

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.

Legislative Analysis



ABUSE OF A VULNERABLE CHILD

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4071 (H-1) as referred to second committee
Sponsor: Rep. Bronna Kahle

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4072 as referred to second committee
Sponsor: Rep. Julie Calley

1st Committee: Families, Children and Seniors
2nd Committee: Judiciary
Complete to 3-21-21

SUMMARY:

House Bill 4071 would amend the Michigan Penal Code to create enhanced penalties for second, third, or fourth degree child abuse if the victim of the abuse is a *vulnerable child*.

Vulnerable child would mean an unemancipated minor (less than 18 years of age) who meets one or more of the following:

- He or she has a *developmental disability*.
- He or she is nonverbal.
- He or she has a *mental illness*.
- He or she has a *physical disability*.

Developmental disability would mean, for an individual who is older than 5 years of age, a severe, chronic condition that meets all of the following:

- The condition is attributable to a mental or physical impairment or a combination of mental and physical impairments.
- The condition is likely to continue indefinitely.
- The condition results in substantial functional limitations in three or more of the following areas of major life activity:
 - Self-care.
 - Receptive and expressive language.
 - Learning.
 - Mobility.
 - Self-direction.
 - Capacity for independent living.
 - Economic self-sufficiency.
- The condition reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

For a child up to and including age 5, *developmental disability* would mean a substantial developmental delay or a specific congenital or acquired condition with

a high probability of resulting in developmental disability as defined above if services are not provided.

Mental illness would mean a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life that was diagnosed by a licensed medical professional.

Physical disability would mean a determinable physical characteristic that may result from disease, injury, congenital condition of birth, or functional disorder that was diagnosed by a licensed medical professional.

Child abuse in the second degree

A person is guilty of child abuse in the second degree if any of the following apply:

- He or she knowingly or intentionally commits an act that is cruel to a child or that is likely to cause serious physical or mental harm to a child, regardless of whether harm results.
- His or her omission or reckless act causes serious physical harm or serious mental harm to a child.
- He or she, or a licensee under the child care organizations act, 1973 PA 116, intentionally violates a licensing rule for family and group child care homes under that act and the violation causes the death of a child.

Child abuse in the second degree is a felony punishable by imprisonment for up to 10 years for a first offense and imprisonment for up to 20 years for a second or subsequent offense.

Under the bill, if the victim was a vulnerable child, a first offense of child abuse in the second degree would be a felony punishable by imprisonment for up to 15 years.

Child abuse in the third degree

A person is guilty of child abuse in the third degree if either of the following applies:

- He or she knowingly or intentionally causes physical harm to a child.
- He or she knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, and the act results in physical harm to a child.

Child abuse in the third degree is a felony punishable by imprisonment for up to two years for a first offense and imprisonment for up to five years for a second or subsequent offense.

Under the bill, if the victim was a vulnerable child, a first offense of child abuse in the third degree would be a felony punishable by imprisonment for up to three years.

Child abuse in the fourth degree

A person is guilty of child abuse in the fourth degree if either of the following applies:

- His or her omission or reckless act causes physical harm to a child.

- He or she knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, regardless of whether physical harm results.

Child abuse in the fourth degree is a felony punishable by imprisonment for up to one year for a first offense and imprisonment for up to two years for a second or subsequent offense.

Under the bill, if the victim was a vulnerable child, a first offense of child abuse in the third degree would be a felony punishable by imprisonment for up to two years.

MCL 750.136b

The bill would take effect 90 days after its enactment.

FISCAL IMPACT:

House Bill 4071 would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on the number of individuals convicted of child abuse of a vulnerable child in the second, third, or fourth degree. New felony convictions would result in increased costs related to state prisons and to state probation supervision. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,300 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs.

POSITIONS:

Representatives of the Lenawee County Prosecutor's Office testified in support of the bills. (3-10-21)

The following entities indicated support for the bills:

- Michigan Council for Maternal and Child Health (3-10-21)
- Michigan Catholic Conference (3-16-21)

The Michigan Coalition to End Domestic and Sexual Violence indicated a neutral position on the bills. (3-16-21)

The following entities indicated opposition to the bills (3-16-21):

- American Civil Liberties Union (ACLU)
- Citizens for Parental Rights

Legislative Analyst: E. Best
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

Supporting Arguments

Proponents of the bill argue that this legislation would provide greater protection for children with disabilities, who are more vulnerable due to their impairments. Children with disabilities are at a higher risk for abuse than non-disabled children. A 2021 clinical report from the American Academy of Pediatrics titled “Maltreatment of Children With Disabilities” found that “Child abuse and neglect is reported in 3% to 10% of the population with disabilities. The rate of child abuse and neglect is at least 3 times higher in children with disabilities than in the typically developing population.” In addition, a 2017 summary by the US. Department of Justice Bureau of Justice Statistics, “Crime Against Persons with Disabilities, 2009-2015 – Statistical Tables,” stated that the rate of violent victimization of persons with disabilities was on average 32.3 persons out of 1,000, while the rate for persons without disabilities was 20.4 persons out of 1,000. When looking at the rates as divided by age, the number becomes even more staggering: for the age range of 12-15, persons with disabilities had a rate of violent victimization of 144.1 persons per 1,000, while persons without disabilities had a rate of 38.8 persons per 1,000. While the Bureau of Justice Statistics report was not solely focused on child abuse and had no statistics for children younger than 12, it demonstrates the enhanced risk of victimization that persons with impairments face.

Michigan also already has laws concerning the abuse of adults defined as vulnerable by the State. The Michigan Penal Code Chapter 750 Section 145n gives the definition and penalties for abuse of a vulnerable adult, offering adults with disabilities protection against caregivers or other persons with authority that would abuse them. HB 4071 would extend a similar protection to vulnerable children.

Opposing Arguments

This bill neglects to mention the subset of children at the highest risk of abuse: children 0-3 years old. The 2019 MDHHS Children’s Services Agency’s “2019 Annual Progress and Services Report” stated the following: “In 2017, the population identified at greatest risk of maltreatment were children ages 3 and younger living with their biological parents, constituting 40 percent of total child victims.” The Resource Center on Domestic Violence: Child Protection and Custody, referring to research from across the US, agreed in their article “Rates of Child Abuse and Child Exposure to Domestic Violence” that “children from birth to age three had the highest rate of victimization (27.7 percent).” Given the prevalence of abuse and maltreatment against very young children, this bill seeks to provide enhanced protection for vulnerable children, those with disabilities, while failing to protect those at highest risk.

The bill also ignores the fact that *all* children are vulnerable. If the bill seeks to provide greater protection for children, perhaps harsher sentences for all child abuse would be more effective than singling out a specific subset of children.

Another concern with the bill is whether harsher sentences would in fact deter child abuse. A 2004 article in the *Oxford Journal of Legal Studies* called “Does Criminal Law Deter? A Behavioral Science Investigation” came to the conclusion that heavier punishments do not reliably serve to deter crime. “Potential offenders commonly do not know the legal rules, either directly or indirectly, even those rules that have been explicitly formulated to produce a behavioral effect,” the article stated, and went on to say that were the individual to understand the rules, the knowledge often would not affect the potential offender’s behavior. In light of this, it is to be questioned whether the bill would even have its desired effects. If the longer sentencing did not change perpetrators’ behavior, this bill would merely result in a greater financial burden upon the taxpayers, as the same number of abusers would spend more time imprisoned.