

HOUSE BILL No. 4525

April 20, 1999, Introduced by Reps. Jellema, Richner, Bovin, Rick Johnson, Allen, Kukuk, Caul, Ehardt, Stamas, Kelly, Pappageorge, Bradstreet, Hart and Birkholz and referred to the Committee on Criminal Law and Corrections.

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:

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 ASSESSMENT, DIAGNOSIS, TREATMENT, OR COUNSELING OF A CLIENT OR
15 PATIENT FOR A MENTAL OR EMOTIONAL ILLNESS, SYMPTOM, OR DISORDER
16 OR TO UNDERSTAND UNCONSCIOUS OR CONSCIOUS MOTIVATION, TO RESOLVE
17 EMOTIONAL, RELATIONSHIP, OR ATTITUDINAL CONFLICTS, OR TO MODIFY
18 BEHAVIORS THAT INTERFERE 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 RECOGNIZED AS A RELI-
24 GIOUS LEADER BY A CHURCH, DENOMINATION, RELIGIOUS ASSOCIATION, OR
25 RELIGIOUS SECT.

26 (ii) A LAY PERSON WHO PROVIDES SPIRITUAL GUIDANCE, AID, OR
27 COMFORT ON BEHALF OF A CHURCH.

1 (iii) AN INDIVIDUAL WHO SERVES AS A YOUTH PASTOR, YOUTH
2 COUNSELOR, OR CAMP COUNSELOR, OR A SUBSTANTIALLY SIMILAR POSITION
3 FOR A CHURCH, DENOMINATION, RELIGIOUS ASSOCIATION, OR RELIGIOUS
4 SECT.

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

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

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

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

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

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

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

25 (J) ~~-(g)-~~ "Mentally incapacitated" means that a person is
26 rendered temporarily incapable of appraising or controlling his
27 or her conduct due to the influence of a narcotic, anesthetic, or

1 other substance administered to that person without his or her
2 consent, or due to any other act committed upon that person with-
3 out his or her consent.

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

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

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

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

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

25 (P) ~~-(m)-~~ "Victim" means the person alleging to have been
26 subjected to criminal sexual conduct.

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

5 (a) That other person is at least 13 years of age and under
6 16 years of age.

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

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

13 (d) That other person is related to the actor by blood or
14 affinity to the third degree and the sexual penetration occurs
15 under circumstances not otherwise prohibited by this chapter. It
16 is an affirmative defense to a prosecution under this subdivision
17 that 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 (E) THE ACTOR IS A MENTAL HEALTH PROFESSIONAL AND THE SEXUAL
24 PENETRATION OCCURS DURING OR WITHIN 2 YEARS AFTER THE PERIOD IN
25 WHICH THE VICTIM IS HIS OR HER CLIENT OR PATIENT AND NOT HIS OR
26 HER SPOUSE. THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A
27 PROSECUTION UNDER THIS SUBDIVISION.

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

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

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

14 (a) That other person is at least 13 years of age and under
15 16 years of age, and the actor is 5 or more years older than that
16 other person.

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

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

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

26 (iii) When the actor coerces the victim to submit by
27 threatening to retaliate in the future against the victim, or any

1 other person, and the victim believes that the actor has the
2 ability to execute this threat. As used in this subdivision, "to
3 retaliate" includes threats of physical punishment, kidnapping,
4 or extortion.

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

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

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

13 (d) That other person is under the jurisdiction of the
14 department of corrections and the actor is an employee or a con-
15 tractual employee of, or a volunteer with, the department of cor-
16 rections who knows that the other person is under the jurisdic-
17 tion of the department of corrections.

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

24 (f) The actor knows or has reason to know that the juvenile
25 division of the probate court, the circuit court, or the
26 recorder's court of the city of Detroit has detained the victim
27 in a facility while the victim is awaiting a trial or hearing, or

1 committed the victim to a facility as a result of the victim
2 having been found responsible for committing an act that would be
3 a crime if committed by an adult, and the actor is an employee or
4 contractual employee of, or a volunteer with, the facility in
5 which the victim is detained or to which the victim was
6 committed.

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

17 (H) THE ACTOR IS A MENTAL HEALTH PROFESSIONAL AND THE SEXUAL
18 CONTACT OCCURS DURING OR WITHIN 2 YEARS AFTER THE PERIOD IN WHICH
19 THE VICTIM IS HIS OR HER CLIENT OR PATIENT AND NOT HIS OR HER
20 SPOUSE. THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A PROSECU-
21 TION UNDER THIS SUBDIVISION.

22 (I) THE ACTOR IS A MEMBER OF THE CLERGY AND THE SEXUAL CON-
23 TACT OCCURS DURING OR WITHIN 2 YEARS AFTER THE PERIOD IN WHICH
24 THE ACTOR IS PROVIDING EMOTIONAL OR MENTAL HEALTH SERVICES OR
25 TREATMENT, SPIRITUAL COUNSELING, SPIRITUAL ADVICE, OR AID AND
26 COMFORT TO THE VICTIM, WHO IS NOT HIS OR HER SPOUSE, AS PART OF

1 HIS OR HER DUTIES AS A MEMBER OF THE CLERGY. THE CONSENT OF THE
2 VICTIM IS NOT A DEFENSE TO A PROSECUTION UNDER THIS SECTION.

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

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

22 (2) WITHIN 30 DAYS AFTER THE INDIVIDUAL PROVIDES THE MENTAL
23 HEALTH PROFESSIONAL OR MEMBER OF THE CLERGY A REPORT UNDER
24 SUBSECTION (1), THE MENTAL HEALTH PROFESSIONAL OR MEMBER OF THE
25 CLERGY SHALL REPORT THE SUSPECTED VIOLATION TO BOTH OF THE
26 FOLLOWING:

1 (A) THE DEPARTMENT OF STATE POLICE. IF THE DEPARTMENT
2 DETERMINES THE INDIVIDUAL ALLEGED TO HAVE COMMITTED THE VIOLATION
3 IS IN A LICENSED OCCUPATION, THE DEPARTMENT SHALL PROMPTLY NOTIFY
4 THE APPROPRIATE LICENSING OR REGISTRATION BOARD OF THE ALLEGED
5 VIOLATION.

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

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

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

19 (5) A REPORT AND A RECORD MADE FROM A REPORT UNDER THIS SEC-
20 TION THAT IS MAINTAINED BY THE DEPARTMENT OF STATE POLICE, A
21 LOCAL POLICE DEPARTMENT, A LICENSING OR REGISTRATION BOARD, A
22 PROSECUTING ATTORNEY, OR OTHER PERSON, OFFICIAL, OR INSTITUTION
23 IS CONFIDENTIAL AND IS EXEMPT FROM DISCLOSURE UNDER THE FREEDOM
24 OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

25 (6) INFORMATION REGARDING THE IDENTITY OF A VICTIM OR
26 ALLEGED VICTIM OF SEXUAL CONTACT BY A MENTAL HEALTH PROFESSIONAL
27 OR MEMBER OF THE CLERGY SHALL NOT BE DISCLOSED BY AN INDIVIDUAL

1 REQUIRED TO REPORT THE VIOLATION OR BY ANY OTHER PERSON WHO HAS
2 RECEIVED OR HAS ACCESS TO A REPORT OR RECORD UNDER THIS SECTION
3 UNLESS THAT DISCLOSURE IS WITH THE CONSENT IN WRITING OF THE
4 VICTIM OR ALLEGED VICTIM. THIS SUBSECTION DOES NOT PROHIBIT THE
5 DEPARTMENT OF STATE POLICE, A LOCAL POLICE DEPARTMENT, A PROSE-
6 CUTING ATTORNEY, OR A LICENSING OR REGISTRATION BOARD WITHIN THIS
7 STATE FROM EXCHANGING INFORMATION FROM A REPORT OR RECORD REGARD-
8 ING A MENTAL HEALTH PROFESSIONAL OR MEMBER OF THE CLERGY.

9 (7) IF THE DEPARTMENT OF STATE POLICE RECEIVES 2 OR MORE
10 REPORTS UNDER THIS SECTION REGARDING THE SAME MENTAL HEALTH PRO-
11 FESSIONAL OR MEMBER OF THE CLERGY, THE DEPARTMENT SHALL PROVIDE
12 THE INFORMATION FROM THE REPORTS TO THE APPROPRIATE PROSECUTING
13 ATTORNEYS.

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

18 (9) A PERSON WHO IN GOOD FAITH MAKES A REPORT OR RECORD
19 UNDER THIS SECTION IS IMMUNE FROM ANY CIVIL OR CRIMINAL LIABILITY
20 FOR MAKING THE REPORT. IT IS A REBUTTABLE PRESUMPTION THAT A
21 PERSON WHO MAKES A REPORT UNDER THIS SECTION ACTED IN GOOD
22 FAITH. THE IMMUNITY PROVIDED UNDER THIS SUBSECTION DOES NOT
23 APPLY TO CIVIL OR CRIMINAL LIABILITY RESULTING FROM A VIOLATION
24 FOR WHICH A REPORT IS REQUIRED UNDER THIS SECTION.