

HOUSE BILL NO. 5075

October 03, 2023, Introduced by Reps. Bezotte, Wozniak, Maddock, DeBoyer, Alexander, Mueller, Johnsen, BeGole, Bollin, Paquette, Harris, Filler, Beson, Slagh and Meerman and referred to the Committee on Criminal Justice.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 520c. (1) A person is guilty of criminal sexual conduct
- 2 in the second degree if the person engages in sexual contact with
- 3 another person and if any of the following circumstances exists:
- 4 (a) That other person is under 13 years of age.

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

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

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

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

8 (iv) The actor is a teacher, substitute teacher, or
9 administrator of the public school, nonpublic school, school
10 district, or intermediate school district in which that other
11 person is enrolled.

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

23 (vi) The actor is an employee, contractual service provider, or
24 volunteer of a child care organization, or a person licensed to
25 operate a foster family home or a foster family group home in which
26 that other person is a resident and the sexual contact occurs
27 during the period of that other person's residency. As used in this
28 subdivision, "child care organization", "foster family home", and
29 "foster family group home" mean those terms as defined in section 1

1 of 1973 PA 116, MCL 722.111.

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

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

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

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

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

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

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.

28 (i) That other person is under the jurisdiction of the
29 department of corrections and the actor is an employee or a

1 contractual employee of, or a volunteer with, the department of
2 corrections who knows that the other person is under the
3 jurisdiction of the department of corrections.

4 (j) That other person is under the jurisdiction of the
5 department of corrections and the actor is an employee or a
6 contractual employee of, or a volunteer with, a private vendor that
7 operates a youth correctional facility under section 20g of the
8 corrections code of 1953, 1953 PA 232, MCL 791.220g, who knows that
9 the other person is under the jurisdiction of the department of
10 corrections.

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

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

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

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

28 (b) In addition to the penalty specified in subdivision (a),
29 the court shall sentence the defendant to lifetime electronic

1 monitoring under section 520n if the violation involved sexual
2 contact committed by an individual 17 years of age or older against
3 an individual less than 13 years of age.

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

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

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

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

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

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

29 (e) That other person is at least 16 years of age but less

1 than 18 years of age and a student at a public school or nonpublic
2 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 provider
10 of the public school, nonpublic school, school district, or
11 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~~ **the actor's** employee, contractual, or
18 volunteer status to gain access to, or to establish a relationship
19 with, that other person.

20 (f) 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
28 lawfully married to each other at the time of the alleged
29 violation.

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

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

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

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

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

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

1 that other person.

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

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

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

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

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

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

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

22 (d) That other person is related to the actor by blood or
23 affinity to the third degree and the sexual contact occurs under
24 circumstances not otherwise prohibited by this chapter. It is an
25 affirmative defense to a prosecution under this subdivision that
26 the other person was in a position of authority over the defendant
27 and used this authority to coerce the defendant to violate this
28 subdivision. The defendant has the burden of proving this defense
29 by a preponderance of the evidence. This subdivision does not apply

1 if both persons are lawfully married to each other at the time of
2 the alleged violation.

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

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

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

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

1 (g) 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 either of the following applies:

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

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

19 (h) The actor is an employee, contractual service provider, or
20 volunteer of a child care organization, or a person licensed to
21 operate a foster family home or a foster family group home, in
22 which that other person is a resident, that other person is at
23 least 16 years of age, and the sexual contact occurs during that
24 other person's residency. As used in this subdivision, "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.

28 (2) Criminal sexual conduct in the fourth degree is a
29 misdemeanor punishable by imprisonment for not more than 2 years or

1 a fine of not more than \$500.00, or both.

2 **(3) The court may order a term of imprisonment imposed under**
3 **this section to be served consecutively to any term of imprisonment**
4 **imposed for any other criminal offense arising from the same**
5 **transaction.**

6 Sec. 520g. (1) Assault with intent to commit criminal sexual
7 conduct involving sexual penetration ~~shall be~~ **is** a felony
8 punishable by imprisonment for not more than 10 years.

9 (2) Assault with intent to commit criminal sexual conduct in
10 the second degree is a felony punishable by imprisonment for not
11 more than 5 years.

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

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