

SENATE BILL NO. 29

January 16, 2019, Introduced by Senator LUCIDO and referred to the Committee on Judiciary and Public Safety.

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.

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

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

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

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

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

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

23 (2) A person is guilty of child abuse in the first degree if
24 the person knowingly or intentionally causes serious physical **harm**
25 or serious mental harm to a child. Child abuse in the first degree
26 is a felony punishable by imprisonment for life or any term of
27 years.

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

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

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

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

9 (d) The person or a licensee, as licensee is defined in
10 section 1 of 1973 PA 116, MCL 722.111, violates section 15(2) of
11 ~~1993 PA 218, 1973 PA 116~~, MCL 722.125.

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

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

15 (b) For ~~a second or subsequent~~ **an offense following a prior**
16 **conviction**, not 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~~. **as follows:**

26 (a) **For a first offense, not more than 2 years.**

27 (b) **For an offense following a prior conviction, not more than**
28 **5 years.**

29 (7) A person is guilty of child abuse in the fourth degree if

1 any of the following apply:

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

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

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

9 (a) **For a first offense,** a misdemeanor punishable by
10 imprisonment for not more than 1 year.

11 (b) **For an offense following a prior conviction, a felony**
12 **punishable by imprisonment for not more than 2 years.**

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

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

25 (11) **If the prosecuting attorney intends to seek an enhanced**
26 **sentence based upon the defendant having 1 or more prior**
27 **convictions, the prosecuting attorney shall include on the**
28 **complaint and information a statement listing the prior conviction**
29 **or convictions. The existence of the defendant's prior conviction**

1 or convictions must be determined by the court, without a jury, at
2 sentencing or at a separate hearing for that purpose before
3 sentencing. The existence of a prior conviction may be established
4 by any evidence relevant for that purpose, including, but not
5 limited to, 1 or more of the following:

6 (a) A copy of the judgment of conviction.

7 (b) A transcript of a prior trial, plea-taking, or sentencing.

8 (c) Information contained in a presentence report.

9 (d) The defendant's statement.

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

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