

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 315 (as enrolled)
Sponsor: Senator William Van Regenmorter
Senate Committee: Judiciary
House Committee: Criminal Law and Corrections

PUBLIC ACT 273 of 1999

Date Completed: 4-26-00

RATIONALE

Under the Michigan Penal Code, a person is guilty of first-degree child abuse if he or she knowingly or intentionally causes "serious physical harm" or "serious mental harm" to a child. First-degree child abuse is a felony punishable by up to 15 years' imprisonment. Second-degree child abuse, which is a felony punishable by up to four years' imprisonment, includes an omission that causes serious physical harm or serious mental harm to a child or a reckless act that causes serious physical harm to a child. "Serious physical harm" originally was defined as "an injury of a child's physical condition or welfare that is not necessarily permanent but constitutes substantial bodily disfigurement, or seriously impairs the function of a body organ or limb". Evidently, this definition was too narrow to apply to some injuries that were intentionally inflicted upon children; as a result, some offenders have been charged with the misdemeanor offense of third-degree child abuse, which is the knowing or intentional causing of "physical harm" to a child. ("Physical harm" means "any injury to a child's physical condition".) Some people contended that the definition of serious physical harm needed to be broadened to include fractures, burns, and other injuries that are intentionally or recklessly inflicted upon children, regardless of whether the injuries constitute substantial bodily disfigurement or seriously impair the function of a body organ or limb.

In addition, some people believed that the second-degree child abuse violation was not broad enough to encompass some egregious acts against children that might not actually result in physical or mental harm to the child, but are cruel or place a child in harm's way. They contended that the child abuse offenses should cover cruelty to children and committing an act that is likely to cause serious physical or mental harm.

CONTENT

The bill amended the Michigan Penal Code's child abuse provisions to revise the definition of "serious physical harm" and broaden the offense of second-degree child abuse. The bill took effect on April 3, 2000.

Under the bill, "serious physical harm" means any physical injury to a child that seriously impairs the child's health or physical well-being, including but not limited to brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

The bill also expanded the second-degree child abuse violation to include knowingly or intentionally committing an act that either is likely to cause serious physical or mental harm to a child, regardless of whether harm results, or is "cruel" to a child, regardless of whether harm results. The bill defines "cruel" as brutal, inhuman, sadistic, or that which torments.

MCL 750.136b

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Penal Code's previous definition of "serious physical harm" under the child abuse provisions was too narrow. Prosecutors and medical personnel reportedly saw many types of injuries that, apparently, were intentionally inflicted or resulted from negligence or recklessness toward a child. In order to convict offenders of first- or second-degree

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child abuse, however, prosecutors had to prove that a physical injury to a child either constituted substantial bodily disfigurement or seriously impaired the function of a body organ or limb. Various types of brutal injuries may fail to rise to the level of the Code's previous definition, which resulted in lesser charges for the abuser. For example, burns, head injuries, and bone fractures may eventually heal beyond the standard of substantial disfigurement or serious impairment of the function of a body organ or limb. The definition was simply too limited to expose some vicious child abusers to the severe felony penalties for first- or second-degree child abuse. In order to subject those criminals to the appropriate punishment for their deeds, the definition of serious physical harm needed to be broadened.

Supporting Argument

The bill's new parameters for second-degree child abuse will allow prosecution as child abuse in particularly egregious cases of child endangerment or cruelty even if no actual harm to the child can be shown. For instance, under the bill's standard for second-degree child abuse, a prosecution could have proceeded in a 1999 case in Wayne County in which a young boy who suffered from a disability was tied around the neck to a bucket containing his urine. Under the former standard, the boy's existing disability negated any attempt to prove that he suffered any actual physical injury or serious mental injury as a result of this inhumane treatment. The bill also will cover cases such as one in which a young child was held by the ankles outside of a moving car, but no actual physical injury or serious mental injury could be shown to have occurred. These torturous acts should be included in the child abuse violations.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on State government.

In 1997, there were 31 dispositions for first-degree child abuse and 20 dispositions for second-degree child abuse. Of the dispositions for first-degree child abuse, 18 offenders were sentenced to prison, and of the dispositions for second-degree child abuse, four were sentenced to prison. There are no data to indicate how many more people will be convicted given an expanded definition of "serious physical harm" and the application of second-degree child abuse whether or not "harm" results.

Fiscal Analyst: K. Firestone