

**SENATE BILL NO. 12**

January 13, 1999, Introduced by Senator BOUCHARD 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 added by 1988 PA 251.

**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(1) of Act No. 293 of the Public Acts of 1968, being section~~  
5 ~~722.4 of the Michigan Compiled Laws~~ 4 OF 1968 PA 293, MCL  
6 722.4.

7       (B) "CRIMINAL SEXUAL ACTIVITY" MEANS A VIOLATION OF SECTION  
8 145C, 520B, 520C, 520D, 520E, OR 520G.

1 (C) ~~(b)~~ "Omission" means a willful failure to provide the  
 2 food, clothing, or shelter necessary for a child's welfare or the  
 3 willful abandonment of a child.

4 (D) ~~(c)~~ "Person RESPONSIBLE FOR THE CHILD'S WELFARE" means  
 5 a child's parent or guardian or any other person who cares for,  
 6 has custody of, or has authority over a child regardless of the  
 7 length of time that ~~a~~ THE child is cared for BY, in the custody  
 8 of, or subject to the authority of that person.

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

11 (F) ~~(e)~~ "Serious physical harm" means ~~an~~ ANY PHYSICAL  
 12 injury ~~of a child's physical condition or welfare that is not~~  
 13 ~~necessarily permanent but constitutes substantial bodily disfig-~~  
 14 ~~urement, or~~ TO A CHILD THAT seriously impairs ~~the function of a~~  
 15 ~~body organ or limb~~ THE CHILD'S HEALTH OR PHYSICAL WELL-BEING,  
 16 INCLUDING, BUT NOT LIMITED TO, BRAIN DAMAGE, A SKULL OR BONE  
 17 FRACTURE, SUBDURAL HEMORRHAGE OR HEMATOMA, DISLOCATION, SPRAIN,  
 18 INTERNAL INJURY, POISONING, BURN OR SCALD, OR SEVERE CUT.

19 (G) ~~(f)~~ "Serious mental harm" means an injury to a child's  
 20 mental condition or welfare that is not necessarily permanent but  
 21 results in ~~visibly demonstrable manifestations of a~~ 1 OF THE  
 22 FOLLOWING:

23 (i) A substantial disorder of thought or mood ~~which~~ THAT  
 24 significantly impairs judgment, behavior, capacity to recognize  
 25 reality, or ability to cope with the ordinary demands of life.

26 (ii) A SEVERE OR PERSISTENT EMOTIONAL CONDITION  
 27 CHARACTERIZED BY SERIOUSLY IMPAIRED PERSONALITY DEVELOPMENT,

1 INDIVIDUAL ADJUSTMENT, SOCIAL ADJUSTMENT, OR EMOTIONAL GROWTH  
2 THAT IS DEMONSTRATED IN BEHAVIOR SYMPTOMATIC OF THAT IMPAIRMENT.

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

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

15 (4) A person RESPONSIBLE FOR THE CHILD'S WELFARE is guilty  
16 of child abuse in the third degree if the person knowingly or  
17 intentionally causes OR THREATENS TO CAUSE physical harm to a  
18 child. Child abuse in the third degree is a misdemeanor punish-  
19 able by imprisonment for not more than 2 years.

20 (5) A person RESPONSIBLE FOR THE CHILD'S WELFARE is guilty  
21 of child abuse in the fourth degree if the person's omission or  
22 reckless act causes OR THREATENS TO CAUSE physical harm to a  
23 child. Child abuse in the fourth degree is a misdemeanor punish-  
24 able by imprisonment for not more than 1 year.

25 (6) A PERSON RESPONSIBLE FOR THE CHILD'S WELFARE IS GUILTY  
26 OF A CRIME PUNISHABLE AS PRESCRIBED IN SUBSECTION (7) IF ALL OF  
27 THE FOLLOWING APPLY:

1 (A) ANOTHER PERSON COMMITTED CRIMINAL SEXUAL ACTIVITY  
2 AGAINST THE CHILD OR CAUSED SERIOUS PHYSICAL HARM OR SERIOUS  
3 MENTAL HARM TO THE CHILD BY COMMITTING ANY OTHER CRIME AGAINST  
4 THE CHILD, REGARDLESS OF WHETHER THE OTHER PERSON IS CONVICTED OF  
5 THE CRIME.

6 (B) THE PERSON RESPONSIBLE FOR THE CHILD'S WELFARE HAD  
7 ACTUAL KNOWLEDGE THAT THE OTHER PERSON ENGAGED, WAS ENGAGED, OR  
8 INTENDED TO ENGAGE IN THE CRIMINAL SEXUAL ACTIVITY AGAINST THE  
9 CHILD OR CAUSED, WAS CAUSING, OR INTENDED TO CAUSE SERIOUS PHYSI-  
10 CAL HARM OR SERIOUS MENTAL HARM TO THE CHILD.

11 (C) THE PERSON RESPONSIBLE FOR THE CHILD'S WELFARE FAILED TO  
12 TAKE ACTIONS THAT WERE REASONABLE UNDER ALL THE CIRCUMSTANCES TO  
13 PREVENT OR STOP THE HARM TO OR THE CRIMINAL SEXUAL ACTIVITY  
14 AGAINST THE CHILD OR TO REPORT THE HARM OR CRIMINAL SEXUAL ACTIV-  
15 ITY TO A LAW ENFORCEMENT AGENCY HAVING JURISDICTION, AN AGENCY  
16 HAVING JURISDICTION OVER CHILD ABUSE OR NEGLECT, OR A PERSON OR  
17 ENTITY REQUIRED TO MAKE A REPORT UNDER THE CHILD PROTECTION LAW,  
18 1975 PA 238, MCL 722.621 TO 722.638, WITHIN A TIME THAT WAS REA-  
19 SONABLE UNDER ALL THE CIRCUMSTANCES.

20 (7) A VIOLATION OF SUBSECTION (6) IS PUNISHABLE BY NOT MORE  
21 THAN THE MAXIMUM PENALTY PROVIDED FOR THE CRIME COMMITTED BY THE  
22 OTHER PERSON, REGARDLESS OF WHETHER THE OTHER PERSON IS CONVICTED  
23 OF THE CRIME, EXCEPT THAT THE MAXIMUM TERM OF IMPRISONMENT AUTHO-  
24 RIZED UNDER THIS SUBSECTION SHALL NOT EXCEED 15 YEARS.

25 (8) IT IS DEFENSE TO A PROSECUTION UNDER SUBSECTION (6) IF  
26 THE DEFENDANT PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT HE  
27 OR SHE FAILED TO COMPLY WITH SUBSECTION (6)(C) BECAUSE HE OR SHE

1 HAD A REASONABLE AND HONEST BELIEF BASED ON THE EXISTENCE OF  
2 DOMESTIC VIOLENCE OR ABUSE THAT ACTING TO PREVENT, STOP, OR  
3 REPORT THE HARM TO THE CHILD OR THE CRIMINAL SEXUAL ACTIVITY  
4 AGAINST THE CHILD WOULD RESULT IN SERIOUS PHYSICAL HARM TO THE  
5 CHILD.

6 (9) A PERSON MAY BE CONVICTED AND A SENTENCE IMPOSED UNDER  
7 THIS SECTION IN ADDITION TO A CONVICTION AND PENALTY FOR ANY  
8 OTHER CRIME ARISING OUT OF THE SAME TRANSACTION.

9 (10) ~~(6)~~ This section ~~shall~~ DOES not ~~be construed to~~  
10 prohibit a parent or guardian, or other person permitted by law  
11 or authorized by the parent or guardian, from taking steps to  
12 reasonably discipline a child, including the use of reasonable  
13 force.