

ABUSE OF A VULNERABLE CHILD

Phone: (517) 373-8080
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House Bill 4071 (H-1) as referred to second committee
Sponsor: Rep. Bronna Kahle

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4072 as referred to second committee
Sponsor: Rep. Julie Calley

1st Committee: Families, Children and Seniors
2nd Committee: Judiciary
Complete to 3-21-21

SUMMARY:

House Bill 4071 would amend the Michigan Penal Code to create enhanced penalties for second, third, or fourth degree child abuse if the victim of the abuse is a *vulnerable child*.

Vulnerable child would mean an unemancipated minor (less than 18 years of age) who meets one or more of the following:

- He or she has a *developmental disability*.
- He or she is nonverbal.
- He or she has a *mental illness*.
- He or she has a *physical disability*.

Developmental disability would mean, for an individual who is older than 5 years of age, a severe, chronic condition that meets all of the following:

- The condition is attributable to a mental or physical impairment or a combination of mental and physical impairments.
- The condition is likely to continue indefinitely.
- The condition results in substantial functional limitations in three or more of the following areas of major life activity:
 - Self-care.
 - Receptive and expressive language.
 - Learning.
 - Mobility.
 - Self-direction.
 - Capacity for independent living.
 - Economic self-sufficiency.
- The condition reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

For a child up to and including age 5, *developmental disability* would mean a substantial developmental delay or a specific congenital or acquired condition with

a high probability of resulting in developmental disability as defined above if services are not provided.

Mental illness would mean a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life that was diagnosed by a licensed medical professional.

Physical disability would mean a determinable physical characteristic that may result from disease, injury, congenital condition of birth, or functional disorder that was diagnosed by a licensed medical professional.

Child abuse in the second degree

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

- He or she knowingly or intentionally commits an act that is cruel to a child or that is likely to cause serious physical or mental harm to a child, regardless of whether harm results.
- His or her omission or reckless act causes serious physical harm or serious mental harm to a child.
- He or she, or a licensee under the child care organizations act, 1973 PA 116, intentionally violates a licensing rule for family and group child care homes under that act and the violation causes the death of a child.

Child abuse in the second degree is a felony punishable by imprisonment for up to 10 years for a first offense and imprisonment for up to 20 years for a second or subsequent offense.

Under the bill, if the victim was a vulnerable child, a first offense of child abuse in the second degree would be a felony punishable by imprisonment for up to 15 years.

Child abuse in the third degree

A person is guilty of child abuse in the third degree if either of the following applies:

- He or she knowingly or intentionally causes physical harm to a child.
- He or she 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.

Child abuse in the third degree is a felony punishable by imprisonment for up to two years for a first offense and imprisonment for up to five years for a second or subsequent offense.

Under the bill, if the victim was a vulnerable child, a first offense of child abuse in the third degree would be a felony punishable by imprisonment for up to three years.

Child abuse in the fourth degree

A person is guilty of child abuse in the fourth degree if either of the following applies:

- His or her omission or reckless act causes physical harm to a child.

- He or she 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.

Child abuse in the fourth degree is a felony punishable by imprisonment for up to one year for a first offense and imprisonment for up to two years for a second or subsequent offense.

Under the bill, if the victim was a vulnerable child, a first offense of child abuse in the third degree would be a felony punishable by imprisonment for up to two years.

MCL 750.136b

House Bill 4072 would amend the sentencing guidelines provisions of the Code of Criminal Procedure to add the felony offenses proposed by House Bill 4071 for child abuse of a vulnerable child, as follows:

- Second degree child abuse of a vulnerable child would be a class C crime against a person with a statutory maximum imprisonment of 15 years.
- Third degree child abuse of a vulnerable child would be a class G crime against a person with a statutory maximum imprisonment of three years.
- Fourth degree child abuse of a vulnerable child would be a class H crime against a person with a statutory maximum imprisonment of two years.

The bill is tie-barred to House Bill 4071, which means that it could not take effect unless House Bill 4071 were also enacted.

MCL 777.76g

Each bill would take effect 90 days after its enactment.

FISCAL IMPACT:

House Bill 4071 would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on the number of individuals convicted of child abuse of a vulnerable child in the second, third, or fourth degree. New felony convictions would result in increased costs related to state prisons and to state probation supervision. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,300 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs.

House Bill 4072 is a companion bill to House Bill 4071 and amends sentencing guidelines to include second, third, and fourth degree child abuse of a vulnerable child. The bill would not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

Representatives of the Lenawee County Prosecutor's Office testified in support of the bills. (3-10-21)

The following entities indicated support for the bills:

- Michigan Council for Maternal and Child Health (3-10-21)
- Michigan Catholic Conference (3-16-21)

The Michigan Coalition to End Domestic and Sexual Violence indicated a neutral position on the bills. (3-16-21)

The following entities indicated opposition to the bills (3-16-21):

- American Civil Liberties Union (ACLU)
- Citizens for Parental Rights

Legislative Analyst: E. Best
Fiscal Analyst: Robin Risko

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