

HOUSE BILL NO. 6454

October 11, 2022, Introduced by Reps. Berman, Carra, Meerman, LaFave and Marino and referred to the Committee on Judiciary.

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

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

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

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

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

22 ~~(1) (2)~~A person is guilty of child abuse in the first degree
 23 if ~~the~~**either of the following applies:**

24 **(a) The person knowingly or intentionally causes serious**
 25 **physical harm or serious mental harm to a child.**

26 **(b) The person knowingly or intentionally consents to,**
 27 **obtains, or assists with a gender transition procedure for a child.**
 28 **For purposes of this subdivision only, "person" means a child's**
 29 **parent or guardian or any other person who cares for, has custody**

1 of, has authority over a child regardless of the length of time
 2 that a child is cared for, in the custody of, or subject to the
 3 authority of that person, or a physician or other licensed medical
 4 professional.

5 (2) Child abuse in the first degree is a felony punishable by
 6 imprisonment for life or any term of 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 a first offense, not more than 10 years.

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

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

27 (a) The person knowingly or intentionally causes physical harm
 28 to a child.

29 (b) The person knowingly or intentionally commits an act that

1 under the circumstances poses an unreasonable risk of harm or
2 injury to a child, and the act results in physical harm to a child.

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

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

6 (b) For an offense following a prior conviction, not more than
7 5 years.

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

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

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

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

17 (a) For a first offense, a misdemeanor punishable by
18 imprisonment for not more than 1 year.

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

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

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

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

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

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

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

21 (a) **"Biological sex" means the biological indication of male**
 22 **or female in the context of reproductive potential or capacity**
 23 **without regard to an individual's psychological, chosen, or**
 24 **subjective experience of gender.**

25 (b) **"Child" means an individual who is less than 18 years of**
 26 **age and is not emancipated by operation of law as provided in**
 27 **section 4 of 1968 PA 293, MCL 722.4.**

28 (c) **"Cross-sex hormones" means any of the following:**

29 (i) **Any testosterone or other androgen given to a biological**

1 female in an amount that is larger or more potent than would
2 normally occur naturally in a healthy biological female.

3 (ii) Any estrogen given to a biological male in an amount that
4 is larger or more potent than would normally occur naturally in a
5 healthy biological male.

6 (d) "Cruel" means brutal, inhuman, sadistic, or that which
7 torments.

8 (e) "Gender" means the psychological, behavioral, social, and
9 cultural aspects of being male or female.

10 (f) "Gender reassignment surgery" means a medical surgery that
11 seeks to alter or remove healthy physical or healthy anatomical
12 characteristics or features that are typical for the individual's
13 biological sex in order to instill or create physiological or
14 anatomical characteristics that resemble a sex different from the
15 individual's biological sex. Gender reassignment surgery includes a
16 genital or nongenital gender reassignment surgery.

17 (g) "Gender transition procedure" means, except as otherwise
18 provided in subdivision (h), any procedure related to a gender
19 transition, whether performed or administered by a physician or
20 other licensed medical professional or any other person, where the
21 procedure seeks to do any of the following:

22 (i) Alter or remove physical or anatomical characteristics or
23 features that are typical of an individual's biological sex.

24 (ii) Instill or create physiological or anatomical
25 characteristics that resemble a sex different from an individual's
26 biological sex, including, but not limited to, any of the
27 following:

28 (A) The administration of puberty-blocking drugs, cross-sex
29 hormones, or any other substances or like mechanisms used to

1 promote the development of feminizing or masculinizing features in
2 the opposite biological sex.

3 (B) A genital or nongenital gender reassignment surgery.

4 (C) The usage of any substances, whether or not those
5 substances were obtained from or prescribed by a physician or other
6 licensed medical professional, that cause the development of a
7 child's biological sex to deviate from his or her biological sex at
8 birth, alter the onset of puberty, or that otherwise alter the
9 typical hormonal ranges of a child from that of his or her
10 biological sex.

11 (h) "Gender transition procedure" does not include any of the
12 following:

13 (i) A service to an individual born with a medically verifiable
14 disorder of sex development, including, but not limited to, a
15 service to any of the following individuals:

16 (A) An individual born with 46 XX chromosomes with
17 virilization.

18 (B) An individual born with 46 XY chromosomes with under-
19 virilization.

20 (C) An individual having both ovarian and testicular tissue.

21 (D) An individual with external biological sex characteristics
22 that are ambiguous.

23 (ii) A service provided by a physician or other licensed
24 medical professional to an individual who, through genetic or
25 biochemical testing, has been diagnosed with a disorder of sexual
26 development due to the individual not having normal sex chromosome
27 structure, sex steroid hormone production, or sex steroid hormone
28 action.

29 (iii) The treatment of an infection, injury, disease, or

1 disorder that has been caused or exacerbated by the performance of
2 a gender transition procedure, whether or not the gender transition
3 procedure was performed in accordance with federal or state law.

4 (iv) A procedure undertaken because the individual suffers from
5 a physical disorder, physical injury, or physical illness that
6 would, as certified by a physician or other licensed medical
7 professional, place the individual in imminent danger of death or
8 impairment of major bodily function unless surgery is performed.

9 (i) "Genital or nongenital gender reassignment surgery" means
10 a medical procedure performed for the purpose of assisting an
11 individual with a gender transition.

12 (j) "Omission" means a willful failure to provide food,
13 clothing, or shelter necessary for a child's welfare or willful
14 abandonment of a child.

15 (k) "Person" means a child's parent or guardian or any other
16 person who cares for, has custody of, or has authority over a child
17 regardless of the length of time that a child is cared for, in the
18 custody of, or subject to the authority of that person.

19 (l) "Physical harm" means any injury to a child's physical
20 condition.

21 (m) "Physician or other licensed medical professional" means a
22 person licensed under article 15 of the public health code, 1978 PA
23 368, MCL 333.16101 to 333.18838.

24 (n) "Prior conviction" means a violation of this section or a
25 violation of a law of another state substantially corresponding to
26 this section.

27 (o) "Puberty-blocking drug" means any of the following if
28 taken to delay or suppress pubertal development in a child for the
29 purpose of assisting with a gender transition:

1 (i) A gonadotropin-releasing hormone analog or other synthetic
2 drug taken by a child whose biological sex is male to stop
3 luteinizing hormone secretion and testosterone secretion.

4 (ii) A synthetic drug taken by a child whose biological sex is
5 female to stop the production of estrogen and progesterone.

6 (p) "Serious mental harm" means an injury to a child's mental
7 condition or welfare that is not necessarily permanent but results
8 in visibly demonstrable manifestations of a substantial disorder of
9 thought or mood which significantly impairs judgment, behavior,
10 capacity to recognize reality, or ability to cope with the ordinary
11 demands of life.

12 (q) "Serious physical harm" means a physical injury to a child
13 that seriously impairs the child's health or physical well-being,
14 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 Enacting section 1. This amendatory act takes effect 90 days
18 after it is enacted into law.