

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4525**

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 520a and 520e (MCL 750.520a and 750.520e),
section 520a as amended by 1983 PA 158 and section 520e as
amended by 2000 PA 227.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 520a. As used in ~~sections 520a to 520f~~ 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:

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

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

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

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

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

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

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

14 (D) "MENTAL HEALTH PROFESSIONAL" MEANS THAT TERM AS DEFINED
15 IN SECTION 100B OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL
16 330.1100B.

17 (E) ~~-(d)-~~ "Mental illness" means a substantial disorder of
18 thought or mood which significantly impairs judgment, behavior,
19 capacity to recognize reality, or ability to cope with the ordi-
20 nary demands of life.

21 (F) ~~-(e)-~~ "Mentally disabled" means that a person has a
22 mental illness, is mentally retarded, or has a developmental
23 disability.

24 (G) ~~-(f)-~~ "Mentally incapable" means that a person suffers
25 from a mental disease or defect which renders that person tempo-
26 rarily or permanently incapable of appraising the nature of his
27 or her conduct.

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1 (H) ~~-(g)-~~ "Mentally incapacitated" means that a person is
2 rendered temporarily incapable of appraising or controlling his
3 or her conduct due to the influence of a narcotic, anesthetic, or
4 other substance administered to that person without his or her
5 consent, or due to any other act committed upon that person with-
6 out his or her consent.

7 (I) ~~-(h)-~~ "Mentally retarded" means significantly subaverage
8 general intellectual functioning which originates during the
9 developmental period and is associated with impairment in adap-
10 tive behavior.

11 (J) ~~-(i)-~~ "Physically helpless" means that a person is
12 unconscious, asleep, or for any other reason is physically unable
13 to communicate unwillingness to an act.

14 (K) ~~-(j)-~~ "Personal injury" means bodily injury, disfigure-
15 ment, mental anguish, chronic pain, pregnancy, disease, or loss
16 or impairment of a sexual or reproductive organ.

17 (l) ~~-(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, DONE FOR A SEXUAL PURPOSE, OR IN A
23 SEXUAL MANNER FOR:

24 (i) REVENGE.

25 (ii) TO INFLICT HUMILIATION.

26 (iii) OUT OF ANGER.

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1 (M) ~~-(t)-~~ "Sexual penetration" means sexual intercourse,
2 cunnilingus, fellatio, anal intercourse, or any other intrusion,
3 however slight, of any part of a person's body or of any object
4 into the genital or anal openings of another person's body, but
5 emission of semen is not required.

6 (N) ~~-(m)-~~ "Victim" means the person alleging to have been
7 subjected to criminal sexual conduct.

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

12 (a) That other person is at least 13 years of age but less
13 than 16 years of age, and the actor is 5 or more years older than
14 that other person.

15 (b) Force or coercion is used to accomplish the sexual
16 contact. Force or coercion includes, but is not limited to, any
17 of the following circumstances:

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

20 (ii) When the actor coerces the victim to submit by threat-
21 ening to use force or violence on the victim, and the victim
22 believes that the actor has the present ability to execute that
23 threat.

24 (iii) When the actor coerces the victim to submit by threat-
25 ening to retaliate in the future against the victim, or any other
26 person, and the victim believes that the actor has the ability to
27 execute that threat. As used in this subparagraph, "to

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1 retaliate" includes threats of physical punishment, kidnapping,
2 or extortion.

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

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

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

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

21 (E) THE ACTOR IS A MENTAL HEALTH PROFESSIONAL AND THE SEXUAL
22 CONTACT OCCURS DURING OR WITHIN 2 YEARS AFTER THE PERIOD IN WHICH
23 THE VICTIM IS HIS OR HER CLIENT OR PATIENT AND NOT HIS OR HER
24 SPOUSE. THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A PROSECU-
25 TION UNDER THIS SUBDIVISION. THIS DOES NOT INDICATE THAT THE
26 VICTIM IS MENTALLY INCOMPETENT.

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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.