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BILL



ANALYSIS

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House Bill 4486 (Substitute H-2 as passed by the House)
House Bill 4487 (Substitute H-2 as passed by the House)
Sponsor: Representative Peter J. Lucido
House Committee: Law and Justice
Senate Committee: Judiciary

Date Completed: 2-23-18

CONTENT

House Bill 4486 (H-2) would amend the Michigan Penal Code to prescribe enhanced penalties for an individual convicted of third- or fourth-degree child abuse following a prior conviction.

House Bill 4487 (H-2) would amend the sentencing guidelines in the Code of Criminal Procedure to establish designations for third- and fourth-degree child abuse with prior conviction.

House Bill 4487 (H-2) is tie-barred to House Bill 4486. Each bill would take effect 90 days after its enactment.

House Bill 4486 (H-2)

Under Section 136b of the Penal Code, a person is guilty of second-degree child abuse if any of the following apply:

- The person's omission or reckless act causes serious physical harm or serious mental 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.
- The person or a licensed child care organization intentionally violates a licensing rule and, by that violation, causes a child's death.

Second-degree child abuse is a felony punishable by imprisonment as follows:

- For a first offense, a maximum of 10 years.
- For a second or subsequent offense, a maximum of 20 years.

Where the Code refers to "a second or subsequent offense", the bill would refer to an offense following a prior conviction. "Prior conviction" would mean a violation of Section 136b or a violation of a law of another state substantially corresponding to Section 136b.

Under the Code, a person is guilty of third-degree child abuse if he or she knowingly or intentionally causes physical harm to a child, 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. Third-degree child abuse is a felony punishable by up to two years' imprisonment. Under the bill, third-degree child abuse would be punishable by imprisonment as follows:

- For a first offense, up to two years.
- For an offense following a prior conviction, a maximum of five years.

A person is guilty of fourth-degree child abuse if his or her omission or reckless act causes physical harm to a child, or he or she 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. Fourth-degree child abuse is a misdemeanor punishable by up to one year's imprisonment. Under the bill, fourth-degree child abuse would be a crime punishable as follows:

- For a first offense, a misdemeanor punishable by imprisonment for up to one year.
- For an offense following a prior conviction, a felony punishable by imprisonment for up to two years.

The bill specifies that if the prosecuting attorney intended to seek an enhanced sentence based on the defendant's having a prior conviction, he or she would have to include on the complaint and information a statement listing the prior conviction. The court would have to determine the existence of the prior conviction, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction could be established by any evidence relevant for that purpose, including one or more of the following: a) a copy of the judgment of conviction; b) a transcript of a prior trial, plea-taking, or sentencing; c) information contained in a presentence report; or d) the defendant's statement.

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Under the Code of Criminal Procedure, a second or subsequent offense of second-degree child abuse is a Class G felony against a person, with a statutory maximum sentence of 20 years. The bill would refer to second degree child abuse with prior conviction.

Under the bill, third-degree child abuse with a prior conviction would be a Class E felony against a person, with a statutory maximum sentence of five years' imprisonment. Fourth-degree child abuse with a prior conviction would be a Class B felony against a person, with a statutory maximum of two years.

MCL 750.136b (H.B. 4486)
777.16g (H.B. 4487)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bill 4486 (H-2)

The bill could have a negative fiscal impact on the State and local government. More felony arrests and convictions could increase demands on court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. Any associated increase in fine revenue increases funding to public libraries.

House Bill 4487 (H-2)

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: John Maxwell

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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.