
Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 113 (as introduced 2-4-97)
Sponsor: Senator Michael J. Bouchard
Committee: Families, Mental Health and Human Services

Date Completed: 5-28-97

CONTENT

The bill would amend the Michigan Penal Code to provide penalties for a person's failure to prevent or stop harm to or "criminal sexual activity" against a child by another individual, or to report the incident, when the person was responsible for the child's welfare and knew the other person engaged or intended to engage in criminal sexual activity against the child or to cause harm to the child. The bill also would add "serious mental harm" to the felony of second-degree child abuse. In addition, the bill would revise the definition of "serious physical harm" in the Code's child abuse provisions and specifies that those provisions would apply to a person "responsible for the child's welfare".

Failure to Prevent, Stop, or Report

A person responsible for the child's welfare would be guilty of a crime, punishable as described below, if all of the following applied:

- Another person committed a crime of criminal sexual activity against the child or caused serious physical harm or serious mental harm to the child by committing any other crime against the child, regardless of whether that other person was convicted of the crime.
- The person responsible for the child's welfare knew that the other person had engaged, was engaging, or intended to engage in the criminal sexual activity against the child or had caused, was causing, or intended to cause physical harm, serious physical harm, or serious mental harm to the child.
- The person responsible for the child's welfare failed to take actions that were reasonable under all the circumstances to prevent or stop the harm to, or the criminal sexual activity against, the child, or to report the harm or criminal sexual activity either to a law enforcement agency that had jurisdiction or to an agency that had jurisdiction over child abuse or neglect, within a time that was reasonable under all the circumstances.

A violation would be punishable by up to the maximum penalty provided for the other person's crime, regardless of whether the other person was convicted of the crime, except that the maximum term of imprisonment could not exceed 15 years.

Second-Degree Child Abuse

A person is guilty of second-degree child abuse if his or her omission causes serious physical harm or serious mental harm to a child or if the person's act causes serious physical harm to a child. The bill also provides that a person would be guilty of second-degree child abuse if the person's reckless act caused serious mental harm to a child.

("Physical harm" means any injury to a child's physical condition. "Serious mental harm" means an

injury to a child's mental condition or welfare that is not necessarily permanent but results in visible demonstrable manifestations of a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. "Omission" means a willful failure to provide the food, clothing, or shelter necessary for a child's welfare or the willful abandonment of a child.)

Definitions

"Criminal sexual activity" would mean a violation of the Penal Code's provisions prohibiting involvement in child sexually abusive activity and possession of child sexually abusive material (MCL 750.145c); first-degree criminal sexual conduct (CSC) (MCL 750.520b); second-degree CSC (MCL 750.520c); third-degree CSC (MCL 750.520d); fourth-degree CSC (MCL 750.520e); or assault with intent to commit CSC (MCL 750.520g).

Under the Code, "serious physical harm" means an injury of a child's physical condition or welfare that is not necessarily permanent but constitutes substantial bodily disfigurement, or seriously impairs the function of a body organ or limb. Under the bill, "serious physical harm" would mean, instead, any physical injury to a child that seriously impaired his or her health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

The Penal Code's child abuse provisions define "person" as a child's parent or guardian or any other person who cares for, has custody of, or has authority over a child, regardless of the length of time that the child is cared for by, in the custody of, or subject to the authority of that person. The bill would replace the term "person" with "person responsible for the child's welfare", which would have the same definition. The bill would apply all the child abuse violations to a "person responsible for the child's welfare".

MCL 750.136b

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State government

To the extent that individuals who are currently not being convicted of failing to prevent or stop harm to or criminal sexual activity against a child and under the provisions of the bill would be convicted of those acts, costs for arresting, prosecuting, and sanctioning violators would increase. There are no data currently available that might indicate the potential number of annual convictions, and the subsequent sanction (prison, jail, probation or some combination) for each conviction that could result because of the bill's new provisions.

Fiscal Analyst: M. Hansen

S9798\S113SA

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.