

Legislative Analysis



MISDEMEANOR CHILD ABUSE: INCREASE TERM OF PROBATION

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

Senate Bill 1110 (Substitute H-1)
Sponsor: Sen. Valde Garcia
House Committee: Judiciary
Senate Committee: Judiciary

First Analysis (6-15-06)

BRIEF SUMMARY: The bill would increase, from two to five years, the maximum time a person could be placed on probation for a misdemeanor child abuse conviction.

FISCAL IMPACT: To the extent that misdemeanor offenders were placed on probation for longer periods of time, local units of government could incur increased costs of misdemeanor probation supervision; such costs vary by jurisdiction.

THE APPARENT PROBLEM:

In general, a court may place a person on probation for up to two years for a misdemeanor conviction and up to five years for a felony conviction, though the law does allow a few exceptions. Currently, a term of probation for third- or fourth-degree child abuse, a misdemeanor offense, would fall under the two-year cap. Some believe that this probation period should be longer, as it is for most assaultive crimes.

THE CONTENT OF THE BILL:

Senate Bill 1110 would amend the Code of Criminal Procedure to increase – from two years to five years – the maximum time that an offender convicted of third- or fourth-degree child abuse could be placed on probation.

(Under the Michigan Penal Code, a person is guilty of third-degree child abuse if he or she knowingly or intentionally caused physical harm to a child; it is a misdemeanor offense punishable by imprisonment for not more than two years. Fourth-degree child abuse involves a person's omission or reckless act that causes physical harm to a child; it is a misdemeanor punishable by imprisonment for up to one year.)

MCL 771.2a

HOUSE COMMITTEE ACTION:

The committee substitute relocated the bill's provisions within Section 2a, but did not alter the wording of the proposed changes.

ARGUMENTS:

For:

Violent crimes and crimes of neglect are often repetitive, meaning that there is a greater likelihood that the person will commit a similar offense. Most assaultive crimes, and even aggravated stalking, allow a term of probation to be up to five years. Yet, the misdemeanor child abuse statutes restrict probation to no more than two years.

A term of probation gives a court the opportunity to monitor an offender's progress and to provide consequences if he or she does not adhere to the conditions of his or her probation (counseling, participation in a substance abuse program, community service, etc.). If the maximum term of probation for a misdemeanor child abuse offense was lengthened to five years, it would give a court more time to impose conditions that would result in positive changes in the person's behavior. And, in so doing, it would provide greater protection to the children involved.

Response:

Both third- and fourth-degree child abuse are misdemeanors, and so, many believe that the bill would increase the maximum term of probation for both offenses. However, third-degree child abuse is a two-year misdemeanor. Under current law, two-year misdemeanors are often treated as felonies for purposes of sentencing. Therefore, the longer probation term is already available for third-degree child abuse convictions. The real change in the bill is that a court would also be able to impose up to five years probation for fourth-degree child abuse.

POSITIONS:

No positions were offered on the bill.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson

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