

**SUBSTITUTE FOR
SENATE BILL NO. 747**

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 136b (MCL 750.136b), as amended by 2012 PA 194.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 136b. (1) As used in this section:

2 (a) "Child" means a person who is less than 18 years of age
3 and is not emancipated by operation of law as provided in section 4
4 of 1968 PA 293, MCL 722.4.

5 (b) "Cruel" means brutal, inhuman, sadistic, or that which
6 torments.

7 (c) "Omission" means a willful failure to provide food,
8 clothing, or shelter necessary for a child's welfare or willful
9 abandonment of a child.

10 (d) "Person" means a child's parent or guardian or any other

1 person who cares for, has custody of, or has authority over a child
2 regardless of the length of time that a child is cared for, in the
3 custody of, or subject to the authority of that person.

4 (e) "Physical harm" means any injury to a child's physical
5 condition.

6 (f) "Serious physical harm" means any physical injury to a
7 child that seriously impairs the child's health or physical well-
8 being, including, but not limited to, brain damage, a skull or bone
9 fracture, subdural hemorrhage or hematoma, dislocation, sprain,
10 internal injury, poisoning, burn or scald, or severe cut.

11 (g) "Serious mental harm" means an injury to a child's mental
12 condition or welfare that is not necessarily permanent but results
13 in visibly demonstrable manifestations of a substantial disorder of
14 thought or mood which significantly impairs judgment, behavior,
15 capacity to recognize reality, or ability to cope with the ordinary
16 demands of life.

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

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

23 (a) The person's omission causes serious physical harm or
24 serious mental harm to a child or if the person's reckless act
25 causes serious physical harm or serious mental harm to a child.

26 (b) The person knowingly or intentionally commits an act
27 likely to cause serious physical or mental harm to a child

1 regardless of whether harm results.

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

4 (D) THE PERSON OR A LICENSEE AS LICENSEE IS DEFINED IN SECTION
5 1 OF 1973 PA 116, MCL 722.111, VIOLATES SECTION 15(2) OF 1993 PA
6 218, MCL 722.125.

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

9 (a) For a first offense, not more than 10 years.

10 (b) For a second or subsequent offense, not more than 20
11 years.

12 (5) A person is guilty of child abuse in the third degree if
13 any of the following apply:

14 (a) The person knowingly or intentionally causes physical harm
15 to a child.

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

19 (6) Child abuse in the third degree is a felony punishable by
20 imprisonment for not more than 2 years.

21 (7) A person is guilty of child abuse in the fourth degree if
22 any of the following apply:

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

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

1 (8) Child abuse in the fourth degree is a misdemeanor
2 punishable by imprisonment for not more than 1 year.

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

7 (10) It is an affirmative defense to a prosecution under this
8 section that the defendant's conduct involving the child was a
9 reasonable response to an act of domestic violence in light of all
10 the facts and circumstances known to the defendant at that time.
11 The defendant has the burden of establishing the affirmative
12 defense by a preponderance of the evidence. As used in this
13 subsection, "domestic violence" means that term as defined in
14 section 1 of 1978 PA 389, MCL 400.1501.

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

17 Enacting section 2. This amendatory act does not take effect
18 unless Senate Bill No. 746 of the 98th Legislature is enacted into
19 law.