

HOUSE BILL No. 4913

July 1, 2003, Introduced by Rep. Bieda and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled
 "The Michigan penal code,"
 by amending sections 72, 83, 88, 89, 91, 110, 213, 317, 349,
 520b, 520c, 520d, 529, and 530 (MCL 750.72, 750.83, 750.88,
 750.89, 750.91, 750.110, 750.213, 750.317, 750.349, 750.520b,
 750.520c, 750.520d, 750.529, and 750.530), section 110 as amended
 by 1994 PA 270 and sections 520b, 520c, and 520d as amended by
 2002 PA 714, and by adding section 506b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 72. ~~Burning dwelling house—Any~~ **A** person who
 2 ~~wilfully~~ **willfully** or maliciously burns ~~any~~ **an occupied or**
 3 **unoccupied** dwelling house, ~~either occupied or unoccupied,~~ or
 4 the contents ~~thereof~~ **of a dwelling house**, whether owned by
 5 ~~himself~~ **the person** or another **person**, or any building within
 6 the curtilage of ~~such~~ **the** dwelling house, or the contents

1 ~~thereof, shall be~~ **of the building, is** guilty of a felony ~~—~~
 2 punishable, **except as otherwise provided in section 506b**, by
 3 imprisonment ~~in the state prison for~~ not more than 20 years.

4 Sec. 83. ~~Assault with intent to commit murder—Any~~ **A**
 5 person who ~~shall assault~~ **assaults** another **person** with **the**
 6 intent to commit ~~the crime of~~ murder ~~—, shall be~~ **is** guilty of
 7 a felony ~~—~~ punishable, **except as otherwise provided in**
 8 **section 506b**, by imprisonment ~~in the state prison~~ for life or
 9 any ~~number~~ **term** of years.

10 Sec. 88. ~~Assault with intent to rob and steal being~~
 11 ~~unarmed—Any~~ **A** person ~~—, not being~~ armed with a dangerous
 12 weapon ~~—, who shall assault~~ **assaults** another **person** with force
 13 and violence, and with **the** intent to rob and steal, ~~shall be~~ **is**
 14 guilty of a felony ~~—~~ punishable, **except as otherwise provided**
 15 **in section 506b**, by imprisonment ~~in the state prison for~~ not
 16 more than 15 years.

17 Sec. 89. ~~Assault with intent to rob and steal being~~
 18 ~~armed—Any~~ **A** person ~~—, being~~ armed with a dangerous weapon ~~—~~
 19 or ~~any~~ **an** article used or fashioned in a manner to lead a
 20 person ~~se~~ **who is** assaulted reasonably to believe it ~~to be~~ **is**
 21 a dangerous weapon ~~—, who shall assault~~ **assaults** another
 22 **person** with **the** intent to rob and steal ~~shall be~~ **is** guilty of a
 23 felony ~~—~~ punishable, **except as otherwise provided in**
 24 **section 506b**, by imprisonment ~~in the state prison for~~ life ~~—~~
 25 or ~~for~~ any term of years.

26 Sec. 91. ~~Attempt to murder by poisoning, etc.—Any~~ **A**
 27 person who ~~shall attempt~~ **attempts** to commit the crime of murder

1 by poisoning, drowning, or strangling another person, or by any
 2 means not constituting the crime of assault with intent to
 3 murder, ~~shall be~~ **is** guilty of a felony ~~—~~ punishable, **except**
 4 **as otherwise provided in section 506b**, by imprisonment ~~in the~~
 5 ~~state prison~~ for life or any term of years.

6 Sec. 110. A person who breaks and enters, with intent to
 7 commit a felony or a larceny therein, a tent, hotel, office,
 8 store, shop, warehouse, barn, granary, factory or other building,
 9 structure, boat, ship ~~—~~ or railroad car is guilty of a felony
 10 ~~—~~ punishable, **except as otherwise provided in section 506b**, by
 11 imprisonment for not more than 10 years.

12 Sec. 213. ~~Malicious threats to extort money—Any~~ A person
 13 who ~~shall, either~~ orally or by a written or printed
 14 communication ~~—~~ maliciously ~~threaten~~ **threatens** to accuse
 15 another **person** of ~~any~~ a crime or offense, or ~~shall~~ orally or
 16 by ~~any~~ a written or printed communication maliciously ~~threaten~~
 17 ~~any~~ **threatens an** injury to the person or property or mother,
 18 father, husband, wife, or child of another **person**, with **the**
 19 intent ~~thereby~~ to extort money or any pecuniary advantage,
 20 ~~whatever,~~ or with **the** intent to compel the person ~~se~~
 21 threatened to do or refrain from doing ~~any~~ **an** act against ~~his~~
 22 **the person's** will, ~~shall be~~ **is** guilty of a felony ~~—~~
 23 punishable, **except as otherwise provided in section 506b**, by
 24 imprisonment ~~in the state prison~~ **for** not more than 20 years or
 25 ~~by~~ a fine of not more than \$10,000.00, ~~dollars~~ **or both**.

26 Sec. 317. ~~Second degree murder—All other kinds of murder~~
 27 ~~shall be~~ **Murder other than murder of the first degree as defined**

1 **in section 316 is** murder of the second degree, and shall be
 2 punished, **except as otherwise provided in section 506b**, by
 3 imprisonment ~~in the state prison~~ for life ~~—~~ or any term of
 4 years. ~~—, in the discretion of the court trying the same.~~

5 Sec. 349. (1) ~~Confining person against will, etc.—Any~~ **A**
 6 person who ~~wilfully~~ **willfully**, maliciously, and without lawful
 7 authority ~~shall~~ forcibly or secretly ~~confine or imprison~~
 8 **confines or imprisons** any other person within this state against
 9 ~~his~~ **the person's** will, ~~or shall~~ forcibly ~~carry~~ **carries** or
 10 ~~send such~~ **sends the** person out of this state, or ~~shall~~
 11 forcibly ~~seize or confine, or shall inveigle or kidnap~~ **seizes,**
 12 **confines, inveigles, or kidnaps** any other person with **the** intent
 13 to extort money or **any** other valuable thing ~~thereby~~ or with **the**
 14 intent either to cause ~~such~~ **the** person to be secretly confined
 15 or imprisoned in this state against ~~his~~ **the person's** will, or
 16 in any way held to service against ~~his~~ **the person's** will,
 17 ~~shall be~~ **is** guilty of a felony ~~—~~ punishable, **except as**
 18 **otherwise provided in section 506b**, by imprisonment ~~in the state~~
 19 ~~prison~~ for life or ~~for~~ any term of years.

20 (2) ~~Every offense mentioned~~ **An offense described** in this
 21 section may be tried either in the county in which the ~~same may~~
 22 ~~have been~~ **offense was** committed or in any county in or through
 23 which the person ~~so~~ seized, taken, inveigled, **or** kidnaped, or
 24 whose services ~~shall be~~ **were** sold or transferred, ~~shall have~~
 25 ~~been~~ **was** taken, confined, held, carried, or brought. ~~—; and~~
 26 ~~upon the trial of any such~~ **In a trial for an offense under this**
 27 **section**, the consent ~~thereto~~ of the person ~~—, so~~ **to being**

1 taken, inveigled, kidnaped, or confined, ~~shall~~ or having his or
2 her services sold or transferred, is not ~~be~~ a defense ~~—~~
3 unless ~~it shall be made satisfactorily to appear to the jury~~
4 ~~that such~~ the consent was not obtained by fraud ~~nor~~ or
5 extorted by duress or by ~~threats~~ a threat.

6 Sec. 506b. (1) A person who is convicted of a violation of
7 section 72, 83, 88, 89, 91, 110, 213, 317, 349, 520b, 520c, 520d,
8 529, or 530 in which a victim is an elderly person and who has 1
9 or more prior convictions shall be punished as follows:

10 (a) If the person has 1 prior conviction, by imprisonment for
11 a minimum term of not less than 5 years.

12 (b) If the person has 2 prior convictions, by imprisonment
13 for a minimum term of not less than 10 years.

14 (c) If the person has 3 or more prior convictions, by
15 imprisonment for life.

16 (2) A person described in subsection (1)(a) or (b) may be
17 sentenced to imprisonment for life if that punishment is
18 permitted by law for that offense. A person sentenced to a
19 minimum term of imprisonment under subsection (1)(a) or (b) shall
20 be sentenced to a maximum term as provided by law for that
21 offense.

22 (3) A mandatory term of imprisonment imposed under
23 subsection (1) shall not be suspended. A person sentenced to a
24 mandatory term of imprisonment under subsection (1) is not
25 eligible for probation or parole during that mandatory term.

26 (4) A sentence imposed under this section shall run
27 consecutively to any other sentence imposed against the person

1 that arises out of the same transaction or occurrence from which
2 the sentence under this section arose.

3 (5) As used in this section:

4 (a) "Elderly person" means a person 60 years of age or
5 older.

6 (b) "Prior conviction" means a previous conviction for a
7 violation of section 72, 83, 88, 89, 91, 110, 213, 317, 349,
8 520b, 520c, 520d, 529, or 530 in which the victim was an elderly
9 person.

10 (c) "Victim" means an individual who suffers direct or
11 threatened physical, financial, or emotional harm as a result of
12 the violation.

13 Sec. 520b. (1) A person is guilty of criminal sexual conduct
14 in the first degree if he or she engages in sexual penetration
15 with another person and if any of the following circumstances
16 ~~exists~~ **exist**:

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

18 (b) That other person is at least 13 but less than 16 years
19 of age and any of the following **circumstances exist**:

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

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

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

26 (iv) The actor is a teacher, substitute teacher, or
27 administrator of the public or nonpublic school in which that

1 other person is enrolled.

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
8 helpless.

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

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

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

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

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

26 (iii) When the actor coerces the victim to submit by
27 threatening to retaliate in the future against the victim, or any

1 other person, and the victim believes that the actor has the
2 ability to execute this threat. As used in this subdivision, "to
3 retaliate" includes threats of physical punishment, kidnapping,
4 or extortion.

5 (iv) When the actor engages in the medical treatment or
6 examination of the victim in a manner or for purposes ~~which~~
7 **that** are medically recognized as unethical or unacceptable.

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

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

13 (h) That other person is mentally incapable, mentally
14 disabled, mentally incapacitated, or physically helpless, and any
15 of the following **circumstances exist**:

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

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

20 (2) Criminal sexual conduct in the first degree is a felony
21 punishable, **except as provided in section 506b**, by imprisonment
22 ~~in the state prison~~ for life or ~~for~~ any term of years.

23 Sec. 520c. (1) A person is guilty of criminal sexual conduct
24 in the second degree if the person engages in sexual contact with
25 another person and if any of the following circumstances ~~exists~~
26 **exist**:

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

1 (b) That other person is at least 13 but less than 16 years
2 of age and any of the following **circumstances exist**:

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

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

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

10 (iv) The actor is a teacher, substitute teacher, or
11 administrator of the public or nonpublic school in which that
12 other person is enrolled.

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~~ **section**
23 520b(1)(f)(i) to (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.

27 (f) The actor causes personal injury to the victim and force

1 or coercion is used to accomplish the sexual contact. Force or
2 coercion includes, but is not limited to, any of the
3 circumstances listed in section 520b(1)(f)(i) to (v).

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 **circumstances exist**:

10 (i) The actor is related to the victim by blood or affinity
11 to 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 (i) That other person is under the jurisdiction of the
15 department of corrections and the actor is an employee or a
16 contractual employee of, or a volunteer with, the department of
17 corrections who knows that the other person is under the
18 jurisdiction of the department of corrections.

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

25 (k) That other person is a prisoner or probationer under the
26 jurisdiction of a county for purposes of imprisonment or a work
27 program or other probationary program and the actor is an

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

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

12 (2) Criminal sexual conduct in the second degree is a felony
13 punishable, **except as provided in section 506b**, by imprisonment
14 for not more than 15 years.

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

19 (a) That other person is at least 13 years of age and under
20 16 years of age.

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

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

27 (d) That other person is related to the actor by blood or

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

10 (e) That other person is at least 16 years of age but less
 11 than 18 years of age and a student at a public or nonpublic
 12 school, and the actor is a teacher, substitute teacher, or
 13 administrator of that public or nonpublic school. This
 14 subdivision does not apply if the other person is emancipated or
 15 if both persons are lawfully married to each other at the time of
 16 the alleged violation.

17 (2) Criminal sexual conduct in the third degree is a felony
 18 punishable, **except as provided by section 506b**, by imprisonment
 19 for not more than 15 years.

20 Sec. 529. ~~Any~~ **A** person who ~~shall assault~~ **assaults**
 21 another ~~—~~ **person** and ~~shall~~ feloniously ~~rob, steal and take~~
 22 ~~from his~~ **robs, steals, and takes from the other** person, or in
 23 ~~his~~ **the other person's** presence, any money or other property ~~—~~
 24 ~~which~~ **that** may be the subject of larceny ~~—, such robber being~~
 25 **while** armed with a dangerous weapon ~~—~~ or any article used or
 26 fashioned in a manner to lead the person ~~so~~ assaulted ~~to~~
 27 reasonably **to** believe it to be a dangerous weapon ~~—, shall be~~ **is**

1 guilty of a felony ~~—~~ punishable, **except as otherwise provided**
2 **in section 506b**, by imprisonment ~~in the state prison~~ for life
3 or ~~for~~ any term of years. If an aggravated assault or serious
4 injury is inflicted by any person while ~~committing an armed~~
5 ~~robbery as defined in~~ **violating** this section, **except as**
6 **otherwise provided in section 506b**, the ~~sentence~~ person shall
7 be **sentenced to imprisonment for** not less than 2 **years**. ~~years~~
8 ~~imprisonment in the state prison.~~

9 Sec. 530. ~~Robbery unarmed—Any~~ **A** person who ~~shall,~~ by
10 force and violence ~~—~~ or by assault or putting in fear ~~—~~
11 feloniously ~~rob, steal and take~~ **robs, steals, and takes** from
12 the person of another, or in ~~his~~ **the other person's** presence,
13 any money or other property ~~which~~ **that** may be the subject of
14 larceny, ~~such robber~~ **while** not ~~being~~ armed with a dangerous
15 weapon, ~~shall be~~ **is** guilty of a felony ~~—~~ punishable, **except**
16 **as otherwise provided in section 506b**, by imprisonment ~~in the~~
17 ~~state prison~~ **for** not more than 15 years.