

Legislative Analysis



CHILD ABUSE: ENHANCED SENTENCE WITH PRIOR CONVICTION

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Senate Bills 29 and 30 as reported from House committee

Sponsor: Sen. Peter J. Lucido

House Committee: Judiciary

(Enacted as Public Acts 49 and 50 of 2020)

Senate Committee: Judiciary and Public Safety

Complete to 1-28-20

Analysis available at
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BRIEF SUMMARY: Senate Bill 29 would amend the Michigan Penal Code to create enhanced penalties for second-, third-, or fourth-degree child abuse when the individual convicted of that crime has a prior conviction for child abuse in any degree. Senate Bill 30 would place the new penalties within the sentencing guidelines.

FISCAL IMPACT: Senate Bill 29 would have an indeterminate fiscal impact on state and local units of government. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

Currently, except for repeat second-degree child abuse violations, no matter how many times the same person commits an act constituting child abuse, the same penalty applies. Some feel, however, that if a person commits a second act, or a third, or more, the subsequent convictions should carry a higher penalty. One incident, they reason, may be an unfortunate mistake or may lead to a person's getting help for a problem that played a part in the wrongdoing. But when the same person either deliberately hurts a child again or continues to engage in conduct that puts a child at risk of harm, he or she should face a harsher criminal sentence.

THE CONTENT OF THE BILLS:

Under current law, a person is guilty of second-degree child abuse if the person's omission or reckless act causes serious physical or mental harm to a child; if the person knowingly or intentionally commits an act that is cruel to a child or that is likely to cause serious physical or mental harm to a child, regardless of whether harm results; or if the person intentionally violates a licensing rule for family and group child care homes under 1973 PA 116 and the violation causes the death of a child. A violation is a felony punishable by up to 10 years' imprisonment for a first offense and up to 20 years' imprisonment for a second or subsequent offense.

A person is guilty of third-degree child abuse if the person knowingly or intentionally causes physical harm to a child *or* knowingly or intentionally commits an act that poses an unreasonable risk of harm or injury to a child and that results in physical harm to a child. A violation is a felony punishable by up to 2 years' imprisonment.

A person is guilty of fourth-degree child abuse if the person's omission or reckless act causes physical harm to a child *or* the person knowingly or intentionally commits an act that poses an unreasonable risk of harm or injury to a child, regardless of whether physical harm results. A violation is a misdemeanor punishable by up to 1 year's imprisonment.

Senate Bill 29 would increase the sentence that can be imposed for second-, third-, or fourth-degree child abuse if the person convicted for that crime has a prior conviction. Under the bill, "prior conviction" would mean a violation of the child abuse law (i.e., child abuse in any degree) or violation of a law of another state that substantially corresponds to the child abuse law. (The penalty for first-degree child abuse is not increased for repeat offenders under the bill because it is currently life or any term of years.)

Under the bill, second-degree child abuse with a prior conviction for child abuse in any degree would be a felony punishable by imprisonment for up to 20 years; third-degree child abuse with a prior conviction would be a felony punishable by imprisonment for up to 5 years; and fourth-degree child abuse with a prior conviction would be a felony punishable by imprisonment for up to 2 years. The bill would not change the penalty for a first violation of any of these crimes.

The bill would require a prosecutor seeking an enhanced sentence for a defendant who has one or more prior convictions to include on the complaint and information a statement listing the prior conviction or convictions. The court would determine, without a jury, the existence of the defendant's prior conviction or convictions either at sentencing or at a separate hearing before sentencing. The court would base its determination on any relevant evidence, which could include a copy of the judgment of conviction; a transcript of a prior trial, plea-taking, or sentencing; information contained in a presentence report; or the defendant's statement.

MCL 750.136b

Senate Bill 30 would place the new felony penalties for third- and fourth-degree child abuse with a prior conviction within the sentencing guidelines portion of the Code of Criminal Procedure. The bill also specifies that the current penalty for repeat second-degree child abuse offenses would apply to second-degree child abuse with any prior conviction, and that the current penalty for third-degree child abuse would apply only to a first offense.

Senate Bill 30 is tie-barred to SB 29, which means that it cannot take effect unless SB 29 is also enacted.

MCL 777.16g

Each bill would take effect 90 days after its enactment.

HOUSE COMMITTEE ACTION:

The House Committee on the Judiciary reported the Senate-passed versions of the bills without amendment.

BACKGROUND INFORMATION:

Senate Bills 29 and 30 are identical to HBs 4486 and 4487 of the 2017-18 legislative session. Those bills were passed by the House of Representatives.

FISCAL INFORMATION:

Senate Bill 29 would have an indeterminate fiscal impact on state and local correctional systems and on local courts. The number of people who would be convicted under provisions of the bill is unknown. The bill would likely decrease the number of misdemeanor convictions and increase the number of felony convictions as violations of fourth-degree child abuse shift from misdemeanors to felonies when there are prior convictions. The bill could also result in increased sentences for second- and third-degree child abuse with prior convictions.

Felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2019, the average cost of prison incarceration in a state facility was roughly \$39,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,800 per supervised offender in the same year. These costs are financed with state General Fund/General Purpose revenue.

By comparison, misdemeanor convictions increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction.

The fiscal impact on local courts would depend on how provisions of the bill affected caseloads and related administrative costs.

Senate Bill 30 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

ARGUMENTS:

For:

Sometimes a person does a bad thing only once. Through counseling, education, maturity, or even serving a criminal penalty, many are rehabilitated and never do that or any other bad thing again. For some crimes, especially ones that result or could result in serious injury to another person, a more stringent penalty for repeat offenses can distinguish between someone who made a mistake and someone who poses an ongoing danger to others. Some feel that the criminal penalty should be harsher for a person who commits child abuse after

being convicted of the crime previously. Senate Bill 29 would do just that. A prosecutor would still retain discretion over which charges to bring and judges, under the guidance of the sentencing guidelines, would retain discretion over an appropriate sentence.

Against:

Some contend that Senate Bill 29 is not needed, as opportunities to enhance a penalty for a repeat violation already exist in law, such as when scoring for prior offenses under the sentencing guidelines.

POSITIONS:

The Prosecuting Attorneys Association of Michigan indicated support for the bills.
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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.