

SUBSTITUTE FOR
HOUSE BILL NO. 5531

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 520a and 520c (MCL 750.520a and 750.520c), as
amended by 2002 PA 714, and by adding section 520n.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 520a. As used in this chapter:
- 2 (a) "Actor" means a person accused of criminal sexual conduct.
- 3 (b) "Developmental disability" means an impairment of general
- 4 intellectual functioning or adaptive behavior which meets the
- 5 following criteria:
- 6 (i) It originated before the person became 18 years of age.
- 7 (ii) It has continued since its origination or can be expected
- 8 to continue indefinitely.
- 9 (iii) It constitutes a substantial burden to the impaired

1 person's ability to perform in society.

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

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

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

8 (C) **"ELECTRONIC MONITORING" MEANS THAT TERM AS DEFINED IN**
9 **SECTION 85 OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL**
10 **791.285.**

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

13 (E) ~~(d)~~ "Mental health professional" means that term as
14 defined in section 100b of the mental health code, 1974 PA 258, MCL
15 330.1100b.

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

20 (G) ~~(f)~~ "Mentally disabled" means that a person has a mental
21 illness, is mentally retarded, or has a developmental disability.

22 (H) ~~(g)~~ "Mentally incapable" means that a person suffers
23 from a mental disease or defect which renders that person
24 temporarily or permanently incapable of appraising the nature of
25 his or her conduct.

26 (I) ~~(h)~~ "Mentally incapacitated" means that a person is
27 rendered temporarily incapable of appraising or controlling his or

1 her conduct due to the influence of a narcotic, anesthetic, or
2 other substance administered to that person without his or her
3 consent, or due to any other act committed upon that person without
4 his or her consent.

5 (J) ~~(i)~~ "Mentally retarded" means significantly subaverage
6 general intellectual functioning which originates during the
7 developmental period and is associated with impairment in adaptive
8 behavior.

9 (K) ~~(j)~~ "Nonpublic school" means that term as defined in
10 section 5 of the revised school code, 1976 PA 451, MCL 380.5.

11 (L) ~~(k)~~ "Physically helpless" means that a person is
12 unconscious, asleep, or for any other reason is physically unable
13 to communicate unwillingness to an act.

14 (M) ~~(l)~~ "Personal injury" means bodily injury, disfigurement,
15 mental anguish, chronic pain, pregnancy, disease, or loss or
16 impairment of a sexual or reproductive organ.

17 (N) ~~(m)~~ "Public school" means that term as defined in
18 section 5 of the revised school code, 1976 PA 451, MCL 380.5.

19 (O) ~~(n)~~ "Sexual contact" includes the intentional touching
20 of the victim's or actor's intimate parts or the intentional
21 touching of the clothing covering the immediate area of the
22 victim's or actor's intimate parts, if that intentional touching
23 can reasonably be construed as being for the purpose of sexual
24 arousal or gratification, done for a sexual purpose, or in a sexual
25 manner for:

26 (i) Revenge.

27 (ii) To inflict humiliation.

1 (iii) Out of anger.

2 (P) ~~(e)~~ "Sexual penetration" means sexual intercourse,
3 cunnilingus, fellatio, anal intercourse, or any other intrusion,
4 however slight, of any part of a person's body or of any object
5 into the genital or anal openings of another person's body, but
6 emission of semen is not required.

7 (Q) ~~(p)~~ "Victim" means the person alleging to have been
8 subjected to criminal sexual conduct.

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

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

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

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

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

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

20 (iv) The actor is a teacher, substitute teacher, or
21 administrator of the public or nonpublic school in which that other
22 person is enrolled.

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

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

27 (i) The actor knows or has reason to know that the victim is

1 mentally incapable, mentally incapacitated, or physically helpless.

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

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

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

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

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

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

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

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

27 (j) That other person is under the jurisdiction of the

1 department of corrections and the actor is an employee or a
2 contractual employee of, or a volunteer with, a private vendor that
3 operates a youth correctional facility under section 20g of 1953 PA
4 232, MCL 791.220g, who knows that the other person is under the
5 jurisdiction of the department of 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 ~~by~~ **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. 520N. (1) A PERSON CONVICTED UNDER SECTION 520B OR 520C
2 FOR CRIMINAL SEXUAL CONDUCT COMMITTED BY AN INDIVIDUAL 17 YEARS OLD
3 OR OLDER AGAINST AN INDIVIDUAL LESS THAN 13 YEARS OF AGE SHALL BE
4 SENTENCED TO LIFETIME ELECTRONIC MONITORING AS PROVIDED UNDER
5 SECTION 85 OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL
6 791.285.

7 (2) A PERSON WHO HAS BEEN SENTENCED UNDER THIS CHAPTER TO
8 LIFETIME ELECTRONIC MONITORING UNDER SECTION 85 OF THE CORRECTIONS
9 CODE OF 1953, 1953 PA 232, MCL 791.285, WHO DOES ANY OF THE
10 FOLLOWING IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT
11 MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN \$2,000.00, OR BOTH:

12 (A) INTENTIONALLY REMOVES, DEFACES, ALTERS, DESTROYS, OR FAILS
13 TO MAINTAIN THE ELECTRONIC MONITORING DEVICE IN WORKING ORDER.

14 (B) FAILS TO NOTIFY THE DEPARTMENT OF CORRECTIONS THAT THE
15 ELECTRONIC MONITORING DEVICE IS DAMAGED.

16 (C) FAILS TO REIMBURSE THE DEPARTMENT OF CORRECTIONS OR ITS
17 AGENT FOR THE COST OF THE MONITORING.

18 (3) THIS SECTION DOES NOT PROHIBIT AN INDIVIDUAL FROM BEING
19 CHARGED WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION OF
20 LAW THAT IS COMMITTED BY THAT INDIVIDUAL WHILE VIOLATING THIS
21 SECTION.

22 (4) A TERM OF IMPRISONMENT IMPOSED FOR A VIOLATION OF THIS
23 SECTION MAY RUN CONSECUTIVELY TO ANY TERM OF IMPRISONMENT IMPOSED
24 FOR ANOTHER VIOLATION ARISING FROM THE SAME TRANSACTION.

25 Enacting section 1. This amendatory act takes effect 90 days
26 after the date it is enacted.

27 Enacting section 2. This amendatory act does not take effect

1 unless all of the following bills of the 93rd Legislature are
2 enacted into law:

3 (a) House Bill No. 5421.

4 (b) House Bill No. 5533.