

SUBSTITUTE FOR
HOUSE BILL NO. 4071

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 136b (MCL 750.136b), as amended by 2020 PA 49.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

7 (c) "Developmental disability" means either of the following
8 as diagnosed by a physician or other licensed medical professional:

9 (i) If applied to an individual older than 5 years of age, a

1 severe, chronic condition that meets all of the following
2 requirements:

3 (A) Is attributable to a mental or physical impairment or a
4 combination of mental and physical impairments.

5 (B) Is manifested before the individual is 22 years old.

6 (C) Is likely to continue indefinitely.

7 (D) Results in substantial functional limitations in 3 or more
8 of the following areas of major life activity:

9 (I) Self-care.

10 (II) Receptive and expressive language.

11 (III) Learning.

12 (IV) Self-direction.

13 (E) Reflects the individual's need for a combination and
14 sequence of special, interdisciplinary, or generic care, treatment,
15 or other services that are of lifelong or extended duration and are
16 individually planned and coordinated.

17 (ii) If applied to a minor from birth to 5 years of age, a
18 substantial developmental delay or a specific congenital or
19 acquired condition with a high probability of resulting in
20 developmental disability as defined in subparagraph (i) if services
21 are not provided.

22 (d) "Mental illness" means a substantial disorder of thought
23 or mood that significantly impairs judgment, behavior, capacity to
24 recognize reality, or ability to cope with the ordinary demands of
25 life that was diagnosed by a physician or other licensed medical
26 professional.

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

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

5 **(g)** "Physical disability" means a determinable physical
6 characteristic of an individual that may result from disease,
7 injury, congenital condition of birth, or functional disorder that
8 was diagnosed by a physician or other licensed medical
9 professional.

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

12 **(i)** "Physician or other licensed medical professional" means a
13 person licensed under article 15 of the public health code, 1978 PA
14 368, MCL 333.16101 to 333.18838.

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

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

26 **(l)** "Vulnerable child" means an individual who is less than 18
27 years of age, who is not emancipated by operation of law under
28 section 4 of 1968 PA 293, MCL 722.4, and who has a developmental
29 disability, mental illness, or physical disability, or is

1 **nonverbal.**

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

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

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

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

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

17 (d) The person or a licensee, as licensee is defined in
18 section 1 of 1973 PA 116, MCL 722.111, violates section 15(2) of
19 1973 PA 116, MCL 722.125.

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

22 (a) ~~For~~ **Except as provided in subdivision (c), for** a first
23 offense, not more than 10 years.

24 (b) For an offense following a prior conviction, not more than
25 20 years.

26 (c) **For a first offense, if the victim is a vulnerable child**
27 **and the offense occurs in either of the following situations, not**
28 **more than 15 years:**

29 (i) **While the person is performing duties in a facility or home**

1 regulated under 1973 PA 116, MCL 722.111 to 722.128.

2 (ii) While the person is acting within the health profession
3 for which he or she is licensed, registered, or otherwise
4 authorized to engage in the practice of under article 15 of the
5 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

6 (5) A person is guilty of child abuse in the third degree if
7 ~~any either~~ of the following ~~apply~~:**applies**:

8 (a) The person knowingly or intentionally causes physical harm
9 to a child.

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

13 (6) Child abuse in the third degree is a felony punishable by
14 imprisonment as follows:

15 (a) ~~For~~**Except as provided in subdivision (c), for** a first
16 offense, not more than 2 years.

17 (b) For an offense following a prior conviction, not more than
18 5 years.

19 (c) **For a first offense, if the victim is a vulnerable child**
20 **and the offense occurs in either of the following situations, not**
21 **more than 3 years:**

22 (i) While the person is performing duties in a facility or home
23 regulated under 1973 PA 116, MCL 722.111 to 722.128.

24 (ii) While the person is acting within the health profession
25 for which he or she is licensed, registered, or otherwise
26 authorized to engage in the practice of under article 15 of the
27 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

28 (7) A person is guilty of child abuse in the fourth degree if
29 ~~any either~~ of the following ~~apply~~:**applies**:

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 crime punishable as
7 follows:

8 (a) ~~For~~**Except as provided in subdivision (c), for** a first
9 offense, a misdemeanor punishable by imprisonment for not more than
10 1 year.

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

13 **(c) For a first offense, if the victim is a vulnerable child**
14 **and the offense occurs in either of the following situations, a**
15 **felony punishable by imprisonment for not more than 2 years:**

16 **(i) While the person is performing duties in a facility or home**
17 **regulated under 1973 PA 116, MCL 722.111 to 722.128.**

18 **(ii) While the person is acting within the health profession**
19 **for which he or she is licensed, registered, or otherwise**
20 **authorized to engage in the practice of under article 15 of the**
21 **public health code, 1978 PA 368, MCL 333.16101 to 333.18838.**

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

26 (10) It is an affirmative defense to a prosecution under this
27 section that the defendant's conduct involving the child was a
28 reasonable response to an act of domestic violence in light of all
29 the facts and circumstances known to the defendant at that time.

1 The defendant has the burden of establishing the affirmative
2 defense by a preponderance of the evidence. As used in this
3 subsection, "domestic violence" means that term as defined in
4 section 1 of 1978 PA 389, MCL 400.1501.

5 (11) If the prosecuting attorney intends to seek an enhanced
6 sentence based upon the defendant having 1 or more prior
7 convictions, the prosecuting attorney shall include on the
8 complaint and information a statement listing the prior conviction
9 or convictions. The existence of the defendant's prior conviction
10 or convictions must be determined by the court, without a jury, at
11 sentencing or at a separate hearing for that purpose before
12 sentencing. The existence of a prior conviction may be established
13 by any evidence relevant for that purpose, including, but not
14 limited to, 1 or more of the following:

- 15 (a) A copy of the judgment of conviction.
16 (b) A transcript of a prior trial, plea-taking, or sentencing.
17 (c) Information contained in a presentence report.
18 (d) The defendant's statement.

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

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