

HOUSE BILL No. 5847

May 31, 1990, Introduced by Reps. Runco, Kulchitsky, Bartnik, Rocca, Law, Dunaskiss, Hoffman, London, Honigman, Willis Bullard, Alley, Richard A. Young, Spaniola, Bennett, Webb, Stupak, Palamara, Porreca, Crandall, Camp, Strand, DeMars, Middaugh, Giese, Martin, Stopczynski, Banks and Jaye and referred to the Committee on Judiciary.

A bill to amend sections 72, 83, 88, 89, 91, 110, 213, 317, 349, 520b, 520c, 520d, 529, and 530 of Act No. 328 of the Public Acts of 1931, entitled "The Michigan penal code," sections 520b, 520c, and 520d as amended by Act No. 158 of the Public Acts of 1983, being sections 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 of the Michigan Compiled Laws; and to add section 506b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 72, 83, 88, 89, 91, 110, 213, 317, 349,
2 520b, 520c, 520d, 529, and 530 of Act No. 328 of the Public Acts
3 of 1931, sections 520b, 520c, and 520d as amended by Act No. 158
4 of the Public Acts of 1983, being sections 750.72, 750.83,
5 750.88, 750.89, 750.91, 750.110, 750.213, 750.317, 750.349,

1 750.520b, 750.520c, 750.520d, 750.529, and 750.530 of the
2 Michigan Compiled Laws, are amended and section 506b is added to
3 read as follows:

4 Sec. 72. ~~Burning dwelling house~~ ~~Any~~ A person who
5 ~~willfully~~ WILLFULLY or maliciously burns ~~any~~ A dwelling house,
6 either occupied or unoccupied, or the contents ~~thereof~~ OF A
7 DWELLING HOUSE, whether owned by ~~himself~~ THE PERSON or another
8 PERSON, or any building within the curtilage of ~~such~~ THE dwell-
9 ing house, or the contents ~~thereof, shall be~~ OF THE BUILDING,
10 IS guilty of a felony ~~—~~ punishable, EXCEPT AS OTHERWISE PRO-
11 VIDED IN SECTION 506B, by imprisonment ~~in the state prison~~ FOR
12 not more than 20 years.

13 Sec. 83. ~~Assault with intent to commit murder~~ ~~Any~~ A
14 person who ~~shall assault~~ ASSAULTS another PERSON with THE
15 intent to commit the crime of murder, ~~shall be~~ IS guilty of a
16 felony ~~—~~ punishable, EXCEPT AS OTHERWISE PROVIDED IN
17 SECTION 506B, by imprisonment ~~in the state prison~~ for life or
18 any number of years.

19 Sec. 88. ~~Assault with intent to rob and steal being~~
20 ~~unarmed~~ ~~Any~~ A person, WHO IS not ~~being~~ armed with a dangerous
21 weapon, who ~~shall assault~~ ASSAULTS another PERSON with force
22 and violence, and with THE intent to rob and steal, ~~shall be~~ IS
23 guilty of a felony ~~—~~ punishable, EXCEPT AS OTHERWISE PROVIDED
24 IN SECTION 506B, by imprisonment ~~in the state prison~~ FOR not
25 more than 15 years.

26 Sec. 89. ~~Assault with intent to rob and steal being~~
27 ~~armed~~ ~~Any~~ A person, being armed with a dangerous weapon, or

1 ~~any~~ AN article used or fashioned in a manner to lead a person
 2 ~~so~~ WHO IS assaulted reasonably to believe it ~~to be~~ IS a dan-
 3 gerous weapon, who ~~shall assault~~ ASSAULTS another PERSON with
 4 THE intent to rob and steal ~~shall be~~ IS guilty of a felony ~~,~~
 5 punishable, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by
 6 imprisonment ~~in the state prison~~ for life, or for any term of
 7 years.

8 Sec. 91. ~~Attempt to murder by poisoning, etc.~~ Any A
 9 person who ~~shall attempt~~ ATTEMPTS to commit the crime of murder
 10 by poisoning, drowning, or strangling another person, or by any
 11 means not constituting the crime of assault with intent to
 12 murder, ~~shall be~~ IS guilty of a felony ~~,~~ punishable, EXCEPT
 13 AS OTHERWISE PROVIDED IN SECTION 506B, by imprisonment ~~in the~~
 14 ~~state prison~~ for life or any term of years.

15 Sec. 110. (1) ~~Any~~ A person who ~~shall break~~ BREAKS and
 16 ~~enter~~ ENTERS with THE intent to commit ~~any~~ A felony ~~,~~ or
 17 ~~any~~ A larceny ~~therein, any~~ IN A tent, hotel, office, store,
 18 shop, warehouse, barn, granary, factory, or other building,
 19 structure, boat or ship, railroad car, or ~~any~~ A private apart-
 20 ment in any of ~~such~~ THESE buildings, or ~~any~~ A unoccupied
 21 dwelling house, ~~shall be~~ IS guilty of a felony punishable,
 22 EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by imprisonment ~~in~~
 23 ~~the state prison~~ FOR not more than 10 years. ~~Any~~

24 (2) A person who breaks and enters ~~any~~ AN occupied dwell-
 25 ing house, with THE intent to commit ~~any~~ A felony or larceny
 26 ~~therein, shall be~~ IN THE OCCUPIED DWELLING HOUSE, IS guilty of
 27 a felony punishable, EXCEPT AS OTHERWISE PROVIDED IN

1 SECTION 506B, by imprisonment ~~in the state prison~~ for not more
2 than 15 years. ~~For the purpose of~~

3 (3) AS USED IN this section, ~~"any"~~ "occupied dwelling
4 house" ~~includes one that does not require the physical presence~~
5 ~~of an occupant at the time of the breaking and entering but one~~
6 ~~which is~~ MEANS A DWELLING THAT IS habitually used as a place of
7 abode, AND THE PHYSICAL PRESENCE OF AN OCCUPANT IN THE DWELLING
8 AT THE TIME OF THE BREAKING AND ENTERING IS NOT REQUIRED.

9 Sec. 213. ~~Malicious threats to extort money~~ ~~Any~~ A person
10 who, ~~shall~~, either orally or by a written or printed communica-
11 tion, maliciously ~~threaten~~ THREATENS to accuse another PERSON
12 of ~~any~~ A crime or offense, or ~~shall~~ orally or by ~~any~~ A
13 written or printed communication maliciously ~~threaten any~~
14 THREATENS AN injury to the person or property or mother, father,
15 husband, wife, or child of another PERSON, with THE intent
16 ~~thereby~~ to extort money or any pecuniary advantage whatever, or
17 with THE intent to compel the person so threatened to do or
18 refrain from doing ~~any~~ AN act against ~~his~~ THE PERSON'S will,
19 ~~shall be~~ IS guilty of a felony ~~—~~ punishable, EXCEPT AS OTHER-
20 WISE PROVIDED IN SECTION 506B, by imprisonment ~~in the state~~
21 ~~prison~~ FOR not more than 20 years or by a fine of not more than
22 \$10,000.00. ~~dollars.~~

23 Sec. 317. ~~Second degree murder~~ All ~~other kinds of~~
24 murder OTHER THAN MURDER OF THE FIRST DEGREE AS DEFINED IN
25 SECTION 316 shall be murder of the second degree, and shall be
26 punished, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by

1 imprisonment ~~in the state prison~~ for life ~~,~~ or any term of
2 years. ~~, in the discretion of the court trying the same.~~

3 Sec. 349. (1) ~~Confining person against will, etc. Any~~ A
4 person who ~~wilfully~~ WILLFULLY, maliciously, and without lawful
5 authority ~~shall~~ forcibly or secretly ~~confine or imprison~~
6 CONFINES OR IMPRISONS any other person within this state against
7 ~~his~~ THE PERSON'S will; ~~,~~ or ~~shall~~ forcibly ~~carry~~ CARRIES
8 or ~~send such~~ SENDS THE person out of this state; ~~,~~ or ~~shall~~
9 forcibly ~~seize or confine, or shall inveigle or kidnap~~ SEIZES,
10 CONFINES, INVEIGLES, OR KIDNAPS any other person with THE intent
11 to extort money or ANY other valuable thing ~~thereby~~ or with THE
12 intent either to cause ~~such~~ THE person to be secretly confined
13 or imprisoned in this state against ~~his~~ THE PERSON'S will, or
14 in any way held to service against ~~his~~ THE PERSON'S will,
15 ~~shall be~~ IS guilty of a felony ~~,~~ punishable, EXCEPT AS OTHER-
16 WISE PROVIDED IN SECTION 506B, by imprisonment ~~in the state~~
17 ~~prison~~ for life or for any term of years.

18 (2) ~~Every~~ AN offense mentioned in this section may be
19 tried either in the county in which the ~~same may have been~~
20 OFFENSE WAS committed or in any county in or through which the
21 person ~~so~~ seized, taken, inveigled, OR kidnaped, or whose serv-
22 ices ~~shall be~~ WERE sold or transferred, ~~shall have been~~ WAS
23 taken, confined, held, carried, or brought. ~~, and upon the~~
24 ~~trial of any such~~ IN A TRIAL FOR AN offense UNDER THIS SECTION,
25 the consent ~~thereto~~ of the person ~~,~~ ~~so~~ TO BEING taken, invei-
26 gled, kidnaped, or confined, OR HAVING HIS OR HER SERVICES SOLD
27 OR TRANSFERRED, shall not be a defense, unless it ~~shall be~~ IS

1 made satisfactorily to appear to the ~~jury~~ TRIER OF FACT that
2 ~~such~~ THE consent was not obtained by fraud nor extorted by
3 duress or by threats.

4 SEC. 506B. (1) A PERSON WHO IS CONVICTED OF A VIOLATION OF
5 SECTION 72, 83, 88, 89, 91, 110, 213, 317, 349, 520B, 520C, 520D,
6 529, OR 530 IN WHICH A VICTIM IS AN ELDERLY PERSON, AND WHO HAS 1
7 OR MORE PRIOR CONVICTIONS FOR VIOLATIONS OF ANY OF THOSE SECTIONS
8 IN WHICH A VICTIM WAS AN ELDERLY PERSON, SHALL BE PUNISHED AS
9 FOLLOWS:

10 (A) IF THE PERSON HAS 1 PRIOR CONVICTION, BY IMPRISONMENT
11 FOR 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 PRIOR CONVICTIONS, BY IMPRISONMENT
15 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 PERMIT-
18 TED BY LAW FOR THAT OFFENSE. A PERSON SENTENCED TO A MINIMUM
19 TERM OF IMPRISONMENT UNDER SUBSECTION (1)(A) OR (B) SHALL BE SEN-
20 TENCED TO A MAXIMUM TERM AS PROVIDED BY LAW FOR THAT OFFENSE.

21 (3) A MANDATORY TERM OF IMPRISONMENT IMPOSED UNDER
22 SUBSECTION (1) SHALL NOT BE SUSPENDED. A PERSON SENTENCED TO A
23 MANDATORY TERM OF IMPRISONMENT UNDER SUBSECTION (1) SHALL NOT BE
24 ELIGIBLE FOR PROBATION OR PAROLE DURING THAT MANDATORY TERM.

25 (4) A SENTENCE IMPOSED PURSUANT TO THIS SECTION SHALL RUN
26 CONSECUTIVELY WITH ANY OTHER SENTENCE THAT IS IMPOSED AGAINST THE

1 PERSON ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE FROM
2 WHICH 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 con-
14 duct in the first degree if he or she engages in sexual penetra-
15 tion with another person and if any of the following circum-
16 stances ~~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
25 victim and used this authority to coerce the victim to submit.

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

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

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

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

10 (e) The actor is armed with a weapon or any article used or
11 fashioned in a manner to lead the victim ~~to~~ reasonably TO
12 believe it to be a weapon.

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

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

19 (ii) When the actor coerces the victim to submit by threat-
20 ening to use force or violence on the victim, and the victim
21 believes that the actor has the present ability to execute these
22 threats.

23 (iii) When the actor coerces the victim to submit by threat-
24 ening to retaliate in the future against the victim, or any other
25 person, and the victim believes that the actor has the ability to
26 execute this threat. As used in this subdivision, "to retaliate"

1 includes threats of physical punishment, kidnapping, or
2 extortion.

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

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

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

11 (h) That other person is mentally incapable, mentally dis-
12 abled, mentally incapacitated, or physically helpless, and any of
13 the following CIRCUMSTANCES EXIST:

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

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

18 (2) Criminal sexual conduct in the first degree is a felony
19 punishable, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by
20 imprisonment ~~in the state prison~~ for life or for any term of
21 years.

22 Sec. 520c. (1) A person is guilty of criminal sexual con-
23 duct in the second degree if the person engages in sexual contact
24 with another person and if any of the following circumstances
25 ~~exists~~ EXIST:

26 (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
8 victim and the actor used this authority to coerce the victim to
9 submit.

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

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

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

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

21 (e) The actor is armed with a weapon, or any article used or
22 fashioned in a manner to lead a person ~~to~~ reasonably TO believe
23 it to be a weapon.

24 (f) The actor causes personal injury to the victim and force
25 or coercion is used to accomplish the sexual contact. Force or
26 coercion includes but is not limited to any of the circumstances
27 listed in section 520b(1)(f)(i) to (v).

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 CIRCUMSTANCES EXIST:

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 sexual conduct in the second degree is a felony
12 punishable, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by
13 imprisonment for not more than 15 years.

14 Sec. 520d. (1) A person is guilty of criminal sexual con-
15 duct in the third degree if the person engages in sexual penetra-
16 tion with another person and if any of the following circum-
17 stances ~~exists~~ EXIST:

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

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

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

1 (2) Criminal sexual conduct in the third degree is a felony
2 punishable, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by
3 imprisonment for not more than 15 years.

4 Sec. 529. ~~Any~~ A person who ~~shall assault~~ ASSAULTS
5 another ~~—~~ PERSON and ~~shall~~ feloniously ~~rob, steal and take~~
6 ~~from his~~ ROBS, STEALS, AND TAKES FROM THE OTHER person, or in
7 ~~his~~ THE OTHER PERSON'S presence, any money or other property,
8 ~~which~~ THAT may be the subject of larceny, ~~such~~ THE robber
9 being armed with a dangerous weapon, or any article used or fash-
10 ioned in a manner to lead the person ~~so~~ assaulted ~~to~~ reason-
11 ably TO believe it to be a dangerous weapon, ~~shall be~~ IS guilty
12 of a felony ~~—~~ punishable, EXCEPT AS OTHERWISE PROVIDED IN
13 SECTION 506B, by imprisonment ~~in the state prison~~ for life or
14 for any term of years. If an aggravated assault or serious
15 injury is inflicted by any person while committing an armed rob-
16 bery as defined in this section, the sentence, EXCEPT AS OTHER-
17 WISE PROVIDED IN SECTION 506B, shall be not less than 2 years'
18 imprisonment. ~~in the state prison.~~

19 Sec. 530. ~~Robbery unarmed Any~~ A person who, ~~shall,~~ by
20 force and violence, or by assault or putting in fear, feloniously
21 ~~rob, steal and take~~ ROBS, STEALS, AND TAKES from the person of
22 another, or in ~~his~~ THE OTHER PERSON'S presence, any money or
23 other property ~~which~~ THAT may be the subject of larceny, ~~such~~
24 THE robber not being armed with a dangerous weapon, ~~shall be~~ IS
25 guilty of a felony ~~—~~ punishable, EXCEPT AS OTHERWISE PROVIDED
26 IN SECTION 506B, by imprisonment ~~in the state prison~~ FOR not
27 more than 15 years.