

HOUSE BILL NO. 4581

May 09, 2019, Introduced by Reps. Kahle, Ellison, Hoitenga and Hall 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:



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

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

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 penetration occurs
10 under circumstances not otherwise prohibited by this chapter. It is
11 an 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) That other person is at least 16 years of age but **is 18**
19 **years of age or** ~~less than 18 years of age~~ and **is** a student at a
20 public school or nonpublic school, and either of the following
21 applies:

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

28 (ii) The actor is an employee or a contractual service provider
29 of the public school, nonpublic school, school district, or



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

10 (f) That other person is at least 16 years old but less than
11 26 years of age and is receiving special education services, and
12 either of the following applies:

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

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

28 (g) The actor is an employee, contractual service provider, or
29 volunteer of a child care organization, or a person licensed to



1 operate a foster family home or a foster family group home, in
2 which that other person is a resident, that other person is at
3 least 16 years of age, and the sexual penetration occurs during
4 that other person's residency. As used in this subdivision, "child
5 care organization", "foster family home", and "foster family group
6 home" mean those terms as defined in section 1 of 1973 PA 116, MCL
7 722.111.

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

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

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

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

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

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

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

29 (iv) When the actor engages in the medical treatment or



1 examination of the victim in a manner or for purposes which are
 2 medically recognized as unethical or unacceptable.

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

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

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

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

24 (f) That other person is at least 16 years of age but **is 18**
 25 **years of age or less than 18 years of age** and **is** a student at a
 26 public school or nonpublic school, and either of the following
 27 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 (g) 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
24 lawfully married to each other at the time of the alleged
25 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 (h) 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 contact occurs during that
10 other person's residency. As used in this subdivision, "child care
11 organization", "foster family home", and "foster family group home"
12 mean those terms as defined in section 1 of 1973 PA 116, MCL
13 722.111.

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

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

