

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 315 (Substitute S-1 as passed by the Senate)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 6-23-99

RATIONALE

Under the Michigan Penal Code, a person is guilty of first-degree child abuse if he or she knowingly or intentionally causes "serious physical harm" or "serious mental harm" to a child. First-degree child abuse is a felony punishable by up to 15 years' imprisonment. Second-degree child abuse, which is a felony punishable by up to four years' imprisonment, is an omission that causes serious physical harm or serious mental harm to a child or a reckless act that causes serious physical harm to a child. "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". Some people believe that this definition is too narrow to apply to some injuries that are intentionally inflicted upon children; as a result, some offenders are charged with the misdemeanor offense of third-degree child abuse, which is the knowing or intentional causing of "physical harm" to a child. ("Physical harm" means "any injury to a child's physical condition".) They contend that the definition of serious physical harm should be broadened to include fractures, burns, and other injuries that are intentionally or recklessly inflicted upon children, regardless of whether the injuries constitute substantial bodily disfigurement or seriously impair the function of a body organ or limb.

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Penal Code's current definition of "serious physical harm" under the child abuse provisions is too narrow. Prosecutors and medical personnel reportedly see many types of injuries that, apparently, are intentionally inflicted or result from negligence or recklessness toward a child. In order to convict offenders of first- or second-degree child abuse, however, prosecutors must prove that a physical injury to a child either constitutes substantial bodily disfigurement or seriously impairs the function of a body organ or limb. Various types of brutal injuries may fail to rise to the level of the Code's definition, resulting in lesser charges for the abuser. For example, burns, head injuries, and bone fractures may eventually heal beyond the Code's standard of substantial disfigurement or serious impairment of the function of a body organ or limb. The current definition is simply too limited to expose some vicious child abusers to the severe felony penalties for first- or second-degree child abuse. In order to subject those criminals to the appropriate punishment for their deeds, the definition of serious physical harm should be broadened.

Legislative Analyst: P. Affholter

CONTENT

The bill would amend the Michigan Penal Code's child abuse provisions to revise the definition of "serious physical harm". Under the bill, that term would mean any physical injury to a child that seriously impaired the child's 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 bill would take effect 90 days after its enactment.

MCL 750.136b

ARGUMENTS

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State government.

In 1997, there were 31 dispositions for first-degree child abuse and 20 dispositions for second-degree child abuse. Of the dispositions for first-degree child abuse, 18 offenders were sentenced to prison, and of the dispositions for second-degree child abuse, four were sentenced to prison. There are no data to indicate how many more people would be convicted given an expanded definition of "serious physical harm".

Fiscal Analyst: K. Firestone

A9900\315a

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.