

# *Albion College Student Handbook 2013-14*

## *Chapter VI, Appendix B*

### *Sexual Assault Policy, Procedures, and Prevention*

Albion College is committed to providing an educational environment where we are all able to learn, teach, and work freely and where the dignity, safety, and self-respect of all members of our community are protected. All forms of sexual assault are incompatible with this mission and will not be tolerated at Albion College.

The Albion College Sexual Assault Policy prohibits all incidents of criminal sexual conduct as defined by the laws of the State of Michigan. However, as an educational institution, we believe we have the responsibility to set an even higher standard of conduct for our community. The Albion College Sexual Assault Policy contains our standards, definitions, and procedures, as well as the pertinent Michigan laws. We will fairly but rigorously enforce these standards.

Education and awareness are essential to our efforts against sexual assault, and the College provides educational materials and programs throughout the academic year. Most importantly, our procedures and referrals to services recognize the trauma of sexual assault and the need to empower the survivor. Our sexual assault materials, programs, and referrals are available to all Albion College students and employees.

#### *Facts About Sexual Assault*

##### *What is Sexual Assault?*

Sexual assault is any physical sexual contact, as defined by Michigan law, to which you have not given consent. Unwanted sexual gestures or language are sexual harassment. (The Albion College Policy and Procedures for Addressing Complaints of Sexual Harassment may be accessed at the following Web site: [www.albion.edu/shp/](http://www.albion.edu/shp/).) Sexual assault includes any sexual touching, with or without clothing, oral sexual activities, vaginal or anal penetration to which explicit consent has not been given.

Sexual assault ranges from pinching someone's buttocks in public through unwanted violent sexual intercourse.

Sexual assault is not always violent.

While in most sexual assaults, men are the perpetrators and women the victims, men can and do victimize men, women can and do victimize women, and women can and do victimize men.

**Acquaintance Rape.** Most sexual assaults occur between people who know each other. These instances of sexual assault are called acquaintance rape. Most campus sexual assaults are acquaintance rapes. Because acquaintance rapes do not fit our culture's stereotype, where a sleazy stranger jumps out of a dark alley and rapes a woman at knifepoint, many of us, women and men, have a hard time naming acquaintance rape as sexual assault. To the perpetrators, she/he meant yes, even if she/he said no. The victims blame themselves, unable to believe that a friend, someone they knew, violated their trust as well as their bodies.

**Alcohol and Other Drugs.** Most acquaintance rapes involve alcohol or other drug use. Alcohol and other drugs impair judgment as well as one's physical and mental abilities.

##### *What is Consent?*

Consent is "willingly and verbally agreeing to specific sexual contact or conduct." This means the individuals involved must state clearly what they do and do not want to occur between them.

Under the Albion College Sexual Assault Policy:

- No one who is impaired by alcohol, drugs, and/or prescribed medication can consent;
- No one who is under duress can consent; and
- No one who has been threatened or pressured can consent.

##### *Safer Sex*

In most cases of sexual assault, precautions against sexually transmitted diseases (STDs) and pregnancy are not taken. Both parties are therefore at risk for STDs such as herpes or genital warts, as well as HIV/AIDS. The woman is also at risk for pregnancy. See On- and Off-Campus Resources section(s) for the location of testing and treatment facilities.

##### *What To Do in Case of Sexual Assault*

###### **If you are sexually assaulted:**

1. **GET TO A SAFE PLACE.** Put your safety first. If you can't get to a phone yourself, do whatever you can to attract someone's attention and get to a safe place.

2. **CALL A SEXUAL ASSAULT ADVOCATE (SAA).** As soon as you can get to a phone, call the sexual assault advocate (SAA) at #9876 (press the # sign first) or have a friend call. These individuals are trained to respond to sexual assaults. *All communication with the SAA is confidential.* In an emergency, you may also contact the SAA through Albion College Campus Safety, ext. 0911 (campus phone) or 517/629-0911 (cell phone) or, if not an emergency, by calling ext. 1234 (campus phone) or 517/629-1234 (cell phone).
3. **DO NOT SHOWER, BATHE, OR CHANGE CLOTHES.** Do not shower, bathe, douche, or change clothes until you decide if you will or will not report the assault.

If a friend is sexually assaulted:

1. **LISTEN.** Believe her/him. Be gentle, patient, and sensitive.
2. **GET THE SURVIVOR TO A SAFE PLACE.**
3. **ASSESS HER/HIS PHYSICAL INJURIES.** Determine if she/he needs emergency medical care and if she/he is coherent enough to make decisions regarding treatment. If she/he is not, get the survivor to the closest medical facility. If she/he is, support the survivor in her/his decision regarding treatment.
4. **CONTACT A SEXUAL ASSAULT ADVOCATE (SAA).** Give the survivor information about the sexual assault advocates including that all communication with the SAA is confidential. The survivor does not have to give her/his name. If the survivor does not want to talk to the SAA, you may call the SAA and anonymously get an informational brochure for her/him.
5. **REMIND THE SURVIVOR NOT TO BATHE OR CHANGE CLOTHES.** Remind the survivor not to shower, bathe, douche, wash her/his hands, brush her/his teeth, go to the bathroom, or change clothes if she/he has any thought of reporting this crime. Any of these actions would destroy evidence which might be important to this case.
6. **KNOW YOUR LIMITS.** Recognize what you can and cannot handle. Get help if you feel you are in over your head.
7. **DON'T JUDGE.** Don't question or judge the survivor's actions or reactions. Don't tell the survivor what she/he should or shouldn't do, or what she/he should or shouldn't be feeling. Don't pry for details if the survivor is unwilling to give them.

## ***On-Campus Resources***

**Counseling Services** — Ext. 0236

The Counseling Services Office offers free, confidential counseling and support to survivors of sexual assault and sexual harassment. The counseling staff are dedicated and experienced in providing personal assistance to survivors as well as friends affected by this type of trauma.

**Student Health Services** — Ext. 0220

The Student Health Services staff are trained in sexual assault response. All conversations and examinations are strictly confidential.

**Campus Safety** — Ext. 1234

**The Anna Howard Shaw Women's Center (AHSWC)** — Ext. 0226

The AHSWC offers information and educational material, advocacy, support, and consultation regarding sexual assault.

## ***Off-Campus Resources***

**Sexual Assault Services of Calhoun County** — 888/383-2192 (24-hours)

Offers short-term individual counseling; trained staff or volunteer advocates provide support and advocacy to survivors at area hospitals and police departments. 24-hour calls/availability. All services provided free of charge.

**AWARE - Jackson** — 517/783-2861

Staff will accompany survivor to Allegiance Health (regional hospital) and City Police or Sheriff Department. Counseling and support groups. 24-hour calls/availability.

**Albion Department of Public Safety -**

**Albion** — 629-3933

## ***Albion College Sexual Assault Policy***

### ***I. Scope***

The philosophy, response procedures, and educational programs included in this sexual assault policy apply to and are available to all members of the Albion College community. The judicial procedures apply only to students.

### ***II. Overview***

The sexual assault policy aims to eliminate sexual assault on the Albion College campus through comprehensive educational programs, rigorous enforcement of campus standards, and cooperation with the criminal justice system.

The policy and procedures seek to provide any survivor of sexual assault who is a member of the Albion College community or his/her guest with referrals for confidential, immediate and long-term services covering her/his psychological and medical needs, as well as with accessible procedures for on-campus and off-campus prosecution where appropriate and if the survivor so chooses. A survivor of sexual assault has the right to report the offense to the Albion Department of Public Safety. The College will assist the survivor in doing so if the survivor wishes. On campus, the College seeks to provide a timely and fair judicial process as well as stringent enforcement of sanctions following decisions for those sexual assault cases involving students. A complaint against a student is adjudicated in accordance with the Judicial Process established in the Albion College *Student Handbook*.

General information and educational material concerning sexual assault are available in the Anna Howard Shaw Women's Center, the Office of Human Resources, the Office of the Provost, and the Office of the Vice President for Student Affairs. Individuals seeking confidential consultation should contact a Sexual Assault Advocate (#9876).

### ***III. Policy***

Albion College is a residential, educational community committed to providing an atmosphere in which we are all able to teach, learn, work, and grow free from constraints based on individual biases. In doing so, we are obligated to protect the dignity, safety, and self-respect of all members of the College community. The College will not tolerate any acts which interfere with this commitment including any form of sexual intimidation, abuse, or assault, which includes all incidents of criminal sexual conduct as defined by Michigan Law.

In accordance with Albion College's basic principles of responsibility, the College seeks to challenge the community to adopt ever higher standards and expectations for its members. For this reason, a student who violates the College standards for sexual conduct could be subjected to sanctions under the College judicial process even though he/she could not be prosecuted in the criminal justice system for that conduct.

Albion College is committed to referring survivors of sexual assault who are members of the Albion College community to trained Sexual Assault Advocates (SAA) affiliated with Sexual Assault Services of Calhoun County, located in Battle Creek.

The Office of the Vice President for Student Affairs shall ensure that campus-wide educational programs for students are conducted annually.

### ***IV. Definitions***

Sexual assault means any sexual act or contact intentionally initiated by a person that has not been expressly consented to by the person to whom the behavior is directed. "Consent" means willingly and verbally agreeing to engage in specific sexual contact or conduct. Psychologically pressuring an individual or attempting to take advantage of an individual under duress or incapable of making a decision on his/her own is a direct violation of the policy. This includes situations in which an individual is impaired by alcohol, drugs, and/or prescribed medications. In the most extreme cases, sexual assault may involve force. Force may include, but is not limited to, the use of or display of a weapon, physical battering, or immobilization of the other person.

#### **A. Sexual Assault**

Rape is the most serious form of sexual assault, and it is also the most extreme form of behavior prohibited by this policy. Rape refers to penetration, however slight, of the vagina or anus, or fellatio or cunnilingus accomplished through force and against the wishes of the other person.

Sexual assault also includes, but is not limited to, attempted non-consensual penetration, fellatio or cunnilingus, or coercing or forcing an individual to engage in non-consensual sexual contact.

#### **B. Sexual Contact**

Sexual contact includes touching intimate parts of the body, including thighs, genitals, buttocks, the pubic region or the breast/chest area, or the clothing covering those parts, and/or using intimate parts of the body to touch another individual.

A student who violates the College standards for sexual conduct could be subjected to sanctions under the College Judicial Process even though he/she could not be prosecuted in the criminal justice system for that conduct.

### ***V. Responding to Survivors of Sexual Assault***

#### **A. Sexual Assault Advocates (SAA)**

Counselors at Sexual Assault Services of Calhoun County, located in Battle Creek, are available to assist survivors of sexual assault. The SAAs will advise survivors on their options for medical and emotional care as well as legal remedies. At the request of the survivor, the SAA will remain with the survivor throughout the immediate post-assault or reporting period and will act as a mediator between the survivor and other professionals. The SAA will continue to assist the survivor through whichever legal procedures she/he chooses to pursue. Communications between a survivor and a SAA are privileged to the extent provided by Michigan law.

#### **B. Medical Care and Advocacy**

In the event of a sexual assault, if the survivor is in need of immediate medical care, the survivor should proceed to the closest medical facility. As soon as the survivor's immediate medical needs have received attention, or in all other cases of sexual assault, the survivor or anyone acting on her/his behalf is strongly advised to contact a sexual assault counselor. Even if the survivor does not choose to interact with the SAA directly at this time, anyone aware of the assault—friend, student, or College employee—can request resource materials, referrals, and other relevant information for the survivor from the sexual assault counselor. The SAA will be available to advise the survivor of her/his options in the following areas:

1. Medical—The SAA will discuss the importance of immediate medical care. In addition to care of injuries, survivors should be tested for sexually transmitted diseases and pregnancy. This would also be the time when procedures for the rape evidence kit could be done.
2. Emotional—The SAA is familiar with the range of reactions survivors have to sexual assault. The SAA is prepared to be there and listen, to provide information, and be a knowledgeable support to the survivor. If, after the immediate post-assault period, the survivor decides she/he needs longer-term counseling, the SAA will provide the survivor with a list of resources.
3. College Policies—The SAA is familiar with Albion College policies and procedures regarding sexual assault. The SAA will provide the survivor with full information concerning how to report the assault on campus and how the student judicial system functions if the assailant is an Albion College student.

Students will be notified of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident if so requested by the survivor and if such changes are reasonable and available.

4. Criminal Charges—The SAA can advise the survivor about reporting the assault to the Albion Department of Public Safety, and give general information regarding investigation and prosecution. Throughout this process, the SAA's role is to advise and support.

**Decisions in all of these areas are the survivor's alone.**

## ***VI. Procedures for Resolution***

Cases involving alleged violation of the sexual assault policy by a student are processed in accordance with the Albion College Judicial Process. The Judicial Process, including procedural guidelines, rights of the respondent, sanctions, and the appeal procedure, is described in the Albion College *Student Handbook*. In hearing a case of alleged sexual assault, the College Judicial Board or administrative hearing officer(s) may consider as part of its hearing and adjudicative function the questions of who has initiated sexual contact, to whom sexual conduct is directed, and whether consent has been effectively given. In *all* cases the College Judicial Board or administrative hearing officer(s) shall have available the full range of sanctions up to and including expulsion from the College. Please refer to the *Student Handbook* for a detailed description of the process.

## ***VII. Recordkeeping***

Records shall be kept for the safety and protection of the College community as a whole.

### **A. Procedures**

Student disciplinary records and Albion College Judicial Process records are maintained by the vice president for student affairs.

### **B. Access to Records**

When the respondent is found responsible, a record of the incident, including any statements and hearing materials, will become part of the respondent's judicial record as would any judicial record. These materials will be held as a part of the student's permanent record in accordance with record retention procedures. Contact the Office of the Vice President for Student Affairs for further information. Such information shall be available to the Albion College Judicial Board or administrative hearing officers as described in the Albion College Judicial Process.

## ***VIII. Education of the College Community***

**A.** It shall be the responsibility of the vice president for student affairs to ensure that campus-wide educational programs for students are conducted annually.

**B.** The director of the Anna Howard Shaw (AHS) Women's Center will develop and coordinate educational programs for the College community on the topics of sexual assault and date rape, among others. The provost, vice president for student affairs, and the vice president of finance and administration shall designate an individual to work with the director of the AHS Women's Center. The designees will have the responsibility of implementing the educational programs for their respective areas. Training shall include discussion of the sexual assault policy statement and an understanding of what constitutes sexual assault, procedures for addressing possible sexual assault, and methods for prevention of sexual assault.

**C.** Educational programs shall be held at the beginning of each semester for new students (first-year and transfers), new employees, and faculty. Ongoing educational programs shall also be held for all members of the Albion College community.

## ***Michigan Criminal Sexual Conduct Statute***

### ***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 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) 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) "Electronic monitoring" means that term as defined in section 85 of the corrections code of 1953, 1953 PA 232, MCL 791.285.
  - (d) "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.
  - (e) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.
  - (f) "Mental health professional" means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.
  - (g) "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.
  - (h) "Mentally disabled" means that a person has a mental illness, is mentally retarded, or has a developmental disability.
  - (i) "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.

- (j) “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.
- (k) “Mentally retarded” means significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior.
- (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.

### ***First degree criminal sexual conduct***

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.

### ***Second degree criminal sexual conduct***

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.

### ***Third degree criminal sexual conduct***

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.

### ***Fourth degree criminal sexual conduct***

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.

## ***Second or subsequent offenses***

Sec. 520f. (1) If a person is convicted of a second or subsequent offense under section 520b, 520c, or 520d, the sentence imposed under those sections for the second or subsequent offense shall provide for a mandatory minimum sentence of at least five years.

(2) For purposes of this section, an offense is considered a second or subsequent offense if, prior to conviction of the second or subsequent offense, the actor has at any time been convicted under section 520b, 520c or 520d or under any similar statute of the United States or any state for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit such an offense.

## ***Assault with intent to commit criminal sexual conduct***

Sec. 520g. (1) Assault with intent to commit criminal sexual conduct involving sexual penetration shall be a felony punishable by imprisonment for not more than 10 years.

(2) Assault with intent to commit criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than five years.

## ***Corroboration of victim’s testimony***

Sec. 520h. The testimony of a victim need not be corroborated in prosecutions under sections 520b to 520g.

## ***Resistance***

Sec. 520i. A victim need not resist the actor in prosecution under sections 520b to 520g.

## ***Admissibility of evidence; victim’s sexual conduct***

Sec. 520j. (1) Evidence of specific instances of the victim’s sexual conduct, opinion evidence of the victim’s sexual conduct, and reputation evidence of the victim’s sexual conduct shall not be admitted under sections 520b to 520g unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

(a) Evidence of the victim’s past sexual conduct with the actor.

(b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.

(2) If the defendant proposes to offer evidence described in subsection (1)(a) or (b), the defendant within ten days after the arraignment on the information shall file a written motion and offer of proof. The court may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1). If new information is discovered during the course of the trial that may make the evidence described in subsection (1)(a) or (b) admissible, the judge may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1).

## ***Suppression of names and details***

Sec. 520k. Upon the request of the counsel or the victim or actor in a prosecution under sections 520b to 520g the magistrate before whom any person is brought on a charge of having committed an offense under sections 520b to 520g shall order that the names of the victim and actor and details of the alleged offense be suppressed until such time as the actor is arraigned on the information, the charge is dismissed or the case is otherwise concluded, whichever occurs first.

## ***Married persons***

Sec. 520l. A person may be charged and convicted under sections 520b to 520g even though the victim is his/her legal spouse. However, a person may not be charged or convicted solely because his/her legal spouse is under the age of 16, mentally incapable or mentally incapacitated.

## ***Blood and saliva samples, chemical testing; DNA identification profiling; definitions***

*Text of section effective July 1, 2009*

A person shall provide samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and shall provide samples for chemical testing if any of the following apply:

- (a) The individual is arrested for a violent felony as that term is defined in section 36 of the corrections code of 1953, 1953 PA 232, MCL 791.236.
  - (b) The person is found responsible for a violation of section 83, 91, 316, 317, or 321, a violation or attempted violation of section 349, 520b, 520c, 520d, 520e, or 520g, or a violation of section 167(1)(c) or (f) or 335a, or a local ordinance substantially corresponding to section 167(1)(c) or (f) or 335a.
  - (c) The person is convicted of a felony or attempted felony, or any of the following misdemeanors, or local ordinances that are substantially corresponding to the following misdemeanors:
    - (i) A violation of section 145a, enticing a child for immoral purposes.
    - (ii) A violation of section 167(1)(c), (f), or (i), disorderly person by window peeping, engaging in indecent or obscene conduct in public, or loitering in a house of ill fame or prostitution.
    - (iii) A violation of section 335a, indecent exposure.
    - (iv) A violation of section 451, first and second prostitution violations.
    - (v) A violation of section 454, leasing a house for purposes of prostitution.
    - (vi) A violation of section 462, female under the age of 17 in a house of prostitution.
- (2) Notwithstanding subsection (1), if at the time the person is arrested for, convicted of, or found responsible for the violation the investigating law enforcement agency or the department of state police already has a sample from the person that meets the requirements of the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176, the person is not required to provide another sample or pay the fee required under subsection (6).
- (3) The county sheriff or the investigating law enforcement agency shall collect and transmit the samples in the manner required under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176. However, a sample taken under subsection (1)(a) may be transmitted to the department of state police upon collection.
- (4) An investigating law enforcement agency, prosecuting agency, or court that has in its possession a DNA identification profile obtained from a sample of a person under subsection (1) shall forward the DNA identification profile to the department of state police at or before the time of the person's sentencing or disposition upon that conviction or finding of responsibility unless the department of state police already has a DNA identification profile of the person.
- (5) The DNA profiles of DNA samples received under this section shall only be disclosed as follows:
  - (a) To a criminal justice agency for law enforcement identification purposes.
  - (b) In a judicial proceeding as authorized or required by a court.
  - (c) To a defendant in a criminal case if the DNA profile is used in conjunction with a charge against the defendant.
  - (d) For an academic, research, statistical analysis, or protocol developmental purpose only if personal identifications are removed.
- (6) Until October 1, 2003, the court shall order each person found responsible for or convicted of 1 or more crimes listed in subsection (1) to pay an assessment of \$60.00. The assessment required under this subsection is in addition to any fine, costs, or other assessments imposed by the court.
- (7) An assessment required under subsection (6) shall be ordered upon the record, and shall be listed separately in the adjudication order, judgment of sentence, or order of probation.
- (8) After reviewing a verified petition by a person against whom an assessment is imposed under subsection (6), the court may suspend payment of all or part of the assessment if it determines the person is unable to pay the assessment.
- (9) The court that imposes the assessment prescribed under subsection (6) may retain 10% of all assessments or portions of assessments collected for costs incurred under this section and shall transmit that money to its funding unit. On the last day of each month, the clerk of the court shall transmit the assessments or portions of assessments collected under this section as follows:
  - (a) Twenty-five percent to the county sheriff or other investigating law enforcement agency that collected the DNA sample as designated by the court to defray the costs of collecting DNA samples.
  - (b) Until October 1, 2003, 65% to the department of treasury for the department of state police forensic science division to defray the costs associated with the requirements of DNA profiling and DNA retention prescribed under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.
  - (c) Beginning October 1, 2003, 65% to the state treasurer for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.
- (10) Beginning December 31, 2002, the director of the department of state police shall report by December 31 of each year concerning the rate of DNA sample collection, DNA identification profiling, retention and compilation of DNA identification profiles, and the collection of assessments required under subsection (6) to all of the following:
  - (a) The standing committees of the senate and house of representatives concerned with DNA sample collection and retention.
  - (b) The house of representatives appropriations subcommittee on state police and military affairs.
  - (c) The senate appropriations subcommittee on state police.
- (11) As used in this section:
  - (a) "DNA identification profile" and "DNA identification profiling" mean those terms as defined in section 2 of the DNA identification profiling system act, 1990 PA 250, MCL 28.172.
  - (b) "Investigating law enforcement agency" means the law enforcement agency responsible for the investigation of the offense for which the person is convicted. Investigating law enforcement agency includes the county sheriff but does not include a probation officer employed by the department of corrections.
  - (c) "Felony" means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.
  - (d) "Sample" means a portion of a person's blood, saliva, or tissue collected from the person.

Source: Michigan Legislature  
www.legislature.mi.gov