

SENATE BILL No. 1570

November 4, 2010, Introduced by Senator JACOBS and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 520e (MCL 750.520e), as amended by 2007 PA 163.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

10 (i) When the actor overcomes the victim through the actual
11 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 that threat.

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

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

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

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

26 (e) The actor is a mental health professional and the sexual
27 contact occurs during or within 2 years after the period in which

1 the victim is his or her client or patient and not his or her
2 spouse. The consent of the victim is not a defense to a prosecution
3 under this subdivision. A prosecution under this subsection shall
4 not be used as evidence that the victim is mentally incompetent.

5 (f) That other person is at least 16 years of age but less
6 than 18 years of age and a student at a public school or nonpublic
7 school, and either of the following applies:

8 (i) The actor is a teacher, substitute teacher, or
9 administrator of that public school, nonpublic school, school
10 district, or intermediate school district. This subparagraph does
11 not apply if the other person is emancipated or if both persons are
12 lawfully married to each other at the time of the alleged
13 violation.

14 (ii) The actor is an employee or a contractual service provider
15 of the public school, nonpublic school, school district, or
16 intermediate school district in which that other person is
17 enrolled, or is a volunteer who is not a student in any public
18 school or nonpublic school, or is an employee of this state or of a
19 local unit of government of this state or of the United States
20 assigned to provide any service to that public school, nonpublic
21 school, school district, or intermediate school district, and the
22 actor uses his or her employee, contractual, or volunteer status to
23 gain access to, or to establish a relationship with, that other
24 person.

25 (g) That other person is at least 16 years old but less than
26 26 years of age and is receiving special education services, and
27 either of the following applies:

1 (i) The actor is a teacher, substitute teacher, administrator,
2 employee, or contractual service provider of the public school,
3 nonpublic school, school district, or intermediate school district
4 from which that other person receives the special education
5 services. This subparagraph does not apply if both persons are
6 lawfully married to each other at the time of the alleged
7 violation.

8 (ii) The actor is a volunteer who is not a student in any
9 public school or nonpublic school, or is an employee of this state
10 or of a local unit of government of this state or of the United
11 States assigned to provide any service to that public school,
12 nonpublic school, school district, or intermediate school district,
13 and the actor uses his or her employee, contractual, or volunteer
14 status to gain access to, or to establish a relationship with, that
15 other person.

16 **(H) THE ACTOR IS AN EMPLOYEE, CONTRACTUAL SERVICE PROVIDER, OR**
17 **VOLUNTEER OF AN ADULT FOSTER CARE FACILITY IN WHICH THAT OTHER**
18 **PERSON IS A RESIDENT AND THE SEXUAL CONTACT OCCURS DURING THE**
19 **PERIOD OF RESIDENCY. THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO**
20 **A PROSECUTION UNDER THIS SUBDIVISION. AS USED IN THIS SUBDIVISION,**
21 **"ADULT FOSTER CARE FACILITY" MEANS THAT TERM AS DEFINED IN SECTION**
22 **3 OF THE ADULT FOSTER CARE FACILITY LICENSING ACT, 1979 PA 218, MCL**
23 **400.703.**

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