

HOUSE BILL No. 5521

October 15, 2009, Introduced by Reps. Pearce, Lund, Lori, Opsommer, Knollenberg,
DeShazor, Tyler, Kowall and Agema and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 520d (MCL 750.520d), as amended by 2007 PA 163.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 520d. (1) A person is guilty of criminal sexual conduct
2 in the third degree if the person engages in sexual penetration
3 with another person and if any of the following circumstances
4 exist:

5 (a) That other person is at least 13 years of age and under 16
6 years of age.

7 (b) Force or coercion is used to accomplish the sexual
8 penetration. Force or coercion includes but is not limited to any
9 of the circumstances listed in section 520b(1)(f)(i) to (v).

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

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

13 (e) That other person is at least 16 years of age but less
14 than 18 years of age and a student at a public school or nonpublic
15 school, and either of the following applies:

16 (i) The actor is a teacher, substitute teacher, or
17 administrator of that public school, nonpublic school, school
18 district, or intermediate school district. This subparagraph does
19 not apply if the other person is emancipated or if both persons are
20 lawfully married to each other at the time of the alleged
21 violation.

22 (ii) The actor is an employee or a contractual service provider
23 of the public school, nonpublic school, school district, or
24 intermediate school district in which that other person is
25 enrolled, or is a volunteer who is not a student in any public
26 school or nonpublic school, or is an employee of this state or of a
27 local unit of government of this state or of the United States

1 assigned to provide any service to that public school, nonpublic
2 school, school district, or intermediate school district, and the
3 actor uses his or her employee, contractual, or volunteer status to
4 gain access to, or to establish a relationship with, that other
5 person.

6 (f) That other person is at least 16 years old but less than
7 26 years of age and is receiving special education services, and
8 either of the following applies:

9 (i) The actor is a teacher, substitute teacher, administrator,
10 employee, or contractual service provider of the public school,
11 nonpublic school, school district, or intermediate school district
12 from which that other person receives the special education
13 services. This subparagraph does not apply if both persons are
14 lawfully married to each other at the time of the alleged
15 violation.

16 (ii) The actor is a volunteer who is not a student in any
17 public school or nonpublic school, or is an employee of this state
18 or of a local unit of government of this state or of the United
19 States assigned to provide any service to that public school,
20 nonpublic school, school district, or intermediate school district,
21 and the actor uses his or her employee, contractual, or volunteer
22 status to gain access to, or to establish a relationship with, that
23 other person.

24 **(G) THE ACTOR IS A MENTAL HEALTH PROFESSIONAL AND THE SEXUAL**
25 **PENETRATION OCCURS DURING OR WITHIN 2 YEARS AFTER THE PERIOD IN**
26 **WHICH THE VICTIM IS HIS OR HER CLIENT OR PATIENT AND NOT HIS OR HER**
27 **SPOUSE. THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A PROSECUTION**

1 UNDER THIS SUBDIVISION. A PROSECUTION UNDER THIS SUBSECTION SHALL
2 NOT BE USED AS EVIDENCE THAT THE VICTIM IS MENTALLY INCOMPETENT.

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