

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4302**

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 520d, 520e, and 520~~l~~ (MCL 750.520d, 750.520e,
and 750.520~~l~~), sections 520d and 520e as amended by 2012 PA 372 and
section 520~~l~~ as amended by 1988 PA 138.

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

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 (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 penetration occurs
7 under circumstances not otherwise prohibited by this chapter. It is
8 an 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) That other person is at least 16 years of age but less
16 than 18 years of age and a student at a public school or nonpublic
17 school, and either of the following applies:

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

24 (ii) The actor is an employee or a contractual service provider
25 of the public school, nonpublic school, school district, or
26 intermediate school district in which that other person is
27 enrolled, or is a volunteer who is not a student in any public
28 school or nonpublic school, or is an employee of this state or of a
29 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~~ **the actor's** employee, contractual, or
4 volunteer status to gain access to, or to establish a relationship
5 with, that other 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 **not**
14 **less than 18 years of age and were** lawfully married to each other
15 at the time of the alleged 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~~ **the actor's** employee, contractual, or
22 volunteer status to gain access to, or to establish a relationship
23 with, that other person.

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

1 care organization", "foster family home", and "foster family group
2 home" mean those terms as defined in section 1 of 1973 PA 116, MCL
3 722.111.

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

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

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

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

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

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

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

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

29 (v) When the actor achieves the sexual contact through

1 concealment or by the element of surprise.

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

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

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

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

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

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

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

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

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

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

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

13 Sec. 520/. A person may be charged and convicted under sections
14 520b to 520g even though the victim is ~~his or her~~ **the person's**
15 legal spouse. However, a person may not be charged or convicted
16 solely because ~~his or her~~ **the person's** legal spouse is ~~under the~~
17 ~~age of 16,~~ mentally incapable ~~,~~ or mentally incapacitated.

18 Enacting section 1. This amendatory act does not take effect
19 unless Senate Bill No. 209 of the 102nd Legislature is enacted into
20 law.