

HOUSE BILL No. 5985

October 19, 2016, Introduced by Rep. Lucido and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 136b (MCL 750.136b), as amended by 2012 PA 194.

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 food,
8 clothing, or shelter necessary for a child's welfare or willful
9 abandonment of a child.

1 (d) "Person" means a child's parent or guardian or any other
2 person who cares for, has custody of, or has authority over a child
3 regardless of the length of time that a child is cared for, in the
4 custody of, or subject to the authority of that person.

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

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

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

18 (2) A person is guilty of child abuse in the first degree if
19 the person knowingly or intentionally causes serious physical **HARM**
20 or serious mental harm to a child. Child abuse in the first degree
21 is a felony punishable by imprisonment for life or any term of
22 years.

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

25 (a) The person's omission causes serious physical harm or
26 serious mental harm to a child or if the person's reckless act
27 causes serious physical harm or serious mental harm to a child.

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

4 (c) The person knowingly or intentionally commits an act that
5 is cruel to a child regardless of whether harm results.

6 (4) Child abuse in the second degree is a felony punishable by
7 imprisonment as follows:

8 (a) For a first offense, not more than 10 years.

9 (b) For a second or subsequent offense, not more than 20
10 years.

11 (5) A person is guilty of child abuse in the third degree if
12 any of the following apply:

13 (a) The person knowingly or intentionally causes physical harm
14 to a child.

15 (b) The person knowingly or intentionally commits an act that
16 under the circumstances poses an unreasonable risk of harm or
17 injury to a child, and the act results in physical harm to a child.

18 (6) Child abuse in the third degree is a felony punishable by
19 imprisonment ~~for not more than 2 years.~~ **AS FOLLOWS:**

20 **(A) FOR A FIRST OFFENSE, NOT MORE THAN 2 YEARS.**

21 **(B) FOR A SECOND OR SUBSEQUENT OFFENSE, NOT MORE THAN 5 YEARS.**

22 (7) A person is guilty of child abuse in the fourth degree if
23 any of the following apply:

24 (a) The person's omission or reckless act causes physical harm
25 to a child.

26 (b) The person knowingly or intentionally commits an act that
27 under the circumstances poses an unreasonable risk of harm or

injury to a child, regardless of whether physical harm results.

(8) Child abuse in the fourth degree is **A CRIME PUNISHABLE BY IMPRISONMENT AS FOLLOWS:**

(A) FOR A FIRST OFFENSE, a misdemeanor punishable by imprisonment for not more than 1 year.

(B) FOR A SECOND OR SUBSEQUENT OFFENSE, A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2 YEARS.

(9) This section does not prohibit a parent or guardian, or other person permitted by law or authorized by the parent or guardian, from taking steps to reasonably discipline a child, 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 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 has the burden of establishing the affirmative defense by a preponderance of the evidence. As used in this subsection, "domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.