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SFA



BILL ANALYSIS

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Senate Bill 113 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Michael J. Bouchard
Committee: Families, Mental Health and Human Services

Date Completed: 8-25-97

RATIONALE

The Michigan Penal Code's criminal child abuse provisions include acts of omission that cause harm to a child. Apparently, there has been some confusion regarding what actions constitute omission because the Code's definition of "omission" (i.e., "a willful failure to provide the food, clothing, or shelter necessary for a child's welfare or the willful abandonment of a child") appears to describe neglect of a child's needs and not a person's failure to prevent an act of child abuse when that person was capable of doing so or to report a violation. Some people believe that it should be a crime for a person responsible for a child's welfare to fail to prevent harm to or sexual activity against a child. Also, some feel that the child abuse provisions' definitions of "serious physical harm" and "serious mental harm" should be revised to include examples of specific types of injuries. In addition, some people believe that serious mental harm should be added to the "reckless act" portion of the felony of second-degree child abuse. (That offense involves a person's omission that causes serious physical harm or serious mental harm to a child or a reckless act that causes serious physical harm to a child.) Finally, many believe that it should be made clear that child abuse offenses apply to a person who is responsible for a child's welfare, and that failure to provide medical treatment, in accordance with legitimate religious beliefs, does not constitute child abuse.

CONTENT

The bill would amend the Michigan Penal Code to provide penalties for a person's failure to prevent or stop harm to or "criminal sexual activity" against a child by another individual, or to report the incident, when the person was responsible for the child's welfare and had actual knowledge that the other person engaged or intended to engage in criminal

sexual activity against the child or to cause harm to the child. The bill also would do all of the following:

- Add "serious mental harm" to the reckless act portion of the felony of second-degree child abuse.
- Revise the definitions of "serious physical harm" and "serious mental harm" in the Code's child abuse provisions.
- Specify that the criminal child abuse provisions would apply to a person "responsible for the child's welfare".
- Provide that it would be a defense to a prosecution under the bill that the person responsible for the child's welfare had a reasonable and honest belief that, based on the existence of domestic violence, preventing or reporting child abuse would result in serious physical harm to the child.
- Specify that failing to provide medical treatment, in accordance with legitimate religious beliefs, would not be a violation of the Code's criminal child abuse provisions.

Failure to Prevent, Stop, or Report

A person responsible for the child's welfare would be guilty of a crime, punishable as described below, if all of the following applied:

- Another person committed a crime of criminal sexual activity against the child or caused serious physical harm or serious mental harm to the child by committing any other crime against the child, regardless of whether that other person was convicted of the crime.

- The person responsible for the child's welfare had actual knowledge that the other person had engaged, was engaging, or intended to engage in the criminal sexual activity against the child or had caused, was causing, or intended to cause serious physical harm or serious mental harm to the child.
- The person responsible for the child's welfare failed to take actions that were reasonable under all the circumstances to prevent or stop the harm to, or the criminal sexual activity against, the child, or to report the harm or criminal sexual activity to a law enforcement agency that had jurisdiction, an agency that had jurisdiction over child abuse or neglect, or a person or entity required to make a report of suspected child abuse or neglect under the Child Protection Law, within a time that was reasonable under all the circumstances.

A violation would be punishable by up to the maximum penalty provided for the other person's crime, regardless of whether the other person was convicted of the crime, except that the maximum term of imprisonment could not exceed 15 years.

It would be a defense to a prosecution for a violation of the bill if the defendant proved, by a preponderance of the evidence, that he or she failed to prevent, stop, or report the abuse because of a reasonable and honest belief that, based on the existence of domestic violence or abuse, acting to prevent, stop, or report the harm to or criminal sexual activity against the child would result in serious physical harm to the child.

Second-Degree Child Abuse

A person is guilty of second-degree child abuse if his or her omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm to a child. The bill also provides that a person would be guilty of second-degree child abuse if the person's reckless act caused serious mental harm to a child.

Definitions

"Criminal sexual activity" would mean a violation of the Penal Code's provisions prohibiting involvement in child sexually abusive activity and possession of child sexually abusive material (MCL 750.145c); first-degree criminal sexual conduct (CSC) (MCL 750.520b); second-degree CSC (MCL 750.520c); third-degree CSC (MCL 750.520d); fourth-degree CSC (MCL 750.520e); or assault with intent to

commit CSC (MCL 750.520g).

Under the Code, "serious physical harm" means an injury of a child's physical condition or welfare that is not necessarily permanent but constitutes substantial bodily disfigurement, or seriously impairs the function of a body organ or limb. Under the bill, "serious physical harm" would mean, instead, any physical injury to a child that seriously impaired his or her health or physical well-being, including, but not limited to, 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. The bill would remove the requirement that the manifestations of the injury be visible demonstrable and would add to the definition a severe or persistent emotional condition characterized by seriously impaired personality development, individual adjustment, social adjustment, or emotional growth that was demonstrated in behavior symptomatic of that impairment.

The Penal Code's child abuse provisions define "person" as a child's parent or guardian or any other person who cares for, has custody of, or has authority over a child, regardless of the length of time that the child is cared for by, in the custody of, or subject to the authority of that person. The bill would replace the term "person" with "person responsible for the child's welfare", which would have the same definition. The bill would apply all the child abuse violations to a "person responsible for the child's welfare".

Religious Practice

The bill provides that a person responsible for a child's welfare who was legitimately practicing his or her religious beliefs and who, for that reason alone, did not provide specified medical treatment for the child would not be in violation of the Penal Code's criminal child abuse provisions.

MCL 750.136b

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Penal Code's child abuse provisions do not adequately address situations in which a child's care giver is not actively involved in an abusive act, but fails to take steps to prevent or report the abuse. The Code's inclusion of acts of omission in the child abuse offenses applies to neglect in the provision of food, clothing, and shelter rather than failure to protect a child from another's abusive acts. The bill would enable law enforcement officials to prosecute as child abusers those individuals who were responsible for a child's welfare and who allowed an act of abuse against the child.

To the extent that individuals who are currently not being convicted of failing to prevent or stop harm to or criminal sexual activity against a child and under the provisions of the bill would be convicted of those acts, costs for arresting, prosecuting, and sanctioning violators would increase. There are no data currently available that might indicate the potential number of annual convictions, and the subsequent sanction (prison, jail, probation, or some combination) for each conviction that could result because of the bill's new provisions.

Fiscal Analyst: M. Hansen

Supporting Argument

While extending criminal punishment to those who allowed others to abuse a child, the bill would recognize the reality of the fear and intimidation of domestic violence situations. A person accused of a violation of the bill would have a recognized defense to prosecution if the person could show that he or she did not prevent or report an act of abuse because of fear that doing so would result in further harm to the child.

Supporting Argument

By specifying that not providing medical treatment for a child due to the legitimate practice of religious beliefs would not constitute criminal child abuse, the bill would ensure that parents were not persecuted for their constitutionally protected religious beliefs.

Response: There is no need for this exemption because the bill would address the failure of a child's care giver to prevent another from harming the child, not a person's failure to seek medical attention for a child. Further, although religious beliefs are protected, if a willing act of omission--such as failure to seek needed medical attention--resulted in serious physical harm to a child, the person who failed to prevent that harm should be held accountable.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State government

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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.