

Legislative Analysis



EXPAND DEFINITIONS OF 2ND, 3RD, AND 4TH DEGREE CHILD ABUSE

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4468 (Substitute H-2)
Sponsor: Rep. William van Regenmorter

House Bill 4584 (Substitute H-2)
Sponsor: Rep. Michael Sak

Committee: Criminal Justice
First Analysis (3-24-04)

BRIEF SUMMARY: House Bill 4468 would expand the definitions of 2nd, 3rd, and 4th degree child abuse and increase the penalties for a conviction of 2nd and 3rd degree child abuse. House Bill 4584 would place the sentencing changes in the corresponding section of the sentencing guidelines. Both bills would take effect 90 days after being enacted into law.

FISCAL IMPACT: A fiscal analysis is in process.

THE APPARENT PROBLEM:

According to prosecutors, the child abuse statutes still do not encompass some egregious acts against children. For instance, a person is guilty of first degree child abuse if he or she knowingly or intentionally commits an act that is likely to cause serious physical or mental harm to the child whether or not that act actually resulted in harming the child. However, if the harm that was likely to occur from the act was less than “serious physical harm” or “serious mental harm” (both terms are defined in statute), than a charge of child abuse in any degree could not be brought. Also, knowingly or intentionally causing physical harm to a child (3rd degree child abuse) is a two-year misdemeanor, but prosecutors feel that this penalty is too low for the harm that is done to children and so would like to see 3rd degree child abuse raised to a felony offense and would like to have an enhanced penalty for repeat offenders. Legislation has been introduced to address these concerns.

THE CONTENT OF THE BILLS:

House Bill 4468 would amend the Michigan Penal Code (MCL 750.136b). Currently, a person is guilty of child abuse in the 2nd degree if 1) the person’s omission causes serious physical harm or serious mental harm to a child or the person’s reckless act causes serious physical harm (the bill would add serious mental harm) to a child; 2) the person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results; or 3) the person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results. The bill would add a fourth criterion: the person knowingly or intentionally committed

three or more acts within a 24-month period that caused physical harm to a child. The acts would not have to be committed against the same child. The bill would increase the maximum term of imprisonment from four years to ten years.

Child abuse in the 3rd degree is defined as knowingly or intentionally causing physical harm to a child. The bill would add knowingly or intentionally committing an act likely to cause physical harm to a child and the act resulted in physical harm to the child. Currently 3rd degree child abuse is a misdemeanor punishable by imprisonment for not more than two years. The bill would raise the crime to a felony punishable by up to four years imprisonment.

A person is guilty of child abuse in the 4th degree if his or her omission or reckless act causes physical harm to a child. The bill would add knowingly or intentionally committing an act likely to cause physical harm to a child regardless of whether physical harm resulted. The penalty, a misdemeanor punishable by imprisonment for up to one year, would not be changed.

(First-degree child abuse, defined as knowingly or intentionally causing serious physical or serious mental harm to a child, a felony punishable by up to 15 years imprisonment, would remain the same. Under the code, “serious physical harm” is defined as any physical injury to a child that seriously impairs 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. “Serious mental harm” is an injury to a child’s mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.)

House Bill 4584 would amend the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.16g) to specify that child abuse in the 2nd degree would be a Class D felony with a maximum term of imprisonment of 10 years and 3rd degree child abuse would be a Class F felony with a four-year maximum term of imprisonment. The bill is tie-barred to House Bill 4468.

ARGUMENTS:

For:

House Bill 4468 would revise the charging criteria for 2nd, 3rd, and 4th degree child abuse, and increase the penalties for 2nd and 3rd degree offenses. Currently, 1st degree child abuse encompasses acts likely to cause serious physical or mental harm regardless of whether harm results. However, many acts committed against children are torturous but do not necessarily meet the level of serious physical harm as defined in the penal code. The bill would allow prosecution as child abuse in these egregious cases of child endangerment; an act resulting in physical harm could be prosecuted as 3rd degree child abuse which, under the bill, would be increased from a two-year misdemeanor offense to a four-year felony offense and an act that was likely to cause harm to a child but didn’t

could be prosecuted as 4th degree child abuse (which would remain a misdemeanor punishable by up to one year imprisonment).

Further, both 3rd and 4th degree child abuse are misdemeanor offenses under current law. Therefore, a person may receive multiple misdemeanor convictions within a short period of time. Besides raising 3rd degree child abuse to a 4-year felony, the bill would also allow those convicted three or more times within 24 months of 3rd degree child abuse (or 4th degree child abuse in situations where the child did suffer physical harm) to be charged with 2nd degree child abuse – a felony that, under the bill, would be punishable by up to ten years instead of the current four years. Hopefully, the increased penalties and expanded charging criteria will act as a deterrent to committing acts that injure or are likely to injure a child. At a minimum, it provides a more appropriate penalty for those who would commit a heinous act against a child.

Against:

For several years, a sluggish economy has caused budget shortfalls that have already resulted in many worthy state-funded projects and programs being cut. Some people are concerned that the increased penalties under the bills will increase state prison costs at a time when corrections' costs already represent a significant portion of the budget. The attempt to protect children by incarcerating abusers for longer periods must be balanced with exploring and expanding lower-cost early intervention programs that could prevent some incidents of child abuse altogether.

POSITIONS:

The Prosecuting Attorneys Association of Michigan (PAAM) supports the bills. (3-17-04)

Legislative Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.