLICE RECEIVES 2 OR MORE
15 REPORTS UNDER THIS SECTION REGARDING THE SAME MENTAL HEALTH PRO-
16 FESSIONAL OR MEMBER OF THE CLERGY, THE DEPARTMENT SHALL PROVIDE
17 THE INFORMATION FROM THE REPORTS TO THE APPROPRIATE PROSECUTING
18 ATTORNEYS.

19 (8) A PERSON WHO INTENTIONALLY DISCLOSES CONFIDENTIAL INFOR-
20 MATION IN VIOLATION OF THIS SECTION IS GUILTY OF A MISDEMEANOR
21 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF
22 NOT MORE THAN \$500.00, OR BOTH.

23 (9) A PERSON WHO IN GOOD FAITH MAKES A REPORT OR RECORD
24 UNDER THIS SECTION IS IMMUNE FROM ANY CIVIL OR CRIMINAL LIABILITY
25 FOR MAKING THE REPORT. IT IS A REBUTTABLE PRESUMPTION THAT A
26 PERSON WHO MAKES A REPORT UNDER THIS SECTION ACTED IN GOOD
27 FAITH. THE IMMUNITY PROVIDED UNDER THIS SUBSECTION DOES NOT

HB4525, As Passed House, December 8, 1999

Sub. H.B. 4525 (H-1) as amended December 8, 1999

12

1 APPLY TO CIVIL OR CRIMINAL LIABILITY RESULTING FROM A VIOLATION

2 FOR WHICH A REPORT IS REQUIRED UNDER THIS SECTION.

[Enacting section 1. This amendatory act takes effect June 1, 2000.]

December 2, 1999

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Final page.

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