

HOUSE BILL No. 5078

October 13, 2011, Introduced by Rep. Scott 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 2008 PA 577,
and by adding section 136d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

1 abandonment of a child.

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

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

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

13 (g) "Serious mental harm" means an injury to a child's mental
14 condition or welfare that is not necessarily permanent but results
15 in visibly demonstrable manifestations of a substantial disorder of
16 thought or mood which significantly impairs judgment, behavior,
17 capacity to recognize reality, or ability to cope with the ordinary
18 demands of life.

19 (2) A person is guilty of child abuse in the first degree if
20 the person knowingly or intentionally causes serious physical or
21 serious mental harm to a child. Child abuse in the first degree is
22 a felony punishable by imprisonment ~~for not more than 15 years.~~ **AS**
23 **FOLLOWS:**

24 (A) **FOR A FIRST OFFENSE, LIFE OR ANY TERM OF YEARS, BUT NOT**
25 **LESS THAN 5 YEARS.**

26 (B) **FOR A SECOND OR SUBSEQUENT OFFENSE, LIFE OR ANY TERM OF**
27 **YEARS, BUT NOT LESS THAN 10 YEARS.**

1 (3) A person is guilty of child abuse in the second degree if
2 any of the following apply:

3 (a) The person's omission causes serious physical harm or
4 serious mental harm to a child or if the person's reckless act
5 causes serious physical harm or serious mental harm to a child.

6 (b) The person knowingly or intentionally commits an act
7 likely to cause serious physical or mental harm to a child
8 regardless of whether harm results.

9 (c) The person knowingly or intentionally commits an act that
10 is cruel to a child regardless of whether harm results.

11 (4) Child abuse in the second degree is a felony punishable by
12 imprisonment ~~for not more than 4 years.~~ **AS FOLLOWS:**

13 **(A) FOR A FIRST OFFENSE, NOT LESS THAN 2 YEARS OR MORE THAN 10**
14 **YEARS.**

15 **(B) FOR A SECOND OR SUBSEQUENT OFFENSE, NOT LESS THAN 4 YEARS**
16 **OR MORE THAN 20 YEARS.**

17 (5) A person is guilty of child abuse in the third degree if
18 any of the following apply:

19 (a) The person knowingly or intentionally causes physical harm
20 to a child.

21 (b) The person knowingly or intentionally commits an act that
22 under the circumstances poses an unreasonable risk of harm or
23 injury to a child, and the act results in physical harm to a child.

24 (6) Child abuse in the third degree is a felony punishable by
25 imprisonment for not more than 2 years.

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

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

3 (b) The person knowingly or intentionally commits an act that
4 under the circumstances poses an unreasonable risk of harm or
5 injury to a child, regardless of whether physical harm results.

6 (8) Child abuse in the fourth degree is a misdemeanor
7 punishable by imprisonment for not more than 1 year.

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

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

20 **SEC. 136D. (1) A PERSON WHO VIOLATES SECTION 136B IN THE**
21 **PRESENCE OF A CHILD OTHER THAN THE CHILD WHO IS THE VICTIM OF THE**
22 **VIOLATION IS GUILTY OF A FELONY PUNISHABLE AS FOLLOWS:**

23 **(A) EXCEPT AS PROVIDED IN SUBDIVISION (B), IF THE PERSON**
24 **VIOLATES SECTION 136B(2) IN THE PRESENCE OF ANOTHER CHILD, BY**
25 **IMPRISONMENT FOR LIFE OR ANY TERM OF YEARS, BUT NOT LESS THAN 5**
26 **YEARS.**

27 **(B) IF THE PERSON VIOLATES SECTION 136B(2) IN THE PRESENCE OF**

1 ANOTHER CHILD ON A SECOND OR SUBSEQUENT OCCASION, BY IMPRISONMENT
2 FOR LIFE OR ANY TERM OF YEARS, BUT NOT LESS THAN 10 YEARS.

3 (C) EXCEPT AS PROVIDED IN SUBDIVISION (D), IF THE PERSON
4 VIOLATES SECTION 136B(4) IN THE PRESENCE OF ANOTHER CHILD, BY
5 IMPRISONMENT FOR NOT LESS THAN 2 YEARS OR MORE THAN 10 YEARS.

6 (D) IF THE PERSON VIOLATES SECTION 136B(4) IN THE PRESENCE OF
7 ANOTHER CHILD ON A SECOND OR SUBSEQUENT OCCASION, BY IMPRISONMENT
8 FOR 4 YEARS, BUT NOT LESS THAN 20 YEARS.

9 (E) IF THE PERSON VIOLATES SECTION 136B(6) IN THE PRESENCE OF
10 ANOTHER CHILD, BY IMPRISONMENT FOR NOT MORE THAN 2 YEARS.

11 (2) A CHARGE AND CONVICTION UNDER THIS SECTION DO NOT PROHIBIT
12 A PERSON FROM BEING CHARGED WITH, CONVICTED OF, OR SENTENCED FOR
13 ANY OTHER VIOLATION OF LAW ARISING OUT OF THE SAME TRANSACTION AS
14 THE VIOLATION OF THIS SECTION.

15 Enacting section 1. This amendatory act shall be known and may
16 be cited as "Dominic's Law".