

HOUSE BILL No. 5054

October 3, 2017, Introduced by Rep. Faris and referred to the Committee on Law and Justice.

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

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
8 penetration. Force or coercion includes but is not limited to any

1 of the circumstances listed in section 520b(1) (f) (i) to (v).

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

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

23 (ii) The actor is an employee or a contractual service
24 provider of the public school, nonpublic school, school district,
25 or intermediate school district in which that other person is
26 enrolled, or is a volunteer who is not a student in any public
27 school or nonpublic school, or is an employee of this state or of a

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

7 (f) That other person is at least 16 years old but less than
8 26 years of age and is receiving special education services, and
9 either of the following applies:

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

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

25 (g) The actor is an employee, contractual service provider, or
26 volunteer of a child care organization, or a person licensed to
27 operate a foster family home or a foster family group home, in

1 which that other person is a resident, that other person is at
2 least 16 years of age, and the sexual penetration occurs during
3 that other person's residency. As used in this subdivision, "child
4 care organization", "foster family home", and "foster family group
5 home" mean those terms as defined in section 1 of 1973 PA 116, MCL
6 722.111.

7 **(H) THE ACTOR IS OR PURPORTS TO BE A MEMBER OF THE CLERGY AND**
8 **EITHER OF THE FOLLOWING APPLIES:**

9 **(i) THE SEXUAL PENETRATION OCCURRED DURING THE COURSE OF A**
10 **MEETING IN WHICH THE OTHER PERSON SOUGHT OR RECEIVED RELIGIOUS OR**
11 **SPIRITUAL ADVICE, AID, OR COMFORT FROM THE ACTOR.**

12 **(ii) THE SEXUAL PENETRATION OCCURRED DURING A PERIOD OF TIME**
13 **IN WHICH THE OTHER PERSON WAS MEETING ON AN ONGOING BASIS WITH THE**
14 **ACTOR TO SEEK OR RECEIVE RELIGIOUS OR SPIRITUAL ADVICE, AID, OR**
15 **COMFORT IN A PRIVATE SETTING.**

16 **(2) THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A**
17 **PROSECUTION UNDER SUBSECTION (1) (H) .**

18 **(3) ~~(2)~~—Criminal sexual conduct in the third degree is a**
19 **felony punishable by imprisonment for not more than 15 years.**

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

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

26 **(b) Force or coercion is used to accomplish the sexual**
27 **contact. Force or coercion includes, but is not limited to, any of**

1 the following circumstances:

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

4 (ii) When the actor coerces the victim to submit by
5 threatening to use force or violence on the victim, and the victim
6 believes that the actor has the present ability to execute that
7 threat.

8 (iii) When the actor coerces the victim to submit by
9 threatening to retaliate in the future against the victim, or any
10 other person, and the victim believes that the actor has the
11 ability to execute that threat. As used in this subparagraph, "to
12 retaliate" includes threats of physical punishment, kidnapping, or
13 extortion.

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

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

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

21 (d) That other person is related to the actor by blood or
22 affinity to the third degree and the sexual contact occurs under
23 circumstances not otherwise prohibited by this chapter. It is an
24 affirmative defense to a prosecution under this subdivision that
25 the other person was in a position of authority over the defendant
26 and used this authority to coerce the defendant to violate this
27 subdivision. The defendant has the burden of proving this defense

1 by a preponderance of the evidence. This subdivision does not apply
2 if both persons are lawfully married to each other at the time of
3 the alleged violation.

4 (e) The actor is a mental health professional and the sexual
5 contact occurs during or within 2 years after the period in which
6 the victim is his or her client or patient and not his or her
7 spouse. The consent of the victim is not a defense to a prosecution
8 under this subdivision. A prosecution under this subsection ~~shall~~
9 **MUST** not be used as evidence that the victim is mentally
10 incompetent.

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

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

20 (ii) The actor is an employee or a contractual service
21 provider of the public school, nonpublic school, school district,
22 or intermediate school district in which that other person is
23 enrolled, or is a volunteer who is not a student in any public
24 school or nonpublic school, or is an employee of this state or of a
25 local unit of government of this state or of the United States
26 assigned to provide any service to that public school, nonpublic
27 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 (g) 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 (h) 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 contact occurs during that
27 other person's residency. As used in this subdivision, "child care

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

4 (I) THE ACTOR IS OR PURPORTS TO BE A MEMBER OF THE CLERGY AND
5 EITHER OF THE FOLLOWING APPLIES:

6 (i) THE SEXUAL CONTACT OCCURRED DURING THE COURSE OF A MEETING
7 IN WHICH THE OTHER PERSON SOUGHT OR RECEIVED RELIGIOUS OR SPIRITUAL
8 ADVICE, AID, OR COMFORT FROM THE ACTOR.

9 (ii) THE SEXUAL CONTACT OCCURRED DURING A PERIOD OF TIME IN
10 WHICH THE OTHER PERSON WAS MEETING ON AN ONGOING BASIS WITH THE
11 ACTOR TO SEEK OR RECEIVE RELIGIOUS OR SPIRITUAL ADVICE, AID, OR
12 COMFORT IN A PRIVATE SETTING.

13 (2) THE CONSENT OF THE VICTIM IS NOT A DEFENSE TO A
14 PROSECUTION UNDER SUBSECTION (1) (I).

15 (3) ~~(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.