



HOUSE BILL No. 5422

March 17 1994 Introduced by Reps Banks McBryde Pitoniak Curtis Freeman Hill and Dalman and referred to the Committee on Judiciary

A bill to amend section 136b of Act No 328 of the Public Acts of 1931, entitled as amended

The Michigan penal code,
as added by Act No 251 of the Public Acts of 1988, being section 750 136b of the Michigan Compiled Laws and to add section 136c

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Section 136b of Act No 328 of the Public Acts
2 of 1931, as added by Act No 251 of the Public Acts of 1988
3 being section 750 136b of the Michigan Compiled Laws is amended
4 and section 136c is added to read as follows

5 Sec 136b (1) As used in this section

6 (a) "Child means a person who is less than 18 years of age
7 and is not emancipated ~~by operation of law~~ as provided in
8 ~~section 4(1) of~~ Act No 293 of the Public Acts of 1968, being

1 ~~section 722 4~~ SECTIONS 722 1 TO 722 6 of the Michigan Compiled
2 Laws

3 (B) INDIVIDUAL RESPONSIBLE FOR THE CHILD S WELFARE MEANS A
4 CHILD'S PARENT OR GUARDIAN OR ANY OTHER INDIVIDUAL WHO CARES FOR,
5 HAS CUSTODY OF OR HAS AUTHORITY OVER A CHILD REGARDLESS OF THE
6 LENGTH OF TIME THAT THE CHILD IS CARED FOR BY, IN THE CUSTODY OF
7 OR SUBJECT TO THE AUTHORITY OF THAT INDIVIDUAL

8 (C) ~~(b) "Omission"~~ NEGLECT' means a willful failure to
9 provide the food clothing, or shelter necessary for a child s
10 welfare or the willful abandonment of a child

11 ~~(c) "Person" means a child's parent or guardian or any~~
12 ~~other person who cares for, has custody of, or has authority over~~
13 ~~a child regardless of the length of time that a child is cared~~
14 ~~for, in the custody of, or subject to the authority of that~~
15 ~~person~~

16 (d) Physical harm means any injury to a child s physical
17 condition

18 (e) 'Serious physical harm' means an injury of a child s
19 physical condition or welfare that is not necessarily permanent
20 but THAT constitutes substantial bodily disfigurement or seri-
21 ously impairs the function of a body organ or limb

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

1 (2) ~~A person~~ AN INDIVIDUAL RESPONSIBLE FOR THE CHILD S
2 WELFARE is guilty of child abuse in the first degree if the
3 ~~person~~ INDIVIDUAL knowingly or intentionally causes serious
4 physical or serious mental harm to a child Child abuse in the
5 first degree is a felony punishable by imprisonment for not more
6 than 15 years

7 (3) ~~A person~~ AN INDIVIDUAL RESPONSIBLE FOR THE CHILD'S
8 WELFARE is guilty of child abuse in the second degree if the
9 ~~person's omission~~ INDIVIDUAL S NEGLECT causes serious physical
10 harm or serious mental harm to a child or if the ~~person's~~
11 INDIVIDUAL S reckless act causes serious physical harm to a
12 child Child abuse in the second degree is a felony punishable
13 by imprisonment for not more than 4 years

14 (4) ~~A person~~ AN INDIVIDUAL RESPONSIBLE FOR THE CHILD S
15 WELFARE is guilty of child abuse in the third degree if the
16 ~~person~~ INDIVIDUAL knowingly or intentionally causes physical
17 harm to a child Child abuse in the third degree is a misde-
18 meanor punishable by imprisonment for not more than 2 years

19 (5) ~~A person~~ AN INDIVIDUAL RESPONSIBLE FOR THE CHILD'S
20 WELFARE is guilty of child abuse in the fourth degree if the
21 ~~person's omission~~ INDIVIDUAL S NEGLECT or reckless act causes
22 physical harm to a child Child abuse in the fourth degree is a
23 misdemeanor punishable by imprisonment for not more than 1 year

24 (6) This section shall not be construed to prohibit a parent
25 or guardian, or other ~~person~~ INDIVIDUAL permitted by law or
26 authorized by the parent or guardian from taking steps to

1 reasonably discipline a child including the use of reasonable
2 force

3 SEC 136C (1) AS USED IN THIS SECTION

4 (A) CHILD INDIVIDUAL RESPONSIBLE FOR THE CHILD S
5 WELFARE , PHYSICAL HARM , SERIOUS MENTAL HARM , AND SERIOUS
6 PHYSICAL HARM MEAN THOSE TERMS AS DEFINED IN SECTION 136B

7 (B) OMISSION MEANS A FAILURE TO ACT IF AN INDIVIDUAL
8 RESPONSIBLE FOR THE CHILD S WELFARE KNOWS THAT ANOTHER INDIVIDUAL
9 INTENDS TO CAUSE IS CAUSING, OR HAS INTENTIONALLY OR RECKLESSLY
10 CAUSED PHYSICAL HARM SERIOUS PHYSICAL HARM OR SERIOUS MENTAL
11 HARM TO A CHILD

12 (2) AN INDIVIDUAL RESPONSIBLE FOR THE CHILD S WELFARE IS
13 GUILTY OF CHILD ABUSE IN THE SECOND DEGREE IF THE INDIVIDUAL S
14 OMISSION RESULTS IN SERIOUS PHYSICAL HARM OR SERIOUS MENTAL HARM
15 TO THE CHILD AND AT THE TIME OF THE OMISSION, THE INDIVIDUAL WAS
16 PHYSICALLY OR EMOTIONALLY INCAPABLE OF TAKING ACTION THAT WOULD
17 HAVE PREVENTED THE HARM FROM OCCURRING OR BEING REPEATED CHILD
18 ABUSE IN THE SECOND DEGREE IS A FELONY PUNISHABLE BY IMPRISONMENT
19 FOR NOT MORE THAN 4 YEARS

20 (3) AN INDIVIDUAL RESPONSIBLE FOR THE CHILD S WELFARE IS
21 GUILTY OF CHILD ABUSE IN THE FOURTH DEGREE IF THE INDIVIDUAL S
22 OMISSION RESULTS IN PHYSICAL HARM TO THE CHILD AND, AT THE TIME
23 OF THE OMISSION, THE INDIVIDUAL WAS PHYSICALLY OR EMOTIONALLY
24 INCAPABLE OF TAKING ACTION THAT WOULD HAVE PREVENTED THE HARM
25 FROM OCCURRING OR BEING REPEATED CHILD ABUSE IN THE FOURTH
26 DEGREE IS A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE
27 THAN 1 YEAR

1 (4) THAT AN INDIVIDUAL RESPONSIBLE FOR THE CHILD S WELFARE
2 WAS PHYSICALLY OR EMOTIONALLY INCAPABLE OF TAKING ACTION THAT
3 WOULD HAVE PREVENTED THE HARM FROM OCCURRING OR BEING REPEATED IS
4 AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER THIS SECTION THE
5 DEFENDANT HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVI-
6 DENCE THAT AT THE TIME OF THE OMISSION THAT CONSTITUTES THE
7 OFFENSE, THE DEFENDANT WAS PHYSICALLY OR EMOTIONALLY INCAPABLE OF
8 TAKING ACTION THAT WOULD HAVE PREVENTED THE HARM FROM OCCURRING
9 OR BEING REPEATED

10 (5) AN INDIVIDUAL WHO WAS UNDER THE INFLUENCE OF VOLUNTARILY
11 CONSUMED OR INJECTED ALCOHOL OR CONTROLLED SUBSTANCES AT THE TIME
12 OF HIS OR HER ALLEGED OFFENSE IS NOT CONSIDERED TO HAVE BEEN
13 PHYSICALLY OR EMOTIONALLY INCAPABLE OF TAKING ACTION THAT WOULD
14 HAVE PREVENTED THE HARM FROM OCCURRING OR BEING REPEATED SOLELY
15 BECAUSE OF BEING UNDER THE INFLUENCE OF THE ALCOHOL OR CONTROLLED
16 SUBSTANCES

17 (6) THIS SECTION SHALL NOT BE CONSTRUED TO PROHIBIT A PARENT
18 OR GUARDIAN OR OTHER INDIVIDUAL PERMITTED BY LAW OR AUTHORIZED
19 BY THE PARENT OR GUARDIAN, FROM TAKING STEPS TO REASONABLY DISCI-
20 PLINE A CHILD, INCLUDING THE USE OF REASONABLE FORCE