

HOUSE BILL No. 5531

December 29, 2005, Introduced by Rep. David Law and referred to the Committee on
Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 520a, 520b, and 520c (MCL 750.520a, 750.520b,
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.

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

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

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

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

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

11 (C) **"ELECTRONIC MONITORING" MEANS THAT TERM AS DEFINED IN**
12 **SECTION 85 OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL**
13 **791.285.**

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

16 (E) ~~-(d)-~~ "Mental health professional" means that term as
17 defined in section 100b of the mental health code, 1974 PA 258, MCL
18 330.1100b.

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

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

25 (H) ~~-(g)-~~ "Mentally incapable" means that a person suffers
26 from a mental disease or defect which renders that person
27 temporarily or permanently incapable of appraising the nature of

1 his or her conduct.

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

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

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

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

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

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

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

1 manner for:

2 (i) Revenge.

3 (ii) To inflict humiliation.

4 (iii) Out of anger.

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

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

12 Sec. 520b. (1) A person is guilty of criminal sexual conduct
13 in the first degree if he or she engages in sexual penetration with
14 another person and if any of the following circumstances exists:

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

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

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

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

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

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

26 (c) Sexual penetration occurs under circumstances involving
27 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 helpless.

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

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

11 (f) The actor causes personal injury to the victim and force
12 or coercion is used to accomplish sexual penetration. Force or
13 coercion includes but is not limited to any of the following
14 circumstances:

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

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

20 (iii) When the actor coerces the victim to submit by threatening
21 to retaliate in the future against the victim, or any other person,
22 and the victim believes that the actor has the ability to execute
23 this threat. As used in this subdivision, "to retaliate" includes
24 threats of physical punishment, kidnapping, or extortion.

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

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

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

6 (h) That other person is mentally incapable, mentally
7 disabled, mentally incapacitated, or physically helpless, and any
8 of the following:

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

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

13 (2) Criminal sexual conduct in the first degree is a felony
14 punishable ~~by~~ **AS FOLLOWS:**

15 **(A) BY** imprisonment in the state prison for life or for any
16 term of years.

17 **(B) IF THE ACTOR VIOLATES SUBSECTION (1)(A), HE OR SHE SHALL**
18 **BE SENTENCED TO LIFETIME ELECTRONIC MONITORING UNDER SECTION 85 OF**
19 **THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.285.**

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

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

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

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

27 (ii) The actor is related by blood or affinity to the fourth

1 degree to the victim.

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

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

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

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

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

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

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

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

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

26 (h) That other person is mentally incapable, mentally
27 disabled, mentally incapacitated, or physically helpless, and any

1 of the following:

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

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

6 (i) That other person is under the jurisdiction of the
7 department of corrections and the actor is an employee or a
8 contractual employee of, or a volunteer with, the department of
9 corrections who knows that the other person is under the
10 jurisdiction of the department of corrections.

11 (j) That other person is under the jurisdiction of the
12 department of corrections and the actor is an employee or a
13 contractual employee of, or a volunteer with, a private vendor that
14 operates a youth correctional facility under section 20g of 1953 PA
15 232, MCL 791.220g, who knows that the other person is under the
16 jurisdiction of the department of corrections.

17 (k) That other person is a prisoner or probationer under the
18 jurisdiction of a county for purposes of imprisonment or a work
19 program or other probationary program and the actor is an employee
20 or a contractual employee of or a volunteer with the county or the
21 department of corrections who knows that the other person is under
22 the county's jurisdiction.

23 (l) The actor knows or has reason to know that a court has
24 detained the victim in a facility while the victim is awaiting a
25 trial or hearing, or committed the victim to a facility as a result
26 of the victim having been found responsible for committing an act
27 that would be a crime if committed by an adult, and the actor is an

1 employee or contractual employee of, or a volunteer with, the
2 facility in which the victim is detained or to which the victim was
3 committed.

4 (2) Criminal sexual conduct in the second degree is a felony
5 punishable ~~by~~ **AS FOLLOWS:**

6 (A) **BY** imprisonment for not more than 15 years.

7 (B) **IF THE ACTOR VIOLATES SUBSECTION (1)(A), HE OR SHE SHALL**
8 **BE SENTENCED TO LIFETIME ELECTRONIC MONITORING UNDER SECTION 85 OF**
9 **THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.285.**

10 **SEC. 520N. (1) A PERSON WHO HAS BEEN SENTENCED UNDER THIS**
11 **CHAPTER TO LIFETIME ELECTRONIC MONITORING UNDER SECTION 85 OF THE**
12 **CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.285, WHO DOES ANY OF**
13 **THE FOLLOWING IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR**
14 **NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN \$2,000.00, OR**
15 **BOTH:**

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

18 (B) **FAILS TO NOTIFY THE DEPARTMENT OF CORRECTIONS THAT THE**
19 **ELECTRONIC MONITORING DEVICE IS DAMAGED.**

20 (C) **FAILS TO REIMBURSE THE DEPARTMENT OF CORRECTIONS OR ITS**
21 **AGENT FOR THE COST OF THE MONITORING.**

22 (2) **THIS SECTION DOES NOT PROHIBIT AN INDIVIDUAL FROM BEING**
23 **CHARGED WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION OF**
24 **LAW THAT IS COMMITTED BY THAT INDIVIDUAL WHILE VIOLATING THIS**
25 **SECTION.**

26 (3) **A TERM OF IMPRISONMENT IMPOSED FOR A VIOLATION OF THIS**
27 **SECTION MAY RUN CONSECUTIVELY TO ANY TERM OF IMPRISONMENT IMPOSED**

1 **FOR ANOTHER VIOLATION ARISING FROM THE SAME TRANSACTION.**

2 Enacting section 1. This amendatory act does not take effect
3 unless Senate Bill No.____ or House Bill No. 5532(request no.
4 03289'05 *) of the 93rd Legislature is enacted into law.