

# HOUSE BILL No. 5740

February 21, 2002, Introduced by Reps. Allen, Mead, Birkholz, Gosselin and Toy and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 520d and 520e (MCL 750.520d and 750.520e), section 520d as amended by 1996 PA 155 and section 520e as amended by 2000 PA 227.

**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 but less  
2 than 16 years of age, and the actor is 5 or more years older than  
3 that 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  
6 of 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 that  
12 threat.

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 that threat. As used in this subparagraph, "to  
17 retaliate" includes threats of physical punishment, kidnapping,  
18 or 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 related to the actor by blood or  
2 affinity to the third degree and the sexual contact occurs under  
3 circumstances not otherwise prohibited by this chapter. It is an  
4 affirmative defense to a prosecution under this subdivision that  
5 the other person was in a position of authority over the  
6 defendant and used this authority to coerce the defendant to vio-  
7 late this subdivision. The defendant has the burden of proving  
8 this defense by a preponderance of the evidence. This subdivi-  
9 sion does not apply if both persons are lawfully married to each  
10 other at the time of the alleged violation.

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

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