

HOUSE BILL NO. 4071

February 02, 2021, Introduced by Reps. Kahle and Calley 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 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 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 either of the following
3 as diagnosed by a physician or other licensed medical professional:

4 (i) If applied to an individual older than 5 years of age, a
5 severe, chronic condition that meets all of the following
6 requirements:

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

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

10 (C) Is likely to continue indefinitely.

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

13 (I) Self-care.

14 (II) Receptive and expressive language.

15 (III) Learning.

16 (IV) Mobility.

17 (V) Self-direction.

18 (VI) Capacity for independent living.

19 (VII) Economic self-sufficiency.

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

24 (ii) If applied to a minor from birth to 5 years of age, a
25 substantial developmental delay or a specific congenital or
26 acquired condition with a high probability of resulting in
27 developmental disability as defined in subdivision (a) if services
28 are not provided.

29 (d) "Mental illness" means a substantial disorder of thought

1 or mood that significantly impairs judgment, behavior, capacity to
2 recognize reality, or ability to cope with the ordinary demands of
3 life that was diagnosed by a physician or other licensed medical
4 professional.

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

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

12 (g) "Physical disability" means a determinable physical
13 characteristic of an individual that may result from disease,
14 injury, congenital condition of birth, or functional disorder that
15 was diagnosed by a physician or other licensed medical
16 professional.

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

19 (i) "Physician or other licensed medical professional" means a
20 person licensed under article 15 of the public health code, 1978 PA
21 368, MCL 333.16101 to 333.18838.

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

27 (k) ~~(g)~~—"Serious mental harm" means an injury to a child's
28 mental condition or welfare that is not necessarily permanent but
29 results in visibly demonstrable manifestations of a substantial

1 disorder of thought or mood which significantly impairs judgment,
2 behavior, capacity to recognize reality, or ability to cope with
3 the ordinary demands of life.

4 (l) "Vulnerable child" means a person who is less than 18 years
5 of age, who is not emancipated by operation of law under section 4
6 of 1968 PA 293, MCL 722.4, and who has a developmental disability,
7 mental illness, or physical disability, or is nonverbal because of
8 a developmental disability.

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

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

16 (a) The person's omission causes serious physical harm or
17 serious mental harm to a child or if the person's reckless act
18 causes serious physical harm or serious mental harm to a child.

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

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

24 (d) The person or a licensee, as licensee is defined in
25 section 1 of 1973 PA 116, MCL 722.111, violates section 15(2) of
26 1973 PA 116, MCL 722.125.

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

29 (a) ~~For~~ **Except as provided in subdivision (c), for** a first

1 offense, not more than 10 years.

2 (b) For an offense following a prior conviction, not more than
3 20 years.

4 **(c) For a first offense, if the victim is a vulnerable child,**
5 **not more than 15 years.**

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 **not more than 3 years.**

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

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

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

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

1 (a) ~~For~~**Except as provided in subdivision (c), for** a first
2 offense, a misdemeanor punishable by imprisonment for not more than
3 1 year.

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

6 **(c) For a first offense, if the victim is a vulnerable child,**
7 **a felony punishable by imprisonment for not more than 2 years.**

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

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

20 (11) If the prosecuting attorney intends to seek an enhanced
21 sentence based upon the defendant having 1 or more prior
22 convictions, the prosecuting attorney shall include on the
23 complaint and information a statement listing the prior conviction
24 or convictions. The existence of the defendant's prior conviction
25 or convictions must be determined by the court, without a jury, at
26 sentencing or at a separate hearing for that purpose before
27 sentencing. The existence of a prior conviction may be established
28 by any evidence relevant for that purpose, including, but not
29 limited to, 1 or more of the following:

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

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

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