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House Bill 4071 (Substitute H-4 as passed by the House)
House Bill 4072 (as passed by the House)
Sponsor: Representative Bronna Kahle (H.B. 4701)
Representative Julie Calley (H.B. 4702)
House Committee: Families, Children, and Seniors
Judiciary
Senate Committee: Judiciary and Public Safety

Date Completed: 11-29-22

CONTENT

House Bill 4071 (H-4) would amend the Michigan Penal Code to prescribe enhanced penalties for an individual convicted of a first offense second-, third-, or fourth-degree child abuse if the victim were a vulnerable child.

House Bill 4072 would amend the sentencing guidelines in the Code of Criminal Procedure to include the felonies prescribed in House Bill 4071 (H-4).

House Bill 4702 is tie-barred to House Bill 4071. Each bill would take effect 90 days after its enactment.

House Bill 4071 (H-4)

Definitions

Under the bill, "vulnerable child" would mean an individual who is less than 18 years of age, who is not emancipated by operation of law, and who has a developmental disability, mental illness, or physical disability, or is nonverbal.

"Developmental disability" would mean either of the following as diagnosed by a physician or other licensed medical professional:

- If applied to an individual older than five years of age, a severe, chronic condition that meets all of the following requirements: a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; b) is manifested before the individual is 22 years old; c) is likely to continue indefinitely; d) results in substantial functional limitations in 3 or more of the following areas of major life activity: self-care; receptive and expressive language; learning; and self-direction; and e) reflects the individual's needs 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.
- If applied to a minor from birth to five years of age, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability 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 physician or other licensed medical professional.

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

Second-Degree Child Abuse

Section 136b specifies that a person is guilty of second-degree child abuse if any of the following apply:

- 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.
- The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.
- The person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results.
- The person or a licensed child care organization intentionally violates a licensing rules and, by that violation, causes a child's death.

Second-degree child abuse is a felony punishable by imprisonment as follows:

- For a first offense, up to 10 years.
- For an offense following a prior conviction, up to 20 years.

Under the bill, for a first offense, if the victim were a vulnerable child and the offense occurred in either of the following situations, the individual would be guilty of a felony punishable by up to 15 years' imprisonment:

- While the person was performing duties in a licensed child care organization.
- While the person was acting within the health profession for which he or she was licensed, registered, or otherwise authorized to engage in the practice of under Article 15 (Occupations) of the Public Health Code.

Third-Degree Child Abuse

Section 136b specifies that a person is guilty of third-degree child abuse if either of the following applies:

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

Third-degree child abuse is a felony punishable by imprisonment as follows:

- For a first offense, up to two years.
- For an offense following a prior conviction, up to five years.

Under the bill, for a first offense, if the victim were a vulnerable child and the offense occurred in either of the following situations, the individual would be guilty of a felony punishable by up to three years' imprisonment:

- While the person was performing duties in a licensed child care organization.
- While the person was acting within the health profession for which he or she was licensed, registered, or otherwise authorized to engage in the practice of under Article 15 of the Public Health Code.

Fourth-Degree Child Abuse

Section 136b specifies that person is guilty of fourth-degree child abuse if his or her omission or reckless act causes physical harm to a child, or 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.

Fourth-degree child abuse is a crime punishable as follows:

- For a first offense, a misdemeanor punishable by up to one year imprisonment.
- For an offense following a prior conviction, a felony punishable by up to two years' imprisonment.

Under the bill, for a first offense, if the victim were a vulnerable child and the offense occurred in either of the following situations, the individual would be guilty of a felony punishable by up to two years' imprisonment:

- While the person was performing duties in a licensed child care organization.
- While the person was acting within the health profession for which he or she was licensed, registered, or otherwise authorized to engage in the practice of under Article 15 of the Public Health Code.

House Bill 4072

The bill would add sentencing guidelines designations, as shown in Table 1.

Table 1

Offense	Felony Class & Category	Statutory Maximum Sentence
Second degree child abuse - vulnerable child	C - Person	15 years
Third degree child abuse - vulnerable child	G - Person	3 years
Fourth degree child abuse - vulnerable child	H - Person	2 years

MCL 750.136b (H.B. 4701)
777.16g (H.B. 4702)

Legislative Analyst: Stephen P. Jackson

FISCAL IMPACT

House Bill 4071 (H-4)

The bill could have a negative fiscal impact on the State relative to the number of individuals convicted under the proposed language. Longer sentences mean more costs for the Department of Corrections, as the average cost per year to incarcerate an individual was over \$42,000 as of 2020. Annual costs for parole and felony probation averaged \$4,300 that same year. Any increased costs would depend on the number of new sentences after the increased penalties took effect. The penalty and, therefore, the cost to the Department, for a second- or third-degree conviction would increase 50% (from 10 years and two years to 15 years and three years, respectively). The penalty for a fourth-degree conviction would increase from

one year (misdemeanor) to two years (felony); this would mean fourth-degree offenders would serve their sentences in prison instead of jail.

House Bill 4072

The bill would have no fiscal impact on State or local government, as it would codify House Bill 4701 (H-4)'s proposed changes within the State's sentencing guidelines.

Fiscal Analyst: Michael Siracuse

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.