

Act No. 577
Public Acts of 2008
Approved by the Governor
January 15, 2009
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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Senators Jelinek, Pappageorge and Anderson

ENROLLED SENATE BILL No. 158

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 136b (MCL 750.136b), as amended by 1999 PA 273.

The People of the State of Michigan enact:

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

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

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

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

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

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

(f) "Serious physical harm" means 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.

(g) "Serious mental harm" means 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) It is an affirmative defense to a prosecution under this section that the defendant's conduct involving 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 has the burden of establishing the affirmative defense by a preponderance of the evidence. As used in this subsection, "domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

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Governor