

HOUSE BILL No. 5558

January 18, 2006, Introduced by Reps. Sheltroun and Sak and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 520a, 520b, 520c, 520d, 520e, 520f, and 520g (MCL 750.520a, 750.520b, 750.520c, 750.520d, 750.520e, 750.520f, and 750.520g), sections 520a, 520b, 520c, 520d, and 520e as amended by 2002 PA 714, and by adding section 520n.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 520a. As used in this chapter:
- 2 (a) "Actor" means a person accused of criminal sexual conduct.
- 3 (b) "Developmental disability" means an impairment of general
- 4 intellectual functioning or adaptive behavior which meets the
- 5 following criteria:
- 6 (i) It originated before the person became 18 years of age.

1 (ii) It has continued since its origination or can be expected
2 to continue indefinitely.

3 (iii) It constitutes a substantial burden to the impaired
4 person's ability to perform in society.

5 (iv) It is attributable to 1 or more of the following:

6 (A) Mental retardation, cerebral palsy, epilepsy, or autism.

7 (B) Any other condition of a person found to be closely
8 related to mental retardation because it produces a similar
9 impairment or requires treatment and services similar to those
10 required for a person who is mentally retarded.

11 (C) **"ELECTRONIC MONITORING" MEANS THAT TERM AS DEFINED IN**
12 **SECTION 85 OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL**
13 **791.285.**

14 (D) ~~-(e)-~~ "Intimate parts" includes the primary genital area,
15 groin, inner thigh, buttock, or breast of a human being.

16 (E) ~~-(d)-~~ "Mental health professional" means that term as
17 defined in section 100b of the mental health code, 1974 PA 258, MCL
18 330.1100b.

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

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

25 (H) ~~-(g)-~~ "Mentally incapable" means that a person suffers
26 from a mental disease or defect which renders that person
27 temporarily or permanently incapable of appraising the nature of

1 his or her conduct.

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

8 (J) ~~-(i)-~~ "Mentally retarded" means significantly subaverage
9 general intellectual functioning which originates during the
10 developmental period and is associated with impairment in adaptive
11 behavior.

12 (K) ~~-(j)-~~ "Nonpublic school" means that term as defined in
13 section 5 of the revised school code, 1976 PA 451, MCL 380.5.

14 (L) ~~-(k)-~~ "Physically helpless" means that a person is
15 unconscious, asleep, or for any other reason is physically unable
16 to communicate unwillingness to an act.

17 (M) ~~-(l)-~~ "Personal injury" means bodily injury, disfigurement,
18 mental anguish, chronic pain, pregnancy, disease, or loss or
19 impairment of a sexual or reproductive organ.

20 (N) ~~-(m)-~~ "Public school" means that term as defined in
21 section 5 of the revised school code, 1976 PA 451, MCL 380.5.

22 (O) ~~-(n)-~~ "Sexual contact" includes the intentional touching
23 of the victim's or actor's intimate parts or the intentional
24 touching of the clothing covering the immediate area of the
25 victim's or actor's intimate parts, if that intentional touching
26 can reasonably be construed as being for the purpose of sexual
27 arousal or gratification, done for a sexual purpose, or in a sexual

1 manner for:

2 (i) Revenge.

3 (ii) To inflict humiliation.

4 (iii) Out of anger.

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

10 (Q) ~~(p)~~ "Victim" means the person alleging to have been
11 subjected to criminal sexual conduct.

12 Sec. 520b. (1) A person is guilty of criminal sexual conduct
13 in the first degree if he or she engages in sexual penetration with
14 another person and if any of the following circumstances exists:

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

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

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

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

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

23 (iv) The actor is a teacher, substitute teacher, or
24 administrator of the public or nonpublic school in which that other
25 person is enrolled.

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

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

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

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

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

11 (f) The actor causes personal injury to the victim and force
12 or coercion is used to accomplish sexual penetration. Force or
13 coercion includes but is not limited to any of the following
14 circumstances:

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

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

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

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

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

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

6 (h) That other person is mentally incapable, mentally
7 disabled, mentally incapacitated, or physically helpless, and any
8 of the following:

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

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

13 (2) Criminal sexual conduct in the first degree is a felony
14 punishable ~~by~~ **AS FOLLOWS:**

15 (A) **BY** imprisonment in the state prison for life or for any
16 term of years.

17 (B) **IF THE ACTOR IS A SEXUALLY DELINQUENT PERSON WHO VIOLATES**
18 **SUBSECTION (1)(A), (B), (D)(ii), (E), (F), OR (G), HE OR SHE SHALL**
19 **BE SENTENCED TO SERVE A MINIMUM TERM OF IMPRISONMENT OF NOT LESS**
20 **THAN 25 YEARS.**

21 (C) **IF THE VICTIM WAS NOT MORE THAN 11 YEARS OF AGE AT THE**
22 **TIME THE CRIME WAS COMMITTED, IN ADDITION TO ANY OTHER SENTENCE**
23 **IMPOSED, THE ACTOR SHALL BE SENTENCED TO LIFETIME ELECTRONIC**
24 **MONITORING AS DESCRIBED IN SECTION 85 OF THE CORRECTIONS CODE OF**
25 **1953, 1953 PA 232, MCL 791.285.**

26 Sec. 520c. (1) A person is guilty of criminal sexual conduct
27 in the second degree if the person engages in sexual contact with

1 another person and if any of the following circumstances exists:

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

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

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

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

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

10 (iv) The actor is a teacher, substitute teacher, or
11 administrator of the public or nonpublic school in which that other
12 person is enrolled.

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

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

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

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

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

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

1 listed in section 520b(1)(f)(i) to (v).

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

5 (h) That other person is mentally incapable, mentally
6 disabled, mentally incapacitated, or physically helpless, and any
7 of the following:

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

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

12 (i) That other person is under the jurisdiction of the
13 department of corrections and the actor is an employee or a
14 contractual employee of, or a volunteer with, the department of
15 corrections who knows that the other person is under the
16 jurisdiction of the department of corrections.

17 (j) That other person is under the jurisdiction of the
18 department of corrections and the actor is an employee or a
19 contractual employee of, or a volunteer with, a private vendor that
20 operates a youth correctional facility under section 20g of **THE**
21 **CORRECTIONS CODE OF 1953**, 1953 PA 232, MCL 791.220g, who knows that
22 the other person is under the jurisdiction of the department of
23 corrections.

24 (k) That other person is a prisoner or probationer under the
25 jurisdiction of a county for purposes of imprisonment or a work
26 program or other probationary program and the actor is an employee
27 or a contractual employee of or a volunteer with the county or the

1 department of corrections who knows that the other person is under
2 the county's jurisdiction.

3 (l) The actor knows or has reason to know that a court has
4 detained the victim in a facility while the victim is awaiting a
5 trial or hearing, or committed the victim to a facility as a result
6 of the victim having been found responsible for committing an act
7 that would be a crime if committed by an adult, and the actor is an
8 employee or contractual employee of, or a volunteer with, the
9 facility in which the victim is detained or to which the victim was
10 committed.

11 (2) Criminal sexual conduct in the second degree is a felony
12 punishable ~~by~~ **AS FOLLOWS:**

13 (A) **BY** imprisonment for not more than 15 years.

14 (B) **IF THE ACTOR IS A SEXUALLY DELINQUENT PERSON WHO VIOLATES**
15 **SUBSECTION (1)(A), (B), (D)(ii), (E), (F), OR (G), HE OR SHE SHALL**
16 **BE SENTENCED TO SERVE A MINIMUM TERM OF IMPRISONMENT OF NOT LESS**
17 **THAN 25 YEARS.**

18 (C) **IF THE VICTIM WAS NOT MORE THAN 11 YEARS OF AGE AT THE**
19 **TIME THE CRIME WAS COMMITTED, IN ADDITION TO ANY OTHER SENTENCE**
20 **IMPOSED, THE ACTOR SHALL BE SENTENCED TO LIFETIME ELECTRONIC**
21 **MONITORING AS DESCRIBED IN SECTION 85 OF THE CORRECTIONS CODE OF**
22 **1953, 1953 PA 232, MCL 791.285.**

23 Sec. 520d. (1) A person is guilty of criminal sexual conduct
24 in the third degree if the person engages in sexual penetration
25 with another person and if any of the following circumstances
26 exist:

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

1 years of age.

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

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

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

17 (e) That other person is at least 16 years of age but less
18 than 18 years of age and a student at a public or nonpublic school,
19 and the actor is a teacher, substitute teacher, or administrator of
20 that public or nonpublic school. This subdivision does not apply if
21 the other person is emancipated or if both persons are lawfully
22 married to each other at the time of the alleged violation.

23 (2) Criminal sexual conduct in the third degree is a felony
24 punishable ~~by~~ **AS FOLLOWS:**

25 (A) **BY** imprisonment for not more than 15 years.

26 (B) **IF THE ACTOR IS A SEXUALLY DELINQUENT PERSON WHO VIOLATES**
27 **SUBSECTION (1)(A) OR (B), HE OR SHE SHALL BE SENTENCED TO SERVE A**

1 MINIMUM TERM OF IMPRISONMENT OF NOT LESS THAN 25 YEARS.

2 (C) IF THE VICTIM WAS NOT MORE THAN 11 YEARS OF AGE AT THE
3 TIME THE CRIME WAS COMMITTED, IN ADDITION TO ANY OTHER SENTENCE
4 IMPOSED, THE ACTOR SHALL BE SENTENCED TO LIFETIME ELECTRONIC
5 MONITORING AS DESCRIBED IN SECTION 85 OF THE CORRECTIONS CODE OF
6 1953, 1953 PA 232, MCL 791.285.

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

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

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

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

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

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

26 (iv) When the actor engages in the medical treatment or
27 examination of the victim in a manner or for purposes which are

1 medically recognized as unethical or unacceptable.

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

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

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

16 (e) The actor is a mental health professional and the sexual
17 contact occurs during or within 2 years after the period in which
18 the victim is his or her client or patient and not his or her
19 spouse. The consent of the victim is not a defense to a prosecution
20 under this subdivision. A prosecution under this subsection shall
21 not be used as evidence that the victim is mentally incompetent.

22 (f) That other person is at least 16 years of age but less
23 than 18 years of age and a student at a public or nonpublic school,
24 and the actor is a teacher, substitute teacher, or administrator of
25 that public or nonpublic school. This subdivision does not apply if
26 the other person is emancipated or if both persons are lawfully
27 married to each other at the time of the alleged violation.

1 (2) Criminal sexual conduct in the fourth degree is a
2 misdemeanor punishable ~~by~~ **AS FOLLOWS:**

3 (A) **BY** imprisonment for not more than 2 years or a fine of not
4 more than \$500.00, or both.

5 (B) **IF THE ACTOR IS A SEXUALLY DELINQUENT PERSON WHO VIOLATES**
6 **SUBSECTION (1)(A) OR (B), HE OR SHE SHALL BE SENTENCED TO SERVE A**
7 **MINIMUM TERM OF IMPRISONMENT OF NOT LESS THAN 25 YEARS.**

8 (C) **IF THE VICTIM WAS NOT MORE THAN 11 YEARS OF AGE AT THE**
9 **TIME THE CRIME WAS COMMITTED, IN ADDITION TO ANY OTHER SENTENCE**
10 **IMPOSED, THE ACTOR SHALL BE SENTENCED TO LIFETIME ELECTRONIC**
11 **MONITORING AS DESCRIBED IN SECTION 85 OF THE CORRECTIONS CODE OF**
12 **1953, 1953 PA 232, MCL 791.285.**

13 Sec. 520f. (1) ~~if~~ **EXCEPT AS OTHERWISE PROVIDED UNDER SECTION**
14 **520B, 520C, AND 520D, IF** a person is convicted of a second or
15 subsequent offense under section 520b, 520c, or 520d, the sentence
16 imposed under those sections for the second or subsequent offense
17 shall provide for a mandatory minimum sentence of at least 5 years.

18 (2) For purposes of this section, an offense is considered a
19 second or subsequent offense if, prior to conviction of the second
20 or subsequent offense, the actor has at any time been convicted
21 under section 520b, 520c, or 520d or under any similar statute of
22 the United States or any state for a criminal sexual offense
23 including rape, carnal knowledge, indecent liberties, gross
24 indecency, or an attempt to commit such an offense.

25 Sec. 520g. (1) ~~Assault~~ **EXCEPT AS PROVIDED IN SUBSECTION (3),**
26 **ASSAULT** with intent to commit criminal sexual conduct involving
27 sexual penetration ~~shall be~~ **IS** a felony punishable by

1 imprisonment for not more than 10 years.

2 (2) ~~Assault~~ EXCEPT AS PROVIDED IN SUBSECTION (3), ASSAULT
3 with intent to commit criminal sexual conduct in the second degree
4 is a felony punishable by imprisonment for not more than 5 years.

5 (3) IF THE CRIMINAL SEXUAL CONDUCT INVOLVED 1 OR MORE OF THE
6 CHARACTERISTICS DESCRIBED IN SECTION 520B(1)(A), (B), (D)(ii), (E),
7 (F), OR (G), ALL OF THE FOLLOWING APPLY:

8 (A) THE ACTOR SHALL BE SENTENCED TO SERVE A MINIMUM TERM OF
9 IMPRISONMENT OF NOT LESS THAN 25 YEARS.

10 (B) IF THE VICTIM WAS NOT MORE THAN 11 YEARS OF AGE AT THE
11 TIME THE CRIME WAS COMMITTED, IN ADDITION TO ANY OTHER SENTENCE
12 IMPOSED, THE ACTOR SHALL BE SENTENCED TO LIFETIME ELECTRONIC
13 MONITORING AS DESCRIBED IN SECTION 85 OF THE CORRECTIONS CODE OF
14 1953, 1953 PA 232, MCL 791.285.

15 SEC. 520N. (1) A PERSON WHO HAS BEEN SENTENCED UNDER THIS
16 CHAPTER TO LIFETIME ELECTRONIC MONITORING AS DESCRIBED IN SECTION
17 85 OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.285, WHO
18 DOES ANY OF THE FOLLOWING IS GUILTY OF A FELONY PUNISHABLE BY
19 IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN
20 \$2,000.00, OR BOTH:

21 (A) INTENTIONALLY REMOVES, DEFACES, ALTERS, DESTROYS, OR FAILS
22 TO MAINTAIN THE ELECTRONIC MONITORING DEVICE IN WORKING ORDER.

23 (B) FAILS TO NOTIFY THE DEPARTMENT OF CORRECTIONS THAT THE
24 ELECTRONIC MONITORING DEVICE IS DAMAGED.

25 (C) FAILS TO REIMBURSE THE DEPARTMENT OF CORRECTIONS OR ITS
26 AGENT FOR THE COST OF THE MONITORING.

27 (2) THIS SECTION DOES NOT PROHIBIT AN INDIVIDUAL FROM BEING

1 CHARGED WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION OF
2 LAW THAT IS COMMITTED BY THAT INDIVIDUAL WHILE VIOLATING THIS
3 SECTION.

4 (3) A TERM OF IMPRISONMENT IMPOSED FOR A VIOLATION OF THIS
5 SECTION MAY RUN CONSECUTIVELY TO ANY TERM OF IMPRISONMENT IMPOSED
6 FOR ANOTHER VIOLATION ARISING FROM THE SAME TRANSACTION.

7 Enacting section 1. This amendatory act does not take effect
8 unless Senate Bill No.____ or House Bill No. 5557(request no.
9 04642'05 a) of the 93rd Legislature is enacted into law.