

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 158

(As amended, December 19, 2008)

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 136b (MCL 750.136b), as amended by 1999 PA 273.

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 of 1968 PA 293, MCL 722.4.

5 (b) "Cruel" means brutal, inhuman, sadistic, or that which
6 torments.

7 (c) "Omission" means a willful failure to provide <<the>> food,
8 clothing, or shelter necessary for a child's welfare or <<the>> willful
9 abandonment of a child.

10 (d) "Person" means a child's parent or guardian or any other
11 person who cares for, has custody of, or has authority over a child
12 regardless of the length of time that a child is cared for, in the

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1 custody of, or subject to the authority of that person.

2 (e) "Physical harm" means any injury to a child's physical
3 condition.

4 (f) "Serious physical harm" means any physical injury <<[to a
5 child that seriously impairs the child's health or physical well-
6 being, including, but not limited to, brain damage, a skull or bone
7 fracture, subdural hemorrhage or hematoma, dislocation, sprain,
8 internal injury, poisoning, burn or scald, or severe cut.]>>

9 (g) "Serious mental harm" means an injury to a child's mental
10 condition or welfare that is not necessarily permanent but results
11 in visibly demonstrable manifestations of a substantial disorder of
12 thought or mood which significantly impairs judgment, behavior,
13 capacity to recognize reality, or ability to cope with the ordinary
14 demands of life.

15 (2) A person is guilty of child abuse in the first degree if
16 the person knowingly or intentionally causes serious physical or
17 serious mental harm to a child. Child abuse in the first degree is
18 a felony punishable by imprisonment for not more than 15 years.

19 (3) A person is guilty of child abuse in the second degree if
20 any of the following apply:

21 (a) The person's omission causes serious physical harm or
22 serious mental harm to a child or if the person's reckless act
23 causes serious physical harm **OR SERIOUS MENTAL HARM** to a child.

24 (b) The person knowingly or intentionally commits an act
25 likely to cause serious physical or mental harm to a child
26 regardless of whether harm results.

27 (c) The person knowingly or intentionally commits an act that

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1 is cruel to a child regardless of whether harm results.

2 (4) Child abuse in the second degree is a felony punishable by
3 imprisonment for not more than 4 years.

4 (5) A person is guilty of child abuse in the third degree if
5 ~~the~~ **<<ANY>> OF THE FOLLOWING <<APPLY>>:**

6 (A) **THE** person knowingly or intentionally causes physical harm
7 to a child.

8 (B) **THE PERSON KNOWINGLY OR INTENTIONALLY COMMITS AN ACT THAT**
9 **UNDER THE CIRCUMSTANCES <<POSES>> AN UNREASONABLE RISK OF HARM <<OR**
10 **INJURY>> TO A**
11 **CHILD, AND THE ACT RESULTS IN PHYSICAL HARM TO A CHILD.**

12 (6) Child abuse in the third degree is a ~~misdemeanor~~ **FELONY**
13 punishable by imprisonment for not more than 2 years.

14 (7) ~~(6)~~ A person is guilty of child abuse in the fourth degree
15 if ~~the~~ **<<ANY>> OF THE FOLLOWING <<APPLY>>:**

16 (A) **THE** person's omission or reckless act causes physical harm
17 to a child.

18 (B) **THE PERSON KNOWINGLY OR INTENTIONALLY COMMITS AN ACT THAT**
19 **UNDER THE CIRCUMSTANCES <<POSES>> AN UNREASONABLE RISK OF HARM <<OR**
20 **INJURY>> TO A**
21 **CHILD, REGARDLESS OF WHETHER PHYSICAL HARM RESULTS.**

22 (8) Child abuse in the fourth degree is a misdemeanor
23 punishable by imprisonment for not more than 1 year.

24 (9) ~~(7)~~ This section does not prohibit a parent or guardian,
25 or other person permitted by law or authorized by the parent or
26 guardian, from taking steps to reasonably discipline a child,
27 including the use of reasonable force.

(10) **IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER THIS**
SECTION THAT THE DEFENDANT'S CONDUCT INVOLVING THE CHILD WAS A

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1 REASONABLE RESPONSE TO AN ACT OF DOMESTIC VIOLENCE IN LIGHT OF ALL
2 THE FACTS AND CIRCUMSTANCES KNOWN TO THE DEFENDANT AT THAT TIME.
3 THE DEFENDANT HAS THE BURDEN OF ESTABLISHING THE AFFIRMATIVE
4 DEFENSE BY A PREPONDERANCE OF THE EVIDENCE. AS USED IN THIS
5 SUBSECTION, "DOMESTIC VIOLENCE" MEANS THAT TERM AS DEFINED IN
6 SECTION 1 OF 1978 PA 389, MCL 400.1501.
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7 Enacting section 1. This amendatory act takes effect April 1,
8 2009.