

HOUSE BILL No. 5528

March 29, 2012, Introduced by Rep. Callton 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), as amended by 2007 PA 163.

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.

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

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

3 (iv) The actor is a teacher, substitute teacher, or
4 administrator of the public school, nonpublic school, school
5 district, or intermediate school district in which that other
6 person is enrolled.

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

18 (vi) THE ACTOR IS AN EMPLOYEE, CONTRACTUAL SERVICE PROVIDER, OR
19 VOLUNTEER OF A CHILD CARE ORGANIZATION, OR A PERSON LICENSED TO
20 OPERATE A FOSTER FAMILY HOME OR A FOSTER FAMILY GROUP HOME IN WHICH
21 THAT OTHER PERSON IS A RESIDENT, AND THE SEXUAL PENETRATION OCCURS
22 DURING THE PERIOD OF THAT OTHER PERSON'S RESIDENCY. THE CONSENT OF
23 THE VICTIM IS NOT A DEFENSE TO A PROSECUTION UNDER THIS
24 SUBPARAGRAPH. AS USED IN THIS SUBPARAGRAPH, "CHILD CARE
25 ORGANIZATION", "FOSTER FAMILY HOME", AND "FOSTER FAMILY GROUP HOME"
26 MEAN THOSE TERMS AS DEFINED IN SECTION 1 OF 1973 PA 116, MCL
27 722.111.

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

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

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

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

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

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

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

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

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

27 (iv) When the actor engages in the medical treatment or

1 examination of the victim in a manner or for purposes that are
2 medically recognized as unethical or unacceptable.

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

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

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

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

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

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

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

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

23 (c) For a violation that is committed by an individual 17
24 years of age or older against an individual less than 13 years of
25 age, by imprisonment for life without the possibility of parole if
26 the person was previously convicted of a violation of this section
27 or section 520c, 520d, 520e, or 520g committed against an

1 individual less than 13 years of age or a violation of law of the
2 United States, another state or political subdivision substantially
3 corresponding to a violation of this section or section 520c, 520d,
4 520e, or 520g committed against an individual less than 13 years of
5 age.

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

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

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

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

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

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

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

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

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

(v) 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.

(vi) THE ACTOR IS AN EMPLOYEE, CONTRACTUAL SERVICE PROVIDER, OR VOLUNTEER OF A CHILD CARE ORGANIZATION, OR A PERSON LICENSED TO OPERATE A FOSTER FAMILY HOME OR A FOSTER FAMILY GROUP HOME IN WHICH THAT OTHER PERSON IS A RESIDENT AND THE SEXUAL CONTACT OCCURS DURING THE PERIOD OF THAT OTHER PERSON'S RESIDENCY. THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A PROSECUTION UNDER THIS SUBPARAGRAPH. AS USED IN THIS SUBDIVISION, "CHILD CARE ORGANIZATION", "FOSTER FAMILY HOME", AND "FOSTER FAMILY GROUP HOME" MEAN THOSE TERMS AS DEFINED IN SECTION 1 OF 1973 PA 116, MCL 722.111.

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

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

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

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

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

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

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

14 (h) That other person is mentally incapable, mentally
15 disabled, mentally incapacitated, or physically helpless, and any
16 of the following:

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

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

21 (i) That other person is under the jurisdiction of the
22 department of corrections and the actor is an employee or a
23 contractual employee of, or a volunteer with, the department of
24 corrections who knows that the other person is under the
25 jurisdiction of the department of corrections.

26 (j) That other person is under the jurisdiction of the
27 department of corrections and the actor is an employee or a

1 contractual employee of, or a volunteer with, a private vendor that
2 operates a youth correctional facility under section 20g of the
3 corrections code of 1953, 1953 PA 232, MCL 791.220g, who knows that
4 the other person is under the jurisdiction of the department of
5 corrections.

6 (k) That other person is a prisoner or probationer under the
7 jurisdiction of a county for purposes of imprisonment or a work
8 program or other probationary program and the actor is an employee
9 or a contractual employee of or a volunteer with the county or the
10 department of corrections who knows that the other person is under
11 the county's jurisdiction.

12 (l) The actor knows or has reason to know that a court has
13 detained the victim in a facility while the victim is awaiting a
14 trial or hearing, or committed the victim to a facility as a result
15 of the victim having been found responsible for committing an act
16 that would be a crime if committed by an adult, and the actor is an
17 employee or contractual employee of, or a volunteer with, the
18 facility in which the victim is detained or to which the victim was
19 committed.

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

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

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

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

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

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

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

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

22 (e) That other person is at least 16 years of age but less
23 than 18 years of age and a student at a public school or nonpublic
24 school, and either of the following applies:

25 (i) The actor is a teacher, substitute teacher, or
26 administrator of that public school, nonpublic school, school
27 district, or intermediate school district. This subparagraph does

1 not apply if the other person is emancipated or if both persons are
2 lawfully married to each other at the time of the alleged
3 violation.

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

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

18 (i) The actor is a teacher, substitute teacher, administrator,
19 employee, or contractual service provider of the public school,
20 nonpublic school, school district, or intermediate school district
21 from which that other person receives the special education
22 services. This subparagraph does not apply if both persons are
23 lawfully married to each other at the time of the alleged
24 violation.

25 (ii) The actor is a volunteer who is not a student in any
26 public school or nonpublic school, or is an employee of this state
27 or of a local unit of government of this state or of the United

1 States assigned to provide any service to that public school,
2 nonpublic school, school district, or intermediate school district,
3 and the actor uses his or her employee, contractual, or volunteer
4 status to gain access to, or to establish a relationship with, that
5 other person.

6 (G) THE ACTOR IS AN EMPLOYEE, CONTRACTUAL SERVICE PROVIDER, OR
7 VOLUNTEER OF A CHILD CARE ORGANIZATION, OR A PERSON LICENSED TO
8 OPERATE A FOSTER FAMILY HOME OR A FOSTER FAMILY GROUP HOME, IN
9 WHICH THAT OTHER PERSON IS A RESIDENT, THAT OTHER PERSON IS AT
10 LEAST 16 YEARS OF AGE, AND THE SEXUAL PENETRATION OCCURS DURING
11 THAT OTHER PERSON'S RESIDENCY. THE CONSENT OF THE VICTIM IS NOT A
12 DEFENSE TO A PROSECUTION UNDER THIS SUBDIVISION. AS USED IN THIS
13 SUBDIVISION, "CHILD CARE ORGANIZATION", "FOSTER FAMILY HOME", AND
14 "FOSTER FAMILY GROUP HOME" MEAN THOSE TERMS AS DEFINED IN SECTION 1
15 OF 1973 PA 116, MCL 722.111.

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

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

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

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

27 (i) When the actor overcomes the victim through the actual

1 application of physical force or physical violence.

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

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

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

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

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

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

27 (e) The actor is a mental health professional and the sexual

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

6 (f) 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 either of the following applies:

9 (i) The actor is a teacher, substitute teacher, or
10 administrator of that public school, nonpublic school, school
11 district, or intermediate school district. This subparagraph does
12 not apply if the other person is emancipated or if both persons are
13 lawfully married to each other at the time of the alleged
14 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 (g) 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 (H) THE ACTOR IS AN EMPLOYEE, CONTRACTUAL SERVICE PROVIDER, OR
18 VOLUNTEER OF A CHILD CARE ORGANIZATION, OR A PERSON LICENSED TO
19 OPERATE A FOSTER FAMILY HOME OR A FOSTER FAMILY GROUP HOME, IN
20 WHICH THAT OTHER PERSON IS A RESIDENT, THAT OTHER PERSON IS AT
21 LEAST 16 YEARS OF AGE, AND THE SEXUAL CONTACT OCCURS DURING THAT
22 OTHER PERSON'S RESIDENCY. THE CONSENT OF THE VICTIM IS NOT A
23 DEFENSE TO A PROSECUTION UNDER THIS SUBDIVISION. AS USED IN THIS
24 SUBDIVISION, "CHILD CARE ORGANIZATION", "FOSTER FAMILY HOME", AND
25 "FOSTER FAMILY GROUP HOME" MEAN THOSE TERMS AS DEFINED IN SECTION 1
26 OF 1973 PA 116, MCL 722.111.

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

- 1 misdemeanor punishable by imprisonment for not more than 2 years or
- 2 a fine of not more than \$500.00, or both.