

HOUSE BILL NO. 4783

June 26, 2019, Introduced by Reps. Kahle, Calley, Leutheuser and Sabo and referred to the Committee on Families, Children, and Seniors.

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) "Cruel" means brutal, inhuman, sadistic, or that which



1 torments.

2 (c) "Developmental disability" means that term as defined in
3 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

4 (d) "Mental illness" means that term as defined in section 400
5 of the mental health code, 1974 PA 258, MCL 330.1400.

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

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

13 (g) "Physical disability" means that term as defined in
14 section 6 of the adult foster care licensing act, 1979 PA 218, MCL
15 400.706.

16 (h) ~~(e)~~—"Physical harm" means any injury to a child's physical
17 condition.

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

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

29 (k) "Vulnerable child" means a person who is less than 18



1 years of age, who is not emancipated by operation of law under
2 section 4 of 1968 PA 293, MCL 722.4, and who has a developmental
3 disability, mental illness, or physical disability, or is nonverbal
4 because of a developmental disability.

5 (2) A person is guilty of child abuse in the first degree if
6 the person knowingly or intentionally causes serious physical or
7 serious mental harm to a child. Child abuse in the first degree is
8 a felony punishable by imprisonment for life or any term of years.

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

11 (a) The person's omission causes serious physical harm or
12 serious mental harm to a child or if the person's reckless act
13 causes serious physical harm or serious mental harm to a child.

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

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

19 (d) The person or a licensee as licensee is defined in section
20 1 of 1973 PA 116, MCL 722.111, violates section 15(2) of ~~1993 PA~~
21 ~~218,~~ **1973 PA 116**, MCL 722.125.

22 **(e) The person knowingly or intentionally commits an act that**
23 **under the circumstances poses an unreasonable risk of harm or**
24 **injury to a vulnerable child regardless of whether harm results.**

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

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

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

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

3 (a) The person knowingly or intentionally 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, and the act results in physical harm to a child.

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

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

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

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

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

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

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



1 section 1 of 1978 PA 389, MCL 400.1501.

2 Enacting section 1. This amendatory act takes effect 90 days

3 after the date it is enacted into law.

