

Legislative Analysis



EXPAND CHILD ABUSE PROHIBITION

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Senate Bills 158 and 760 (Substitutes H-1)

Sponsor: Sen. Ron Jelinek

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 12-16-08

A SUMMARY OF SENATE BILLS 158 AND 760 AS REPORTED BY THE HOUSE JUDICIARY COMMITTEE 12-10-08

Senate Bill 158 would revise the elements constituting child abuse in the second through fourth degrees and provide an affirmative defense if the person's actions involving the child were a responsible response to an act of domestic violence. Senate Bill 760 would revise the sentencing guidelines to comply with the revisions of Senate Bill 158 and House Bill 4872.

A brief description of each bill follows.

Senate Bill 158 would amend a provision of the Michigan Penal Code (MCL 750.136b) pertaining to child abuse. Both bills would take effect April 1, 2009. The bill would add the following elements to those already in the act:

- For child abuse in the second degree, add serious mental harm to a child caused by a person's reckless act. (Currently, one element of second degree child abuse is met if the person's omission causes serious physical harm or serious mental harm to a child or if a reckless act causes physical harm.)
- For child abuse in the third degree, add as an element that the person knowingly or intentionally commits an act that under the circumstances creates an unreasonable risk of harm to a child, and the act results in physical harm to the child. Further, the bill would make third degree child abuse a felony with a two-year maximum term of imprisonment. Currently, the offense is a misdemeanor with the same penalty.
- For child abuse in the fourth degree, add as an element that the person knowingly or intentionally commits an act that under the circumstances creates an unreasonable risk of harm to a child, regardless of whether physical harm resulted.

In addition, the bill would create an affirmative defense to a charge of child abuse. It would be an affirmative defense if the defendant's conduct toward the child was a reasonable response to an act of domestic violence in light of all the facts and circumstances known to the defendant at that time. The defendant would bear the burden

of establishing the affirmative defense by a preponderance of the evidence. “Domestic violence” would mean that term as defined in Section 1 of Public Act 389 of 1978, MCL 400.1501.

Senate Bill 760 would amend the Code of Criminal Procedure (MCL 777.16g) to make a technical adjustment to the compiled law reference of the underlying statute of child abuse in the third degree. The bill would also include penalties for crimes added by House Bill 4872. In particular, the bill would specify that leaving a child unattended in a vehicle resulting in serious physical harm would be a Class D felony against a person with a maximum term of imprisonment of 10 years and that leaving a child unattended in a vehicle resulting in death would be a Class B felony against a person with a 15-year maximum term of imprisonment. (House Bill 4872, which is on the Senate floor, would prohibit a person from leaving a young child unattended in a vehicle for a period of time that posed an unreasonable risk of harm or injury and create a tiered-penalty structure for violations.)

The bill is tie-barred to Senate Bill 158 and House Bill 4872.

FISCAL IMPACT:

The bills' fiscal impact on the state and local units of government would depend on how they affected numbers of misdemeanor and felony convictions and severity of sentences. Generally, misdemeanor sanctions are a local responsibility; two-year misdemeanors, however, constitute an exception. Unlike other misdemeanors, two-year misdemeanors are subject to sentencing guidelines and offenders placed on probation for two-year misdemeanors are supervised by MDOC probation agents.

In 2007, there were 37 sentences for first-degree child abuse, 104 for second-degree child abuse, and 154 sentences for third-degree child abuse (currently a two-year misdemeanor, elevated to a two-year felony by the bill). Most of the sentences for first-degree child abuse were prison sentences, while the bulk of the sentences for the other offenses were probation (Table 1).

Table 1

	2007 Dispositions for Child Abuse (Includes Attempts)				
	Prison	Probation	Jail	Other	Total
1st Degree	32	4	1	0	37
2nd Degree	24	61	16	3	104
3rd Degree	8	114	30	2	154

To the extent that SB 158 increased the number or severity of felony sentences, the state could incur increased costs of incarceration or felony probation supervision. Incarceration in a state correctional facility currently averages about \$32,000 per prisoner per year, a figure that includes various fixed operational and administrative costs. Parole

and probation supervision averages about \$2,100 per supervised offender per year, exclusive of tether costs.

Changes in the amount of time served by offenders in county jails or in the number of offenders sentenced to misdemeanor probation supervision would affect local units of government; those costs vary with jurisdiction.

POSITIONS:

The Prosecuting Attorneys Association of Michigan (PAAM) supports the bills. (12-10-08)

The Michigan Domestic Violence Prevention and Treatment Board indicated support for the bills. (12-10-08)

A representative of Citizens for Parental Rights testified in opposition to the bills. (12-10-08)

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■ 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.