

**SUBSTITUTE FOR
SENATE BILL NO. 386**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 520b. (1) A person is guilty of criminal sexual conduct
2 in the first degree if he or she engages in sexual penetration with
3 another person and if any of the following circumstances exists:
4 (a) That other person is under 13 years of age.
5 (b) That other person is at least 13 but less than 16 years of
6 age and any of the following:
7 (i) The actor is a member of the same household as the victim.

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

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

5 (iv) The actor is a teacher, substitute teacher, ~~or~~
6 administrator, **EMPLOYEE, OR CONTRACTUAL SERVICE PROVIDER** of the
7 public or nonpublic school, **SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL**
8 **DISTRICT** in which that other person is enrolled, **OR IS A VOLUNTEER**
9 **WHO IS NOT A STUDENT IN ANY SCHOOL IN GRADES K THROUGH 12, OR IS AN**
10 **EMPLOYEE OF THIS STATE OR OF A LOCAL UNIT OF GOVERNMENT OF THIS**
11 **STATE OR OF THE UNITED STATES ASSIGNED TO PROVIDE ANY SERVICE TO**
12 **THAT PUBLIC OR NONPUBLIC SCHOOL, SCHOOL DISTRICT, OR INTERMEDIATE**
13 **SCHOOL DISTRICT.**

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

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

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

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

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

26 (f) The actor causes personal injury to the victim and force
27 or coercion is used to accomplish sexual penetration. Force or

1 coercion includes, but is not limited to, any of the following
2 circumstances:

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

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

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

13 (iv) When the actor engages in the medical treatment or
14 examination of the victim in a manner or for purposes that 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
22 disabled, mentally incapacitated, or physically helpless, and any
23 of the following:

24 (i) The actor is related to the victim by blood or affinity to
25 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 (I) THAT OTHER PERSON IS AT LEAST 16 YEARS OLD BUT LESS THAN
2 26 YEARS OF AGE AND IS RECEIVING SPECIAL EDUCATION SERVICES, AND
3 THE ACTOR IS A TEACHER, SUBSTITUTE TEACHER, ADMINISTRATOR,
4 EMPLOYEE, OR CONTRACTUAL SERVICE PROVIDER OF THE PUBLIC OR
5 NONPUBLIC SCHOOL, SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT
6 FROM WHICH THAT OTHER PERSON RECEIVES THE SPECIAL EDUCATION
7 SERVICES, OR IS A VOLUNTEER WHO IS NOT A STUDENT IN ANY SCHOOL IN
8 GRADES K THROUGH 12, OR IS AN EMPLOYEE OF THIS STATE OR OF A LOCAL
9 UNIT OF GOVERNMENT OF THIS STATE OR OF THE UNITED STATES ASSIGNED
10 TO PROVIDE ANY SERVICE TO THAT PUBLIC OR NONPUBLIC SCHOOL, SCHOOL
11 DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT.

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

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

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

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

1 520e, or 520g committed against an individual less than 13 years of
2 age.

3 (d) In addition to any other penalty imposed under subdivision
4 (a) or (b), the court shall sentence the defendant to lifetime
5 electronic monitoring under section 520n.

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

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

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

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

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

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

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

21 (iv) The actor is a teacher, substitute teacher, ~~or~~
22 administrator, **EMPLOYEE, OR CONTRACTUAL SERVICE PROVIDER** of the
23 public or nonpublic school, **SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL**
24 **DISTRICT** in which that other person is enrolled, **OR IS A VOLUNTEER**
25 **WHO IS NOT A STUDENT IN ANY SCHOOL IN GRADES K THROUGH 12, OR IS AN**
26 **EMPLOYEE OF THIS STATE OR OF A LOCAL UNIT OF GOVERNMENT OF THIS**
27 **STATE OR OF THE UNITED STATES ASSIGNED TO PROVIDE ANY SERVICE TO**

1 THAT PUBLIC OR NONPUBLIC SCHOOL, SCHOOL DISTRICT, OR INTERMEDIATE
2 SCHOOL DISTRICT.

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

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

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

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

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

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

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

22 (h) That other person is mentally incapable, mentally
23 disabled, mentally incapacitated, or physically helpless, and any
24 of the following:

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

27 (ii) The actor is in a position of authority over the victim

1 and used this authority to coerce the victim to submit.

2 (i) That other person is under the jurisdiction of the
3 department of corrections and the actor is an employee or a
4 contractual employee of, or a volunteer with, the department of
5 corrections who knows that the other person is under the
6 jurisdiction of the department of corrections.

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

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

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

1 (M) THAT OTHER PERSON IS AT LEAST 16 YEARS OLD BUT LESS THAN
2 26 YEARS OF AGE AND IS RECEIVING SPECIAL EDUCATION SERVICES, AND
3 THE ACTOR IS A TEACHER, SUBSTITUTE TEACHER, ADMINISTRATOR,
4 EMPLOYEE, OR CONTRACTUAL SERVICE PROVIDER OF THE PUBLIC OR
5 NONPUBLIC SCHOOL, SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT
6 FROM WHICH THAT OTHER PERSON RECEIVES THE SPECIAL EDUCATION
7 SERVICES, OR IS A VOLUNTEER WHO IS NOT A STUDENT IN ANY SCHOOL IN
8 GRADES K THROUGH 12, OR IS AN EMPLOYEE OF THIS STATE OR OF A LOCAL
9 UNIT OF GOVERNMENT OF THIS STATE OR OF THE UNITED STATES ASSIGNED
10 TO PROVIDE ANY SERVICE TO THAT PUBLIC OR NONPUBLIC SCHOOL, SCHOOL
11 DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT.

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

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

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

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

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

26 (b) Force or coercion is used to accomplish the sexual
27 penetration. Force or coercion includes but is not limited to any

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

2 (c) The actor knows or has reason to know that the victim is
3 mentally incapable, mentally incapacitated, or physically 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 is
7 an affirmative defense to a prosecution under this subdivision that
8 the other person was in a position of authority over the defendant
9 and used this authority to coerce the defendant to violate this
10 subdivision. The defendant has the burden of proving this defense
11 by a preponderance of the evidence. This subdivision does not apply
12 if both persons are lawfully married to each other at the time of
13 the alleged violation.

14 (e) That other person is at least 16 years of age but less
15 than 18 years of age and a student at a public or nonpublic school,
16 and the actor is a teacher, substitute teacher, ~~ex~~-administrator,
17 **EMPLOYEE, OR CONTRACTUAL SERVICE PROVIDER** of that public or
18 nonpublic school, **SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT,**
19 **OR IS A VOLUNTEER WHO IS NOT A STUDENT IN ANY SCHOOL IN GRADES K**
20 **THROUGH 12, OR IS AN EMPLOYEE OF THIS STATE OR OF A LOCAL UNIT OF**
21 **GOVERNMENT OF THIS STATE OR OF THE UNITED STATES ASSIGNED TO**
22 **PROVIDE ANY SERVICE TO THAT PUBLIC OR NONPUBLIC SCHOOL, SCHOOL**
23 **DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT.** This subdivision does
24 not apply if the other person is emancipated or if both persons are
25 lawfully married to each other at the time of the alleged
26 violation.

27 (2) Criminal sexual conduct in the third degree is a felony

1 punishable by imprisonment for not more than 15 years.

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

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

8 (b) Force or coercion is used to accomplish the sexual
9 contact. Force or coercion includes, but is not limited to, any of
10 the following 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 that threat.

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 that threat. As used in this subparagraph, "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 which are
23 medically recognized as unethical or unacceptable.

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

26 (c) The actor knows or has reason to know that the victim is
27 mentally incapable, mentally incapacitated, or physically 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 defendant
6 and used this authority to coerce the defendant to violate this
7 subdivision. The defendant has the burden of proving this defense
8 by a preponderance of the evidence. This subdivision does not apply
9 if both persons are lawfully married to each other at the time of
10 the alleged violation.

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

17 (f) 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,
20 **EMPLOYEE, OR CONTRACTUAL SERVICE PROVIDER** of that public or
21 nonpublic school, **SCHOOL DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT,**
22 **OR IS A VOLUNTEER WHO IS NOT A STUDENT IN ANY SCHOOL IN GRADES K**
23 **THROUGH 12, OR IS AN EMPLOYEE OF THIS STATE OR OF A LOCAL UNIT OF**
24 **GOVERNMENT OF THIS STATE OR OF THE UNITED STATES ASSIGNED TO**
25 **PROVIDE ANY SERVICE TO THAT PUBLIC OR NONPUBLIC SCHOOL, SCHOOL**
26 **DISTRICT, OR INTERMEDIATE SCHOOL DISTRICT.** This subdivision does
27 not apply if the other person is emancipated or if both persons are

1 lawfully married to each other at the time of the alleged
2 violation.

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

6 Enacting section 1. This amendatory act takes effect 90 days
7 after the date it is enacted.