



HOUSE BILL No. 5167

December 7, 1999, Introduced by Reps. Mead, Bradstreet, Ruth Johnson, Rick Johnson, Allen, Kuipers, Voorhees, Van Woerkom, Pumford, Bishop, Hart, Jelinek and Scranton 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 520d and 520e (MCL 750.520d and 750.520e),
as amended by 1996 PA 155.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 520d. (1) A person is guilty of criminal sexual con-
2 duct in the third degree if the person engages in sexual penetra-
3 tion with another person and if any of the following circum-
4 stances 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).

1 (c) The actor knows or has reason to know that the victim is
2 mentally incapable, mentally incapacitated, or physically
3 helpless.

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

14 (E) THE OTHER PERSON IS A STUDENT ENROLLED IN ANY PUBLIC OR
15 NONPUBLIC SCHOOL AND IS 16 YEARS OF AGE OR OLDER AND THE ACTOR IS
16 AN EMPLOYEE OR A CONTRACTUAL EMPLOYEE OF, OR A VOLUNTEER WITH,
17 ANY PUBLIC OR NONPUBLIC SCHOOL WHO KNOWS OR HAS REASON TO KNOW
18 THAT THE OTHER PERSON IS ENROLLED AS A STUDENT IN ANY PUBLIC OR
19 NONPUBLIC SCHOOL. AS USED IN THIS SECTION, "SCHOOL" MEANS AN
20 INSTITUTION OFFERING INSTRUCTION IN ANY GRADE FROM K THROUGH 12.

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

23 Sec. 520e. (1) A person is guilty of criminal sexual con-
24 duct in the fourth degree if he or she engages in sexual contact
25 with another person and if any of the following circumstances
26 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 that
3 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 to
16 execute this threat. As used in this subdivision, "to retaliate"
17 includes threats of physical punishment, kidnapping, or
18 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 knows that the other person is under the juris-
5 diction 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) That other person is related to the actor by blood or
23 affinity to the third degree and the sexual contact occurs under
24 circumstances not otherwise prohibited by this chapter. It is an
25 affirmative defense to a prosecution under this subdivision that
26 the other person was in a position of authority over the
27 defendant and used this authority to coerce the defendant to

1 violate this subdivision. The defendant has the burden of
2 proving this defense by a preponderance of the evidence. This
3 subdivision does not apply if both persons are lawfully married
4 to each other at the time of the alleged violation.

5 (H) THE OTHER PERSON IS A STUDENT ENROLLED IN ANY PUBLIC OR
6 NONPUBLIC SCHOOL AND IS 16 YEARS OF AGE OR OLDER AND THE ACTOR IS
7 AN EMPLOYEE OR A CONTRACTUAL EMPLOYEE OF, OR A VOLUNTEER WITH,
8 ANY PUBLIC OR NONPUBLIC SCHOOL WHO KNOWS OR HAS REASON TO KNOW
9 THAT THE OTHER PERSON IS ENROLLED AS A STUDENT IN ANY PUBLIC OR
10 NONPUBLIC SCHOOL. AS USED IN THIS SECTION, "SCHOOL" MEANS AN
11 INSTITUTION OFFERING INSTRUCTION IN ANY GRADE FROM 1 THROUGH 12.

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