

SENATE BILL NO. 990

June 25, 2020, Introduced by Senators HERTEL, IRWIN, CHANG, MCMORROW, ALEXANDER, BAYER, MCCANN, GEISS, POLEHANKI, BRINKS, WOJNO, HOLLIER and ANANICH and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 520a, 520b, 520c, 520d, and 520e (MCL 750.520a, 750.520b, 750.520c, 750.520d, and 750.520e), section 520a as amended by 2014 PA 64, section 520b as amended by 2014 PA 23, and sections 520c, 520d, and 520e as amended by 2012 PA 372.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 520a. As used in this chapter:

1 (a) "Actor" means a person accused of criminal sexual conduct.

2 (b) "Developmental disability" means an impairment of general
3 intellectual functioning or adaptive behavior that meets all of the
4 following criteria:

5 (i) It originated before the person became 18 years of age.

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

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

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

11 (A) Intellectual disability, cerebral palsy, epilepsy, or
12 autism.

13 (B) Any other condition of a person that produces a similar
14 impairment or requires treatment and services similar to those
15 required for a person described in this subdivision.

16 (c) "Electronic monitoring" means that term as defined in
17 section 85 of the corrections code of 1953, 1953 PA 232, MCL
18 791.285.

19 (d) "Intellectual disability" means that term as defined in
20 section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

21 (e) "Intermediate school district" means a corporate body
22 established under part 7 of the revised school code, 1976 PA 451,
23 MCL 380.601 to 380.705.

24 (f) "Intimate parts" includes the primary genital area, groin,
25 inner thigh, buttock, or breast of a human being.

26 (g) "Law enforcement officer" means that term as defined in
27 section 2 of the Michigan commission on law enforcement standards
28 act, 1965 PA 203, MCL 28.602.

29 (h) ~~(g)~~ "Mental health professional" means that term as

1 defined in section 100b of the mental health code, 1974 PA 258, MCL
2 330.1100b.

3 (i) ~~(h)~~—"Mental illness" means a substantial disorder of
4 thought or mood that significantly impairs judgment, behavior,
5 capacity to recognize reality, or ability to cope with the ordinary
6 demands of life.

7 (j) ~~(i)~~—"Mentally disabled" means that a person has a mental
8 illness, is intellectually disabled, or has a developmental
9 disability.

10 (k) ~~(j)~~—"Mentally incapable" means that a person suffers from
11 a mental disease or defect that renders that person temporarily or
12 permanently incapable of appraising the nature of his or her
13 conduct.

14 (l) ~~(k)~~—"Mentally incapacitated" means that a person is
15 rendered temporarily incapable of appraising or controlling his or
16 her conduct due to the influence of a narcotic, anesthetic, or
17 other substance administered to that person without his or her
18 consent, or due to any other act committed upon that person without
19 his or her consent.

20 (m) ~~(l)~~—"Nonpublic school" means a private, denominational, or
21 parochial elementary or secondary school.

22 (n) ~~(m)~~—"Physically helpless" means that a person is
23 unconscious, asleep, or for any other reason is physically unable
24 to communicate unwillingness to an act.

25 (o) ~~(n)~~—"Personal injury" means bodily injury, disfigurement,
26 mental anguish, chronic pain, pregnancy, disease, or loss or
27 impairment of a sexual or reproductive organ.

28 (p) ~~(o)~~—"Public school" means a public elementary or secondary
29 educational entity or agency that is established under the revised

1 school code, 1976 PA 451, MCL 380.1 to 380.1852.

2 (q) ~~(p)~~ "School district" means a general powers school
3 district organized under the revised school code, 1976 PA 451, MCL
4 380.1 to 380.1852.

5 (r) ~~(q)~~ "Sexual contact" includes the intentional touching of
6 the victim's or actor's intimate parts or the intentional touching
7 of the clothing covering the immediate area of the victim's or
8 actor's intimate parts, if that intentional touching can reasonably
9 be construed as being for the purpose of sexual arousal or
10 gratification, done for a sexual purpose, or in a sexual manner
11 for:

12 (i) Revenge.

13 (ii) To inflict humiliation.

14 (iii) Out of anger.

15 (s) ~~(r)~~ "Sexual penetration" means sexual intercourse,
16 cunnilingus, fellatio, anal intercourse, or any other intrusion,
17 however slight, of any part of a person's body or of any object
18 into the genital or anal openings of another person's body, but
19 emission of semen is not required.

20 (t) ~~(s)~~ "Victim" means the person alleging to have been
21 subjected to criminal sexual conduct.

22 Sec. 520b. (1) A person is guilty of criminal sexual conduct
23 in the first degree if he or she engages in sexual penetration with
24 another person and if any of the following circumstances

25 ~~exists:~~**exist:**

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

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

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

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

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

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

9 (v) The actor is an employee or a contractual service provider
10 of the public school, nonpublic school, school district, or
11 intermediate school district in which that other person is
12 enrolled, or is a volunteer who is not a student in any public
13 school or nonpublic school, or is an employee of this state or of a
14 local unit of government of this state or of the United States
15 assigned to provide any service to that public school, nonpublic
16 school, school district, or intermediate school district, and the
17 actor uses his or her employee, contractual, or volunteer status to
18 gain access to, or to establish a relationship with, that other
19 person.

20 (vi) The actor is an employee, contractual service provider, or
21 volunteer of a child care organization, or a person licensed to
22 operate a foster family home or a foster family group home in which
23 that other person is a resident, and the sexual penetration occurs
24 during the period of that other person's residency. As used in this
25 subparagraph, "child care organization", "foster family home", and
26 "foster family group home" mean those terms as defined in section 1
27 of 1973 PA 116, MCL 722.111.

28 **(vii) The actor is a law enforcement officer and the sexual**
29 **penetration occurs while the victim is being detained by or is in**

1 **the custody of the actor.**

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

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

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

8 (ii) The actor uses force or coercion to accomplish the sexual
9 penetration. Force or coercion includes, but is not limited to, any
10 of the circumstances listed in subdivision (f).

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

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

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

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

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

28 (iv) When the actor engages in the medical treatment or
29 examination of the victim in a manner or for purposes that are

1 medically recognized as unethical or unacceptable.

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

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

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

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

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

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

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

18 (b) For a violation that is committed by an individual 17
19 years of age or older against an individual less than 13 years of
20 age by imprisonment for life or any term of years, but not less
21 than 25 years.

22 (c) For a violation that is committed by an individual 18
23 years of age or older against an individual less than 13 years of
24 age, by imprisonment for life without the possibility of parole if
25 the person was previously convicted of a violation of this section
26 or section 520c, 520d, 520e, or 520g committed against an
27 individual less than 13 years of age or a violation of law of the
28 United States, another state or political subdivision substantially
29 corresponding to a violation of this section or section 520c, 520d,

1 520e, or 520g committed against an individual less than 13 years of
2 age.

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

6 (3) The court may order a term of imprisonment imposed under
7 this section to be served consecutively to any term of imprisonment
8 imposed for any other criminal offense arising from the same
9 transaction.

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

13 ~~exists:~~**exist:**

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

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

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

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

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

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

26 (v) The actor is an employee or a contractual service provider
27 of the public school, nonpublic school, school district, or
28 intermediate school district in which that other person is
29 enrolled, or is a volunteer who is not a student in any public

1 school or nonpublic school, or is an employee of this state or of a
2 local unit of government of this state or of the United States
3 assigned to provide any service to that public school, nonpublic
4 school, school district, or intermediate school district, and the
5 actor uses his or her employee, contractual, or volunteer status to
6 gain access to, or to establish a relationship with, that other
7 person.

8 (vi) The actor is an employee, contractual service provider, or
9 volunteer of a child care organization, or a person licensed to
10 operate a foster family home or a foster family group home in which
11 that other person is a resident and the sexual contact occurs
12 during the period of that other person's residency. As used in this
13 subdivision, "child care organization", "foster family home", and
14 "foster family group home" mean those terms as defined in section 1
15 of 1973 PA 116, MCL 722.111.

16 **(vii) The actor is a law enforcement officer and the sexual**
17 **contact occurs while the victim is being detained by or is in the**
18 **custody of the actor.**

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

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

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

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

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

1 be a weapon.

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

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

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

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

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

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

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

28 (k) That other person is a prisoner or probationer under the
29 jurisdiction of a county for purposes of imprisonment or a work

1 program or other probationary program and the actor is an employee
2 or a contractual employee of or a volunteer with the county or the
3 department of corrections who knows that the other person is under
4 the county's jurisdiction.

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

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

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

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

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
28 penetration. Force or coercion includes but is not limited to any
29 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
28 assigned to provide any service to that public school, nonpublic
29 school, school district, or intermediate school district, and the

1 actor uses his or her employee, contractual, or volunteer status to
2 gain access to, or to establish a relationship with, that other
3 person.

4 (f) That other person is at least 16 years old but less than
5 26 years of age and is receiving special education services, and
6 either of the following applies:

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

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

22 (g) The actor is an employee, contractual service provider, or
23 volunteer of a child care organization, or a person licensed to
24 operate a foster family home or a foster family group home, in
25 which that other person is a resident, that other person is at
26 least 16 years of age, and the sexual penetration occurs during
27 that other person's residency. As used in this subdivision, "child
28 care organization", "foster family home", and "foster family group
29 home" mean those terms as defined in section 1 of 1973 PA 116, MCL

1 722.111.

2 (h) The actor is a law enforcement officer, that other person
3 is at least 16 years of age, and the sexual penetration occurs
4 while the other person is being detained by or is in the custody of
5 the actor.

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

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

11 (a) That other person is at least 13 years of age but less
12 than 16 years of age, and the actor is 5 or more years older than
13 that other person.

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

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

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

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

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

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

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

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

15 (e) The actor is a mental health professional and the sexual
16 contact occurs during or within 2 years after the period in which
17 the victim is his or her client or patient and not his or her
18 spouse. The consent of the victim is not a defense to a prosecution
19 under this subdivision. A prosecution under this subsection ~~shall~~
20 **must** not be used as evidence that the victim is mentally
21 incompetent.

22 (f) That other person is at least 16 years of age but less
23 than 18 years of age and a student at a public school or nonpublic
24 school, and either of the following applies:

25 (i) The actor is a teacher, substitute teacher, or
26 administrator of that public school, nonpublic school, school
27 district, or intermediate school district. This subparagraph does
28 not apply if the other person is emancipated or if both persons are
29 lawfully married to each other at the time of the alleged

1 violation.

2 (ii) The actor is an employee or a contractual service provider
3 of the public school, nonpublic school, school district, or
4 intermediate school district in which that other person is
5 enrolled, or is a volunteer who is not a student in any public
6 school or nonpublic school, or is an employee of this state or of a
7 local unit of government of this state or of the United States
8 assigned to provide any service to that public school, nonpublic
9 school, school district, or intermediate school district, and the
10 actor uses his or her employee, contractual, or volunteer status to
11 gain access to, or to establish a relationship with, that other
12 person.

13 (g) That other person is at least 16 years old but less than
14 26 years of age and is receiving special education services, and
15 either of the following applies:

16 (i) The actor is a teacher, substitute teacher, administrator,
17 employee, or contractual service provider of the public school,
18 nonpublic school, school district, or intermediate school district
19 from which that other person receives the special education
20 services. This subparagraph does not apply if both persons are
21 lawfully married to each other at the time of the alleged
22 violation.

23 (ii) The actor is a volunteer who is not a student in any
24 public school or nonpublic school, or is an employee of this state
25 or of a local unit of government of this state or of the United
26 States assigned to provide any service to that public school,
27 nonpublic school, school district, or intermediate school district,
28 and the actor uses his or her employee, contractual, or volunteer
29 status to gain access to, or to establish a relationship with, that

1 other person.

2 (h) The actor is an employee, contractual service provider, or
3 volunteer of a child care organization, or a person licensed to
4 operate a foster family home or a foster family group home, in
5 which that other person is a resident, that other person is at
6 least 16 years of age, and the sexual contact occurs during that
7 other person's residency. As used in this subdivision, "child care
8 organization", "foster family home", and "foster family group home"
9 mean those terms as defined in section 1 of 1973 PA 116, MCL
10 722.111.

11 (i) **The actor is a law enforcement officer, that other person**
12 **is at least 16 years of age, and the sexual contact occurs while**
13 **the other person is being detained by or is in the custody of the**
14 **actor.**

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

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