

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 386

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 520a, 520b, 520c, 520d, and 520e (MCL
750.520a, 750.520b, 750.520c, 750.520d, and 750.520e), sections
520a and 520c as amended by 2006 PA 171, section 520b as amended by
2006 PA 169, and sections 520d and 520e as amended by 2002 PA 714.

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 all of
- 5 the 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) **"INTERMEDIATE SCHOOL DISTRICT" MEANS A CORPORATE BODY**
15 **ESTABLISHED UNDER PART 7 OF THE REVISED SCHOOL CODE, 1976 PA 451,**
16 **MCL 380.601 TO 380.705.**

17 (E) ~~(d)~~—"Intimate parts" includes the primary genital area,
18 groin, inner thigh, buttock, or breast of a human being.

19 (F) ~~(e)~~—"Mental health professional" means that term as
20 defined in section 100b of the mental health code, 1974 PA 258, MCL
21 330.1100b.

22 (G) ~~(f)~~—"Mental illness" means a substantial disorder of
23 thought or mood that significantly impairs judgment, behavior,
24 capacity to recognize reality, or ability to cope with the ordinary
25 demands of life.

26 (H) ~~(g)~~—"Mentally disabled" means that a person has a mental
27 illness, is mentally retarded, or has a developmental disability.

1 (I) ~~(h)~~—"Mentally incapable" means that a person suffers from
2 a mental disease or defect that renders that person temporarily or
3 permanently incapable of appraising the nature of his or her
4 conduct.

5 (J) ~~(i)~~—"Mentally incapacitated" means that a person is
6 rendered temporarily incapable of appraising or controlling his or
7 her conduct due to the influence of a narcotic, anesthetic, or
8 other substance administered to that person without his or her
9 consent, or due to any other act committed upon that person without
10 his or her consent.

11 (K) ~~(j)~~—"Mentally retarded" means significantly subaverage
12 general intellectual functioning that originates during the
13 developmental period and is associated with impairment in adaptive
14 behavior.

15 (L) ~~(k)~~—"Nonpublic school" means ~~that term as defined in~~
16 ~~section 5 of the revised school code, 1976 PA 451, MCL 380.5-A~~
17 **PRIVATE, DENOMINATIONAL, OR PAROCHIAL ELEMENTARY OR SECONDARY**
18 **SCHOOL.**

19 (M) ~~(l)~~—"Physically helpless" means that a person is
20 unconscious, asleep, or for any other reason is physically unable
21 to communicate unwillingness to an act.

22 (N) ~~(m)~~—"Personal injury" means bodily injury, disfigurement,
23 mental anguish, chronic pain, pregnancy, disease, or loss or
24 impairment of a sexual or reproductive organ.

25 (O) ~~(n)~~—"Public school" means ~~that term as defined in section~~
26 ~~5 of the revised school code, 1976 PA 451, MCL 380.5-A~~ **A PUBLIC**
27 **ELEMENTARY OR SECONDARY EDUCATIONAL ENTITY OR AGENCY THAT IS**

1 ESTABLISHED UNDER THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1
2 TO 380.1852.

3 (P) "SCHOOL DISTRICT" MEANS A GENERAL POWERS SCHOOL DISTRICT
4 ORGANIZED UNDER THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1 TO
5 380.1852.

6 (Q) ~~(e)~~—"Sexual contact" includes the intentional touching of
7 the victim's or actor's intimate parts or the intentional touching
8 of the clothing covering the immediate area of the victim's or
9 actor's intimate parts, if that intentional touching can reasonably
10 be construed as being for the purpose of sexual arousal or
11 gratification, done for a sexual purpose, or in a sexual manner
12 for:

13 (i) Revenge.

14 (ii) To inflict humiliation.

15 (iii) Out of anger.

16 (R) ~~(p)~~—"Sexual penetration" means sexual intercourse,
17 cunnilingus, fellatio, anal intercourse, or any other intrusion,
18 however slight, of any part of a person's body or of any object
19 into the genital or anal openings of another person's body, but
20 emission of semen is not required.

21 (S) ~~(q)~~—"Victim" means the person alleging to have been
22 subjected to criminal sexual conduct.

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

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

27 (b) That other person is at least 13 but less than 16 years of

1 age and any of the following:

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

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

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

7 (iv) The actor is a teacher, substitute teacher, or
8 administrator of the public ~~or~~ SCHOOL, nonpublic school, SCHOOL
9 DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT in which that other
10 person is enrolled.

11 (v) THE ACTOR IS AN EMPLOYEE OR A CONTRACTUAL SERVICE PROVIDER
12 OF THE PUBLIC SCHOOL, NONPUBLIC SCHOOL, SCHOOL DISTRICT, OR
13 INTERMEDIATE SCHOOL DISTRICT IN WHICH THAT OTHER PERSON IS
14 ENROLLED, OR IS A VOLUNTEER WHO IS NOT A STUDENT IN ANY PUBLIC
15 SCHOOL OR NONPUBLIC SCHOOL, OR IS AN EMPLOYEE OF THIS STATE OR OF A
16 LOCAL UNIT OF GOVERNMENT OF THIS STATE OR OF THE UNITED STATES
17 ASSIGNED TO PROVIDE ANY SERVICE TO THAT PUBLIC SCHOOL, NONPUBLIC
18 SCHOOL, SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT, AND THE
19 ACTOR USES HIS OR HER EMPLOYEE, CONTRACTUAL, OR VOLUNTEER STATUS TO
20 GAIN ACCESS TO, OR TO ESTABLISH A RELATIONSHIP WITH, THAT OTHER
21 PERSON.

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

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

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

1 (ii) The actor uses force or coercion to accomplish the sexual
2 penetration. Force or coercion includes, but is not limited to, any
3 of the circumstances listed in subdivision (f).

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

7 (f) The actor causes personal injury to the victim and force
8 or coercion is used to accomplish sexual penetration. Force or
9 coercion includes, but is not limited to, any of the following
10 circumstances:

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

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

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

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

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

26 (g) The actor causes personal injury to the victim, and the
27 actor knows or has reason to know that the victim is mentally

1 incapable, mentally incapacitated, or physically helpless.

2 (h) That other person is mentally incapable, mentally
3 disabled, mentally incapacitated, or physically helpless, and any
4 of the following:

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

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

9 (2) Criminal sexual conduct in the first degree is a felony
10 punishable as follows:

11 (a) Except as provided in subdivisions (b) and (c), by
12 imprisonment for life or for any term of years.

13 (b) For a violation that is committed by an individual 17
14 years of age or older against an individual less than 13 years of
15 age by imprisonment for life or any term of years, but not less
16 than 25 years.

17 (c) For a violation that is committed by an individual 17
18 years of age or older against an individual less than 13 years of
19 age, by imprisonment for life without the possibility of parole if
20 the person was previously convicted of a violation of this section
21 or section 520c, 520d, 520e, or 520g committed against an
22 individual less than 13 years of age or a violation of law of the
23 United States, another state or political subdivision substantially
24 corresponding to a violation of this section or section 520c, 520d,
25 520e, or 520g committed against an individual less than 13 years of
26 age.

27 (d) In addition to any other penalty imposed under subdivision

1 (a) or (b), the court shall sentence the defendant to lifetime
2 electronic monitoring under section 520n.

3 (3) The court may order a term of imprisonment imposed under
4 this section to be served consecutively to any term of imprisonment
5 imposed for any other criminal offense arising from the same
6 transaction.

7 Sec. 520c. (1) A person is guilty of criminal sexual conduct
8 in the second degree if the person engages in sexual contact with
9 another person and if any of the following circumstances exists:

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

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

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

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

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

18 (iv) The actor is a teacher, substitute teacher, or
19 administrator of the public ~~or~~ SCHOOL, nonpublic school, SCHOOL
20 DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT in which that other
21 person is enrolled.

22 (v) THE ACTOR IS AN EMPLOYEE OR A CONTRACTUAL SERVICE PROVIDER
23 OF THE PUBLIC SCHOOL, NONPUBLIC SCHOOL, SCHOOL DISTRICT, OR
24 INTERMEDIATE SCHOOL DISTRICT IN WHICH THAT OTHER PERSON IS
25 ENROLLED, OR IS A VOLUNTEER WHO IS NOT A STUDENT IN ANY PUBLIC
26 SCHOOL OR NONPUBLIC SCHOOL, OR IS AN EMPLOYEE OF THIS STATE OR OF A
27 LOCAL UNIT OF GOVERNMENT OF THIS STATE OR OF THE UNITED STATES

1 ASSIGNED TO PROVIDE ANY SERVICE TO THAT PUBLIC SCHOOL, NONPUBLIC
2 SCHOOL, SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT, AND THE
3 ACTOR USES HIS OR HER EMPLOYEE, CONTRACTUAL, OR VOLUNTEER STATUS TO
4 GAIN ACCESS TO, OR TO ESTABLISH A RELATIONSHIP WITH, THAT OTHER
5 PERSON.

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

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

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

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

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 to
17 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).

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
26 disabled, mentally incapacitated, or physically helpless, and any
27 of the following:

1 (i) The actor is related to the victim by blood or affinity to
2 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 (i) That other person is under the jurisdiction of the
6 department of corrections and the actor is an employee or a
7 contractual employee of, or a volunteer with, the department of
8 corrections who knows that the other person is under the
9 jurisdiction of the department of corrections.

10 (j) That other person is under the jurisdiction of the
11 department of corrections and the actor is an employee or a
12 contractual employee of, or a volunteer with, a private vendor that
13 operates a youth correctional facility under section 20g of **THE**
14 **CORRECTIONS CODE OF 1953**, 1953 PA 232, MCL 791.220g, who knows that
15 the other person is under the jurisdiction of the department of
16 corrections.

17 (k) That other person is a prisoner or probationer under the
18 jurisdiction of a county for purposes of imprisonment or a work
19 program or other probationary program and the actor is an employee
20 or a contractual employee of or a volunteer with the county or the
21 department of corrections who knows that the other person is under
22 the county's jurisdiction.

23 (l) The actor knows or has reason to know that a court has
24 detained the victim in a facility while the victim is awaiting a
25 trial or hearing, or committed the victim to a facility as a result
26 of the victim having been found responsible for committing an act
27 that would be a crime if committed by an adult, and the actor is an

1 employee or contractual employee of, or a volunteer with, the
2 facility in which the victim is detained or to which the victim was
3 committed.

4 (2) Criminal sexual conduct in the second degree is a felony
5 punishable as follows:

6 (a) By imprisonment for not more than 15 years.

7 (b) In addition to the penalty specified in subdivision (a),
8 the court shall sentence the defendant to lifetime electronic
9 monitoring under section 520n if the violation involved sexual
10 contact committed by an individual 17 years of age or older against
11 an individual less than 13 years of age.

12 Sec. 520d. (1) A person is guilty of criminal sexual conduct
13 in the third degree if the person engages in sexual penetration
14 with another person and if any of the following circumstances
15 exist:

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

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

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

23 (d) That other person is related to the actor by blood or
24 affinity to the third degree and the sexual penetration occurs
25 under circumstances not otherwise prohibited by this chapter. It is
26 an affirmative defense to a prosecution under this subdivision that
27 the other person was in a position of authority over the defendant

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

6 (e) That other person is at least 16 years of age but less
7 than 18 years of age and a student at a public **SCHOOL** or nonpublic
8 school, and ~~the~~ **EITHER OF THE FOLLOWING APPLIES:**

9 (i) **THE** actor is a teacher, substitute teacher, or
10 administrator of that public ~~or~~ **SCHOOL**, nonpublic school, **SCHOOL**
11 **DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT.** This ~~subdivision~~
12 **SUBPARAGRAPH** does not apply if the other person is emancipated or
13 if both persons are lawfully married to each other at the time of
14 the alleged violation.

15 (ii) **THE ACTOR IS AN EMPLOYEE OR A CONTRACTUAL SERVICE PROVIDER**
16 **OF THE PUBLIC SCHOOL, NONPUBLIC SCHOOL, SCHOOL DISTRICT, OR**
17 **INTERMEDIATE SCHOOL DISTRICT IN WHICH THAT OTHER PERSON IS**
18 **ENROLLED, OR IS A VOLUNTEER WHO IS NOT A STUDENT IN ANY PUBLIC**
19 **SCHOOL OR NONPUBLIC SCHOOL, OR IS AN EMPLOYEE OF THIS STATE OR OF A**
20 **LOCAL UNIT OF GOVERNMENT OF THIS STATE OR OF THE UNITED STATES**
21 **ASSIGNED TO PROVIDE ANY SERVICE TO THAT PUBLIC SCHOOL, NONPUBLIC**
22 **SCHOOL, SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT, AND THE**
23 **ACTOR USES HIS OR HER EMPLOYEE, CONTRACTUAL, OR VOLUNTEER STATUS TO**
24 **GAIN ACCESS TO, OR TO ESTABLISH A RELATIONSHIP WITH, THAT OTHER**
25 **PERSON.**

26 (F) **THAT OTHER PERSON IS AT LEAST 16 YEARS OLD BUT LESS THAN**
27 **26 YEARS OF AGE AND IS RECEIVING SPECIAL EDUCATION SERVICES, AND**

1 EITHER OF THE FOLLOWING APPLIES:

2 (i) THE ACTOR IS A TEACHER, SUBSTITUTE TEACHER, ADMINISTRATOR,
3 EMPLOYEE, OR CONTRACTUAL SERVICE PROVIDER OF THE PUBLIC SCHOOL,
4 NONPUBLIC SCHOOL, SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT
5 FROM WHICH THAT OTHER PERSON RECEIVES THE SPECIAL EDUCATION
6 SERVICES. THIS SUBPARAGRAPH DOES NOT APPLY IF BOTH PERSONS ARE
7 LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED
8 VIOLATION.

9 (ii) THE ACTOR IS A VOLUNTEER WHO IS NOT A STUDENT IN ANY
10 PUBLIC SCHOOL OR NONPUBLIC SCHOOL, OR IS AN EMPLOYEE OF THIS STATE
11 OR OF A LOCAL UNIT OF GOVERNMENT OF THIS STATE OR OF THE UNITED
12 STATES ASSIGNED TO PROVIDE ANY SERVICE TO THAT PUBLIC SCHOOL,
13 NONPUBLIC SCHOOL, SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT,
14 AND THE ACTOR USES HIS OR HER EMPLOYEE, CONTRACTUAL, OR VOLUNTEER
15 STATUS TO GAIN ACCESS TO, OR TO ESTABLISH A RELATIONSHIP WITH, THAT
16 OTHER PERSON.

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

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

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

25 (b) Force or coercion is used to accomplish the sexual
26 contact. Force or coercion includes, but is not limited to, any of
27 the following 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 threatening
4 to use force or violence on the victim, and the victim believes
5 that the actor has the present ability to execute that threat.

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

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

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

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

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

Senate Bill No. 386 (H-2) as amended November 26, 2007

(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. A prosecution under this subsection shall not be used as evidence that the victim is mentally incompetent.

(f) That other person is at least 16 years of age but less than 18 years of age and a student at a public ~~or~~ SCHOOL [OR] nonpublic school, and the []

AND EITHER OF THE FOLLOWING APPLIES:

(i) **THE** actor is a teacher, substitute teacher, or administrator of that public ~~or~~ SCHOOL, nonpublic school, SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT. This ~~subdivision~~ SUBPARAGRAPH does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(ii) **THE ACTOR IS AN EMPLOYEE OR A CONTRACTUAL SERVICE PROVIDER OF THE PUBLIC SCHOOL, NONPUBLIC SCHOOL, SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT IN WHICH THAT OTHER PERSON IS ENROLLED, OR IS A VOLUNTEER WHO IS NOT A STUDENT IN ANY PUBLIC SCHOOL OR NONPUBLIC SCHOOL, OR IS AN EMPLOYEE OF THIS STATE OR OF A LOCAL UNIT OF GOVERNMENT OF THIS STATE OR OF THE UNITED STATES ASSIGNED TO PROVIDE ANY SERVICE TO THAT PUBLIC SCHOOL, NONPUBLIC SCHOOL, SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT, AND THE ACTOR USES HIS OR HER EMPLOYEE, CONTRACTUAL, OR VOLUNTEER STATUS TO GAIN ACCESS TO, OR TO ESTABLISH A RELATIONSHIP WITH, THAT OTHER PERSON.**

Senate Bill No. 386 (H-2) as amended November 26, 2007

(G) THAT OTHER PERSON IS AT LEAST 16 YEARS OLD BUT LESS THAN 26 YEARS OF AGE AND IS RECEIVING SPECIAL EDUCATION SERVICES, AND EITHER OF THE FOLLOWING APPLIES:

(i) THE ACTOR IS A TEACHER, SUBSTITUTE TEACHER, ADMINISTRATOR, EMPLOYEE, OR CONTRACTUAL SERVICE PROVIDER OF THE PUBLIC SCHOOL, NONPUBLIC SCHOOL, SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT FROM WHICH THAT OTHER PERSON RECEIVES THE SPECIAL EDUCATION SERVICES. THIS SUBPARAGRAPH DOES NOT APPLY IF BOTH PERSONS ARE LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.

(ii) THE ACTOR IS A VOLUNTEER WHO IS NOT A STUDENT IN ANY PUBLIC SCHOOL OR NONPUBLIC SCHOOL, OR IS AN EMPLOYEE OF THIS STATE OR OF A LOCAL UNIT OF GOVERNMENT OF THIS STATE OR OF THE UNITED STATES ASSIGNED TO PROVIDE ANY SERVICE TO THAT PUBLIC SCHOOL, NONPUBLIC SCHOOL, SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT, AND THE ACTOR USES HIS OR HER EMPLOYEE, CONTRACTUAL, OR VOLUNTEER STATUS TO GAIN ACCESS TO, OR TO ESTABLISH A RELATIONSHIP WITH, THAT OTHER PERSON.

(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.

Enacting section 1. This amendatory act takes effect [July] 1, 2008.