

# SENATE BILL NO. 548

October 03, 2023, Introduced by Senators MCBROOM, IRWIN, BELLINO, GEISS, SHINK, VICTORY, DALEY, OUTMAN, JOHNSON and LAUWERS and referred to the Committee on Housing and Human Services.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 136b (MCL 750.136b), as amended by 2020 PA 49.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1           Sec. 136b. (1) As used in this section:  
2           (a) "Child" means ~~a person~~ **an individual** who is less than 18  
3 years of age and is not emancipated by operation of law as provided  
4 in section 4 of 1968 PA 293, MCL 722.4.  
5           (b) "Cruel" means brutal, inhuman, sadistic, or that which  
6 torments.

1 (c) "Omission" means a willful failure to provide food,  
2 clothing, or shelter necessary for a child's welfare or willful  
3 abandonment of a child.

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

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

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

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

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

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

28 (a) The person's omission causes serious physical harm or  
29 serious mental harm to a child or if the person's reckless act

1 causes serious physical harm or serious mental harm to a child.

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

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

7 (d) The person or a licensee, as licensee is defined in  
8 section 1 of 1973 PA 116, MCL 722.111, violates section 15(2) of  
9 1973 PA 116, MCL 722.125.

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

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

13 (b) For an offense following a prior conviction, not more than  
14 20 years.

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

17 (a) The person knowingly or intentionally causes physical harm  
18 to a child.

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

22 (6) Child abuse in the third degree is a felony punishable by  
23 imprisonment as follows:

24 (a) For a first offense, not more than 2 years.

25 (b) For an offense following a prior conviction, not more than  
26 5 years.

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

29 (a) The person's omission or reckless act causes physical harm

1 to a child.

2 (b) The person knowingly or intentionally commits an act that  
3 under the circumstances poses an unreasonable risk of harm or  
4 injury to a child, regardless of whether physical harm results.

5 (8) Child abuse in the fourth degree is a crime punishable as  
6 follows:

7 (a) For a first offense, a misdemeanor punishable by  
8 imprisonment for not more than 1 year.

9 (b) For an offense following a prior conviction, a felony  
10 punishable by imprisonment for not more than 2 years.

11 (9) This section does not prohibit a parent or guardian, or  
12 other person permitted by law or authorized by the parent or  
13 guardian, from taking steps to reasonably discipline a child,  
14 including the use of reasonable force.

15 (10) It is an affirmative defense to a prosecution under this  
16 section that the defendant's conduct involving the child was a  
17 reasonable response to an act of domestic violence in light of all  
18 the facts and circumstances known to the defendant at that time.  
19 The defendant has the burden of establishing the affirmative  
20 defense by a preponderance of the evidence. As used in this  
21 subsection, "domestic violence" means that term as defined in  
22 section 1 of 1978 PA 389, MCL 400.1501.

23 (11) If the prosecuting attorney intends to seek an enhanced  
24 sentence based upon the defendant having 1 or more prior  
25 convictions, the prosecuting attorney shall include on the  
26 complaint and information a statement listing the prior conviction  
27 or convictions. The existence of the defendant's prior conviction  
28 or convictions must be determined by the court, without a jury, at  
29 sentencing or at a separate hearing for that purpose before

1 sentencing. The existence of a prior conviction may be established  
2 by any evidence relevant for that purpose, including, but not  
3 limited to, 1 or more of the following:

4 (a) A copy of the judgment of conviction.

5 (b) A transcript of a prior trial, plea-taking, or sentencing.

6 (c) Information contained in a presentence report.

7 (d) The defendant's statement.

8 (12) As used in this section, "prior conviction" means a  
9 violation of this section or a violation of a law of another state  
10 substantially corresponding to this section.

11 **(13) This section does not apply to a person who allows a**  
12 **child to engage in independent activities as described under**  
13 **section 2(k) of the child protection law, 1975 PA 238, MCL 722.622.**

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

16 Enacting section 2. This amendatory act does not take effect  
17 unless Senate Bill No. 547 of the 102nd Legislature is enacted into  
18 law.