

SENATE BILL NO. 879

February 12, 1998, Introduced by Senators EMMONS, MC MANUS and SHUGARS and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 520a, 520b, 520c, 520d, and 520e (MCL 750.520a, 750.520b, 750.520c, 750.520d, and 750.520e), sections 520a, 520b, and 520c as amended by 1983 PA 158 and sections 520d and 520e as amended by 1996 PA 155.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 520a. As used in ~~sections 520a to 520l~~ THIS

2 CHAPTER:

3 (a) "Actor" means a person accused of criminal sexual con-
4 duct IN VIOLATION OF THIS CHAPTER.

5 (b) "Developmental disability" means an impairment of gen-
6 eral intellectual functioning or adaptive behavior ~~which~~ THAT
7 meets ALL OF the following criteria:

1 (i) It originated before the person became 18 years of age.

2 (ii) It has continued since its origination or can be
3 expected to continue indefinitely.

4 (iii) It constitutes a substantial burden to the impaired
5 person's ability to perform in society.

6 (iv) It is attributable to 1 or more of the following:

7 (A) Mental retardation, cerebral palsy, epilepsy, or
8 autism.

9 (B) Any other condition of a person found to be closely
10 related to mental retardation because it produces a similar
11 impairment or requires treatment and services similar to those
12 required for a person who is mentally retarded.

13 (C) "EMANCIPATED" MEANS EMANCIPATED UNDER 1968 PA 293, MCL
14 722.1 TO 722.6.

15 (D) ~~(c)~~ "Intimate parts" includes the primary genital
16 area, groin, inner thigh, buttock, or breast of a human being.

17 (E) ~~(d)~~ "Mental illness" means a substantial disorder of
18 thought or mood ~~which~~ THAT significantly impairs judgment,
19 behavior, capacity to recognize reality, or ability to cope with
20 the ordinary demands of life.

21 (F) ~~(e)~~ "Mentally disabled" means that a person has a
22 mental illness, is mentally retarded, or has a developmental
23 disability.

24 (G) ~~(f)~~ "Mentally incapable" means that a person suffers
25 from a mental disease or defect ~~which~~ THAT renders that person
26 temporarily or permanently incapable of appraising the nature of
27 his or her conduct.

1 (H) ~~(g)~~ "Mentally incapacitated" means that a person is
2 rendered temporarily incapable of appraising or controlling his
3 or her conduct due to the influence of a narcotic, anesthetic, or
4 other substance administered to that person without his or her
5 consent ~~,~~ or due to any other act committed upon that person
6 without his or her consent.

7 (I) ~~(h)~~ "Mentally retarded" means HAVING significantly
8 subaverage general intellectual functioning ~~which~~ THAT origi-
9 nates during the developmental period and is associated with
10 impairment in adaptive behavior.

11 (J) ~~(i)~~ "Physically helpless" means that a person is
12 unconscious ~~,~~ OR asleep ~~,~~ or for any other reason is physi-
13 cally unable to communicate unwillingness to an act.

14 (K) ~~(j)~~ "Personal injury" means bodily injury, disfigure-
15 ment, mental anguish, chronic pain, pregnancy, disease, or loss
16 or impairment of a sexual or reproductive organ.

17 (L) ~~(k)~~ "Sexual contact" includes the intentional touching
18 of the victim's or actor's intimate parts or the intentional
19 touching of the clothing covering the immediate area of the
20 victim's or actor's intimate parts, if that intentional touching
21 can reasonably be construed as being for the purpose of sexual
22 arousal or gratification.

23 (M) ~~(l)~~ "Sexual penetration" means sexual intercourse,
24 cunnilingus, fellatio, anal intercourse, or any other intrusion,
25 however slight, of any part of a person's body or of any object
26 into the genital or anal openings of another person's body. ~~but~~
27 ~~emission~~ EMISSION of semen is not required.

1 (N) ~~(m)~~ "Victim" means the person alleging to have been
2 subjected to criminal sexual conduct IN VIOLATION OF THIS
3 CHAPTER.

4 Sec. 520b. (1) A person is guilty of criminal sexual con-
5 duct in the first degree if he or she engages in sexual penetra-
6 tion with another person and if any of the following circum-
7 stances ~~exists~~ EXIST:

8 (a) That other person is ~~under~~ LESS THAN 13 years of age.

9 (b) That other person is at least 13 YEARS OF AGE but less
10 than ~~16~~ 18 years of age and THE ACTOR IS any of the following:

11 (i) ~~The actor is a~~ A member of the same household as the
12 victim. THIS SUBPARAGRAPH DOES NOT APPLY IF THE VICTIM IS EMAN-
13 CIPATED OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO EACH OTHER AT
14 THE TIME OF THE ALLEGED VIOLATION.

15 (ii) ~~The actor is related~~ RELATED to the victim by blood
16 or affinity to the fourth degree. THIS SUBPARAGRAPH DOES NOT
17 APPLY IF THE VICTIM IS EMANCIPATED OR IF BOTH PERSONS ARE LAW-
18 FULLY MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.

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

21 (iv) THREE OR MORE YEARS OLDER THAN THE VICTIM. THIS SUB-
22 PARAGRAPH DOES NOT APPLY IF THE VICTIM IS EMANCIPATED OR IF BOTH
23 PERSONS ARE LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE
24 ALLEGED VIOLATION.

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

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

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

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

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~~ IS 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 threat-
20 ening to use force or violence on the victim ~~,~~ and the victim
21 believes ~~that~~ the actor has the present ability to execute
22 ~~these threats~~ THAT THREAT.

23 (iii) When the actor coerces the victim to submit by threat-
24 ening to retaliate in the future against the victim ~~,~~ or any
25 other person ~~,~~ and the victim believes ~~that~~ the actor has the
26 ability to execute ~~this~~ THAT threat. As used in this
27 ~~subdivision,~~ SUBPARAGRAPH, "THREATENING to retaliate"

1 includes BUT IS NOT LIMITED TO threats of physical punishment,
2 kidnapping, or 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, through concealment or by the element of
7 surprise, is able to overcome the victim.

8 (g) The actor causes personal injury to the victim ~~,~~ and
9 ~~the actor~~ knows or has reason to know that the victim is men-
10 tally incapable, mentally incapacitated, or physically helpless.

11 (h) That other person is mentally incapable, mentally dis-
12 abled, mentally incapacitated, or physically helpless, and THE
13 ACTOR IS any of the following:

14 (i) ~~The actor is related~~ RELATED to the victim by blood or
15 affinity to the fourth degree.

16 (ii) ~~The actor is in~~ IN a position of authority over the
17 victim and used this authority to coerce the victim to submit.

18 (2) Criminal sexual conduct in the first degree is a felony
19 punishable by imprisonment ~~in the state prison~~ for life or
20 ~~for~~ any term of years.

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

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

26 (b) That other person is at least 13 YEARS OF AGE but less
27 than ~~16~~ 18 years of age and THE ACTOR IS any of the following:

1 (i) ~~The actor is a~~ A member of the same household as the
2 victim. THIS SUBPARAGRAPH DOES NOT APPLY IF THE VICTIM IS EMAN-
3 CIPATED OR IF BOTH PERSONS ARE LAWFULLY MARRIED TO EACH OTHER AT
4 THE TIME OF THE ALLEGED VIOLATION.

5 (ii) ~~The actor is related~~ RELATED by blood or affinity to
6 the fourth degree to the victim. THIS SUBPARAGRAPH DOES NOT
7 APPLY IF THE VICTIM IS EMANCIPATED OR IF BOTH PERSONS ARE LAW-
8 FULLY MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED VIOLATION.

9 (iii) ~~The actor is in~~ IN a position of authority over the
10 victim and ~~the actor~~ used this authority to coerce the victim
11 to submit.

12 (iv) THREE OR MORE YEARS OLDER THAT THE VICTIM. THIS SUB-
13 PARAGRAPH DOES NOT APPLY IF THE VICTIM IS EMANCIPATED OR IF BOTH
14 PERSONS ARE LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE
15 ALLEGED VIOLATION.

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

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

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

23 (ii) The actor uses force or coercion to accomplish the
24 sexual contact. Force or coercion includes but is not limited to
25 any of the circumstances listed in ~~sections~~ SECTION
26 520b(1)(f)(i) to (v).

1 (e) The actor is armed with a weapon ~~—~~ or any article used
2 or fashioned in a manner to lead ~~a person~~ THE VICTIM to
3 reasonably believe it ~~to be~~ IS a weapon.

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

8 (g) The actor causes personal injury to the victim and ~~the~~
9 ~~actor~~ knows or has reason to know that the victim is mentally
10 incapable, mentally incapacitated, or physically helpless.

11 (h) That other person is mentally incapable, mentally dis-
12 abled, mentally incapacitated, or physically helpless, and THE
13 ACTOR IS any of the following:

14 (i) ~~The actor is related~~ RELATED to the victim by blood or
15 affinity to the fourth degree.

16 (ii) ~~The actor is in~~ IN a position of authority over the
17 victim and used this authority to coerce the victim to submit.

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

20 Sec. 520d. (1) A person is guilty of criminal sexual con-
21 duct in the third degree if the person engages in sexual penetra-
22 tion with another person and if any of the following circum-
23 stances exist:

24 (a) That other person is at least 13 years of age ~~and under~~
25 ~~16~~ BUT LESS THAN 18 years of age. THIS SUBDIVISION DOES NOT
26 APPLY IF THE VICTIM IS EMANCIPATED OR IF BOTH PERSONS ARE

1 LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED
2 VIOLATION.

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

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

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

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

21 Sec. 520e. (1) A person is guilty of criminal sexual con-
22 duct in the fourth degree if he or she engages in sexual contact
23 with another person and if any of the following circumstances
24 exist:

25 (a) That other person is at least 13 years of age ~~and under~~
26 ~~16~~ BUT LESS THAN 18 years of age. ~~, and the actor is 5 or more~~
27 ~~years older than that other person.~~ THIS SUBDIVISION DOES NOT

1 APPLY IF THE VICTIM IS EMANCIPATED OR IF BOTH PERSONS ARE
2 LAWFULLY MARRIED TO EACH OTHER AT THE TIME OF THE ALLEGED
3 VIOLATION.

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

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

9 (ii) When the actor coerces the victim to submit by threat-
10 ening to use force or violence on the victim ~~—~~ and the victim
11 believes ~~that~~ the actor has the present ability to execute
12 ~~these threats~~ THAT THREAT.

13 (iii) When the actor coerces the victim to submit by threat-
14 ening to retaliate in the future against the victim ~~—~~ or any
15 other person ~~,~~ and the victim believes ~~that~~ the actor has the
16 ability to execute ~~this~~ THAT threat. As used in this
17 ~~subdivision,~~ SUBPARAGRAPH, "THREATENING to retaliate"
18 includes BUT IS NOT LIMITED TO threats of physical punishment,
19 kidnapping, or extortion.

20 (iv) When the actor engages in the medical treatment or
21 examination of the victim in a manner or for purposes ~~which are~~
22 medically recognized as unethical or unacceptable.

23 (v) When the actor achieves the sexual contact through con-
24 cealment or by the element of surprise.

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

1 (d) That other person is under the jurisdiction of the
2 department of corrections and the actor is an employee or a con-
3 tractual employee of —, or a volunteer with —, the department
4 of corrections who knows that the other person is under the
5 jurisdiction of the department of corrections.

6 (e) 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
9 employee or a contractual employee of or a volunteer with the
10 county who knows that the other person is under the county's
11 jurisdiction.

12 (f) The actor knows or has reason to know that the
13 ~~juvenile~~ FAMILY division of ~~the probate~~ CIRCUIT court, the
14 circuit court, or the recorder's court of the city of Detroit has
15 detained the victim in a facility while the victim is awaiting a
16 trial or hearing, or committed the victim to a facility as a
17 result of the victim having been found responsible for committing
18 an act that would be a crime if committed by an adult, and the
19 actor is an employee or contractual employee of —, or a volun-
20 teer with —, the facility in which the victim is detained or to
21 which the victim was committed.

22 (g) 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
27 defendant and used this authority to coerce the defendant to

1 violate this subdivision. The defendant has the burden of
2 proving this defense by a preponderance of the evidence. This
3 subdivision does not apply if both persons are lawfully married
4 to each other at the time of the alleged violation.

5 (2) Criminal sexual conduct in the fourth degree is a misde-
6 meanor punishable by imprisonment for not more than 2 years or a
7 fine of not more than \$500.00, or both.