

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5531

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending sections 520a and 520c (MCL 750.520a and 750.520c), as
amended by 2002 PA 714, and by adding section 520n.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 520a. As used in this chapter:
- 2 (a) "Actor" means a person accused of criminal sexual conduct.
- 3 (b) "Developmental disability" means an impairment of general
- 4 intellectual functioning or adaptive behavior which meets **ALL OF**
- 5 the following criteria:
- 6 (i) It originated before the person became 18 years of age.
- 7 (ii) It has continued since its origination or can be expected

1 to continue indefinitely.

2 (iii) It constitutes a substantial burden to the impaired
3 person's ability to perform in society.

4 (iv) It is attributable to 1 or more of the following:

5 (A) Mental retardation, cerebral palsy, epilepsy, or autism.

6 (B) Any other condition of a person found to be closely
7 related to mental retardation because it produces a similar
8 impairment or requires treatment and services similar to those
9 required for a person who is mentally retarded.

10 (C) **"ELECTRONIC MONITORING" MEANS THAT TERM AS DEFINED IN**
11 **SECTION 85 OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL**
12 **791.285.**

13 (D) ~~(e)~~ "Intimate parts" includes the primary genital area,
14 groin, inner thigh, buttock, or breast of a human being.

15 (E) ~~(d)~~ "Mental health professional" means that term as
16 defined in section 100b of the mental health code, 1974 PA 258, MCL
17 330.1100b.

18 (F) ~~(e)~~ "Mental illness" means a substantial disorder of
19 thought or mood ~~which~~ **THAT** significantly impairs judgment,
20 behavior, capacity to recognize reality, or ability to cope with
21 the ordinary demands of life.

22 (G) ~~(f)~~ "Mentally disabled" means that a person has a mental
23 illness, is mentally retarded, or has a developmental disability.

24 (H) ~~(g)~~ "Mentally incapable" means that a person suffers
25 from a mental disease or defect ~~which~~ **THAT** renders that person
26 temporarily or permanently incapable of appraising the nature of
27 his or her conduct.

1 (I) ~~(h)~~ "Mentally incapacitated" means that a person is
2 rendered temporarily incapable of appraising or controlling his or
3 her conduct due to the influence of a narcotic, anesthetic, or
4 other substance administered to that person without his or her
5 consent, or due to any other act committed upon that person without
6 his or her consent.

7 (J) ~~(i)~~ "Mentally retarded" means significantly subaverage
8 general intellectual functioning ~~which~~ **THAT** originates during the
9 developmental period and is associated with impairment in adaptive
10 behavior.

11 (K) ~~(j)~~ "Nonpublic school" means that term as defined in
12 section 5 of the revised school code, 1976 PA 451, MCL 380.5.

13 (L) ~~(k)~~ "Physically helpless" means that a person is
14 unconscious, asleep, or for any other reason is physically unable
15 to communicate unwillingness to an act.

16 (M) ~~(l)~~ "Personal injury" means bodily injury, disfigurement,
17 mental anguish, chronic pain, pregnancy, disease, or loss or
18 impairment of a sexual or reproductive organ.

19 (N) ~~(m)~~ "Public school" means that term as defined in
20 section 5 of the revised school code, 1976 PA 451, MCL 380.5.

21 (O) ~~(n)~~ "Sexual contact" includes the intentional touching
22 of the victim's or actor's intimate parts or the intentional
23 touching of the clothing covering the immediate area of the
24 victim's or actor's intimate parts, if that intentional touching
25 can reasonably be construed as being for the purpose of sexual
26 arousal or gratification, done for a sexual purpose, or in a sexual
27 manner for:

1 (i) Revenge.

2 (ii) To inflict humiliation.

3 (iii) Out of anger.

4 (P) ~~(e)~~ "Sexual penetration" means sexual intercourse,
5 cunnilingus, fellatio, anal intercourse, or any other intrusion,
6 however slight, of any part of a person's body or of any object
7 into the genital or anal openings of another person's body, but
8 emission of semen is not required.

9 (Q) ~~(p)~~ "Victim" means the person alleging to have been
10 subjected to criminal sexual conduct.

11 Sec. 520c. (1) A person is guilty of criminal sexual conduct
12 in the second degree if the person engages in sexual contact with
13 another person and if any of the following circumstances exists:

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

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

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

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

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

22 (iv) The actor is a teacher, substitute teacher, or
23 administrator of the public or nonpublic school in which that other
24 person is enrolled.

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

27 (d) The actor is aided or abetted by 1 or more other persons

1 and either of the following circumstances exists:

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

4 (ii) The actor uses force or coercion to accomplish the sexual
5 contact. Force or coercion includes, but is not limited to, any of
6 the circumstances listed in ~~sections 520b(1)(f)(i) to (v)~~ **SECTION**
7 **520B(1)(F)**.

8 (e) The actor is armed with a weapon, or any article used or
9 fashioned in a manner to lead a person to reasonably believe it to
10 be a weapon.

11 (f) The actor causes personal injury to the victim and force
12 or coercion is used to accomplish the sexual contact. Force or
13 coercion includes, but is not limited to, any of the circumstances
14 listed in section ~~520b(1)(f)(i) to (v)~~ **520B(1)(F)**.

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

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

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

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

25 (i) That other person is under the jurisdiction of the
26 department of corrections and the actor is an employee or a
27 contractual employee of, or a volunteer with, the department of

1 corrections who knows that the other person is under the
2 jurisdiction of the department of corrections.

3 (j) That other person is under the jurisdiction of the
4 department of corrections and the actor is an employee or a
5 contractual employee of, or a volunteer with, a private vendor that
6 operates a youth correctional facility under section 20g of 1953 PA
7 232, MCL 791.220g, who knows that the other person is under the
8 jurisdiction of the department of corrections.

9 (k) That other person is a prisoner or probationer under the
10 jurisdiction of a county for purposes of imprisonment or a work
11 program or other probationary program and the actor is an employee
12 or a contractual employee of or a volunteer with the county or the
13 department of corrections who knows that the other person is under
14 the county's jurisdiction.

15 (l) The actor knows or has reason to know that a court has
16 detained the victim in a facility while the victim is awaiting a
17 trial or hearing, or committed the victim to a facility as a result
18 of the victim having been found responsible for committing an act
19 that would be a crime if committed by an adult, and the actor is an
20 employee or contractual employee of, or a volunteer with, the
21 facility in which the victim is detained or to which the victim was
22 committed.

23 (2) Criminal sexual conduct in the second degree is a felony
24 punishable ~~by~~ **AS FOLLOWS:**

25 (A) **BY** imprisonment for not more than 15 years.

26 (B) **IN ADDITION TO THE PENALTY SPECIFIED IN SUBDIVISION (A),**
27 **THE COURT SHALL SENTENCE THE DEFENDANT TO LIFETIME ELECTRONIC**

1 MONITORING UNDER SECTION 520N IF THE VIOLATION INVOLVED SEXUAL
2 CONTACT COMMITTED BY AN INDIVIDUAL 17 YEARS OF AGE OR OLDER AGAINST
3 AN INDIVIDUAL LESS THAN 13 YEARS OF AGE.

4 SEC. 520N. (1) A PERSON CONVICTED UNDER SECTION 520B OR 520C
5 FOR CRIMINAL SEXUAL CONDUCT COMMITTED BY AN INDIVIDUAL 17 YEARS OLD
6 OR OLDER AGAINST AN INDIVIDUAL LESS THAN 13 YEARS OF AGE SHALL BE
7 SENTENCED TO LIFETIME ELECTRONIC MONITORING AS PROVIDED UNDER
8 SECTION 85 OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL
9 791.285.

10 (2) A PERSON WHO HAS BEEN SENTENCED UNDER THIS CHAPTER TO
11 LIFETIME ELECTRONIC MONITORING UNDER SECTION 85 OF THE CORRECTIONS
12 CODE OF 1953, 1953 PA 232, MCL 791.285, WHO DOES ANY OF THE
13 FOLLOWING IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT
14 MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN \$2,000.00, OR BOTH:

15 (A) INTENTIONALLY REMOVES, DEFACTES, ALTERS, DESTROYS, OR FAILS
16 TO MAINTAIN THE ELECTRONIC MONITORING DEVICE IN WORKING ORDER.

17 (B) FAILS TO NOTIFY THE DEPARTMENT OF CORRECTIONS THAT THE
18 ELECTRONIC MONITORING DEVICE IS DAMAGED.

19 (C) FAILS TO REIMBURSE THE DEPARTMENT OF CORRECTIONS OR ITS
20 AGENT FOR THE COST OF THE MONITORING.

21 (3) THIS SECTION DOES NOT PROHIBIT AN INDIVIDUAL FROM BEING
22 CHARGED WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION OF
23 LAW THAT IS COMMITTED BY THAT INDIVIDUAL WHILE VIOLATING THIS
24 SECTION.

25 (4) A TERM OF IMPRISONMENT IMPOSED FOR A VIOLATION OF THIS
26 SECTION MAY RUN CONSECUTIVELY TO ANY TERM OF IMPRISONMENT IMPOSED
27 FOR ANOTHER VIOLATION ARISING FROM THE SAME TRANSACTION.

1 Enacting section 1. This amendatory act takes effect 90 days
2 after the date it is enacted.

3 Enacting section 2. This amendatory act does not take effect
4 unless all of the following bills of the 93rd Legislature are
5 enacted into law:

6 (a) Senate Bill No. 709.

7 (b) Senate Bill No. 717.

8 (c) Senate Bill No. 718.

9 (d) Senate Bill No. 1122.

10 (e) House Bill No. 5421.

11 (f) House Bill No. 5422.

12 (g) House Bill No. 5532.