



**House
Legislative
Analysis
Section**

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MODERNIZE CHILD CRUELTY STATUTES

House Bill 4465 as introduced
First Analysis (6-4-87)

Sponsor: Rep. David M. Gubow
Committee: Judiciary

THE APPARENT PROBLEM:

The two sections of the Penal Code that prohibit child cruelty and child torture have been criticized for being archaic and vague. Child cruelty, a felony punishable by up to four years in prison, is in effect defined by a list that includes expected, but undefined, offenses such as cruelly punishing or willfully abandoning a child, and unusual offenses couched in antiquated language, such as habitually permitting a child to frequent public places for the purpose of receiving alms. Child torture, a ten-year felony, is completely undefined; the statute simply prohibits torturing a child. At one time, the drafters of the state's criminal jury instructions found the statute to be so deficient in indicating what constitutes child torture that they declined to write jury instructions for the offense (jury instructions were adopted in 1984, following the development of pertinent case law). Defendants have challenged child torture convictions on the grounds that the law is unconstitutionally vague, and while various panels of the Court of Appeals have upheld the statute, they also have employed differing definitions.

THE CONTENT OF THE BILL:

The bill would add to the penal code a new section establishing four degrees of child abuse; sections prohibiting child cruelty (MCL 750.136) and child torture (MCL 750.136a) would be repealed. Any person who cared for, had custody of, or had authority over a child could be charged under the bill regardless of the length of time that the child was cared for, in the custody of, or subject to the authority of that person. The protection of the law, now limited to children under 16 years of age, would be extended to children under age 18 who had not been legally emancipated.

The standards for the four degrees of child abuse and their penalties would be:

- First degree: an act that knowingly or intentionally caused serious physical or serious mental harm to a child; felony with maximum prison term of ten years.
- Second degree: an omission that caused serious physical harm or serious mental harm or a reckless act that caused serious physical harm; felony with a maximum prison term of four years.
- Third degree: an act that knowingly or intentionally caused physical harm; misdemeanor with maximum prison term of two years.
- Fourth degree: an omission or reckless act that caused physical harm; misdemeanor with maximum prison term of one year.

An "omission" would be a willful failure to provide the food, clothing, or shelter necessary for a child's welfare or the willful abandonment of a child. "Physical harm" would mean any injury to a child's physical condition. "Serious physical harm" would mean an injury to a child's

physical condition or welfare that was not necessarily permanent but constituted substantial bodily disfigurement, or seriously impaired the function of a body organ or limb. "Serious mental harm" would mean an injury to a child's mental condition or welfare that was not necessarily permanent but resulted in substantial and protracted, visibly demonstrable manifestations of mental distress.

The bill could not be construed to prohibit a parent or guardian or other legally authorized person from taking steps to reasonably discipline a child, including the use of reasonable force. Proceedings pending and liabilities existing at the time the bill took effect would be prosecuted according to the law in force when they were commenced.

(MCL 750.136b)

FISCAL IMPLICATIONS:

The House Fiscal Agency says that to the degree that sentences are increased, the bill would increase state costs. (5-5-87)

ARGUMENTS:

For:

The bill would provide courts, prosecutors, and the public with clearly delineated and enforceable child abuse offenses that cover a wider range of situations than the present law does. Various anachronisms and outdated language found in the current child cruelty statute would be eliminated, and the vagueness of the current child torture statute would no longer be an issue.

Against:

In the interest of having a clear and enforceable law, the element of mental harm should be deleted from the definitions of child abuse. Reportedly, no other section of the penal code punishes only mental harm, and tort law has only recently recognized intentional infliction of mental distress as a compensable civil action.

Response: It would be a mistake not to include serious mental harm within the definitions of child abuse. Severe emotional abuse is heinous conduct that can cause long-lasting and debilitating damage. Simply because mental abuse may be difficult to prove does not mean it should be legal. Although some may be concerned that the law would be too vague, the bill's definition of serious mental harm is rigorous enough to ensure that parents are not punished for merely shouting at a child.

Against:

Punishment for the worst of child abusers should be harsh, and the bill therefore should impose mandatory minimum sentences for child abuse in the first degree, at least.

Response: Enactment of mandatory minimum prison terms would interfere with a judge's discretion to consider mitigating circumstances in determining a sentence.

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OVER

Against:

Failure to protect a child from a spouse or partner's abuse should be punishable as child abuse, and the bill's definition of "omission" should somehow incorporate this failure to protect a child.

Against:

Some question whether it is appropriate to have special statutes outlawing child abuse. Victims are victims, whether adults or children, and the law should treat all with equal consideration.

Response: Many believe that an assault on a child is qualitatively different from an assault on an adult. Children depend on adults and are ill-equipped to defend themselves against abuse.

Against:

The bill could lead to more convictions and incarcerations in situations where some form of treatment would be the better solution. In many instances, family counseling would be preferable to imprisoning a parent and putting a child in foster care, but the bill would do nothing to ensure that appropriate alternatives were pursued.

POSITIONS:

The Department of State Police supports the bill. (5-5-87)

The Prosecuting Attorneys Association of Michigan supports the bill. (5-5-87)

A representative from the Department of Social Services testified in support of the bill. (5-5-87)

The Michigan Council on Crime and Delinquency does not oppose the bill. (5-5-87)