

**10. Penal Code**

Criminal Sexual Conduct - Act 505 of 2000

Vulnerable Adult Abuse – Act 559 of 2004

MI Penal Code - Act 328 of 1931 750.520a – .520n

MI Penal Code - Act 328 of 1931 750.81 – 750.89

MEMORANDUM  
**DEPARTMENT OF COMMUNITY HEALTH**  
LANSING, MI 48913

March 21, 2001

To: DCH-ORR  
CMHSP Rights Offices  
LPH/U Rights Offices

From: Dianne Baker, DCH-ORR  
Director of Community/Field Operations

Subject: PA 505 of 2000; Enrolled House Bill 4525

Find attached PA 505 of 2000, which amends the Penal Code criminal sexual conduct provisions at Sec. 520a to include the definition of mental health professional and 520e, CSC Fourth Degree, at (1)(e) to criminalize sexual contact where the actor is a mental health professional and the sexual contact occurs during or within 2 years after the time in which the victim is his/her client or patient (and not his/her spouse). Note that the consent of the victim is not a defense.

The question has arisen as to potential conflict between Sec. 723 ((9) Criminal Abuse in the Mental Health Code and Sec. 520e(1)(e) of the Penal Code. Sec. 723 (9) *does not require* a person to report suspected criminal abuse if (b) the suspected criminal abuse occurred *more than 1 year before* the date on which it first became known to the person who would otherwise be required to make a report. Sec. 520e (1)(e) makes it criminal sexual conduct in the 4<sup>th</sup> degree if a mental health professional has sexual contact with a patient or client during or within a *2 year period after* the victim is/was a patient or client. It is the position of this office that a report should be made to law enforcement regarding a mental health professional having a sexual relationship with an ex-patient or client, even if this occurred beyond a year before. Sec. 723(9) does not require but it does not prohibit such a report. There is no affirmative duty to report, however, in the best interest of the victim and any potential future victims, the report should be made. An individual acting in good faith who makes such a report is immune from civil or criminal liability that otherwise might accrue.

As always, we strongly recommend that you consult your agency 's legal counsel for his/her opinion and advice as how to proceed under these circumstances.



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The question has arisen as to potential conflict between Sec. 723 ((9) Criminal Abuse in the Mental Health Code and Sec. 520e(1)(e) of the Penal Code. Sec. 723 (9) *does not require* a person to report suspected criminal abuse if (b) the suspected criminal abuse occurred *more than 1 year before* the date on which it first became known to the person who would otherwise be required to make a report. Sec. 520e (1)(e) makes it criminal sexual conduct in the 4<sup>th</sup> degree if a mental health professional has sexual contact with a patient or client during or within a *2 year period after* the victim is/was a patient or client. It is the position of this office that a report should be made to law enforcement regarding a mental health professional having a sexual relationship with an ex-patient or client, even if this occurred beyond a year before. Sec. 723(9) does not require but it does not prohibit such a report. There is no affirmative duty to report, however, in the best interest of the victim and any potential future victims, the report should be made. An individual acting in good faith who makes such a report is immune from civil or criminal liability that otherwise might accrue.

As always, we strongly recommend that you consult your agency 's legal counsel for his/her opinion and advice as how to proceed under these circumstances.

**THE MICHIGAN PENAL CODE (EXCERPT)**  
**Act 328 of 1931**

**750.145n Vulnerable adult abuse; first degree; second degree; third degree; fourth degree; authority to prevent vulnerable adult from being harmed or harming others not prohibited; applicability of section to act carried out by patient advocate.**

Sec. 145n.

(1) A caregiver is guilty of vulnerable adult abuse in the first degree if the caregiver intentionally causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the first degree is a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(2) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the second degree if the reckless act or reckless failure to act of the caregiver or other person with authority over the vulnerable adult causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the second degree is a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(3) A caregiver is guilty of vulnerable adult abuse in the third degree if the caregiver intentionally causes physical harm to a vulnerable adult. Vulnerable adult abuse in the third degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,500.00, or both.

(4) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the fourth degree if the reckless act or reckless failure to act of the caregiver or other person with authority over a vulnerable adult causes physical harm to a vulnerable adult. Vulnerable adult abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(5) This section does not prohibit a caregiver or other person with authority over a vulnerable adult from taking reasonable action to prevent a vulnerable adult from being harmed or from harming others.

(6) This section does not apply to an act or failure to act that is carried out as directed by a patient advocate under a patient advocate designation executed in accordance with sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515.

Act 559 of 2004 (this section)

**History:** Add. 1994, Act 149, Eff. Oct. 1, 1994 ;-- Am. 2000, Act 66, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 559, Imd. Eff. Jan. 3, 2005

## THE MICHIGAN PENAL CODE (EXCERPT)

### Act 328 of 1931

#### **750.520a Definitions.**

Sec. 520a. As used in this chapter:

- (a) "Actor" means a person accused of criminal sexual conduct.
- (b) "Developmental disability" means an impairment of general intellectual functioning or adaptive behavior which meets the following criteria: (i) It originated before the person became 18 years of age.
  - (ii) It has continued since its origination or can be expected to continue indefinitely.
  - (iii) It constitutes a substantial burden to the impaired person's ability to perform in society.
  - (iv) It is attributable to 1 or more of the following: (A) Mental retardation, cerebral palsy, epilepsy, or autism.
- (b) Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.
- (c) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.
- (d) "Mental health professional" means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.
- (e) "Mental illness" means a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
- (f) "Mentally disabled" means that a person has a mental illness, is mentally retarded, or has a developmental disability.
- (g) "Mentally incapable" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.
- (h) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.
- (i) "Mentally retarded" means significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.
- (j) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.
- (k) "Personal injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.
- (l) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose

of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for: (i) Revenge.

(ii) To inflict humiliation.

(iii) Out of anger.

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

(n) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

**History:** Add. 1974, Act 266, Eff. Apr. 1, 1975 ;--Am. 1983, Act 158, Eff. Mar. 29, 1984 ;--Am. 2000, Act 505, Eff. Mar. 28, 2001 .

**Constitutionality:** The provision in the criminal sexual conduct statute which permits elevation of a criminal sexual conduct offense from a lesser to a higher degree on the basis of proof of personal injury to the victim in the form of mental anguish is not unconstitutionally vague. *People v. Petrella*, 424 Mich. 221, 380 N.W.2d 11 (1985).

**Compiler's Note:** Section 2 of Act 266 of 1974 provides: "Saving clause. "All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

### **750.520b.amended Criminal sexual conduct in the first degree; felony; consecutive terms.**

Sec. 520b. (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

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

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

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

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

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

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

(v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Criminal sexual conduct in the first degree is a felony punishable as follows:

(a) Except as provided in subdivisions (b) and (c), by imprisonment for life or for any term of years.

(b) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years.

(c) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age, by imprisonment for life without the possibility of parole if the person was previously convicted of a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age or a violation of law of the United States, another state or political subdivision substantially corresponding to a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age.

(d) In addition to any other penalty imposed under subdivision (a) or (b), the court shall sentence the defendant to lifetime electronic monitoring under section 520n.

(3) The court may order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.

**History:** Add. 1974, Act 266, Eff. Apr. 1, 1975 ;-- Am. 1983, Act 158, Eff. Mar. 29, 1984 ;-- Am. 2002, Act 714, Eff. Apr. 1, 2003 ;-- Am. 2006, Act 165, Eff. Aug. 28, 2006 ;-- Am. 2006, Act 169, Eff. Aug. 28, 2006 ;-- Am. 2007, Act 163, Eff. July 1, 2008

**Constitutionality:** The provision in the criminal sexual conduct statute which permits elevation of a criminal sexual conduct offense from a lesser to a higher degree on the basis of proof of personal injury to the victim in the form of mental anguish is not unconstitutionally vague. *People v. Petrella*, 424 Mich. 221, 380 N.W.2d 11 (1985).

**Compiler's Notes:** Section 2 of Act 266 of 1974 provides: "Saving clause. "All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

### **750.520c.amended Criminal sexual conduct in the second degree; felony.**

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

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

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

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

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

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

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

(v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or 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.

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

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

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

(ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).

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

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).

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

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

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

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

(i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.

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

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

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

(2) Criminal sexual conduct in the second degree is a felony punishable as follows:

(a) By imprisonment for not more than 15 years.

(b) In addition to the penalty specified in subdivision (a), the court shall sentence the defendant to lifetime electronic monitoring under section 520n if the violation involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age.

**History:** Add. 1974, Act 266, Eff. Apr. 1, 1975 ;-- Am. 1983, Act 158, Eff. Mar. 29, 1984 ;-- Am. 2000, Act 227, Eff. Oct. 1, 2000 ;-- Am. 2002, Act 714, Eff. Apr. 1, 2003 ;-- Am. 2006, Act 171, Eff. Aug. 28, 2006 ;-- Am. 2007, Act 163, Eff. July 1, 2008

**Compiler's Notes:** Section 2 of Act 266 of 1974 provides: "Saving clause. "All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

**750.520d.amended Criminal sexual conduct in the third degree; felony.**

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

- (a) That other person is at least 13 years of age and under 16 years of age.
- (b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(i) to (v).
- (c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- (d) That other person is related to the actor by blood or affinity to the third degree and the sexual penetration occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.
- (e) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:
  - (i) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.
  - (ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or 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.
- (f) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:
  - (i) The actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public school, nonpublic school, school district, or intermediate school district

from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(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.

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

**History:** Add. 1974, Act 266, Eff. Apr. 1, 1975 ;-- Am. 1983, Act 158, Eff. Mar. 29, 1984 ;-- Am. 1996, Act 155, Eff. June 1, 1996 ;-- Am. 2002, Act 714, Eff. Apr. 1, 2003 ;-- Am. 2007, Act 163, Eff. July 1, 2008

**Compiler's Notes:** Section 2 of Act 266 of 1974 provides: "Saving clause. "All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this amendatory act takes effect are saved and may be consummated according to the law in force when they are commenced. This amendatory act shall not be construed to affect any prosecution pending or begun before the effective date of this amendatory act."

#### **750.520e.amended Criminal sexual conduct in the fourth degree; misdemeanor.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or 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) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:

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

(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.

(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.

**History:** Add. 1974, Act 266, Eff. Apr. 1, 1975 ;-- Am. 1983, Act 158, Eff. Mar. 29, 1984 ;-- Am. 1988, Act 86, Eff. June 1, 1988 ;-- Am. 1994, Act 213, Eff. Oct. 1, 1994 ;-- Am. 1996, Act 155, Eff. June 1, 1996 ;-- Am. 2000, Act 227, Eff. Oct. 1, 2000 ;-- Am. 2000, Act 505, Eff. Mar. 28, 2001 ;-- Am. 2002, Act 714, Eff. Apr. 1, 2003 ;-- Am. 2007, Act 163, Eff. July 1, 2008

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**THE MICHIGAN PENAL CODE (EXCERPT)**  
**Act 328 of 1931**

**750.81 Assault and battery; penalties; applicability to individual using necessary reasonable physical force in compliance with MCL 380.1312 of the revised school code; “dating relationship” defined.**

Sec. 81.(1) Except as otherwise provided in this section, a person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(2) Except as provided in subsection (3) or (4), an individual who assaults or assaults and batters his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(3) An individual who commits an assault or an assault and battery in violation of subsection (2), and who has previously been convicted of assaulting or assaulting and battering his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, under any of the following, may be punished by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both:

(a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(4) An individual who commits an assault or an assault and battery in violation of subsection (2), and who has 2 or more previous convictions for assaulting or assaulting and battering his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, under any of the following, is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,500.00, or both:

(a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(5) This section does not apply to an individual using necessary reasonable physical force in compliance with section 1312 of the revised school code, 1976 PA 451, MCL 380.1312.

(6) As used in this section, “dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 75081 ;-- Am. 1994, Act 64, Eff. July 1, 1994 ;-- Am. 1999, Act 270, Eff. July 1, 2000 ;-- Am. 2000, Act 462, Imd. Eff. Jan. 10, 2001 ;-- Am. 2001, Act 189, Eff. Apr. 1, 2002 ;-- Am. 2001, Act 190, Eff. Apr. 1, 2002

### **750.82 Felonious assault; violation of subsection (1) in weapon free school zone; definitions.**

Sec. 82. (1) Except as provided in subsection (2), a person who assaults another person with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(2) A person who violates subsection (1) in a weapon free school zone is guilty of a felony punishable by 1 or more of the following:

(a) Imprisonment for not more than 4 years.

(b) Community service for not more than 150 hours.

(c) A fine of not more than \$6,000.00.

(3) As used in this section:

(a) “School” means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12.

(b) “School property” means a building, playing field, or property used for school purposes to impart instruction to children or used for functions and events sponsored by a school, except a building used primarily for adult education or college extension courses.

(c) “Weapon free school zone” means school property and a vehicle used by a school to transport students to or from school property.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.82 ;-- Am. 1994, Act 158, Eff. Aug. 15, 1994

**750.83 Assault with intent to commit murder.**

Sec. 83. Assault with intent to commit murder—Any person who shall assault another with intent to commit the crime of murder, shall be guilty of a felony, punishable by imprisonment in the state prison for life or any number of years.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.

**750.84 Assault with intent to do great bodily harm less than murder.**

Sec. 84. Assault with intent to do great bodily harm less than murder—Any person who shall assault another with intent to do great bodily harm, less than the crime of murder, shall be guilty of a felony punishable by imprisonment in the state prison not more than 10 years, or by fine of not more than 5,000 dollars.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.84

**750.86 Assault with intent to maim.**

Sec. 86. Assault with intent to maim—Any person who shall assault another with intent to maim or disfigure his person by cutting out or maiming the tongue, putting out or destroying an eye, cutting or tearing off an ear, cutting or slitting or mutilating the nose or lips or cutting off or disabling a limb, organ or member, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years or by fine of not more than 5,000 dollars.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.86

**750.87 Assault with intent to commit felony not otherwise punished.**

Sec. 87. Assault with intent to commit felony, not otherwise punished—Any person who shall assault another, with intent to commit any burglary, or any other felony, the punishment of which assault is not otherwise in this act prescribed, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years, or by fine of not more than 5,000 dollars.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.87

**750.88 Assault with intent to rob and steal; unarmed.**

Sec. 88. Assault with intent to rob and steal being unarmed—Any person, not being armed with a dangerous weapon, who shall assault another with force and violence, and with intent to rob and steal, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 15 years.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.88

**750.89 Assault with intent to rob and steal; armed.**

Sec. 89. Assault with intent to rob and steal being armed—Any person, being armed with a dangerous weapon, or any article used or fashioned in a manner to lead a person so assaulted reasonably to believe it to be a dangerous weapon, who shall assault another with intent to rob and steal shall be guilty of a felony, punishable by imprisonment in the state prison for life, or for any term of years.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- Am. 1939, Act 94, Eff. Sept. 29, 1939 ;-- CL 1948, 750.89

**THE MICHIGAN PENAL CODE (EXCERPT)**  
**Act 328 of 1931**

**750.145n Vulnerable adult abuse; first degree; second degree; third degree; fourth degree; authority to prevent vulnerable adult from being harmed or harming others not prohibited; applicability of section to act carried out by patient advocate.**

Sec. 145n.

(1) A caregiver is guilty of vulnerable adult abuse in the first degree if the caregiver intentionally causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the first degree is a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(2) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the second degree if the reckless act or reckless failure to act of the caregiver or other person with authority over the vulnerable adult causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the second degree is a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(3) A caregiver is guilty of vulnerable adult abuse in the third degree if the caregiver intentionally causes physical harm to a vulnerable adult. Vulnerable adult abuse in the third degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,500.00, or both.

(4) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the fourth degree if the reckless act or reckless failure to act of the caregiver or other person with authority over a vulnerable adult causes physical harm to a vulnerable adult. Vulnerable adult abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(5) This section does not prohibit a caregiver or other person with authority over a vulnerable adult from taking reasonable action to prevent a vulnerable adult from being harmed or from harming others.

(6) This section does not apply to an act or failure to act that is carried out as directed by a patient advocate under a patient advocate designation executed in accordance with sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515.

Act 559 of 2004 (this section)

**History:** Add. 1994, Act 149, Eff. Oct. 1, 1994 ;-- Am. 2000, Act 66, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 559, Imd. Eff. Jan. 3, 2005

MEMORANDUM  
DEPARTMENT OF COMMUNITY HEALTH  
LANSING, MI 48913

March 21, 2001

To: DCH-ORR  
CMHSP Rights Offices  
LPH/U Rights Offices

From: Dianne Baker, DCH-ORR  
Director of Community/Field Operations

Subject: PA 505 of 2000; Enrolled House Bill 4525

Find attached PA 505 of 2000, which amends the Penal Code criminal sexual conduct provisions at Sec. 520a to include the definition of mental health professional and 520e, CSC Fourth Degree, at (1)(e) to criminalize sexual contact where the actor is a mental health professional and the sexual contact occurs during or within 2 years after the time in which the victim is his/her client or patient (and not his/her spouse). Note that the consent of the victim is not a defense.

The question has arisen as to potential conflict between Sec. 723 ((9) Criminal Abuse in the Mental Health Code and Sec. 520e(1)(e) of the Penal Code. Sec. 723 (9) *does not require* a person to report suspected criminal abuse if (b) the suspected criminal abuse occurred *more than 1 year before* the date on which it first became known to the person who would otherwise be required to make a report. Sec. 520e (1)(e) makes it criminal sexual conduct in the 4<sup>th</sup> degree if a mental health professional has sexual contact with a patient or client during or within a *2 year period after* the victim is/was a patient or client. It is the position of this office that a report should be made to law enforcement regarding a mental health professional having a sexual relationship with an ex-patient or client, even if this occurred beyond a year before. Sec. 723(9) does not require but it does not prohibit such a report. There is no affirmative duty to report, however, in the best interest of the victim and any potential future victims, the report should be made. An individual acting in good faith who makes such a report is immune from civil or criminal liability that otherwise might accrue.

As always, we strongly recommend that you consult your agency's legal counsel for his/her opinion and advice as how to proceed under these circumstances.

**THE MICHIGAN PENAL CODE (EXCERPT)**  
**Act 328 of 1931**

**750.145n Vulnerable adult abuse; first degree; second degree; third degree; fourth degree; authority to prevent vulnerable adult from being harmed or harming others not prohibited; applicability of section to act carried out by patient advocate.**

(1) A caregiver is guilty of vulnerable adult abuse in the first degree if the caregiver intentionally causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the first degree is a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(2) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the second degree if the reckless act or reckless failure to act of the caregiver or other person with authority over the vulnerable adult causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the second degree is a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(3) A caregiver is guilty of vulnerable adult abuse in the third degree if the caregiver intentionally causes physical harm to a vulnerable adult. Vulnerable adult abuse in the third degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,500.00, or both.

(4) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the fourth degree if the reckless act or reckless failure to act of the caregiver or other person with authority over a vulnerable adult causes physical harm to the vulnerable adult or the caregiver or other person with authority over the vulnerable adult knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a vulnerable adult, regardless of whether physical harm results. Vulnerable adult abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(5) This section does not prohibit a caregiver or other person with authority over a vulnerable adult from taking reasonable action to prevent a vulnerable adult from being harmed or from harming others.

(6) This section does not apply to an act or failure to act that is carried out as directed by a patient advocate under a patient advocate designation executed in accordance with sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515.

History: Add. 1994, Act 149, Eff. Oct. 1, 1994 ;-- Am. 2000, Act 66, Eff. Apr. 1, 2000 ;-- Am. 2004, Act 559, Imd. Eff. Jan. 3, 2005 ;-- Am. 2016, Act 480, Eff. Apr. 6, 2017

**THE MICHIGAN PENAL CODE (EXCERPT)**  
**Act 328 of 1931**

**750.520a Definitions.**

As used in this chapter:

- (a) "Actor" means a person accused of criminal sexual conduct.
- (b) "Developmental disability" means an impairment of general intellectual functioning or adaptive behavior that meets all of the following criteria:
  - (i) It originated before the person became 18 years of age.
  - (ii) It has continued since its origination or can be expected to continue indefinitely.
  - (iii) It constitutes a substantial burden to the impaired person's ability to perform in society.
  - (iv) It is attributable to 1 or more of the following:
    - (A) Intellectual disability, cerebral palsy, epilepsy, or autism.
    - (B) Any other condition of a person that produces a similar impairment or requires treatment and services similar to those required for a person described in this subdivision.
- (c) "Electronic monitoring" means that term as defined in section 85 of the corrections code of 1953, 1953 PA 232, MCL 791.285.
- (d) "Intellectual disability" means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.
- (e) "Intermediate school district" means a corporate body established under part 7 of the revised school code, 1976 PA 451, MCL 380.601 to 380.705.
- (f) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.
- (g) "Mental health professional" means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.
- (h) "Mental illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
- (i) "Mentally disabled" means that a person has a mental illness, is intellectually disabled, or has a developmental disability.
- (j) "Mentally incapable" means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.
- (k) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.
- (l) "Nonpublic school" means a private, denominational, or parochial elementary or secondary school.
- (m) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.
- (n) "Personal injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.
- (o) "Public school" means a public elementary or secondary educational entity or agency that is established under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.
- (p) "School district" means a general powers school district organized under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.
- (q) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:
  - (i) Revenge.
  - (ii) To inflict humiliation.
  - (iii) Out of anger.
- (r) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(s) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

**History:** Add. 1974, Act 266, Eff. Apr. 1, 1975 ;-- Am. 1983, Act 158, Eff. Mar. 29, 1984 ;-- Am. 2000, Act 505, Eff. Mar. 28, 2001 ;-- Am. [2002, Act 714](#), Eff. Apr. 1, 2003 ;-- Am. [2006, Act 171](#), Eff. Aug. 28, 2006 ;-- Am. [2007, Act 163](#), Eff. July 1, 2008 ;-- Am. [2014, Act 64](#), Imd. Eff. Mar. 28, 2014

**750.520b.amended Criminal sexual conduct in the first degree; felony; consecutive terms.**

(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

- (a) That other person is under 13 years of age.
- (b) That other person is at least 13 but less than 16 years of age and any of the following:
  - (i) The actor is a member of the same household as the victim.
  - (ii) The actor is related to the victim by blood or affinity to the fourth degree.
  - (iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
  - (iv) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.
  - (v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or 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.
  - (vi) 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, and the sexual penetration occurs during the period of that other person's residency. As used in this subparagraph, "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.
- (c) Sexual penetration occurs under circumstances involving the commission of any other felony.
- (d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:
  - (i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
  - (ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes, but is not limited to, any of the circumstances listed in subdivision (f).
- (e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.
- (f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances:
  - (i) When the actor overcomes the victim through the actual application of physical force or physical violence.
  - (ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.
  - (iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.
  - (iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.
  - (v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.
- (g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- (h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:
  - (i) The actor is related to the victim by blood or affinity to the fourth degree.
  - (ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(2) Criminal sexual conduct in the first degree is a felony punishable as follows:

(a) Except as provided in subdivisions (b) and (c), by imprisonment for life or for any term of years.

(b) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years.

(c) For a violation that is committed by an individual 18 years of age or older against an individual less than 13 years of age, by imprisonment for life without the possibility of parole if the person was previously convicted of a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age or a violation of law of the United States, another state or political subdivision substantially corresponding to a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age.

(d) In addition to any other penalty imposed under subdivision (a) or (b), the court shall sentence the defendant to lifetime electronic monitoring under section 520n.

(3) The court may order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.

**History:** Add. 1974, Act 266, Eff. Apr. 1, 1975 ;-- Am. 1983, Act 158, Eff. Mar. 29, 1984 ;-- Am. 2002, Act 714, Eff. Apr. 1, 2003 ;-- Am. 2006, Act 165, Eff. Aug. 28, 2006 ;-- Am. 2006, Act 169, Eff. Aug. 28, 2006 ;-- Am. 2007, Act 163, Eff. July 1, 2008 ;-- Am. 2012, Act 372, Eff. Apr. 1, 2013 ;-- Am. 2014, Act 23, Imd. Eff. Mar. 4, 2014

**750.520c.amended Criminal sexual conduct in the second degree; felony.**

(1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

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

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

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

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

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

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

(v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or 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.

(vi) 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 and the sexual contact occurs during the period of 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.

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

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

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

(ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).

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

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).

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

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

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

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

(i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.

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

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

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

(2) Criminal sexual conduct in the second degree is a felony punishable as follows:

(a) By imprisonment for not more than 15 years.

(b) In addition to the penalty specified in subdivision (a), the court shall sentence the defendant to lifetime electronic monitoring under section 520n if the violation involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age.

**History:** Add. 1974, Act 266, Eff. Apr. 1, 1975 ;-- Am. 1983, Act 158, Eff. Mar. 29, 1984 ;-- Am. [2000, Act 227](#), Eff. Oct. 1, 2000 ;-- Am. [2002, Act 714](#), Eff. Apr. 1, 2003 ;-- Am. [2006, Act 171](#), Eff. Aug. 28, 2006 ;-- Am. [2007, Act 163](#), Eff. July 1, 2008 ;-- Am. [2012, Act 372](#), Eff. Apr. 1, 2013

#### **750.520d.amended Criminal sexual conduct in the third degree; felony.**

(1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist:

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

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

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

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

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

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

(ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or 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.

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

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

(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) 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 penetration 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 third degree is a felony punishable by imprisonment for not more than 15 years.

**History:** Add. 1974, Act 266, Eff. Apr. 1, 1975 ;-- Am. 1983, Act 158, Eff. Mar. 29, 1984 ;-- Am. [1996, Act 155](#), Eff. June 1, 1996 ;-- Am. [2002, Act 714](#), Eff. Apr. 1, 2003 ;-- Am. [2007, Act 163](#), Eff. July 1, 2008 ;-- Am. [2012, Act 372](#), Eff. Apr. 1, 2013

#### **750.520e.amended Criminal sexual conduct in the fourth degree; misdemeanor.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or 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) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:

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

(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.

(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.

**History:** Add. 1974, Act 266, Eff. Apr. 1, 1975 ;-- Am. 1983, Act 158, Eff. Mar. 29, 1984 ;-- Am. 1988, Act 86, Eff. June 1, 1988 ;-- Am. 1994, Act 213, Eff. Oct. 1, 1994 ;-- Am. [1996, Act 155](#), Eff. June 1, 1996 ;-- Am. [2000, Act 227](#), Eff. Oct. 1, 2000 ;-- Am. 2000, Act 505, Eff. Mar. 28, 2001 ;-- Am. [2002, Act 714](#), Eff. Apr. 1, 2003 ;-- Am. [2007, Act 163](#), Eff. July 1, 2008 ;-- Am. [2012, Act 372](#), Eff. Apr. 1, 2013

## Chapter XI – ASSAULTS

### **750.81 Assault or assault and battery; penalties; previous convictions; exception; “dating relationship” defined.**

(1) Except as otherwise provided in this section, a person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(2) Except as provided in subsection (3), (4), or (5), an individual who assaults or assaults and batters his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(3) An individual who assaults or assaults and batters an individual who is pregnant and who knows the individual is pregnant is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(4) An individual who commits an assault or an assault and battery in violation of subsection (2) or (3), and who has previously been convicted of assaulting or assaulting and battering an individual described in either subsection (2) or subsection (3) under any of the following, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both:

(a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(5) An individual who commits an assault or an assault and battery in violation of subsection (2) or (3), and who has 2 or more previous convictions for assaulting or assaulting and battering an individual described in either subsection (2) or subsection (3) under any of the following, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both:

(a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81a, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81a, 82, 83, 84, or 86.

(6) This section does not apply to an individual using necessary reasonable physical force in compliance with section 1312 of the revised school code, 1976 PA 451, MCL 380.1312.

(7) As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 75081 ;-- Am. 1994, Act 64, Eff. July 1, 1994 ;-- Am. 1999, Act 270, Eff. July 1, 2000 ;-- Am. 2000, Act 462, Imd. Eff. Jan. 10, 2001 ;-- Am. 2001, Act 189, Eff. Apr. 1, 2002 ;-- Am. 2001, Act 190, Eff. Apr. 1, 2002 ;-- Am. 2012, Act 366, Eff. Apr. 1, 2013 ;-- Am. 2016, Act 87, Eff. July 25, 2016

**750.81a Assault; infliction of serious or aggravated injury; penalties; previous convictions; “dating relationship” defined.**

(1) Except as otherwise provided in this section, a person who assaults an individual without a weapon and inflicts serious or aggravated injury upon that individual without intending to commit murder or to inflict great bodily harm less than murder is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(2) Except as provided in subsection (3), an individual who assaults his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of the same household without a weapon and inflicts serious or aggravated injury upon that individual without intending to commit murder or to inflict great bodily harm less than murder is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(3) An individual who commits an assault and battery in violation of subsection (2), and who has 1 or more previous convictions for assaulting or assaulting and battering his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of the same household, in violation of any of the following, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both:

(a) This section or an ordinance of a political subdivision of this state substantially corresponding to this section.

(b) Section 81, 82, 83, 84, or 86.

(c) A law of another state or an ordinance of a political subdivision of another state substantially corresponding to this section or section 81, 82, 83, 84, or 86.

(4) As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

**History:** Add. 1939, Act 237, Eff. Sept. 29, 1939 ;-- CL 1948, 750.81a ;-- Am. 1994, Act 65, Eff. July 1, 1994 ;-- Am. 1999, Act 270, Eff. July 1, 2000 ;-- Am. 2001, Act 190, Eff. Apr. 1, 2002 ;-- Am. 2012, Act 366, Eff. Apr. 1, 2013

**750.81b Enhanced sentence; provisions.**

The following provisions apply in any case in which the prosecuting attorney seeks an enhanced sentence under section 81(3) or (4) or 81a(3):

(a) The charging document or amended charging document shall include a notice provision that states that the prosecuting attorney intends to seek an enhanced sentence under section 81(3) or (4) or 81a(3) and lists the prior conviction or convictions that will be relied upon for that purpose. The notice shall be separate and distinct from the language charging the current offense, and shall not be read or otherwise disclosed to the jury if the case proceeds to trial before a jury.

(b) The defendant's prior conviction or convictions shall be established at sentencing. The existence of a prior conviction and the factual circumstances establishing the required relationship between the defendant and the victim of the prior assault or assault and battery may be established by any evidence that is relevant for that purpose, including, but not limited to, 1 or more of the following:

(i) A copy of a judgment of conviction.

(ii) A transcript of a prior trial, plea-taking, or sentencing proceeding.

(iii) Information contained in a presentence report.

(iv) A statement by the defendant.

(c) The defendant or his or her attorney shall be given an opportunity to deny, explain, or refute any evidence or information relating to the defendant's prior conviction or convictions before the sentence is imposed, and shall be permitted to present evidence relevant for that purpose unless the court determines and states upon the record that the challenged evidence or information will not be considered as a basis for imposing an enhanced sentence under section 81(3) or (4) or 81a(3).

(d) A prior conviction may be considered as a basis for imposing an enhanced sentence under section 81(3) or (4) or 81a(3) if the court finds the existence of both of the following by a preponderance of the evidence:

(i) The prior conviction.

(ii) 1 or more of the required relationships between the defendant and the victim of the prior assault or assault and battery.

**History:** Add. 1994, Act 65, Eff. July 1, 1994

**750.81c Threats or assault against employee of family independence agency; violation; penalty; other conviction; "serious impairment of body function" defined.**

(1) A person who communicates to any person a threat that he or she will physically harm an individual who is an employee of the family independence agency and who does so because of the individual's status as an employee of that agency is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(2) Except as provided in subsection (3), a person who assaults or assaults and batters an individual while the individual is performing his or her duties as an employee of the family independence agency or because of the individual's status as an employee of that agency and causes the individual any physical injury is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$1,000.00, or both.

(3) A person who assaults or assaults and batters an individual while the individual is performing his or her duties as an employee of the family independence agency or because of the individual's status as an employee of that agency and causes the individual serious impairment of body function is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.

(4) A conviction or sentence imposed for a violation of this section does not preclude a conviction or sentence for a violation of any other applicable law.

(5) As used in this section, "serious impairment of body function" means that phrase as defined in section 625(5) of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

**History:** Add. 2001, Act 22, Eff. Sept. 1, 2001

**750.81d Assaulting, battering, resisting, obstructing, opposing person performing duty; felony; penalty; other violations; consecutive terms; definitions.**

(1) Except as provided in subsections (2), (3), and (4), an individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(2) An individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties causing a bodily injury requiring medical attention or medical care to that person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(3) An individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties causing a serious impairment of a body function of that person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(4) An individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties causing the death of that person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$20,000.00, or both.

(5) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

(6) A term of imprisonment imposed for a violation of this section may run consecutively to any term of imprisonment imposed for another violation arising from the same transaction.

(7) As used in this section:

(a) "Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.

(b) "Person" means any of the following:

(i) A police officer of this state or of a political subdivision of this state including, but not limited to, a motor carrier officer or capitol security officer of the department of state police.

(ii) A police officer of a junior college, college, or university who is authorized by the governing board of that junior college, college, or university to enforce state law and the rules and ordinances of that junior college, college, or university.

(iii) A conservation officer of the department of natural resources or the department of environmental quality.

(iv) A conservation officer of the United States department of the interior.

(v) A sheriff or deputy sheriff.

(vi) A constable.

(vii) A peace officer of a duly authorized police agency of the United States, including, but not limited to, an agent of the secret service or department of justice.

(viii) A firefighter.

(ix) Any emergency medical service personnel described in section 20950 of the public health code, 1978 PA 368, MCL 333.20950.

(x) An individual engaged in a search and rescue operation as that term is defined in section 50c.

(c) "Serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

**History:** Add. 2002, Act 266, Eff. July 15, 2002 ;-- Am. 2006, Act 517, Imd. Eff. Dec. 29, 2006

**750.81e Assault or battery of employee or contractor of public utility; violation as misdemeanor or felony; penalty; other violations; definitions.**

(1) Except as otherwise provided in this section, a person who assaults, batters, or assaults and batters an individual while the individual is performing his or her duties as an employee or contractor of a public utility or because of the individual's status as an employee or contractor of a public utility is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(2) A person who assaults, batters, or assaults and batters an individual while the individual is performing his or her duties as an employee or contractor of a public utility or because of the individual's status as an employee or contractor of a public utility causing the individual bodily injury requiring medical attention or medical care is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$1,000.00, or both.

(3) A person who assaults, batters, or assaults and batters an individual while the individual is performing his or her duties as an employee or contractor of a public utility or because of the individual's status as an employee or contractor of a public utility causing the individual serious impairment of a body function is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.

(4) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction as the violation of this section.

(5) As used in this section:

(a) "Public utility" means a utility that provides steam, gas, heat, electricity, water, cable television, telecommunications services, or pipeline services, whether privately, municipally, or cooperatively owned.

(b) "Serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

**History:** Add. 2010, Act 131, Eff. Oct. 19, 2010

**750.82 Felonious assault; violation of subsection (1) in weapon free school zone; definitions.**

(1) Except as provided in subsection (2), a person who assaults another person with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, or other dangerous weapon without intending to commit murder or to inflict great bodily harm less than murder is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(2) A person who violates subsection (1) in a weapon free school zone is guilty of a felony punishable by 1 or more of the following:

(a) Imprisonment for not more than 4 years.

(b) Community service for not more than 150 hours.

(c) A fine of not more than \$6,000.00.

(3) As used in this section:

(a) "School" means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12.

(b) "School property" means a building, playing field, or property used for school purposes to impart instruction to children or used for functions and events sponsored by a school, except a building used primarily for adult education or college extension courses.

(c) "Weapon free school zone" means school property and a vehicle used by a school to transport students to or from school property.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.82 ;-- Am. 1994, Act 158, Eff. Aug. 15, 1994

**750.83 Assault with intent to commit murder.**

Assault with intent to commit murder—Any person who shall assault another with intent to commit the crime of murder, shall be guilty of a felony, punishable by imprisonment in the state prison for life or any number of years.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.83

**750.84 Assault with intent to do great bodily harm less than murder; assault by strangulation or suffocation; "strangulation or suffocation" defined; other violation out of same conduct.**

(1) A person who does either of the following is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both:

- (a) Assaults another person with intent to do great bodily harm, less than the crime of murder.
- (b) Assaults another person by strangulation or suffocation.

(2) As used in this section, "strangulation or suffocation" means intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

(3) This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same conduct as the violation of this section.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.84 ;-- Am. 2012, Act 367, Eff. Apr. 1, 2013

**750.85 Torture; felony; penalty; definitions; element of crime; other laws.**

(1) A person who, with the intent to cause cruel or extreme physical or mental pain and suffering, inflicts great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control commits torture and is guilty of a felony punishable by imprisonment for life or any term of years.

(2) As used in this section:

- (a) "Cruel" means brutal, inhuman, sadistic, or that which torments.
- (b) "Custody or physical control" means the forcible restriction of a person's movements or forcible confinement of the person so as to interfere with that person's liberty, without that person's consent or without lawful authority.
- (c) "Great bodily injury" means either of the following:
  - (i) Serious impairment of a body function as that term is defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.
  - (ii) One or more of the following conditions: internal injury, poisoning, serious burns or scalding, severe cuts, or multiple puncture wounds.
- (d) "Severe mental pain or suffering" means a mental injury that results in a substantial alteration of mental functioning that is manifested in a visibly demonstrable manner caused by or resulting from any of the following:
  - (i) The intentional infliction or threatened infliction of great bodily injury.
  - (ii) The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt the senses or the personality.
  - (iii) The threat of imminent death.

(iv) The threat that another person will imminently be subjected to death, great bodily injury, or the administration or application of mind-altering substances or other procedures calculated to disrupt the senses or personality.

(3) Proof that a victim suffered pain is not an element of the crime under this section.

(4) A conviction or sentence under this section does not preclude a conviction or sentence for a violation of any other law of this state arising from the same transaction.

**History:** Add. 2005, Act 335, Eff. Mar. 1, 2006

#### **750.86 Assault with intent to maim.**

Assault with intent to maim—Any person who shall assault another with intent to maim or disfigure his person by cutting out or maiming the tongue, putting out or destroying an eye, cutting or tearing off an ear, cutting or slitting or mutilating the nose or lips or cutting off or disabling a limb, organ or member, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years or by fine of not more than 5,000 dollars.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.86

#### **750.87 Assault with intent to commit felony not otherwise punished.**

Assault with intent to commit felony, not otherwise punished—Any person who shall assault another, with intent to commit any burglary, or any other felony, the punishment of which assault is not otherwise in this act prescribed, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years, or by fine of not more than 5,000 dollars.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.87

#### **750.88 Assault with intent to rob and steal; unarmed.**

Assault with intent to rob and steal being unarmed—Any person, not being armed with a dangerous weapon, who shall assault another with force and violence, and with intent to rob and steal, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 15 years.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- CL 1948, 750.88

#### **750.89 Assault with intent to rob and steal; armed.**

Assault with intent to rob and steal being armed—Any person, being armed with a dangerous weapon, or any article used or fashioned in a manner to lead a person so assaulted reasonably to believe it to be a dangerous weapon, who shall assault another with intent to rob and steal shall be guilty of a felony, punishable by imprisonment in the state prison for life, or for any term of years.

**History:** 1931, Act 328, Eff. Sept. 18, 1931 ;-- Am. 1939, Act 94, Eff. Sept. 29, 1939 ;-- CL 1948, 750.89