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BILL ANALYSIS

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Senate Bill 158 (Substitute S-2)  
Senate Bill 760 (Substitute S-1)  
Sponsor: Senator Ron Jelinek  
Committee: Judiciary

Date Completed: 3-11-08

### **CONTENT**

**Senate Bill 158 (S-2)** would amend the Michigan Penal Code to do all of the following:

- Include in the factors that constitute second-degree child abuse a person's reckless act that caused serious mental harm to a child.
- Include in the factors that constitute third- and fourth-degree child abuse a person's knowing or intentional act that the person knew, or should have known, was likely to cause physical harm to a child.
- Designate third-degree child abuse as a felony rather than a misdemeanor.
- Provide an affirmative defense to a prosecution for child abuse for an act that was a reasonable response to domestic violence.

**Senate Bill 760 (S-1)** would amend the Code of Criminal Procedure to revise the sentencing guidelines MCL citation for third-degree child abuse.

The bills would take effect 90 days after their enactment. Senate Bill 760 (S-1) is tie-barred to Senate Bill 158.

### **Senate Bill 158 (S-2)**

#### **Second-Degree Child Abuse**

Under the Penal Code, a person is guilty of second-degree child abuse, a felony punishable by up to four years' imprisonment, if any of the following apply:

- The person's omission causes serious physical harm or serious mental harm to a child (an unemancipated person under 18 years old).
- The person's reckless act causes serious physical harm to a child.
- The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child, regardless of whether harm results.
- The person knowingly or intentionally commits an act that is cruel to a child, regardless of whether harm results.

Under the bill, a person also would be guilty of second-degree child abuse if his or her reckless act caused serious mental harm to a child.

("Physical harm" means an injury to a child's physical condition. "Serious physical harm" means any physical injury to a child that seriously impairs the child's health or physical well-being, including brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

"Serious mental harm" means an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of 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.)

#### Third-Degree Child Abuse

Currently, a person is guilty of third-degree child abuse if he or she knowingly or intentionally causes physical harm to a child. Under the bill, a person also would be guilty of third-degree child abuse if he or she knowingly or intentionally committed an act that he or she knew or should have known was likely to cause physical harm to a child, and the act resulted in physical harm to a child.

Third-degree child abuse presently is a misdemeanor punishable by up to two years' imprisonment. Under the bill, the offense would be a felony subject to the same penalty.

#### Fourth-Degree Child Abuse

Currently, a person is guilty of fourth-degree child abuse, a misdemeanor punishable by up to one year's imprisonment, if his or her omission or reckless act causes physical harm to a child. Under the bill, a person also would be guilty of fourth-degree child abuse if he or she knowingly or intentionally committed an act that he or she knew or should have known was likely to cause physical harm to a child, regardless of whether physical harm resulted.

#### Affirmative Defense

The bill specifies that it would be an affirmative defense to a prosecution for child abuse that the defendant's conduct involving the child was a reasonable response to an act of domestic violence in light of all the facts and circumstances known to the defendant at that time. The defendant would have the burden of establishing the affirmative defense by a preponderance of the evidence. (An affirmative defense is new matter that constitutes a defense to a complaint, or evidence that outweighs the evidence against the defense.)

"Domestic violence" would mean that term as defined in the domestic violence prevention and treatment Act (MCL 400.1501). (Under that Act, "domestic violence" means the occurrence of any of the following acts by a person that is not an act of self-defense:

- Causing or attempting to cause physical or mental harm to a family or household member.
- Placing a family or household member in fear of physical or mental harm.
- Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
- Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.)

#### **Senate Bill 760 (S-1)**

Under the sentencing guidelines in the Code of Criminal Procedure, the Michigan Compiled Laws (MCL) citation for third-degree child abuse is 750.136b(5). Under Senate Bill 158 (S-2), however, the penalty for third-degree child abuse would be specified in a different

subsection, MCL 750.136b(6). Senate Bill 760 (S-1) would change the citation in the sentencing guidelines to refer to that subsection.

MCL 750.136b (S.B. 158)  
777.16g (S.B. 760)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many additional offenders would be convicted of the child abuse offenses if the factors were expanded. In 2005, 101 offenders were convicted of second-degree child abuse or attempting the offense. Of these, 17 were sentenced to prison, 58 to probation, 26 to jail, and three to other types of sentences such as Holmes Youthful Trainee probation, or delayed or suspended sentences. In 2005, 127 offenders were convicted of third-degree child abuse. Eleven of these offenders were sentenced to prison, 94 to probation, 21 to jail, and one to another type of sentence. To the extent that the bills resulted in increased incarceration time, local governments would incur increased costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$33,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.