

# HOUSE BILL No. 5421

November 10, 2005, Introduced by Reps. Pavlov, Pastor, Shaffer, Stahl, Jones, Steil,  
Gaffney, Baxter and Emmons and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 520b (MCL 750.520b), as amended by 2002 PA 714.

**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 or nonpublic school in which that other  
5 person is enrolled.

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

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

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

12           (ii) The actor uses force or coercion to accomplish the sexual  
13 penetration. Force or coercion includes but is not limited to any  
14 of the circumstances listed in subdivision ~~-(f)(i) to (v)-~~ **(F)**.

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

18           (f) The actor causes personal injury to the victim and force  
19 or coercion is used to accomplish sexual penetration. Force or  
20 coercion includes but is not limited to any of the following  
21 circumstances:

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

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

27           (iii) When the actor coerces the victim to submit by threatening

1 to retaliate in the future against the victim, or any other person,  
2 and the victim believes that the actor has the ability to execute  
3 this threat. As used in this subdivision, "to retaliate" includes  
4 threats of physical punishment, kidnapping, or extortion.

5 (iv) When the actor engages in the medical treatment or  
6 examination of the victim in a manner or for purposes ~~which~~ **THAT**  
7 are medically recognized as unethical or unacceptable.

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

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

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

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

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

20 (2) Criminal sexual conduct in the first degree is a felony  
21 punishable **AS FOLLOWS:**

22 **(A) EXCEPT AS PROVIDED IN SUBDIVISION (B),** by imprisonment ~~in~~  
23 ~~the state prison~~ for life or for any term of years.

24 **(B) FOR A VIOLATION OF SUBSECTION (1)(A) THAT IS COMMITTED BY**  
25 **AN INDIVIDUAL 17 YEARS OF AGE OR OLDER AND ACCOMPLISHED WHILE ARMED**  
26 **WITH A WEAPON OR ANY ARTICLE USED OR FASHIONED IN A MANNER TO LEAD**  
27 **THE VICTIM TO REASONABLY BELIEVE IT TO BE A WEAPON OR THROUGH FORCE**

1 OR COERCION, BY IMPRISONMENT FOR LIFE OR ANY TERM OF YEARS, BUT NOT  
2 LESS THAN 25 YEARS.

3 (3) THE COURT MAY ORDER A TERM OF IMPRISONMENT IMPOSED UNDER  
4 THIS SECTION TO BE SERVED CONSECUTIVELY TO ANY TERM OF IMPRISONMENT  
5 IMPOSED FOR ANY OTHER CRIMINAL OFFENSE ARISING FROM THE SAME  
6 TRANSACTION.

7 Enacting section 1. This amendatory act does not take effect  
8 unless Senate Bill No.\_\_\_\_ or House Bill No. 5422(request no.  
9 04982'05 a) of the 93rd Legislature is enacted into law.