

HOUSE BILL No. 4877

August 16, 2017, Introduced by Rep. Garcia and referred to the Committee on Law and Justice.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending section 136b (MCL 750.136b), as amended by 2016 PA 488.

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) "CONTROLLED SUBSTANCE" MEANS A CONTROLLED SUBSTANCE LISTED**
6 **IN SCHEDULE 1 UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA**
7 **368, MCL 333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR A**
8 **CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC**
9 **HEALTH CODE, 1978 PA 368, MCL 333.7214.**

10 (C) ~~(b)~~—"Cruel" means brutal, inhuman, sadistic, or that which

1 torments.

2 (D) "FETUS" MEANS THAT TERM AS DEFINED IN SECTION 17015 OF THE
3 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.17015.

4 (E) ~~(e)~~—"Omission" means a willful failure to provide food,
5 clothing, or shelter necessary for a child's welfare or willful
6 abandonment of a child.

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

11 (G) ~~(e)~~—"Physical harm" means any injury to a child's physical
12 condition.

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

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

24 (2) A person is guilty of child abuse in the first degree if
25 the person knowingly or intentionally causes serious physical or
26 serious mental harm to a child. Child abuse in the first degree is
27 a felony punishable by imprisonment for life or any term of 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 (d) The person or a licensee as licensee is defined in section
12 1 of 1973 PA 116, MCL 722.111, violates section 15(2) of ~~1993 PA~~
13 ~~218, 1973 PA 116~~, MCL 722.125.

14 (4) Child abuse in the second degree is a felony punishable by
15 imprisonment as follows:

16 (a) For a first offense, not more than 10 years.

17 (b) For a second or subsequent offense, not more than 20
18 years.

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

21 (a) The person knowingly or intentionally causes physical harm
22 to a child.

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

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

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

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

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

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

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

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

22 **(11) THIS SECTION APPLIES TO AN INDIVIDUAL WHO IS PREGNANT AND**
23 **ADDICTED TO CONTROLLED SUBSTANCES AND WHOSE USE OF CONTROLLED**
24 **SUBSTANCES HARMS THE FETUS OR CONSTITUTES AN UNREASONABLE RISK OF**
25 **HARM TO THE FETUS AS DESCRIBED IN THIS SECTION. HOWEVER, AS TO THAT**
26 **FETUS, THAT FOLLOWING ARE AFFIRMATIVE DEFENSES:**

27 **(A) THAT THE DEFENDANT IS PREGNANT AND ADDICTED TO CONTROLLED**

1 SUBSTANCES BUT HAS ENROLLED IN AN ADDICTION RECOVERY PROGRAM BEFORE
2 THE BIRTH OF THE CHILD, REMAINED IN THAT PROGRAM THROUGH PREGNANCY,
3 AND SUCCESSFULLY COMPLETED THE ADDICTION RECOVERY PROGRAM.

4 (B) THAT THE DEFENDANT GIVES BIRTH TO A CHILD WHO IS BORN
5 ADDICTED TO OR HARMED BY THE DEFENDANT'S USE OF CONTROLLED
6 SUBSTANCES DURING PREGNANCY BUT HAS ENROLLED IN A COURT-ORDERED
7 ADDICTION RECOVERY PROGRAM OR IS ACCEPTED INTO THE DRUG TREATMENT
8 COURT, AND SUCCESSFULLY COMPLETES THE PROGRAM, UNDER SECTIONS 1060
9 TO 1086 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL
10 600.1060 TO 600.1086.

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