

# Legislative Analysis

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## DOMINICK'S LAW

**House Bill 5562 as introduced**  
**Sponsor: Rep. Matt Lori**

**House Bill 5563 as introduced**  
**Sponsor: Rep. Joseph Graves**  
**Committee: Judiciary**

## First Analysis (5-9-12)

**BRIEF SUMMARY:** House Bill 5562 would enact "Dominick's Law" to:

- Establish minimum terms of imprisonment and increased maximum terms of imprisonment for first- and second-degree child abuse.
- Provide an enhanced sentence for a repeat offense of first- and second-degree child abuse; and
- Allow for an additional sentence for an offense of first- through third-degree child abuse if the crime was committed in the presence of one or more child witnesses.

House Bill 5563 would add the new maximum sentences to the sentencing guidelines.

**FISCAL IMPACT:** The bills would have an indeterminate fiscal impact on state and local correctional costs as discussed in more detail later in the analysis.

## **THE APPARENT PROBLEM:**

A little over two years ago, a four-year-old child named Dominick was subjected to four days of beatings and torture by his mother's boyfriend. He was thrown against a wall, repeatedly kicked in the head and genitals, beaten with fists, and had two teeth pulled out by the bare hands of the man police say assaulted him. By many accounts, his mother did little to protect him. The day after he was rescued by his paternal grandfather and the police, Dominick died. The details of the assaults were so heinous, the trial had to be moved to a neighboring county to find enough impartial people to impanel a jury.

Though the perpetrator in this case was convicted on multiple counts that will keep him in prison for the rest of his life, including first- and second-degree murder and first-degree child abuse, the horrific nature of the abuse has once again focused attention on the state's child abuse statutes.

Some feel that too often adults who abuse children get away with a slap on the wrist and point out there are no minimum sentences or enhanced penalties for repeat offenses. A

minimum sentence would ensure that an abuser would be off the street and incapable of injuring another child, at least for a time.

Moreover, where some states make it a separate crime to abuse one child in front of another, Michigan doesn't. Dominick's eight-year old brother was present in the apartment and witnessed some of the assaults. It is not uncommon for a parent or caregiver to pick on one child and not another. Yet, children who witness violence can suffer emotional and psychological trauma even though they themselves were not physically harmed. Therefore, some believe Michigan should provide a separate penalty for anyone who abused one child in the presence of another.

### ***THE CONTENT OF THE BILLS:***

House Bill 5562 would amend the Michigan Penal Code (MCL 750.136b and 750.136d) to revise the penalties for first- and second-degree child abuse and create a separate penalty for abusing one child in the presence of one or more other children. The bill is to be known as "Dominick's Law."

First-degree child abuse is a felony punishable by imprisonment for not more than 15 years. The bill would revise the penalty for a first offense to be life or any terms of years and would carry a minimum sentence of five years. A second or subsequent offense would be punishable by life or any term of years and require a minimum sentence of 10 years.

Child abuse in the second degree is a felony punishable by a maximum term of imprisonment of four years. The bill would instead require a minimum sentence of two years and a maximum sentence of not more than 10 years. The minimum sentence for a second or subsequent offense would be four years with a maximum sentence of 20 years.

The penalties for child abuse in the third and fourth degree would not be altered. Child abuse in the third degree is a felony punishable by imprisonment for not more than two years. Child abuse in the fourth degree is a misdemeanor with a one-year maximum term of imprisonment.

The bill would also create a separate offense for committing child abuse in the first, second, or third degree in the presence of a child who was not the victim. The minimum and maximum terms of imprisonment for a violation involving first- or second-degree child abuse in the presence of a child witness would be the same as for the crime of child abuse as detailed above. Committing child abuse in the third degree in the presence of a child witness would be punishable by up to two years imprisonment.

A charge and conviction under the new crime category would not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law arising out of the same transaction involving child abuse.

House Bill 5563, which is tie-barred to House Bill 5562, would add the revised penalties under House Bill 5078 to the sentencing guidelines (MCL 777.16g) as follows:

Felony Classification	OFFENSE/ Against a Person	MAXIMUM TERM OF IMPRISONMENT
A	First degree child abuse – First offense	Life
A	First degree child abuse – Second or subsequent offense	Life
C	Second degree child abuse – First offense	10 years
B	Second degree child abuse – Second or subsequent offense	20 years
A	First degree child abuse in presence of another child – first offense	Life
A	First degree child abuse in presence of another child – second or subsequent offense	Life
D	Second degree child abuse in presence of another child – first offense	10 years
B	Second degree child abuse in presence of another child – second or subsequent offense	20 years
G	Third degree child abuse in presence of another child	2 years

***BACKGROUND INFORMATION:***

The bills are virtually identical to House Bills 5077 and 5078.

**The degrees of the crime of child abuse**

***First-degree child abuse.*** A person is guilty of first-degree child abuse if he or she knowingly or intentionally causes serious physical or serious mental harm to a child.

***Second-degree child abuse.*** A person is guilty of second-degree child abuse if any of the following apply: (1) the person's omission or reckless act causes serious physical or mental harm to a child; (2) the person knowingly or intentionally commits an act likely to cause serious physical or mental harm regardless of whether harm results; and/or (3) the person knowingly or intentionally commits an act that is cruel regardless of whether harm results.

***Third-degree child abuse.*** A person is guilty of third-degree child abuse if he or she knowingly or intentionally causes physical harm to a child and/or knowingly or

intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, and the act results in physical harm to a child.

***Fourth-degree child abuse.*** A person is guilty of fourth-degree child abuse if the person's omission or reckless act causes physical harm to a child and/or the person knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, regardless of whether physical harm results.

### ***FISCAL INFORMATION:***

The bills would establish new statutory minimum sentences and would increase maximum sentences for first- and second-degree child abuse and would create new additional felony offenses for repeat child abuse offenders and offenses committed in the presence of another child. By increasing the length of jail and/or prison sentences for persons convicted of first- and second-degree child abuse, the bills would likely increase state and local incarceration costs by an indeterminate amount.

As background, under current law, first-degree child abuse is a Class B felony with a maximum sentence of 15 years and minimum sentence ranges under Michigan sentencing guidelines that vary from 0-18 months to 117-160 months, depending on the prior record of the offender and factors surrounding the offense as both are scored under sentencing guidelines. Michigan Department of Corrections annual statistical reports show that, for the three-period starting January 1, 2008 and ending December 31, 2010, 134 persons were convicted of committing or attempting to commit first-degree child abuse. Of these persons, 96 were sentenced to prison; 34 were sentenced to probation, 1 to county jail; and 3 were sentenced in another manner (e.g. delayed or suspended sentence, youthful offender probation).

Second-degree child abuse, under current law, is deemed a Class F felony with a maximum sentence of 4 years and minimum sentence ranges that vary from 0-3 months to 17-30 months, depending again on prior record and offense scoring under sentencing guidelines. Michigan Department of Corrections annual statistical reports show that, for the three-period starting January 1, 2008 and ending December 31, 2010, 264 persons were convicted of committing or attempting to commit second-degree child abuse. Of these persons, 66 were sentenced to prison; 157 were sentenced to probation, 31 to county jail; and 10 were sentenced in another manner.

The bills' revisions to current law make the first offense for first-degree child abuse a class A felony with a statutory minimum sentence of 5 years in prison and a maximum sentence of life in prison. Likewise, first-offense, second-degree child abuse would become a Class C felony with a statutory minimum sentence of 2 years in prison and a maximum sentence of 10 years. This suggests that all persons convicted of these offenses would serve time in prison equal to at least the new statutory minimum sentence lengths, except in cases where sentencing judges might decide to depart from the prescribed statutory minimum prison sentence. Even then, the likelihood of a prison or

jail sentence would increase under Michigan Sentencing Guidelines with the upgraded Class A and Class C felony designations. The same would hold true for those convicted of the new second-offense and "in the presence of another child" provisions which also carry statutory minimum prison terms.

In general, this would increase the prison population and related state corrections costs. For reference, the data above show that 236 persons were convicted of these offenses from 2008 through 2010, but did not serve prison sentences as they more likely would have if the bills' provisions had been in place at the time. Note, however, that this assumes that persons previously convicted of these offenses would have still been convicted of these specific offenses with the bill's new revisions in place. It is possible that, once the sentence structures are changed, plea agreements will move some offenders to lower level offenses (e.g. third-degree child abuse) where probation sentences would remain an option.

In addition to increasing the percentage of convictions that lead to prison terms, the bills would also increase the prison length of stay of those convicted of these offenses. Looking at MDOC data on calendar year 2009 prison commitments, the average minimum sentence for first-degree child abuse (actual abuse, not attempted abuse) was 4.9 years, less than the mandated 5 years in House Bill 5562 for a first offense. Eleven of the 19 offenders sentenced to prison had minimum sentences below the new mandatory minimum prescribed in the bill. Likewise, on second-degree child abuse prison commitments in 2009, the average minimum was 1.8 years, and 7 of the 13 offenders sentenced to prison received a minimum below the 2 years prescribed in the bill for first offenses. This increased length of stay would also likely have a non-negligible impact on prison population, especially over time.

To the extent that the bills result in more sentences and longer sentences to prison or to county jails, state and local incarceration costs will increase. The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The cost of local incarceration in a county jail varies by jurisdiction. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,100 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

### ***ARGUMENTS:***

#### ***For:***

Currently, each incident of child abuse is treated in a vacuum. There is no enhancement in the penalty for a repeat offense. Plus, even in the more serious cases, when a child suffers mental or physical harm, or serious mental or physical harm, the perpetrator may not spend a single night in jail. Hitting a dog can result in tougher sentences than hitting a child, and that simply cannot be tolerated.

The bills would increase the penalties for first- and second-degree child abuse, the most serious offenses, so that even first-time offenders would spend some time in prison (five and two years, respectively). Those minimum sentences would double for a second or subsequent offense. Incarcerating these dangerous individuals will protect children and give them time to heal with the security of knowing the abuser cannot "get to them." In addition, a person could get sentenced for additional years if the crime was committed in the presence of another child. This is important as a child who witnesses the violent abuse of a sibling or other child can suffer emotional and/or psychological trauma that can cause lifelong scars.

Most importantly, the bills would send a strong signal that attacks on children - and especially in the presence of other children - will not be tolerated and that abusers will find sure and harsh penalties if a child is harmed. There must never be another child who suffers as Dominick did.

***Against:***

While the case described was a horrific crime perpetrated on an innocent and vulnerable child, current laws have been sufficient to mete out the appropriate punishment. Jurors found the man who abused Dominick guilty on at least 10 counts, including first- and second-degree murder, first-degree child abuse, torture, distribution/manufacture of marijuana, and possession of a controlled substance. The man will die in prison. Dominick's mother, who did little over the four days to seek help for her son, pled guilty to second-degree murder and will serve 13 to 30 years in prison. Even if the penalties proposed by the bills had been in place, they would have done little to enhance the punishment available under current laws.

Though true that Michigan does not have a separate crime for committing child abuse of one child in the presence of another, that element is one of the factors used to determine a defendant's score for the purposes of sentencing and as such can enhance the length of a sentence or make the difference between jail and prison.

More importantly, the penalty increases proposed by House Bill 5562 have not been researched to see if evidence supports the increases as being an appropriate or effective punishment. There is no justification or sanction for harming a child, but in many cases, parenting education, drug and/or alcohol treatment, anger management, counseling, and other programs can be effective in stopping a cycle of abuse and successfully reunifying a family. However, research has proven that over-punishing certain crimes works against rehabilitation.

In Dominick's case, there were no previous signs of child abuse. In fact, one law enforcement officer was quoted in the press as saying that "[e]verything you hear about this case is about drugs." The mother's failure to protect Dominick was in part related to her own drug involvement, as was the rage of the man who beat Dominick. The abuser's father described his son as being a compassionate loving kid -- that is, until he began getting involved with drugs.

A person under the influence of drugs is not thinking about whether his or her actions meet the elements of a crime, or what the possible prison time would be. Research has shown that the "[a]llocation of police resources or the use of enforcement methods that dramatically increase the capture rate can deter." But increasing criminal penalties "does not materially effect deterrence." ["Does Criminal Law Deter? A Behavioural Science Investigation, Robinson, Paul H. and Darley, John M., *Oxford Journal of Legal Studies*, Vol.24, No. 2 (2004), pp. 173-205.]

Questions also have been raised about the neighbors who heard evidence of ongoing violence and did nothing. Had any one of them called the police, the child might still be alive. Thus, simply increasing prison time for child abuse or making extra crimes will not automatically solve the problem or prevent other children from suffering harm or death.

***POSITIONS:***

The Michigan Catholic Conference indicated support for the bills. (5-3-12)

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■ 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.