

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 158

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 136b (MCL 750.136b), as amended by 1999 PA 273.

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 the food,
8 clothing, or shelter necessary for a child's welfare or the willful
9 abandonment of a child.

10 (d) "Person" means a child's parent or guardian or any other
11 person who cares for, has custody of, or has authority over a child
12 regardless of the length of time that a child is cared for, in the

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1 custody of, or subject to the authority of that person.

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

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

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

16 (2) A person is guilty of child abuse in the first degree if
17 the person knowingly or intentionally causes serious physical or
18 serious mental harm to a child. Child abuse in the first degree is
19 a felony punishable by imprisonment for not more than 15 years.

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

22 (a) The person's omission causes serious physical harm or
23 serious mental harm to a child or if the person's reckless act
24 causes serious physical harm **OR SERIOUS MENTAL HARM** to a child.

25 (b) The person knowingly or intentionally commits an act
26 likely to cause serious physical or mental harm to a child
27 regardless of whether harm results.

(c) The person knowingly or intentionally commits an act that

1 is cruel to a child regardless of whether harm results.

2 (4) Child abuse in the second degree is a felony punishable by
3 imprisonment for not more than 4 years.

4 (5) A person is guilty of child abuse in the third degree if
5 ~~the~~ **EITHER OF THE FOLLOWING APPLIES:**

6 (A) **THE** person knowingly or intentionally causes physical harm
7 to a child.

8 (B) **THE PERSON KNOWINGLY OR INTENTIONALLY COMMITS AN ACT THAT**
9 **UNDER THE CIRCUMSTANCES CREATES AN UNREASONABLE RISK OF HARM TO A**
10 **CHILD, AND THE ACT RESULTS IN PHYSICAL HARM TO A CHILD.**

11 (6) Child abuse in the third degree is a ~~misdemeanor~~ **FELONY**
12 punishable by imprisonment for not more than 2 years.

13 (7) ~~(6)~~ A person is guilty of child abuse in the fourth degree
14 if ~~the~~ **EITHER OF THE FOLLOWING APPLIES:**

15 (A) **THE** person's omission or reckless act causes physical harm
16 to a child.

17 (B) **THE PERSON KNOWINGLY OR INTENTIONALLY COMMITS AN ACT THAT**
18 **UNDER THE CIRCUMSTANCES CREATES AN UNREASONABLE RISK OF HARM TO A**
19 **CHILD, REGARDLESS OF WHETHER PHYSICAL HARM RESULTS.**

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

22 (9) ~~(7)~~ This section does not prohibit a parent or guardian,
23 or other person permitted by law or authorized by the parent or
24 guardian, from taking steps to reasonably discipline a child,
25 including the use of reasonable force.

26 (10) **IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER THIS**
27 **SECTION THAT THE DEFENDANT'S CONDUCT INVOLVING THE CHILD WAS A**

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1 REASONABLE RESPONSE TO AN ACT OF DOMESTIC VIOLENCE IN LIGHT OF ALL
2 THE FACTS AND CIRCUMSTANCES KNOWN TO THE DEFENDANT AT THAT TIME.
3 THE DEFENDANT HAS THE BURDEN OF ESTABLISHING THE AFFIRMATIVE
4 DEFENSE BY A PREPONDERANCE OF THE EVIDENCE. AS USED IN THIS
5 SUBSECTION, "DOMESTIC VIOLENCE" MEANS THAT TERM AS DEFINED IN
6 SECTION 1 OF 1978 PA 389, MCL 400.1501.

[(11) THE DEFENDANT HAS THE BURDEN OF ESTABLISHING THE AFFIRMATIVE
DEFENSE DESCRIBED IN THIS SUBSECTION BY A PREPONDERANCE OF THE EVIDENCE.
IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER SUBSECTIONS (3) AND
(7) THAT THE DEFENDANT'S CONDUCT INVOLVING THE CHILD ATTRIBUTABLE TO THE
PROVISION OF TREATMENT BY SPIRITUAL MEANS IN LIEU OF MEDICAL CARE WAS
REASONABLE UNDER THE CIRCUMSTANCES. THE FOLLOWING FACTORS SHALL BE
RELEVANT FOR PURPOSES OF EVALUATING REASONABLENESS UNDER THIS SECTION:

(A) THE AGE, MATURITY, AND CAPACITY OF THE CHILD.

(B) THE CONDITION FOR WHICH THE CHILD WAS BEING TREATED.

(C) WHETHER THE CHILD EXHIBITED CLEAR SYMPTOMS OF A CONDITION THAT
IS LIFE-THREATENING OR WOULD RESULT IN SERIOUS DISABILITY.

(D) THE LENGTH OF TIME DURING WHICH THE CHILD EXPERIENCED THE
CONDITION.

(E) THE LIKELIHOOD THAT MEDICAL TREATMENT WOULD HAVE SUCCEEDED IN
REMEDYING THE CHILD'S CONDITION INCLUDING CONSIDERATION OF THE RISKS OF
HARM OR NEGATIVE SIDE EFFECTS ASSOCIATED WITH UNDERGOING MEDICAL
TREATMENT AND THE RISKS OF HARM FROM FAILURE TO PROVIDE MEDICAL
TREATMENT.

(F) THE PAST EXPERIENCE OF THE FAMILY IN RELYING UPON MEDICAL
TREATMENT.

(G) THE PAST EXPERIENCE OF THE FAMILY IN RELYING UPON SPIRITUAL
TREATMENT.]

7 Enacting section 1. This amendatory act takes effect April 1,
8 2009.