

Act No. 505
Public Acts of 2000
Approved by the Governor
January 16, 2001
Filed with the Secretary of State
January 16, 2001
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

**Introduced by Reps. Jellema, Richner, Bovin, Rick Johnson, Allen, Kukuk, Caul, Ehardt, Stamas, Kelly, Pappageorge, Bradstreet, Hart and Birkholz
Reps. Cassis, Howell, Julian, Kuipers, LaSata, Law, Richardville, Van Woerkom, Vander Roest and Voorhees named co-sponsors**

ENROLLED HOUSE BILL No. 4525

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," 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:

Sec. 520a. As used in this chapter:

- (a) "Actor" means a person accused of criminal sexual conduct.
- (b) "Developmental disability" means an impairment of general intellectual functioning or adaptive behavior which meets the following criteria:
 - (i) It originated before the person became 18 years of age.
 - (ii) It has continued since its origination or can be expected to continue indefinitely.
 - (iii) It constitutes a substantial burden to the impaired person's ability to perform in society.
 - (iv) It is attributable to 1 or more of the following:
 - (A) Mental retardation, cerebral palsy, epilepsy, or autism.
 - (B) Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.
- (c) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.

(d) "Mental health professional" means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

(e) "Mental illness" means a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(f) "Mentally disabled" means that a person has a mental illness, is mentally retarded, or has a developmental disability.

(g) "Mentally incapable" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

(h) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.

(i) "Mentally retarded" means significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.

(j) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.

(k) "Personal injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.

(l) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

(i) Revenge.

(ii) To inflict humiliation.

(iii) Out of anger.

(m) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(n) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

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

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

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

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

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute that threat.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute that threat. As used in this subparagraph, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.

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

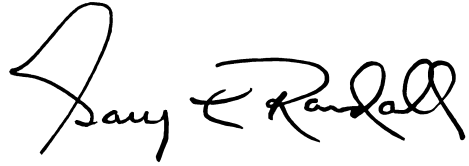
(v) When the actor achieves the sexual contact through concealment or by the element of surprise.

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

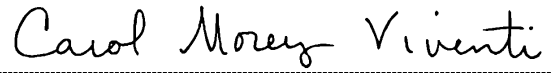
(d) That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority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

(e) The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is his or her client or patient and not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision. This does not indicate that the victim is mentally incompetent.

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



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.