

SENATE BILL No. 86

February 1, 2001, Introduced by Senator JAYE and referred to the Committee on
Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 136b, 317, 520b, 520c, and 520d (MCL
750.136b, 750.317, 750.520b, 750.520c, and 750.520d), section
136b as amended by 1999 PA 273, section 520b as amended by 1983
PA 158, section 520c as amended by 2000 PA 227, and section 520d
as amended by 1996 PA 155.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 136b. (1) As used in this section:

2 (a) "Child" means a person who is less than 18 years of age
3 and is not emancipated by operation of law as provided in section
4 4 of 1968 PA 293, MCL 722.4.

5 (b) "Cruel" means brutal, inhuman, sadistic, or that which
6 torments.

1 (c) "Omission" means a willful failure to provide the food,
2 clothing, or shelter necessary for a child's welfare or the will-
3 ful abandonment of a child.

4 (d) "Person" means a child's parent or guardian or any other
5 person who cares for, has custody of, or has authority over a
6 child regardless of the length of time that a child is cared for,
7 in the custody of, or subject to the authority of that person.

8 (e) "Physical harm" means any injury to a child's physical
9 condition.

10 (f) "Serious physical harm" means any physical injury to a
11 child that seriously impairs the child's health or physical
12 well-being, including, but not limited to, brain damage, a skull
13 or bone fracture, subdural hemorrhage or hematoma, dislocation,
14 sprain, internal injury, poisoning, burn or scald, or severe
15 cut.

16 (g) "Serious mental harm" means an injury to a child's
17 mental condition or welfare that is not necessarily permanent but
18 results in visibly demonstrable manifestations of a substantial
19 disorder of thought or mood which significantly impairs judgment,
20 behavior, capacity to recognize reality, or ability to cope with
21 the ordinary demands of life.

22 (2) A person is guilty of child abuse in the first degree if
23 the person knowingly or intentionally causes serious physical or
24 serious mental harm to a child. Child abuse in the first degree
25 is a felony ~~punishable~~ AND SHALL BE PUNISHED by imprisonment
26 for ~~not more than 15 years~~ LIFE WITHOUT ELIGIBILITY FOR
27 PAROLE.

1 (3) A person is guilty of child abuse in the second degree
2 if any of the following apply:

3 (a) The person's omission causes serious physical harm or
4 serious mental harm to a child or if the person's reckless act
5 causes serious physical harm to a child.

6 (b) The person knowingly or intentionally commits an act
7 likely to cause serious physical or mental harm to a child
8 regardless of whether harm results.

9 (c) The person knowingly or intentionally commits an act
10 that is cruel to a child regardless of whether harm results.

11 (4) Child abuse in the second degree is a felony punishable
12 by imprisonment for not more than 4 years.

13 (5) A person is guilty of child abuse in the third degree if
14 the person knowingly or intentionally causes physical harm to a
15 child. Child abuse in the third degree is a misdemeanor punish-
16 able by imprisonment for not more than 2 years.

17 (6) A person is guilty of child abuse in the fourth degree
18 if the person's omission or reckless act causes physical harm to
19 a child. Child abuse in the fourth degree is a misdemeanor pun-
20 ishable by imprisonment for not more than 1 year.

21 (7) This section does not prohibit a parent or guardian, or
22 other person permitted by law or authorized by the parent or
23 guardian, from taking steps to reasonably discipline a child,
24 including the use of reasonable force.

25 Sec. 317. (1) ~~Second degree murder--All other kinds of~~
26 ~~murder shall be~~ MURDER, OTHER THAN MURDER IN THE FIRST DEGREE,
27 IS murder ~~of~~ IN the second degree. ~~, and shall be punished~~

1 (2) A PERSON WHO COMMITS MURDER IN THE SECOND DEGREE IS
2 GUILTY OF A FELONY AND SHALL BE PUNISHED by imprisonment ~~in the~~
3 ~~state prison~~ for life ~~, or any term of years, in the discretion~~
4 ~~of the court trying the same~~ WITHOUT ELIGIBILITY FOR PAROLE.

5 Sec. 520b. (1) A person is guilty of criminal sexual con-
6 duct in the first degree if he or she engages in sexual penetra-
7 tion with another person and if any of the following circum-
8 stances exists:

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

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

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

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

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

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

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

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

25 (ii) The actor uses force or coercion to accomplish the
26 sexual penetration. Force or coercion includes but is not

1 limited to any of the circumstances listed in subdivision (f)(i)
2 to (v).

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

6 (f) The actor causes personal injury to the victim and force
7 or coercion is used to accomplish sexual penetration. Force or
8 coercion includes but is not limited to any of the following
9 circumstances:

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

12 (ii) When the actor coerces the victim to submit by threat-
13 ening to use force or violence on the victim, and the victim
14 believes that the actor has the present ability to execute these
15 threats.

16 (iii) When the actor coerces the victim to submit by threat-
17 ening to retaliate in the future against the victim, or any other
18 person, and the victim believes that the actor has the ability to
19 execute this threat. As used in this subdivision, "to retaliate"
20 includes threats of physical punishment, kidnapping, or
21 extortion.

22 (iv) When the actor engages in the medical treatment or
23 examination of the victim in a manner or for purposes ~~which~~
24 THAT are medically recognized as unethical or unacceptable.

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

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

4 (h) That other person is mentally incapable, mentally dis-
5 abled, mentally incapacitated, or physically helpless, and any of
6 the following:

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

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

11 (2) ~~Criminal~~ EXCEPT AS PROVIDED IN SUBSECTION (3),
12 CRIMINAL sexual conduct in the first degree is a felony punish-
13 able by imprisonment in the state prison for life or for any term
14 of years.

15 (3) IF A PERSON IS CONVICTED OF VIOLATING THIS SECTION AND
16 THE VICTIM OF THE VIOLATION WAS LESS THAN 18 YEARS OF AGE WHEN
17 THE VIOLATION WAS COMMITTED, AND THE PERSON WAS PREVIOUSLY CON-
18 VICTED OF VIOLATING THIS SECTION, SECTION 316, 317, 520C, 520D,
19 OR 520E, OR A LAW OF THE UNITED STATES, OF ANOTHER STATE, OR OF A
20 LOCAL UNIT OF GOVERNMENT OF ANOTHER STATE SUBSTANTIALLY CORRE-
21 SPONDING TO THIS SECTION OR SECTION 316, 317, 520C, 520D, OR
22 520E, AND THE VICTIM OF THE PREVIOUS VIOLATION WAS LESS THAN 18
23 YEARS OF AGE WHEN THAT VIOLATION WAS COMMITTED, THE PERSON SHALL
24 BE SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT ELIGIBILITY FOR
25 PAROLE.

26 Sec. 520c. (1) A person is guilty of criminal sexual
27 conduct in the second degree if the person engages in sexual

1 contact with another person and if any of the following
2 circumstances exists:

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

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

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

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

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

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

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

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

20 (ii) The actor uses force or coercion to accomplish the
21 sexual contact. Force or coercion includes, but is not limited
22 to, any of the circumstances listed in sections 520b(1)(f)(i) to
23 (v).

24 (e) The actor is armed with a weapon, or any article used or
25 fashioned in a manner to lead a person to reasonably believe it
26 to be a weapon.

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

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

8 (h) That other person is mentally incapable, mentally dis-
9 abled, mentally incapacitated, or physically helpless, and any of
10 the following:

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

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

15 (i) That other person is under the jurisdiction of the
16 department of corrections and the actor is an employee or a con-
17 tractual employee of, or a volunteer with, the department of cor-
18 rections who knows that the other person is under the jurisdic-
19 tion of the department of corrections.

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

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

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

5 (1) 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
8 result of the victim having been found responsible for committing
9 an act that would be a crime if committed by an adult, and the
10 actor is an employee or contractual employee of, or a volunteer
11 with, the facility in which the victim is detained or to which
12 the victim was committed.

13 (2) ~~Criminal~~ EXCEPT AS PROVIDED IN SUBSECTION (3),
14 CRIMINAL sexual conduct in the second degree is a felony punish-
15 able by imprisonment for not more than 15 years.

16 (3) IF A PERSON IS CONVICTED OF VIOLATING THIS SECTION AND
17 THE VICTIM OF THE VIOLATION WAS LESS THAN 18 YEARS OF AGE WHEN
18 THE VIOLATION WAS COMMITTED, AND THE PERSON WAS PREVIOUSLY CON-
19 VICTED OF VIOLATING THIS SECTION, SECTION 316, 317, 520B, 520D,
20 OR 520E, OR A LAW OF THE UNITED STATES, OF ANOTHER STATE, OR OF A
21 LOCAL UNIT OF GOVERNMENT OF ANOTHER STATE SUBSTANTIALLY CORRE-
22 SPONDING TO THIS SECTION OR SECTION 316, 317, 520B, 520D, OR
23 520E, AND THE VICTIM OF THE PREVIOUS VIOLATION WAS LESS THAN 18
24 YEARS OF AGE WHEN THAT VIOLATION WAS COMMITTED, THE PERSON SHALL
25 BE SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT ELIGIBILITY FOR
26 PAROLE.

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

5 (a) That other person is at least 13 years of age and under
6 16 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
9 any of the circumstances listed in section 520b(1)(f)(i) to (v).

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

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

23 (2) ~~Criminal~~ EXCEPT AS PROVIDED IN SUBSECTION (3),
24 CRIMINAL sexual conduct in the third degree is a felony punish-
25 able by imprisonment for not more than 15 years.

26 (3) IF A PERSON IS CONVICTED OF VIOLATING THIS SECTION AND
27 THE VICTIM OF THE VIOLATION WAS LESS THAN 18 YEARS OF AGE WHEN

1 THE VIOLATION WAS COMMITTED, AND THE PERSON WAS PREVIOUSLY
2 CONVICTED OF VIOLATING THIS SECTION, SECTION 316, 317, 520B,
3 520C, OR 520E, OR A LAW OF THE UNITED STATES, OF ANOTHER STATE,
4 OR OF A LOCAL UNIT OF GOVERNMENT OF ANOTHER STATE SUBSTANTIALLY
5 CORRESPONDING TO THIS SECTION OR SECTION 316, 317, 520B, 520C, OR
6 520E, AND THE VICTIM OF THE PREVIOUS VIOLATION WAS LESS THAN 18
7 YEARS OF AGE WHEN THAT VIOLATION WAS COMMITTED, THE PERSON SHALL
8 BE SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT ELIGIBILITY FOR
9 PAROLE.

10 Enacting section 1. This amendatory act does not take
11 effect unless Senate Bill No. 87
12 of the 91st Legislature is enacted into
13 law.