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BILL ANALYSIS

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House Bill 4465 (as reported with amendments)

Sponsor: Representative David M. Gubow

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 12-17-87

RATIONALE

The two sections of the Michigan Penal Code that prohibit child cruelty and child torture have been criticized by some as 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 certain 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 10 year felony, is completely undefined; the statute simply prohibits torturing a child. In fact, 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. Defendants have challenged child torture convictions on the ground 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. Some feel, then, that criminal statutes for child abuse offenses should be updated and more precisely defined.

CONTENT

The bill would amend the Michigan Penal Code by repealing sections of the Code concerning cruelty to children (MCL 750.136) and torturing of children (MCL 750.136a), and replacing them with a new section that would establish four degrees of child abuse. 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 15 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.

The bill would also provide definitions for such terms as "omission", "physical harm", "serious physical harm", and "serious mental harm".

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 bodily disfigurement, or 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.

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 bill specifies that it could not be construed to prohibit a parent or guardian from taking steps to discipline a child reasonably. 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

SENATE COMMITTEE ACTION

The Senate Judiciary adopted amendments to House Bill 4465 that would delete the word "substantial" from "bodily disfigurement" and the word "seriously" from "impairs the function of a body organ or limb" in the bill's definition of "serious bodily harm". The Committee amendments also would increase the bill's punishment for first degree child abuse from a maximum sentence of 10 years to 15 years.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. Enforcement costs are not determinable.

ARGUMENTS**Supporting Argument**

The bill would provide courts, prosecutors, and the public with clearly delineated and enforceable child abuse offenses that covered 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.

Opposing Argument

In the interest of having a clear and enforceable law, the

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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.

Opposing Argument

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.

Opposing Argument

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

Opposing Argument

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.

Opposing Argument

The bill could lead to more convictions and incarcerations in situations in which 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.

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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.