

# SENATE BILL No. 135

January 31, 2013, Introduced by Senators JONES, EMMONS, BIEDA, ANDERSON and GREEN and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending sections 520d and 520e (MCL 750.520d and 750.520e), as  
amended by 2012 PA 372.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 520d. (1) A person is guilty of criminal sexual conduct  
2       in the third degree if the person engages in sexual penetration  
3       with another person and if any of the following circumstances  
4       exist:

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

7           (b) Force or coercion is used to accomplish the sexual  
8       penetration. Force or coercion includes but is not limited to any

1 of the circumstances listed in section 520b(1)(f)(i) to (v).

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

14 (e) That other person is at least 16 years of age ~~but less~~  
15 ~~than 18 years of age and~~ IS a student at a public school or  
16 nonpublic school, and either of the following applies:

17 (i) The actor is a teacher, substitute teacher, or  
18 administrator of that public school, nonpublic school, school  
19 district, or intermediate school district. This subparagraph does  
20 not apply if ~~the other person is emancipated or if~~ both persons are  
21 lawfully married to each other at the time of the alleged  
22 violation.

23 (ii) The actor is an employee or a contractual service provider  
24 of the public school, nonpublic school, school district, or  
25 intermediate school district in which that other person is  
26 enrolled, or is a volunteer who is not a student in any public  
27 school or nonpublic school, or is an employee of this state or of a

1 local unit of government of this state or of the United States  
2 assigned to provide any service to that public school, nonpublic  
3 school, school district, or intermediate school district, and the  
4 actor uses his or her employee, contractual, or volunteer status to  
5 gain access to, or to establish a relationship with, that other  
6 person.

7 ~~—— (f) That other person is at least 16 years old but less than~~  
8 ~~26 years of age and is receiving special education services, and~~  
9 ~~either of the following applies:~~

10 ~~—— (i) The actor is a teacher, substitute teacher, administrator,~~  
11 ~~employee, or contractual service provider of the public school,~~  
12 ~~nonpublic school, school district, or intermediate school district~~  
13 ~~from which that other person receives the special education~~  
14 ~~services. This subparagraph does not apply if both persons are~~  
15 ~~lawfully married to each other at the time of the alleged~~  
16 ~~violation.~~

17 ~~—— (ii) The actor is a volunteer who is not a student in any~~  
18 ~~public school or nonpublic school, or is an employee of this state~~  
19 ~~or of a local unit of government of this state or of the United~~  
20 ~~States assigned to provide any service to that public school,~~  
21 ~~nonpublic school, school district, or intermediate school district,~~  
22 ~~and the actor uses his or her employee, contractual, or volunteer~~  
23 ~~status to gain access to, or to establish a relationship with, that~~  
24 ~~other person.~~

25 (F) ~~(g)~~ The actor is an employee, contractual service  
26 provider, or volunteer of a child care organization, or a person  
27 licensed to operate a foster family home or a foster family group

1 home, in which that other person is a resident, that other person  
2 is at least 16 years of age, and the sexual penetration occurs  
3 during that other person's residency. As used in this subdivision,  
4 "child care organization", "foster family home", and "foster family  
5 group home" mean those terms as defined in section 1 of 1973 PA  
6 116, MCL 722.111.

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

9 Sec. 520e. (1) A person is guilty of criminal sexual conduct  
10 in the fourth degree if he or she engages in sexual contact with  
11 another person and if any of the following circumstances exist:

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

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

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

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

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

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

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

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

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

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

24           (f) That other person is at least 16 years of age ~~but less~~  
25 ~~than 18 years of age~~ and **IS** a student at a public school or  
26 nonpublic school, and either of the following applies:

27           (i) The actor is a teacher, substitute teacher, or

1 administrator of that public school, nonpublic school, school  
2 district, or intermediate school district. This subparagraph does  
3 not apply if ~~the other person is emancipated or if both persons are~~  
4 lawfully married to each other at the time of the alleged  
5 violation.

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

17 ~~—— (g) That other person is at least 16 years old but less than~~  
18 ~~26 years of age and is receiving special education services, and~~  
19 ~~either of the following applies:~~

20 ~~—— (i) The actor is a teacher, substitute teacher, administrator,~~  
21 ~~employee, or contractual service provider of the public school,~~  
22 ~~nonpublic school, school district, or intermediate school district~~  
23 ~~from which that other person receives the special education~~  
24 ~~services. This subparagraph does not apply if both persons are~~  
25 ~~lawfully married to each other at the time of the alleged~~  
26 ~~violation.~~

27 ~~—— (ii) The actor is a volunteer who is not a student in any~~

~~public school or nonpublic school, or is an employee of this state  
or of a local unit of government of this state or of the United  
States assigned to provide any service to that public school,  
nonpublic school, school district, or intermediate school district,  
and the actor uses his or her employee, contractual, or volunteer  
status to gain access to, or to establish a relationship with, that  
other person.~~

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

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

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