

HOUSE BILL No. 4225

February 4, 1997, Introduced by Reps. Dobronski, Brewer, Harder, Willard, Hale, Anthony, Wetters, Schauer, Prusi, DeHart, Varga, Schermesser, Leland, Gire, Raczkowski, Cherry, Hanley, Goschka, Wojno, Bogardus, McBryde and Callahan and referred to the Committee on Judiciary.

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, sections 520b and 520c as amended by 1983 PA 158, and section 520d as amended by 1996 PA 155, 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

1 the curtilage of ~~such~~ THE dwelling house, or the contents
2 ~~thereof, shall be~~ OF THE BUILDING, IS guilty of a felony ~~,~~
3 punishable, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by
4 imprisonment ~~in the state prison~~ FOR not more than 20 years.

5 Sec. 83. ~~Assault with intent to commit murder--Any~~ A
6 person who ~~shall assault~~ ASSAULTS another PERSON with THE
7 intent to commit the crime of murder ~~,~~ ~~shall be~~ IS guilty of a
8 felony ~~,~~ punishable, EXCEPT AS OTHERWISE PROVIDED IN
9 SECTION 506B, by imprisonment ~~in the state prison~~ for life or
10 any number of years.

11 Sec. 88. ~~Assault with intent to rob and steal being~~
12 ~~unarmed--Any~~ A person ~~,~~ not ~~being~~ armed with a dangerous
13 weapon ~~,~~ who ~~shall assault~~ ASSAULTS another PERSON with force
14 and violence, and with THE intent to rob and steal, ~~shall be~~ IS
15 guilty of a felony ~~,~~ punishable, EXCEPT AS OTHERWISE PROVIDED
16 IN SECTION 506B, by imprisonment ~~in the state prison~~ FOR not
17 more than 15 years.

18 Sec. 89. ~~Assault with intent to rob and steal being~~
19 ~~armed--Any~~ A person ~~,~~ ~~being~~ armed with a dangerous weapon ~~,~~
20 or ~~any~~ AN article used or fashioned in a manner to lead a
21 person ~~so~~ WHO IS assaulted reasonably to believe it ~~to be~~ IS
22 a dangerous weapon ~~,~~ who ~~shall assault~~ ASSAULTS another
23 PERSON with THE intent to rob and steal ~~shall be~~ IS guilty of a
24 felony ~~,~~ punishable, EXCEPT AS OTHERWISE PROVIDED IN
25 SECTION 506B, by imprisonment ~~in the state prison~~ for life, or
26 for any term of years.

1 Sec. 91. ~~Attempt to murder by poisoning, etc.--Any~~ A
2 person who ~~shall attempt~~ ATTEMPTS to commit the crime of murder
3 by poisoning, drowning, or strangling another person, or by any
4 means not constituting the crime of assault with intent to
5 murder, ~~shall be~~ IS guilty of a felony ~~,~~ punishable, EXCEPT
6 AS OTHERWISE PROVIDED IN SECTION 506B, by imprisonment ~~in the~~
7 ~~state prison~~ for life or any term of years.

8 Sec. 110. A person who breaks and enters, with intent to
9 commit a felony or a larceny therein, a tent, hotel, office,
10 store, shop, warehouse, barn, granary, factory or other building,
11 structure, boat, ship ~~,~~ or railroad car is guilty of a felony
12 ~~,~~ punishable, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by
13 imprisonment for not more than 10 years.

14 Sec. 213. ~~Malicious threats to extort money--Any~~ A person
15 who ~~shall, either~~ orally or by a written or printed communica-
16 tion ~~,~~ maliciously ~~threaten~~ THREATENS to accuse another
17 PERSON of ~~any~~ A crime or offense, or ~~shall~~ orally or by ~~any~~
18 A written or printed communication maliciously ~~threaten any~~
19 THREATENS AN injury to the person or property or mother, father,
20 husband, wife, or child of another PERSON, with THE intent
21 ~~thereby~~ to extort money or any pecuniary advantage, ~~whatever,~~
22 or with THE intent to compel the person ~~so~~ threatened to do or
23 refrain from doing ~~any~~ AN act against ~~his~~ THE PERSON'S will,
24 ~~shall be~~ IS guilty of a felony ~~,~~ punishable, EXCEPT AS OTHER-
25 WISE PROVIDED IN SECTION 506B, by imprisonment ~~in the state~~
26 ~~prison~~ FOR not more than 20 years or by a fine of not more than
27 \$10,000.00. ~~dollars.~~

1 Sec. 317. ~~Second degree murder--~~ All ~~other kinds of~~
2 murder ~~shall be~~ OTHER THAN MURDER OF THE FIRST DEGREE AS
3 DEFINED IN SECTION 316 IS murder of the second degree, and shall
4 be punished, EXCEPT AS OTHERWISE PROVIDED IN SECTION 506B, by
5 imprisonment ~~in the state prison~~ for life ~~,~~ or any term of
6 years. ~~, in the discretion of the court trying the same.~~

7 Sec. 349. (1) ~~Confining person against will, etc.--~~ Any A
8 person who ~~wilfully~~ WILLFULLY, maliciously, and without lawful
9 authority ~~shall~~ forcibly or secretly ~~confine or imprison~~
10 CONFINES OR IMPRISONS any other person within this state against
11 ~~his~~ THE PERSON'S will, ~~or shall~~ forcibly ~~carry~~ CARRIES or
12 ~~send such~~ SENDS THE person out of this state, or ~~shall~~ forc-
13 ibly ~~seize or confine, or shall inveigle or kidnap~~ SEIZES, CON-
14 FINES, INVEIGLES, OR KIDNAPS any other person with THE intent to
15 extort money or ANY other valuable thing ~~thereby~~ or with THE
16 intent either to cause ~~such~~ THE person to be secretly confined
17 or imprisoned in this state against ~~his~~ THE PERSON'S will, or
18 in any way held to service 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 life or for any term of years.

22 (2) ~~Every offense mentioned~~ AN OFFENSE DESCRIBED in this
23 section may be tried either in the county in which the ~~same may~~
24 ~~have been~~ OFFENSE WAS committed or in any county in or through
25 which the person ~~so~~ seized, taken, inveigled, OR kidnaped, or
26 whose services ~~shall be~~ WERE sold or transferred, ~~shall have~~
27 ~~been~~ WAS taken, confined, held, carried, or brought. ~~and~~

1 ~~upon the trial of any such~~ IN A TRIAL FOR AN offense UNDER THIS
2 SECTION, the consent ~~thereto~~ of the person ~~, so~~ TO BEING
3 taken, inveigled, kidnaped, or confined, ~~shall~~ OR HAVING HIS OR
4 HER SERVICES SOLD OR TRANSFERRED, IS not ~~be~~ a defense ~~,~~
5 unless ~~it shall be made satisfactorily to appear to the jury~~
6 ~~that such~~ THE consent was not obtained by fraud ~~nor~~ OR
7 extorted by duress or by ~~threats~~ A THREAT.

8 SEC. 506B. (1) A PERSON WHO IS CONVICTED OF A VIOLATION OF
9 SECTION 72, 83, 88, 89, 91, 110, 213, 317, 349, 520B, 520C, 520D,
10 529, OR 530 IN WHICH A VICTIM IS AN ELDERLY PERSON, AND WHO HAS 1
11 OR MORE PRIOR CONVICTIONS FOR VIOLATIONS OF ANY OF THOSE SECTIONS
12 IN WHICH A VICTIM WAS AN ELDERLY PERSON, SHALL BE PUNISHED AS
13 FOLLOWS:

14 (A) IF THE PERSON HAS 1 PRIOR CONVICTION, BY IMPRISONMENT
15 FOR A MINIMUM TERM OF NOT LESS THAN 5 YEARS.

16 (B) IF THE PERSON HAS 2 PRIOR CONVICTIONS, BY IMPRISONMENT
17 FOR A MINIMUM TERM OF NOT LESS THAN 10 YEARS.

18 (C) IF THE PERSON HAS 3 PRIOR CONVICTIONS, BY IMPRISONMENT
19 FOR LIFE.

20 (2) A PERSON DESCRIBED IN SUBSECTION (1)(A) OR (B) MAY BE
21 SENTENCED TO IMPRISONMENT FOR LIFE IF THAT PUNISHMENT IS PERMIT-
22 TED BY LAW FOR THAT OFFENSE. A PERSON SENTENCED TO A MINIMUM
23 TERM OF IMPRISONMENT UNDER SUBSECTION (1)(A) OR (B) SHALL BE SEN-
24 TENCED TO A MAXIMUM TERM AS PROVIDED BY LAW FOR THAT OFFENSE.

25 (3) A MANDATORY TERM OF IMPRISONMENT IMPOSED UNDER
26 SUBSECTION (1) SHALL NOT BE SUSPENDED. A PERSON SENTENCED TO A

1 MANDATORY TERM OF IMPRISONMENT UNDER SUBSECTION (1) IS NOT
2 ELIGIBLE FOR PROBATION OR PAROLE DURING THAT MANDATORY TERM.

3 (4) A SENTENCE IMPOSED PURSUANT TO THIS SECTION SHALL RUN
4 CONSECUTIVELY TO ANY OTHER SENTENCE IMPOSED AGAINST THE PERSON
5 THAT ARISES OUT OF THE SAME TRANSACTION OR OCCURRENCE FROM WHICH
6 THE SENTENCE UNDER THIS SECTION AROSE.

7 (5) AS USED IN THIS SECTION:

8 (A) "ELDERLY PERSON" MEANS A PERSON 60 YEARS OF AGE OR
9 OLDER.

10 (B) "PRIOR CONVICTION" MEANS A PREVIOUS CONVICTION FOR A
11 VIOLATION OF SECTION 72, 83, 88, 89, 91, 110, 213, 317, 349,
12 520B, 520C, 520D, 529, OR 530 IN WHICH THE VICTIM WAS AN ELDERLY
13 PERSON.

14 (C) "VICTIM" MEANS AN INDIVIDUAL WHO SUFFERS DIRECT OR
15 THREATENED PHYSICAL, FINANCIAL, OR EMOTIONAL HARM AS A RESULT OF
16 THE VIOLATION.

17 Sec. 520b. (1) A person is guilty of criminal sexual con-
18 duct in the first degree if he or she engages in sexual penetra-
19 tion with another person and ~~if~~ any of the following circum-
20 stances ~~exists~~ EXIST:

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

22 (b) That other person is at least 13 but less than 16 years
23 of age and any of the following CIRCUMSTANCES EXIST:

24 (i) The actor is a member of the same household as the
25 victim.

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

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

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

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

7 (i) The actor knows or has reason to know that the victim is
8 mentally incapable, mentally incapacitated, or physically
9 helpless.

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

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

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

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

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

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

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

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

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

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

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

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

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

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~~ EXIST:

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 CIRCUMSTANCES EXIST:

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 to
22 any of the circumstances listed in ~~sections~~
23 SECTION 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 TO believe
26 it 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 circumstances
4 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 CIRCUMSTANCES EXIST:

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

18 Sec. 520d. (1) A person is guilty of criminal sexual con-
19 duct in the third degree if the person engages in sexual penetra-
20 tion with another person and if any of the following circum-
21 stances exist:

22 (a) That other person is at least 13 years of age and under
23 16 years of age.

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

1 (c) The actor knows or has reason to know that the victim is
 2 mentally incapable, mentally incapacitated, or physically
 3 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
 7 is an affirmative defense to a prosecution under this subdivision
 8 that the other person was in a position of authority over the
 9 defendant and used this authority to coerce the defendant to vio-
 10 late this subdivision. The defendant has the burden of proving
 11 this defense by a preponderance of the evidence. This subdivi-
 12 sion does not apply if both persons are lawfully married to each
 13 other at the time of the alleged violation.

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

17 Sec. 529. ~~Any~~ A person who ~~shall assault~~ ASSAULTS
 18 another ~~,~~ PERSON and ~~shall~~ feloniously ~~rob, steal and take~~
 19 ~~from his~~ ROBBS, STEALS, AND TAKES FROM THE OTHER person, or in
 20 ~~his~~ THE OTHER PERSON'S presence, any money or other property ~~,~~
 21 ~~which~~ THAT may be the subject of larceny ~~,~~ ~~such robber being~~
 22 WHILE armed with a dangerous weapon ~~,~~ or any article used or
 23 fashioned in a manner to lead the person ~~so~~ assaulted ~~to~~ rea-
 24 sonably TO believe it to be 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 life
 27 or for any term of years. If an aggravated assault or serious

1 injury is inflicted by any person while ~~committing an armed~~
2 ~~robbery as defined in~~ VIOLATING this section, EXCEPT AS OTHER-
3 WISE PROVIDED IN SECTION 506B, the ~~sentence~~ PERSON shall be
4 SENTENCED TO IMPRISONMENT FOR not less than 2 YEARS. ~~years+~~
5 ~~imprisonment in the state prison.~~

6 Sec. 530. ~~Robbery unarmed--Any~~ A person who ~~shall,~~ by
7 force and violence ~~,~~ or by assault or putting in fear ~~,~~ felo-
8 niously ~~rob, steal and take~~ ROBS, STEALS, AND TAKES from the
9 person of another, or in ~~his~~ THE OTHER PERSON'S presence, any
10 money or other property ~~which~~ THAT may be the subject of larcen-
11 ny, ~~such robber~~ WHILE not ~~being~~ armed with a dangerous
12 weapon, ~~shall be~~ IS guilty of a felony ~~,~~ punishable, EXCEPT
13 AS OTHERWISE PROVIDED IN SECTION 506B, by imprisonment ~~in the~~
14 ~~state prison~~ FOR not more than 15 years.