

Legislative Analysis



CHILD ABUSE: INCREASE PENALTIES

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5562

Sponsor: Rep. Matt Lori

House Bill 5563

Sponsor: Rep. Joseph Graves

Committee: Judiciary

Complete to 5-2-12

A SUMMARY OF HOUSE BILLS 5562 AND 5563 AS INTRODUCED 4-24-12

House Bill 5562 would enact "Dominick's Law" to:

- Establish minimum terms of imprisonment and increased maximum terms of imprisonment for first- and second-degree child abuse.
- Provide an enhanced sentence for a repeat offense of first- and second-degree child abuse; and
- Allow for an additional sentence for an offense of first- through third-degree child abuse if the crime was committed in the presence of one or more child witnesses.

House Bill 5563 would add the new maximum sentences to the sentencing guidelines.

House Bill 5562 would amend the Michigan Penal Code (MCL 750.136b and 750.136d) to revise the penalties for first- and second-degree child abuse and create a separate penalty for abusing one child in the presence of one or more other children. The bill is to be known as "Dominick's Law."

First-degree child abuse is a felony punishable by imprisonment for not more than 15 years. The bill would revise the penalty for a first offense to be life or any terms of years and would carry a minimum sentence of five years. A second or subsequent offense would be punishable by life or any term of years and require a minimum sentence of 10 years.

Child abuse in the second-degree is a felony punishable by a maximum term of imprisonment of four years. The bill would instead require a minimum sentence of two years and a maximum sentence of not more than 10 years. The minimum sentence for a second or subsequent offense would be four years with a maximum sentence of 20 years.

The penalties for child abuse in the third- and fourth-degree would not be altered.

The bill would also create a separate offense for committing child abuse in the first-, second-, or third-degree in the presence of a child who was not the victim. The minimum and maximum terms of imprisonment for a violation involving first- or second-degree child abuse in the presence of a child witness would be the same as for the crime of child abuse as detailed above. Committing child abuse in the third-degree in the presence of a child witness would be punishable by up to two years imprisonment.

A charge and conviction under the new crime category would not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law arising out of the same transaction involving child abuse.

House Bill 5563, which is tie-barred to House Bill 5078, would add the revised penalties under House Bill 5078 to the sentencing guidelines (MCL 777.16g) as follows:

Felony Classification	OFFENSE/ Against a Person	MAXIMUM TERM OF IMPRISONMENT
A	First degree child abuse – First offense	Life
A	First degree child abuse – Second or subsequent offense	Life
C	Second degree child abuse – First offense	10 years
B	Second degree child abuse – Second or subsequent offense	20 years
A	First degree child abuse in presence of another child – first offense	Life
A	First degree child abuse in presence of another child - second or subsequent offense	Life
D	Second degree child abuse in presence of another child – first offense	10 years
B	Second degree child abuse in presence of another child – second or subsequent offense	20 years
G	Third degree child abuse in presence of another child	2 years

BACKGROUND INFORMATION:

First-degree child abuse. A person is guilty of first-degree child abuse if he or she knowingly or intentionally causes serious physical or serious mental harm to a child.

Second-degree child abuse. A person is guilty of second-degree child abuse if any of the following apply: (1) the person's omission or reckless act causes serious physical or mental harm to a child; (2) the person knowingly or intentionally commits an act likely to

cause serious physical or mental harm regardless of whether harm results; and/or (3) the person knowingly or intentionally commits an act that is cruel regardless of whether harm results.

Third-degree child abuse. A person is guilty of third-degree child abuse if he or she knowingly or intentionally causes physical harm to a child and/or knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, and the act results in physical harm to a child.

Fourth-degree child abuse. A person is guilty of fourth-degree child abuse if the person's omission or reckless act causes physical harm to a child and/or the person knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, regardless of whether physical harm results.

FISCAL IMPACT:

The bills would establish new statutory minimum sentences and would increase maximum sentences for first- and second-degree child abuse and would create new additional felony offenses for repeat child abuse offenders and offenses committed in the presence of another child. By increasing the length of jail and/or prison sentences for persons convicted of first- and second-degree child abuse, the bills would likely increase state and local incarceration costs by an indeterminate amount.

As background, under current law, first-degree child abuse is a Class B felony with a maximum sentence of 15 years and minimum sentence ranges under Michigan sentencing guidelines that vary from 0-18 months to 117-160 months, depending on the prior record of the offender and factors surrounding the offense as both are scored under sentencing guidelines. Michigan Department of Corrections annual statistical reports show that, for the three-period starting January 1, 2008 and ending December 31, 2010, 134 persons were convicted of committing or attempting to commit first-degree child abuse. Of these persons, 96 were sentenced to prison; 34 were sentenced to probation, 1 to county jail; and 3 were sentenced in another manner (e.g. delayed or suspended sentence, youthful offender probation).

Second-degree child abuse, under current law, is deemed a Class F felony with a maximum sentence of 4 years and minimum sentence ranges that vary from 0-3 months to 17-30 months, depending again on prior record and offense scoring under sentencing guidelines. Michigan Department of Corrections annual statistical reports show that, for the three-period starting January 1, 2008 and ending December 31, 2010, 264 persons were convicted of committing or attempting to commit second-degree child abuse. Of these persons, 66 were sentenced to prison; 157 were sentenced to probation, 31 to county jail; and 10 were sentenced in another manner.

The bills' revisions to current law make the first offense for first-degree child abuse a class A felony with a statutory minimum sentence of 5 years in prison and a maximum sentence of life in prison. Likewise, first-offense, second-degree child abuse would become a Class C felony with a statutory minimum sentence of 2 years in prison and a

maximum sentence of 10 years. This suggests that all persons convicted of these offenses would serve time in prison equal to at least the new statutory minimum sentence lengths, except in cases where sentencing judges might decide to depart from the prescribed statutory minimum prison sentence. Even then, the likelihood of a prison or jail sentence would increase under Michigan Sentencing Guidelines with the upgraded Class A and Class C felony designations. The same would hold true for those convicted of the new second-offense and "in the presence of another child" provisions which also carry statutory minimum prison terms.

In general, this would increase the prison population and related state corrections costs. For reference, the data above show that 236 persons were convicted of these offenses from 2008 through 2010, but did not serve prison sentences as they more likely would have if the bills' provisions had been in place at the time. Note, however, that this assumes that persons previously convicted of these offenses would have still been convicted of these specific offenses with the bill's new revisions in place. It is possible that, once the sentence structures are changed, plea agreements will move some offenders to lower level offenses (e.g. third-degree child abuse) where probation sentences would remain an option.

In addition to increasing the percentage of convictions that lead to prison terms, the bills would also increase the prison length of stay of those convicted of these offenses. Looking at MDOC data on calendar year 2009 prison commitments, the average minimum sentence for first-degree child abuse (actual abuse, not attempted abuse) was 4.9 years, less than the mandated 5 years in House Bill 5562 for a first offense. Eleven of the 19 offenders sentenced to prison had minimum sentences below the new mandatory minimum prescribed in the bill. Likewise, on second-degree child abuse prison commitments in 2009, the average minimum was 1.8 years, and 7 of the 13 offenders sentenced to prison received a minimum below the 2 years prescribed in the bill for first offenses. This increased length of stay would also likely have a non-negligible impact on prison population, especially over time.

To the extent that the bills result in more sentences and longer sentences to prison or to county jails, state and local incarceration costs will increase. The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The cost of local incarceration in a county jail varies by jurisdiction. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,100 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Bob Schneider

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.