

**SENATE BILL NO. 476**

March 24, 1999, Introduced by Senators ROGERS, STEIL and SHUGARS  
and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending sections 520b, 520c, 520d, and 520e (MCL 750.520b,  
750.520c, 750.520d, and 750.520e), sections 520b and 520c as  
amended by 1983 PA 158 and sections 520d and 520e as amended by  
1996 PA 155.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

5       (a) That other person is ~~under 13~~ LESS THAN 16 years of  
6 age.

7       ~~(b) That other person is at least 13 but less than 16 years~~  
8 ~~of age and any of the following:~~

1       ~~(i) The actor is a member of the same household as the~~  
2 ~~victim.~~

3       ~~(ii) The actor is related to the victim by blood or affinity~~  
4 ~~to the fourth degree.~~

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

7       (B) ~~(c)~~ Sexual penetration occurs under circumstances  
8 involving the commission of any other felony.

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

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

14       (ii) The actor uses force or coercion to accomplish the  
15 sexual penetration. Force or coercion includes but is not  
16 limited to any of the circumstances listed in subdivision  
17 ~~(f)(i)~~ (E)(i) to (v).

18       (D) ~~(e)~~ The actor is armed with a weapon or any article  
19 used or fashioned in a manner to lead the victim to reasonably  
20 believe it to be a weapon.

21       (E) ~~(f)~~ The actor causes personal injury to the victim and  
22 force or coercion is used to accomplish sexual penetration.  
23 Force or coercion includes but is not limited to any of the fol-  
24 lowing circumstances:

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

1           (ii) When the actor coerces the victim to submit by  
2 threatening to use force or violence on the victim, and the  
3 victim believes that the actor has the present ability to execute  
4 these threats.

5           (iii) When the actor coerces the victim to submit by threat-  
6 ening to retaliate in the future against the victim, or any other  
7 person, and the victim believes that the actor has the ability to  
8 execute this threat. As used in this subdivision, "to retaliate"  
9 includes threats of physical punishment, kidnapping, or  
10 extortion.

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

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

16           (F) ~~(g)~~ The actor causes personal injury to the victim,  
17 and the actor knows or has reason to know that the victim is men-  
18 tally incapable, mentally incapacitated, or physically helpless.

19           (G) ~~(h)~~ That other person is mentally incapable, mentally  
20 disabled, mentally incapacitated, or physically helpless, and any  
21 of the following:

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

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

1 (2) Criminal sexual conduct in the first degree is a felony  
2 punishable by imprisonment in the state prison for life or for  
3 any term of years.

4 Sec. 520c. (1) A person is guilty of criminal sexual con-  
5 duct in the second degree if the person engages in sexual contact  
6 with another person and if any of the following circumstances  
7 exists:

8 (a) That other person is ~~under 13~~ LESS THAN 16 years of  
9 age.

10 ~~(b) That other person is at least 13 but less than 16 years~~  
11 ~~of age and any of the following:~~

12 ~~(i) The actor is a member of the same household as the~~  
13 ~~victim.~~

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

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

19 (B) ~~(c)~~ Sexual contact occurs under circumstances involv-  
20 ing the commission of any other felony.

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

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

26 (ii) The actor uses force or coercion to accomplish the  
27 sexual contact. Force or coercion includes but is not limited to

1 any of the circumstances listed in ~~sections 520b(1)(f)(i)~~  
 2 SECTION 520B(1)(E)(i) to (v).

3 (D) ~~(e)~~ The actor is armed with a weapon, or any article  
 4 used or fashioned in a manner to lead a person to reasonably  
 5 believe it to be a weapon.

6 (E) ~~(f)~~ The actor causes personal injury to the victim and  
 7 force or coercion is used to accomplish the sexual contact.  
 8 Force or coercion includes but is not limited to any of the cir-  
 9 cumstances listed in section ~~520b(1)(f)(i)~~ 520B(1)(E)(i) to  
 10 (v).

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

14 (G) ~~(h)~~ That other person is mentally incapable, mentally  
 15 disabled, mentally incapacitated, or physically helpless, and any  
 16 of the following:

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

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

21 (2) Criminal sexual conduct in the second degree is a felony  
 22 punishable by imprisonment for not more than 15 years.

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

1       ~~(a) That other person is at least 13 years of age and under~~  
2 ~~16 years of age.~~

3       (A) ~~(b)~~ Force or coercion is used to accomplish the sexual  
4 penetration. Force or coercion includes but is not limited to  
5 any of the circumstances listed in section ~~520b(1)(f)(i)~~  
6 520B(1)(E)(i) to (v).

7       (B) ~~(c)~~ The actor knows or has reason to know that the  
8 victim is mentally incapable, mentally incapacitated, or physi-  
9 cally helpless.

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

20       (2) Criminal sexual conduct in the third degree is a felony  
21 punishable by imprisonment for not more than 15 years.

22       Sec. 520e. (1) A person is guilty of criminal sexual con-  
23 duct in the fourth degree if he or she engages in sexual contact  
24 with another person and if any of the following circumstances  
25 exist:

1       ~~(a) That other person is at least 13 years of age and under~~  
2 ~~16 years of age, and the actor is 5 or more years older than that~~  
3 ~~other person.~~

4       (A) ~~(b)~~ Force or coercion is used to accomplish the sexual  
5 contact. Force or coercion includes but is not limited to any of  
6 the following circumstances:

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

9       (ii) When the actor coerces the victim to submit by threat-  
10 ening to use force or violence on the victim, and the victim  
11 believes that the actor has the present ability to execute these  
12 threats.

13       (iii) When the actor coerces the victim to submit by threat-  
14 ening to retaliate in the future against the victim, or any other  
15 person, and the victim believes that the actor has the ability to  
16 execute this threat. As used in this subdivision, "to retaliate"  
17 includes threats of physical punishment, kidnapping, or  
18 extortion.

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

22       (v) When the actor achieves the sexual contact through con-  
23 cealment or by the element of surprise.

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

1 (C) ~~(d)~~ That other person is under the jurisdiction of the  
2 department of corrections and the actor is an employee or a  
3 contractual employee of, or a volunteer with, the department of  
4 corrections who knows that the other person is under the juris-  
5 diction of the department of corrections.

6 (D) ~~(e)~~ That other person is a prisoner or probationer  
7 under the jurisdiction of a county for purposes of imprisonment  
8 or a work program or other probationary program and the actor is  
9 an employee or a contractual employee of or a volunteer with the  
10 county who knows that the other person is under the county's  
11 jurisdiction.

12 (E) ~~(f)~~ The actor knows or has reason to know that the  
13 ~~juvenile~~ FAMILY division of ~~the probate~~ CIRCUIT court ~~,~~ OR  
14 the circuit court ~~,~~ ~~or the recorder's court of the city of~~  
15 ~~Detroit~~ has detained the victim in a facility while the victim  
16 is awaiting a trial or hearing, or committed the victim to a  
17 facility as a result of the victim having been found responsible  
18 for committing an act that would be a crime if committed by an  
19 adult, and the actor is an employee or contractual employee of,  
20 or a volunteer with, the facility in which the victim is detained  
21 or to which the victim was committed.

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



1 violate this subdivision. The defendant has the burden of  
2 proving this defense by a preponderance of the evidence. This  
3 subdivision does not apply if both persons are lawfully married  
4 to each other at the time of the alleged violation.

5 (2) Criminal sexual conduct in the fourth degree is a misde-  
6 meanor punishable by imprisonment for not more than 2 years or a  
7 fine of not more than \$500.00, or both.