

SENATE BILL No. 590

June 14, 2007, Introduced by Senator WHITMER and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 520b, 520d, and 520e (MCL 750.520b, 750.520d,
and 750.520e), section 520b as amended by 2006 PA 169 and sections
520d and 520e 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

1 the fourth degree.

2 (iii) The actor is in a position of authority over the victim
3 and 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 penetration occurs under circumstances involving
8 the 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 penetration. Force or coercion includes, but is not limited to, any
15 of the circumstances listed in subdivision (f).

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

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

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

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

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

6 (iv) When the actor engages in the medical treatment or
7 examination of the victim in a manner or for purposes that are
8 medically recognized as unethical or unacceptable.

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

11 (vi) **WHEN THE ACTOR INTENTIONALLY LEADS THE VICTIM TO BELIEVE**
12 **THAT THE ACTOR IS SOMEONE OTHER THAN HIMSELF OR HERSELF.**

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

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

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

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

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

25 (a) Except as provided in subdivisions (b) and (c), by
26 imprisonment for life or for any term of years.

27 (b) For a violation that is committed by an individual 17

1 years of age or older against an individual less than 13 years of
2 age by imprisonment for life or any term of years, but not less
3 than 25 years.

4 (c) For a violation that is committed by an individual 17
5 years of age or older against an individual less than 13 years of
6 age, by imprisonment for life without the possibility of parole if
7 the person was previously convicted of a violation of this section
8 or section 520c, 520d, 520e, or 520g committed against an
9 individual less than 13 years of age or a violation of law of the
10 United States, another state or political subdivision substantially
11 corresponding to a violation of this section or section 520c, 520d,
12 520e, or 520g committed against an individual less than 13 years of
13 age.

14 (d) In addition to any other penalty imposed under subdivision
15 (a) or (b), the court shall sentence the defendant to lifetime
16 electronic monitoring under section 520n.

17 (3) The court may order a term of imprisonment imposed under
18 this section to be served consecutively to any term of imprisonment
19 imposed for any other criminal offense arising from the same
20 transaction.

21 Sec. 520d. (1) A person is guilty of criminal sexual conduct
22 in the third degree if the person engages in sexual penetration
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 16
26 years of age.

27 (b) Force or coercion is used to accomplish the sexual

1 penetration. Force or coercion includes but is not limited to any
2 of the circumstances listed in section ~~520b(1)(f)(i) to (v)~~
3 **520B(1)(F)**.

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

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

16 (e) That other person is at least 16 years of age but less
17 than 18 years of age and a student at a public or nonpublic school,
18 and the actor is a teacher, substitute teacher, or administrator of
19 that public or nonpublic school. This subdivision does not apply if
20 the other person is emancipated or if both persons are lawfully
21 married to each other at the time of the alleged violation.

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

24 Sec. 520e. (1) A person is guilty of criminal sexual conduct
25 in the fourth degree if he or she engages in sexual contact with
26 another person and if any of the following circumstances exist:

27 (a) That other person is at least 13 years of age but less

1 than 16 years of age, and the actor is 5 or more years older than
2 that other person.

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

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

8 (ii) When the actor coerces the victim to submit by threatening
9 to use force or violence on the victim, and the victim believes
10 that the actor has the present ability to execute that threat.

11 (iii) When the actor coerces the victim to submit by threatening
12 to retaliate in the future against the victim, or any other person,
13 and the victim believes that the actor has the ability to execute
14 that threat. As used in this subparagraph, "to retaliate" includes
15 threats of physical punishment, kidnapping, or extortion.

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

19 (v) When the actor achieves the sexual contact through
20 concealment or by the element of surprise.

21 **(vi) WHEN THE ACTOR INTENTIONALLY LEADS THE VICTIM TO BELIEVE**
22 **THAT THE ACTOR IS SOMEONE OTHER THAN HIMSELF OR HERSELF.**

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

25 (d) That other person is related to the actor by blood or
26 affinity to the third degree and the sexual contact occurs under
27 circumstances not otherwise prohibited by this chapter. It is an

1 affirmative defense to a prosecution under this subdivision that
2 the other person was in a position of authority over the defendant
3 and used this authority to coerce the defendant to violate this
4 subdivision. The defendant has the burden of proving this defense
5 by a preponderance of the evidence. This subdivision does not apply
6 if both persons are lawfully married to each other at the time of
7 the alleged violation.

8 (e) The actor is a mental health professional and the sexual
9 contact occurs during or within 2 years after the period in which
10 the victim is his or her client or patient and not his or her
11 spouse. The consent of the victim is not a defense to a prosecution
12 under this subdivision. A prosecution under this subsection shall
13 not be used as evidence that the victim is mentally incompetent.

14 (f) That other person is at least 16 years of age but less
15 than 18 years of age and a student at a public or nonpublic school,
16 and the actor is a teacher, substitute teacher, or administrator of
17 that public or nonpublic school. This subdivision does not apply if
18 the other person is emancipated or if both persons are lawfully
19 married to each other at the time of the alleged violation.

20 (2) Criminal sexual conduct in the fourth degree is a
21 misdemeanor punishable by imprisonment for not more than 2 years or
22 a fine of not more than \$500.00, or both.