

HOUSE BILL No. 5585

February 15, 2018, Introduced by Rep. Kahle and referred to the Committee on Law and Justice.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 520d and 520e (MCL 750.520d and 750.520e), as
amended by 2012 PA 372.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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~~ **IS** a student at a public school or
16 nonpublic school, and either of the following applies:

17 (i) The actor is a teacher, substitute teacher, or
18 administrator of that public school, nonpublic school, school
19 district, or intermediate school district. This subparagraph does
20 not apply if ~~the other person is emancipated or if~~ both persons are
21 lawfully married to each other at the time of the alleged
22 violation.

23 (ii) The actor is an employee or a contractual service
24 provider of the public school, nonpublic school, school district,
25 or intermediate school district in which that other person is
26 enrolled, or is a volunteer who is not a student in any public
27 school or nonpublic school, or is an employee of this state or of a

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

7 ~~—— (f) That other person is at least 16 years old but less than~~
8 ~~26 years of age and is receiving special education services, and~~
9 ~~either of the following applies:~~

10 ~~—— (i) The actor is a teacher, substitute teacher, administrator,~~
11 ~~employee, or contractual service provider of the public school,~~
12 ~~nonpublic school, school district, or intermediate school district~~
13 ~~from which that other person receives the special education~~
14 ~~services. This subparagraph does not apply if both persons are~~
15 ~~lawfully married to each other at the time of the alleged~~
16 ~~violation.~~

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

25 (F) ~~(g)~~ The actor is an employee, contractual service
26 provider, or volunteer of a child care organization, or a person
27 licensed to operate a foster family home or a foster family group

1 home, in which that other person is a resident, that other person
2 is at least 16 years of age, and the sexual penetration occurs
3 during that other person's residency. As used in this subdivision,
4 "child care organization", "foster family home", and "foster family
5 group home" mean those terms as defined in section 1 of 1973 PA
6 116, MCL 722.111.

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

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

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

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

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

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

24 (iii) When the actor coerces the victim to submit by
25 threatening to retaliate in the future against the victim, or any
26 other person, and the victim believes that the actor has the
27 ability to execute that threat. As used in this subparagraph, "to

1 retaliate" includes threats of physical punishment, kidnapping, or
2 extortion.

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

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

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

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

20 (e) The actor is a mental health professional and the sexual
21 contact occurs during or within 2 years after the period in which
22 the victim is his or her client or patient and not his or her
23 spouse. The consent of the victim is not a defense to a prosecution
24 under this subdivision. A prosecution under this subsection ~~shall~~
25 **MUST** not be used as evidence that the victim is mentally
26 incompetent.

27 (f) That other person is at least 16 years of age ~~but less~~

1 ~~than 18 years of age and~~ **IS** a student at a public school or
2 nonpublic school, and either of the following applies:

3 (i) The actor is a teacher, substitute teacher, or
4 administrator of that public school, nonpublic school, school
5 district, or intermediate school district. This subparagraph does
6 not apply if ~~the other person is emancipated or if both persons are~~
7 lawfully married to each other at the time of the alleged
8 violation.

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

20 ~~—— (g) That other person is at least 16 years old but less than~~
21 ~~26 years of age and is receiving special education services, and~~
22 ~~either of the following applies:~~

23 ~~—— (i) The actor is a teacher, substitute teacher, administrator,~~
24 ~~employee, or contractual service provider of the public school,~~
25 ~~nonpublic school, school district, or intermediate school district~~
26 ~~from which that other person receives the special education~~
27 ~~services. This subparagraph does not apply if both persons are~~

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

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

11 (G) ~~(h)~~ The actor is an employee, contractual service
12 provider, or volunteer of a child care organization, or a person
13 licensed to operate a foster family home or a foster family group
14 home, in which that other person is a resident, that other person
15 is at least 16 years of age, and the sexual contact occurs during
16 that other person's residency. As used in this subdivision, "child
17 care organization", "foster family home", and "foster family group
18 home" mean those terms as defined in section 1 of 1973 PA 116, MCL
19 722.111.

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

23 Enacting section 1. This amendatory act takes effect 90 days
24 after the date it is enacted into law.