

# SENATE BILL NO. 1123

June 30, 2022, Introduced by Senators MACDONALD, SANTANA, GEISS, POLEHANKI, MOSS, BAYER, BULLOCK, MCMORROW, HUIZENGA, HOLLIER and SCHMIDT and referred to the Committee on Judiciary and Public Safety.

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 employee, contractual, or volunteer status to  
14 gain access to, or to establish a relationship with, that other  
15 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 employee, contractual, or volunteer  
3 status to gain access to, or to establish a relationship with, that  
4 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 engages in sexual contact with  
18 another person and if any of the following circumstances exist:

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

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

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

27 (ii) When the actor coerces the victim to submit by threatening  
28 to use force or violence on the victim, and the victim believes  
29 that the actor has the present ability to execute that threat.

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

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

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

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

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

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

29           (f) That other person is at least 16 years of age but less

1 than 18 years of age and a student at a public school or nonpublic  
2 school, and either of the following applies:

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

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

20 (g) That other person is at least 16 years old but less than  
21 26 years of age and is receiving special education services, and  
22 either of the following applies:

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

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

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

18           (2) Criminal sexual conduct in the fourth degree is a  
19 misdemeanor punishable by imprisonment for not more than 2 years or  
20 a fine of not more than \$500.00, or both.

21           Sec. 520~~l~~. A person may be charged and convicted under sections  
22 520b to 520g even though the victim is his or her legal spouse.  
23 However, a person may not be charged or convicted solely because  
24 his or her legal spouse is ~~under the age of 16,~~ mentally incapable  
25 ~~—~~or mentally incapacitated.

26           Enacting section 1. This amendatory act does not take effect  
27 unless Senate Bill No. 1114 of the 101st Legislature is enacted  
28 into law.