

Act No. 171
Public Acts of 2006
Approved by the Governor
May 29, 2006
Filed with the Secretary of State
May 30, 2006
EFFECTIVE DATE: August 28, 2006

**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006**

Introduced by Reps. David Law, Anderson, Stewart, Drolet, Zelenko, Kooiman, Meyer, Hummel, Newell, Vander Veen, Williams, Adamini, Brown, Farrah, Pastor, LaJoy, Bieda, Wojno, Acciavatti, Clack, Condino, Vagnozzi, DeRoche, Taub, Stakoe, Garfield, Hune, Gleason, Robertson, Shaffer, Hoogendyk, Nofs, Wenke, Ward, Byrum, Emmons, Steil, Van Regenmorter, Sak, Nitz, Stahl, Sheen, Farhat, Moolenaar, Palsrok, Gillard, Casperson, Dillon, Angerer, Ball, Baxter, Booher, Byrnes, Caul, Clemente, Elsenheimer, Espinoza, Gonzales, Gosselin, Hansen, Hildenbrand, Jones, Kahn, Marleau, McDowell, Moore, Mortimer, Palmer, Pavlov, Pearce, Polidori, Rocca, Schuitmaker, Sheltroun and Spade

ENROLLED HOUSE BILL No. 5531

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," 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:

Sec. 520a. As used in this chapter:

- (a) "Actor" means a person accused of criminal sexual conduct.
- (b) "Developmental disability" means an impairment of general intellectual functioning or adaptive behavior which meets all of the following criteria:
 - (i) It originated before the person became 18 years of age.
 - (ii) It has continued since its origination or can be expected to continue indefinitely.
 - (iii) It constitutes a substantial burden to the impaired person's ability to perform in society.
 - (iv) It is attributable to 1 or more of the following:
 - (A) Mental retardation, cerebral palsy, epilepsy, or autism.
 - (B) Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.
- (c) "Electronic monitoring" means that term as defined in section 85 of the corrections code of 1953, 1953 PA 232, MCL 791.285.
- (d) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.

(e) “Mental health professional” means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

(f) “Mental illness” means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(g) “Mentally disabled” means that a person has a mental illness, is mentally retarded, or has a developmental disability.

(h) “Mentally incapable” means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

(i) “Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.

(j) “Mentally retarded” means significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior.

(k) “Nonpublic school” means that term as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.

(l) “Physically helpless” means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.

(m) “Personal injury” means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.

(n) “Public school” means that term as defined in section 5 of the revised school code, 1976 PA 451, MCL 380.5.

(o) “Sexual contact” includes the intentional touching of the victim’s or actor’s intimate parts or the intentional touching of the clothing covering the immediate area of the victim’s or actor’s intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

(i) Revenge.

(ii) To inflict humiliation.

(iii) Out of anger.

(p) “Sexual penetration” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.

(q) “Victim” means the person alleging to have been subjected to criminal sexual conduct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) In addition to the penalty specified in subdivision (a), the court shall sentence the defendant to lifetime electronic monitoring under section 520n if the violation involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age.

Sec. 520n. (1) A person convicted under section 520b or 520c for criminal sexual conduct committed by an individual 17 years old or older against an individual less than 13 years of age shall be sentenced to lifetime electronic monitoring as provided under section 85 of the corrections code of 1953, 1953 PA 232, MCL 791.285.

(2) A person who has been sentenced under this chapter to lifetime electronic monitoring under section 85 of the corrections code of 1953, 1953 PA 232, MCL 791.285, who does any of the following is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both:

(a) Intentionally removes, defaces, alters, destroys, or fails to maintain the electronic monitoring device in working order.

(b) Fails to notify the department of corrections that the electronic monitoring device is damaged.

(c) Fails to reimburse the department of corrections or its agent for the cost of the monitoring.

(3) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

(4) A term of imprisonment imposed for a violation of this section may run consecutively to any term of imprisonment imposed for another violation arising from the same transaction.

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

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

(a) Senate Bill No. 709.

(b) Senate Bill No. 717.

(c) Senate Bill No. 718.

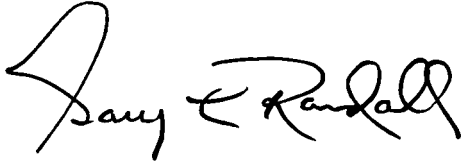
(d) Senate Bill No. 1122.

(e) House Bill No. 5421.

(f) House Bill No. 5422.

(g) House Bill No. 5532.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor