

SENATE BILL NO. 382

February 24, 1999, Introduced by Senators JAYE and SHUGARS and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 136b, 317, 520b, 520c, and 520d (MCL 750.136b, 750.317, 750.520b, 750.520c, and 750.520d), section 136b as added by 1988 PA 251, sections 520b and 520c as amended by 1983 PA 158, and section 520d as amended by 1996 PA 155.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 136b. (1) As used in this section:

2 (a) "Child" means a person who is less than 18 years of age
3 and is not emancipated by operation of law as provided in section
4 ~~4(1)~~ 4 of ~~Act No. 293 of the Public Acts of 1968, being sec-~~
5 ~~tion 722.4 of the Michigan Compiled Laws~~ 1968 PA 293, MCL
6 722.4.

1 (b) "Omission" means a willful failure to provide the food,
2 clothing, or shelter necessary for a child's welfare or the
3 willful abandonment of a child.

4 (c) "Person" means a child's parent or guardian or any other
5 person who cares for, has custody of, or has authority over a
6 child regardless of the length of time that a child is cared for,
7 in the custody of, or subject to the authority of that person.

8 (d) "Physical harm" means any injury to a child's physical
9 condition.

10 (e) "Serious physical harm" means an injury of a child's
11 physical condition or welfare that is not necessarily permanent
12 but constitutes substantial bodily disfigurement, or seriously
13 impairs the function of a body organ or limb.

14 (f) "Serious mental harm" means an injury to a child's
15 mental condition or welfare that is not necessarily permanent but
16 results in visibly demonstrable manifestations of a substantial
17 disorder of thought or mood which significantly impairs judgment,
18 behavior, capacity to recognize reality, or ability to cope with
19 the ordinary demands of life.

20 (2) A person is guilty of child abuse in the first degree if
21 the person knowingly or intentionally causes serious physical or
22 serious mental harm to a child. Child abuse in the first degree
23 is a felony ~~punishable~~ AND SHALL BE PUNISHED by imprisonment
24 for ~~not more than 15 years~~ LIFE WITHOUT ELIGIBILITY FOR
25 PAROLE.

26 (3) A person is guilty of child abuse in the second degree
27 if the person's omission causes serious physical harm or serious

1 mental harm to a child or if the person's reckless act causes
 2 serious physical harm to a child. Child abuse in the second
 3 degree is a felony punishable by imprisonment for not more than 4
 4 years.

5 (4) A person is guilty of child abuse in the third degree if
 6 the person knowingly or intentionally causes physical harm to a
 7 child. Child abuse in the third degree is a misdemeanor punish-
 8 able by imprisonment for not more than 2 years.

9 (5) A person is guilty of child abuse in the fourth degree
 10 if the person's omission or reckless act causes physical harm to
 11 a child. Child abuse in the fourth degree is a misdemeanor pun-
 12 ishable by imprisonment for not more than 1 year.

13 (6) This section shall not be construed to prohibit a parent
 14 or guardian, or other person permitted by law or authorized by
 15 the parent or guardian, from taking steps to reasonably disci-
 16 pline a child, including the use of reasonable force.

17 Sec. 317. (1) ~~Second degree murder--All other kinds of~~
 18 ~~murder shall be~~ MURDER, OTHER THAN MURDER IN THE FIRST DEGREE,
 19 IS murder ~~of~~ IN the second degree. ~~, and shall be punished~~

20 (2) A PERSON WHO COMMITS MURDER IN THE SECOND DEGREE IS
 21 GUILTY OF A FELONY AND SHALL BE PUNISHED by imprisonment ~~in the~~
 22 ~~state prison~~ for life ~~, or any term of years, in the discretion~~
 23 ~~of the court trying the same~~ WITHOUT ELIGIBILITY FOR PAROLE.

24 Sec. 520b. (1) A person is guilty of criminal sexual con-
 25 duct in the first degree if he or she engages in sexual penetra-
 26 tion with another person and if any of the following
 27 circumstances exists:

1 (a) That other person is under 13 years of age.

2 (b) That other person is at least 13 but less than 16 years
3 of age and any of the following:

4 (i) The actor is a member of the same household as the
5 victim.

6 (ii) The actor is related to the victim by blood or affinity
7 to the fourth degree.

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

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

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

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

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

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

24 (f) The actor causes personal injury to the victim and force
25 or coercion is used to accomplish sexual penetration. Force or
26 coercion includes but is not limited to any of the following
27 circumstances:

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

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

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

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

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

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

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

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

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

1 (2) ~~Criminal~~ EXCEPT AS PROVIDED IN SUBSECTION (3),
2 CRIMINAL sexual conduct in the first degree is a felony punish-
3 able by imprisonment in the state prison for life or for any term
4 of years.

5 (3) IF A PERSON IS CONVICTED OF VIOLATING THIS SECTION AND
6 THE VICTIM OF THE VIOLATION WAS LESS THAN 18 YEARS OF AGE WHEN
7 THE VIOLATION WAS COMMITTED, AND THE PERSON WAS PREVIOUSLY CON-
8 VICTED OF VIOLATING THIS SECTION, SECTION 316, 317, 520C, 520D,
9 OR 520E, OR A LAW OF THE UNITED STATES, OF ANOTHER STATE, OR OF A
10 LOCAL UNIT OF GOVERNMENT OF ANOTHER STATE SUBSTANTIALLY CORRE-
11 SPONDING TO THIS SECTION OR SECTION 316, 317, 520C, 520D, OR
12 520E, AND THE VICTIM OF THE PREVIOUS VIOLATION WAS LESS THAN 18
13 YEARS OF AGE WHEN THAT VIOLATION WAS COMMITTED, THE PERSON SHALL
14 BE SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT ELIGIBILITY FOR
15 PAROLE.

16 Sec. 520c. (1) A person is guilty of criminal sexual con-
17 duct in the second degree if the person engages in sexual contact
18 with another person and if any of the following circumstances
19 exists:

20 (a) That other person is under 13 years of age.

21 (b) That other person is at least 13 but less than 16 years
22 of age and any of the following:

23 (i) The actor is a member of the same household as the
24 victim.

25 (ii) The actor is related by blood or affinity to the fourth
26 degree to the victim.

1 (iii) The actor is in a position of authority over the
2 victim and the actor used this authority to coerce the victim to
3 submit.

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

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

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

11 (ii) The actor uses force or coercion to accomplish the
12 sexual contact. Force or coercion includes but is not limited to
13 any of the circumstances listed in sections 520b(1)(f)(i) to
14 (v).

15 (e) The actor is armed with a weapon, or any article used or
16 fashioned in a manner to lead a person to reasonably believe it
17 to be a weapon.

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

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

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

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

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

5 (2) ~~Criminal~~ EXCEPT AS PROVIDED IN SUBSECTION (3),
6 CRIMINAL sexual conduct in the second degree is a felony punish-
7 able by imprisonment for not more than 15 years.

8 (3) IF A PERSON IS CONVICTED OF VIOLATING THIS SECTION AND
9 THE VICTIM OF THE VIOLATION WAS LESS THAN 18 YEARS OF AGE WHEN
10 THE VIOLATION WAS COMMITTED, AND THE PERSON WAS PREVIOUSLY CON-
11 VICTED OF VIOLATING THIS SECTION, SECTION 316, 317, 520B, 520D,
12 OR 520E, OR A LAW OF THE UNITED STATES, OF ANOTHER STATE, OR OF A
13 LOCAL UNIT OF GOVERNMENT OF ANOTHER STATE SUBSTANTIALLY CORRE-
14 SPONDING TO THIS SECTION OR SECTION 316, 317, 520B, 520D, OR
15 520E, AND THE VICTIM OF THE PREVIOUS VIOLATION WAS LESS THAN 18
16 YEARS OF AGE WHEN THAT VIOLATION WAS COMMITTED, THE PERSON SHALL
17 BE SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT ELIGIBILITY FOR
18 PAROLE.

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

23 (a) That other person is at least 13 years of age and under
24 16 years of age.

25 (b) Force or coercion is used to accomplish the sexual
26 penetration. Force or coercion includes but is not limited to
27 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 (2) ~~Criminal~~ EXCEPT AS PROVIDED IN SUBSECTION (3),
15 CRIMINAL sexual conduct in the third degree is a felony punish-
16 able by imprisonment for not more than 15 years.

17 (3) IF A PERSON IS CONVICTED OF VIOLATING THIS SECTION AND
18 THE VICTIM OF THE VIOLATION WAS LESS THAN 18 YEARS OF AGE WHEN
19 THE VIOLATION WAS COMMITTED, AND THE PERSON WAS PREVIOUSLY CON-
20 VICTED OF VIOLATING THIS SECTION, SECTION 316, 317, 520B, 520C,
21 OR 520E, OR A LAW OF THE UNITED STATES, OF ANOTHER STATE, OR OF A
22 LOCAL UNIT OF GOVERNMENT OF ANOTHER STATE SUBSTANTIALLY CORRE-
23 SPONDING TO THIS SECTION OR SECTION 316, 317, 520B, 520C, OR
24 520E, AND THE VICTIM OF THE PREVIOUS VIOLATION WAS LESS THAN 18
25 YEARS OF AGE WHEN THAT VIOLATION WAS COMMITTED, THE PERSON SHALL
26 BE SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT ELIGIBILITY FOR
27 PAROLE.

1 Enacting section 1. This amendatory act does not take
2 effect unless Senate Bill No. 383
3 of the 90th Legislature is enacted into
4 law.