

# SENATE BILL No. 386

March 29, 2007, Introduced by Senators PATTERSON, ANDERSON, BIRKHOLZ, KAHN and PAPPAGEORGE and referred to the Committee on Judiciary.

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:

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

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

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

6 (iv) The actor is a teacher, substitute teacher, ~~or~~  
7 administrator, **VOLUNTEER WHO IS NOT A STUDENT AT THAT SCHOOL,**  
8 **EMPLOYEE, OR CONTRACTUAL SERVICE PROVIDER** of the public or  
9 nonpublic school in which that other person is enrolled.

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

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

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

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

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

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

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

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

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

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

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

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

17           (h) That other person is mentally incapable, mentally  
18 disabled, mentally incapacitated, or physically helpless, and any  
19 of the following:

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

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

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

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

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

5 (c) For a violation that is committed by an individual 17  
6 years of age or older against an individual less than 13 years of  
7 age, by imprisonment for life without the possibility of parole if  
8 the person was previously convicted of a violation of this section  
9 or section 520c, 520d, 520e, or 520g committed against an  
10 individual less than 13 years of age or a violation of law of the  
11 United States, another state or political subdivision substantially  
12 corresponding to a violation of this section or section 520c, 520d,  
13 520e, or 520g committed against an individual less than 13 years of  
14 age.

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

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

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

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

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

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

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

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

6 (iv) The actor is a teacher, substitute teacher, ~~or~~  
7 administrator, **VOLUNTEER WHO IS NOT A STUDENT AT THAT SCHOOL,**  
8 **EMPLOYEE, OR CONTRACTUAL SERVICE PROVIDER** of the public or  
9 nonpublic school in which that other person is enrolled.

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

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

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

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

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

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

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

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

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

26 (l) The actor knows or has reason to know that a court has  
27 detained the victim in a facility while the victim is awaiting a

1 trial or hearing, or committed the victim to a facility as a result  
2 of the victim having been found responsible for committing an act  
3 that would be a crime if committed by an adult, and the actor is an  
4 employee or contractual employee of, or a volunteer with, the  
5 facility in which the victim is detained or to which the victim was  
6 committed.

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

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

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

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

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

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

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

26 (d) That other person is related to the actor by blood or  
27 affinity to the third degree and the sexual penetration occurs

1 under circumstances not otherwise prohibited by this chapter. It is  
2 an affirmative defense to a prosecution under this subdivision that  
3 the other person was in a position of authority over the defendant  
4 and used this authority to coerce the defendant to violate this  
5 subdivision. The defendant has the burden of proving this defense  
6 by a preponderance of the evidence. This subdivision does not apply  
7 if both persons are lawfully married to each other at the time of  
8 the alleged violation.

9 (e) That other person is at least 16 years of age but less  
10 than 18 years of age and a student at a public or nonpublic school,  
11 and the actor is a teacher, substitute teacher, ~~or~~ administrator,  
12 **VOLUNTEER WHO IS NOT A STUDENT AT THAT SCHOOL, EMPLOYEE, OR**  
13 **CONTRACTUAL SERVICE PROVIDER** of that public or nonpublic school.  
14 This subdivision does not apply if the other person is emancipated  
15 or if both persons are lawfully married to each other at the time  
16 of the alleged violation.

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.

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

7 (f) That other person is at least 16 years of age but less  
8 than 18 years of age and a student at a public or nonpublic school,  
9 and the actor is a teacher, substitute teacher, ~~or~~ administrator,  
10 **VOLUNTEER WHO IS NOT A STUDENT AT THAT SCHOOL, EMPLOYEE, OR**  
11 **CONTRACTUAL SERVICE PROVIDER** of that public or nonpublic school.  
12 This subdivision does not apply if the other person is emancipated  
13 or if both persons are lawfully married to each other at the time  
14 of the alleged violation.

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