October 11, 2022, Introduced by Reps. Berman, Carra, Meerman, LaFave and Marino and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled "The Michigan penal code,"
by amending section 136b (MCL 750.136b), as amended by 2020 PA 49.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 136b. (1) As used in this section:

(a) "Child" means a person who is less than 18 years of age and is not emancipated by operation of law as provided in section 4 of 1968 PA 293, MCL 722.4.

(b) "Cruel" means brutal, inhuman, sadistic, or that which
torments.

(c) "Omission" means a willful failure to provide food, clothing, or shelter necessary for a child's welfare or willful abandonment of a child.

(d) "Person" means a child's parent or guardian or any other person who cares for, has custody of, or has authority over a child regardless of the length of time that a child is cared for, in the custody of, or subject to the authority of that person.

(e) "Physical harm" means any injury to a child's physical condition.

(f) "Serious physical harm" means any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(g) "Serious mental harm" means an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of 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.

1. (2) A person is guilty of child abuse in the first degree if the either of the following applies:

   (a) The person knowingly or intentionally causes serious physical harm or serious mental harm to a child.

   (b) The person knowingly or intentionally consents to, obtains, or assists with a gender transition procedure for a child. For purposes of this subdivision only, "person" means a child's parent or guardian or any other person who cares for, has custody
of, has authority over a child regardless of the length of time
that a child is cared for, in the custody of, or subject to the
authority of that person, or a physician or other licensed medical
professional.

(2) Child abuse in the first degree is a felony punishable by
imprisonment for life or any term of years.

(3) A person is guilty of child abuse in the second degree if
any of the following apply:
   
   (a) The person's omission causes serious physical harm or
       serious mental harm to a child or if the person's reckless act
       causes serious physical harm or serious mental harm to a child.
   
   (b) The person knowingly or intentionally commits an act
       likely to cause serious physical or mental harm to a child
       regardless of whether harm results.
   
   (c) The person knowingly or intentionally commits an act that
       is cruel to a child regardless of whether harm results.
   
   (d) The person or a licensee, as licensee is defined in
       section 1 of 1973 PA 116, MCL 722.111, violates section 15(2) of

(4) Child abuse in the second degree is a felony punishable by
imprisonment as follows:
   
   (a) For a first offense, not more than 10 years.
   
   (b) For an offense following a prior conviction, not more than
       20 years.

(5) A person is guilty of child abuse in the third degree if
any of the following apply:
   
   (a) The person knowingly or intentionally causes physical harm
       to a child.
   
   (b) The person 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.

(6) Child abuse in the third degree is a felony punishable by imprisonment as follows:

(a) For a first offense, not more than 2 years.
(b) For an offense following a prior conviction, not more than 5 years.

(7) A person is guilty of child abuse in the fourth degree if any of the following apply:

(a) The person's omission or reckless act causes physical harm to a child.
(b) 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.

(8) Child abuse in the fourth degree is a crime punishable as follows:

(a) For a first offense, a misdemeanor punishable by imprisonment for not more than 1 year.
(b) For an offense following a prior conviction, a felony punishable by imprisonment for not more than 2 years.

(9) This section does not prohibit a parent or guardian, or other person permitted by law or authorized by the parent or guardian, from taking steps to reasonably discipline a child, including the use of reasonable force.

(10) It is an affirmative defense to a prosecution under this section that the defendant's conduct involving the child was a reasonable response to an act of domestic violence in light of all the facts and circumstances known to the defendant at that time. The defendant has the burden of establishing the affirmative
defense by a preponderance of the evidence. As used in this subsection, "domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(11) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions must be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.
(b) A transcript of a prior trial, plea-taking, or sentencing.
(c) Information contained in a presentence report.
(d) The defendant's statement.

(12) As used in this section: "prior conviction" means a violation of this section or a violation of a law of another state substantially corresponding to this section.

(a) "Biological sex" means the biological indication of male or female in the context of reproductive potential or capacity without regard to an individual's psychological, chosen, or subjective experience of gender.
(b) "Child" means an individual who is less than 18 years of age and is not emancipated by operation of law as provided in section 4 of 1968 PA 293, MCL 722.4.
(c) "Cross-sex hormones" means any of the following:
(i) Any testosterone or other androgen given to a biological
female in an amount that is larger or more potent than would
normally occur naturally in a healthy biological female.

(ii) Any estrogen given to a biological male in an amount that
is larger or more potent than would normally occur naturally in a
healthy biological male.

(d) "Cruel" means brutal, inhuman, sadistic, or that which
torments.

(e) "Gender" means the psychological, behavioral, social, and
cultural aspects of being male or female.

(f) "Gender reassignment surgery" means a medical surgery that
seeks to alter or remove healthy physical or healthy anatomical
characteristics or features that are typical for the individual's
biological sex in order to instill or create physiological or
anatomical characteristics that resemble a sex different from the
individual's biological sex. Gender reassignment surgery includes a
genital or nongenital gender reassignment surgery.

(g) "Gender transition procedure" means, except as otherwise
provided in subdivision (h), any procedure related to a gender
transition, whether performed or administered by a physician or
other licensed medical professional or any other person, where the
procedure seeks to do any of the following:

(i) Alter or remove physical or anatomical characteristics or
features that are typical of an individual's biological sex.

(ii) Instill or create physiological or anatomical
characteristics that resemble a sex different from an individual's
biological sex, including, but not limited to, any of the
following:

(A) The administration of puberty-blocking drugs, cross-sex
hormones, or any other substances or like mechanisms used to
promote the development of feminizing or masculinizing features in
the opposite biological sex.

(B) A genital or nongenital gender reassignment surgery.

(C) The usage of any substances, whether or not those
substances were obtained from or prescribed by a physician or other
licensed medical professional, that cause the development of a
child's biological sex to deviate from his or her biological sex at
birth, alter the onset of puberty, or that otherwise alter the
typical hormonal ranges of a child from that of his or her
biological sex.

(h) "Gender transition procedure" does not include any of the
following:

(i) A service to an individual born with a medically verifiable
disorder of sex development, including, but not limited to, a
service to any of the following individuals:

(A) An individual born with 46 XX chromosomes with
virilization.

(B) An individual born with 46 XY chromosomes with under-
virilization.

(C) An individual having both ovarian and testicular tissue.

(D) An individual with external biological sex characteristics
that are ambiguous.

(ii) A service provided by a physician or other licensed
medical professional to an individual who, through genetic or
biochemical testing, has been diagnosed with a disorder of sexual
development due to the individual not having normal sex chromosome
structure, sex steroid hormone production, or sex steroid hormone
action.

(iii) The treatment of an infection, injury, disease, or
disorder that has been caused or exacerbated by the performance of
a gender transition procedure, whether or not the gender transition
procedure was performed in accordance with federal or state law.

(iv) A procedure undertaken because the individual suffers from
a physical disorder, physical injury, or physical illness that
would, as certified by a physician or other licensed medical
professional, place the individual in imminent danger of death or
impairment of major bodily function unless surgery is performed.

(i) "Genital or nongenital gender reassignment surgery" means
a medical procedure performed for the purpose of assisting an
individual with a gender transition.

(j) "Omission" means a willful failure to provide food,
clothing, or shelter necessary for a child's welfare or willful
abandonment of a child.

(k) "Person" means a child's parent or guardian or any other
person who cares for, has custody of, or has authority over a child
regardless of the length of time that a child is cared for, in the
custody of, or subject to the authority of that person.

(l) "Physical harm" means any injury to a child's physical
condition.

(m) "Physician or other licensed medical professional" means a
person licensed under article 15 of the public health code, 1978 PA
368, MCL 333.16101 to 333.18838.

(n) "Prior conviction" means a violation of this section or a
violation of a law of another state substantially corresponding to
this section.

(o) "Puberty-blocking drug" means any of the following if
taken to delay or suppress pubertal development in a child for the
purpose of assisting with a gender transition:
(i) A gonadotropin-releasing hormone analog or other synthetic
drug taken by a child whose biological sex is male to stop
luteinizing hormone secretion and testosterone secretion.

(ii) A synthetic drug taken by a child whose biological sex is
female to stop the production of estrogen and progesterone.

(p) "Serious mental harm" means an injury to a child's mental
condition or welfare that is not necessarily permanent but results
in visibly demonstrable manifestations of 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.

(q) "Serious physical harm" means a physical injury to a child
that seriously impairs the child's health or physical well-being,
including, but not limited to, brain damage, a skull or bone
fracture, subdural hemorrhage or hematoma, dislocation, sprain,
internal injury, poisoning, burn or scald, or severe cut.

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