

# HOUSE BILL NO. 5112

October 10, 2023, Introduced by Reps. Zorn, Rigas, Borton, Bezotte, Alexander, Thompson and O'Neal 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 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) "Developmental disability" means either of the following  
2 as diagnosed by a physician or other licensed medical professional:

3 (i) If applied to an individual older than 5 years of age, a  
4 severe, chronic condition that meets all of the following  
5 requirements:

6 (A) Is attributable to a mental or physical impairment or a  
7 combination of mental and physical impairments.

8 (B) Is manifested before the individual is 22 years old.

9 (C) Is likely to continue indefinitely.

10 (D) Results in substantial functional limitations in 3 or more  
11 of the following areas of major life activity:

12 (I) Self-care.

13 (II) Receptive and expressive language.

14 (III) Learning.

15 (IV) Self-direction.

16 (E) Reflects the individual's need for a combination and  
17 sequence of special, interdisciplinary, or generic care, treatment,  
18 or other services that are of lifelong or extended duration and are  
19 individually planned and coordinated.

20 (ii) If applied to a minor from birth to 5 years of age, a  
21 substantial developmental delay or a specific congenital or  
22 acquired condition with a high probability of resulting in  
23 developmental disability as defined in subparagraph (i) if services  
24 are not provided.

25 (d) "Mental illness" means a substantial disorder of thought  
26 or mood that significantly impairs judgment, behavior, capacity to  
27 recognize reality, or ability to cope with the ordinary demands of  
28 life that was diagnosed by a physician or other licensed medical  
29 professional.

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

8           (g) **"Physical disability" means a determinable physical**  
9 **characteristic of an individual that may result from disease,**  
10 **injury, congenital condition of birth, or functional disorder that**  
11 **was diagnosed by a physician or other licensed medical**  
12 **professional.**

13           (h) ~~(e)~~—"Physical harm" means any injury to a child's physical  
14 condition.

15           (i) **"Physician or other licensed medical professional" means a**  
16 **person licensed under article 15 of the public health code, 1978 PA**  
17 **368, MCL 333.16101 to 333.18838.**

18           (j) ~~(f)~~—"Serious physical harm" means any physical injury to a  
19 child that seriously impairs the child's health or physical well-  
20 being, including, but not limited to, brain damage, a skull or bone  
21 fracture, subdural hemorrhage or hematoma, dislocation, sprain,  
22 internal injury, poisoning, burn or scald, or severe cut.

23           (k) ~~(g)~~—"Serious mental harm" means an injury to a child's  
24 mental condition or welfare that is not necessarily permanent but  
25 results in visibly demonstrable manifestations of a substantial  
26 disorder of thought or mood which significantly impairs judgment,  
27 behavior, capacity to recognize reality, or ability to cope with  
28 the ordinary demands of life.

29           (l) **"Vulnerable child" means an individual who is less than 18**

1 years of age, who is not emancipated by operation of law under  
2 section 4 of 1968 PA 293, MCL 722.4, and who has a developmental  
3 disability, mental illness, or physical disability, or is  
4 nonverbal.

5 (2) A person is guilty of child abuse in the first degree if  
6 the person knowingly or intentionally causes serious physical harm  
7 or serious mental harm to a child. Child abuse in the first degree  
8 is a felony punishable by imprisonment for life or any term of  
9 years.

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

12 (a) The person's omission causes serious physical harm or  
13 serious mental harm to a child or if the person's reckless act  
14 causes serious physical harm or serious mental harm to a child.

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

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

20 (d) The person or a licensee, as licensee is defined in  
21 section 1 of 1973 PA 116, MCL 722.111, violates section 15(2) of  
22 1973 PA 116, MCL 722.125.

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

25 (a) ~~For~~ **Except as provided in subdivision (c), for** a first  
26 offense, not more than 10 years.

27 (b) For an offense following a prior conviction, not more than  
28 20 years.

29 (c) **For a first offense, if the victim is a vulnerable child**

1 and the offense occurs in either of the following situations, not  
2 more than 15 years:

3 (i) While the person is performing duties in a facility or home  
4 regulated under 1973 PA 116, MCL 722.111 to 722.128.

5 (ii) While the person is acting within the health profession  
6 for which the person is licensed, registered, or otherwise  
7 authorized to engage in the practice of under article 15 of the  
8 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

9 (5) A person is guilty of child abuse in the third degree if  
10 ~~any either~~ of the following ~~apply~~:**applies:**

11 (a) The person knowingly or intentionally causes physical harm  
12 to a child.

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

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

18 (a) ~~For~~**Except as provided in subdivision (c), for** a first  
19 offense, not more than 2 years.

20 (b) For an offense following a prior conviction, not more than  
21 5 years.

22 (c) **For a first offense, if the victim is a vulnerable child**  
23 **and the offense occurs in either of the following situations, not**  
24 **more than 3 years:**

25 (i) While the person is performing duties in a facility or home  
26 regulated under 1973 PA 116, MCL 722.111 to 722.128.

27 (ii) While the person is acting within the health profession  
28 for which the person is licensed, registered, or otherwise  
29 authorized to engage in the practice of under article 15 of the

1 **public health code, 1978 PA 368, MCL 333.16101 to 333.18838.**

2 (7) A person is guilty of child abuse in the fourth degree if  
3 ~~any either~~ of the following ~~apply~~:**applies:**

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

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

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

11 (a) ~~For~~**Except as provided in subdivision (c),** for a first  
12 offense, a misdemeanor punishable by imprisonment for not more than  
13 1 year.

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

16 (c) **For a first offense, if the victim is a vulnerable child**  
17 **and the offense occurs in either of the following situations, a**  
18 **felony punishable by imprisonment for not more than 2 years:**

19 (i) **While the person is performing duties in a facility or home**  
20 **regulated under 1973 PA 116, MCL 722.111 to 722.128.**

21 (ii) **While the person is acting within the health profession**  
22 **for which the person is licensed, registered, or otherwise**  
23 **authorized to engage in the practice of under article 15 of the**  
24 **public health code, 1978 PA 368, MCL 333.16101 to 333.18838.**

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

29 (10) It is an affirmative defense to a prosecution under this

1 section that the defendant's conduct involving the child was a  
2 reasonable response to an act of domestic violence in light of all  
3 the facts and circumstances known to the defendant at that time.  
4 The defendant has the burden of establishing the affirmative  
5 defense by a preponderance of the evidence. As used in this  
6 subsection, "domestic violence" means that term as defined in  
7 section 1 of 1978 PA 389, MCL 400.1501.

8 (11) If the prosecuting attorney intends to seek an enhanced  
9 sentence based upon the defendant having 1 or more prior  
10 convictions, the prosecuting attorney shall include on the  
11 complaint and information a statement listing the prior conviction  
12 or convictions. The existence of the defendant's prior conviction  
13 or convictions must be determined by the court, without a jury, at  
14 sentencing or at a separate hearing for that purpose before  
15 sentencing. The existence of a prior conviction may be established  
16 by any evidence relevant for that purpose, including, but not  
17 limited to, 1 or more of the following:

- 18 (a) A copy of the judgment of conviction.  
19 (b) A transcript of a prior trial, plea-taking, or sentencing.  
20 (c) Information contained in a presentence report.  
21 (d) The defendant's statement.

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

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