

HOUSE BILL NO. 4302

March 16, 2023, Introduced by Reps. Andrews, Hope, Brixie, Hill, Young, Grant, Breen, Byrnes, Hoskins, Morgan, Skaggs, Paiz, Brabec and McKinney and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 13, 520d, 520e, and 520l (MCL 750.13, 750.520d, 750.520e, and 750.520l), section 13 as amended by 2015 PA 210, sections 520d and 520e as amended by 2012 PA 372, and section 520l as amended by 1988 PA 138.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. A person who takes or entices away a minor under the
2 age of 16 years from the minor's father, mother, guardian, or other
3 person having the legal charge of the minor, without their consent,

1 for the purpose of prostitution, concubinage, **or** sexual intercourse
2 ~~, or marriage~~ is guilty of a felony punishable by imprisonment for
3 not more than 10 years.

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

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

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

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

15 (d) That other person is related to the actor by blood or
16 affinity to the third degree and the sexual penetration occurs
17 under circumstances not otherwise prohibited by this chapter. It is
18 an affirmative defense to a prosecution under this subdivision that
19 the other person was in a position of authority over the defendant
20 and used this authority to coerce the defendant to violate this
21 subdivision. The defendant has the burden of proving this defense
22 by a preponderance of the evidence. This subdivision does not apply
23 if both persons are lawfully married to each other at the time of
24 the alleged violation.

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

28 (i) The actor is a teacher, substitute teacher, or
29 administrator of that public school, nonpublic school, school

1 district, or intermediate school district. This subparagraph does
2 not apply if the other person is emancipated ~~or if both persons are~~
3 ~~lawfully married to each other~~ at the time of the alleged
4 violation.

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

16 (f) That other person is at least 16 years old but less than
17 26 years of age and is receiving special education services, and
18 either of the following applies:

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

26 (ii) The actor is a volunteer who is not a student in any
27 public school or nonpublic school, or is an employee of this state
28 or of a local unit of government of this state or of the United
29 States assigned to provide any service to that public school,

1 nonpublic school, school district, or intermediate school district,
2 and the actor uses ~~his or her~~ **the actor's** employee, contractual, or
3 volunteer status to gain access to, or to establish a relationship
4 with, that other person.

5 (g) The actor is an employee, contractual service provider, or
6 volunteer of a child care organization, or a person licensed to
7 operate a foster family home or a foster family group home, in
8 which that other person is a resident, that other person is at
9 least 16 years of age, and the sexual penetration occurs during
10 that other person's residency. As used in this subdivision, "child
11 care organization", "foster family home", and "foster family group
12 home" mean those terms as defined in section 1 of 1973 PA 116, MCL
13 722.111.

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

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

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

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

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

28 (ii) When the actor coerces the victim to submit by threatening
29 to use force or violence on the victim, and the victim believes

1 that the actor has the present ability to execute that threat.

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

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

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

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

14 (d) That other person is related to the actor by blood or
15 affinity to the third degree and the sexual contact occurs under
16 circumstances not otherwise prohibited by this chapter. It is an
17 affirmative defense to a prosecution under this subdivision that
18 the other person was in a position of authority over the defendant
19 and used this authority to coerce the defendant to violate this
20 subdivision. The defendant has the burden of proving this defense
21 by a preponderance of the evidence. This subdivision does not apply
22 if both persons are lawfully married to each other at the time of
23 the alleged violation.

24 (e) The actor is a mental health professional and the sexual
25 contact occurs during or within 2 years after the period in which
26 the victim is ~~his or her~~ **the actor's** client or patient and not ~~his~~
27 ~~er her~~ **the actor's** spouse. The consent of the victim is not a
28 defense to a prosecution under this subdivision. A prosecution
29 under this subsection shall not be used as evidence that the victim

1 is mentally incompetent.

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

5 (i) The actor is a teacher, substitute teacher, or
6 administrator of that public school, nonpublic school, school
7 district, or intermediate school district. This subparagraph does
8 not apply if the other person is emancipated ~~or if both persons are~~
9 ~~lawfully married to each other~~ at the time of the alleged
10 violation.

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

22 (g) That other person is at least 16 years old but less than
23 26 years of age and is receiving special education services, and
24 either of the following applies:

25 (i) The actor is a teacher, substitute teacher, administrator,
26 employee, or contractual service provider of the public school,
27 nonpublic school, school district, or intermediate school district
28 from which that other person receives the special education
29 services. This subparagraph does not apply if both persons are **not**

1 **less than 18 years of age and were** lawfully married to each other
2 at the time of the alleged violation.

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

11 (h) The actor is an employee, contractual service provider, or
12 volunteer of a child care organization, or a person licensed to
13 operate a foster family home or a foster family group home, in
14 which that other person is a resident, that other person is at
15 least 16 years of age, and the sexual contact occurs during that
16 other person's residency. As used in this subdivision, "child care
17 organization", "foster family home", and "foster family group home"
18 mean those terms as defined in section 1 of 1973 PA 116, MCL
19 722.111.

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.

23 Sec. 520~~l~~. A person may be charged and convicted under sections
24 520b to 520g even though the victim is ~~his or her~~ **the person's**
25 legal spouse. However, a person may not be charged or convicted
26 solely because ~~his or her~~ **the person's** legal spouse is ~~under the~~
27 ~~age of 16,~~ mentally incapable ~~,~~ or mentally incapacitated.

28 Enacting section 1. This amendatory act does not take effect
29 unless Senate Bill No. ____ or House Bill No. 4293 (request no.

1 01334'23) of the 102nd Legislature is enacted into law.