

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.136b Definitions; child abuse; degrees; penalties; exception; affirmative defense; enhanced sentence; "prior conviction" defined.

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 harm or serious mental harm to a child. Child abuse in the first degree is a felony punishable by imprisonment for life or any term of 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.

(d) The person or a licensee, as licensee is defined in section 1 of 1973 PA 116, MCL 722.111, violates section 15(2) of 1973 PA 116, MCL 722.125.

(4) Child abuse in the second degree is a felony punishable by imprisonment as follows:

(a) For a first offense, not more than 10 years.

(b) For an offense following a prior conviction, not more than 20 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 as follows:

(a) For a first offense, not more than 2 years.

(b) For an offense following a prior conviction, not more than 5 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 crime punishable as follows:

(a) For a first offense, a misdemeanor punishable by imprisonment for not more than 1 year.

(b) For an offense following a prior conviction, a felony punishable by imprisonment for not more than 2 years.

(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.

(11) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions must be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(12) As used in this section, "prior conviction" means a violation of this section or a violation of a law of another state substantially corresponding to this section.

History: Add. 1988, Act 251, Eff. Sept. 1, 1988 ;-- Am. 1999, Act 273, Eff. Apr. 3, 2000 ;-- Am. 2008, Act 577, Eff. Apr. 1, 2009 ;-- Am. 2012, Act 194, Eff. July 1, 2012 ;-- Am. 2016, Act 488, Eff. Apr. 6, 2017 ;-- Am. 2020, Act 49, Eff. June 1, 2020

Compiler's Notes: Section 4 of Act 251 of 1988 provides: "All proceedings pending and liabilities existing at the time this amendatory act takes effect are saved and may be prosecuted according to the law in force when they are commenced pursuant to section 4a of chapter 1 of the Revised Statutes of 1846, being section 8.4a of the Michigan Compiled Laws." Enacting section 1 of Act 194 of 2012 provides: "Enacting section 1. This amendatory act shall be known and may be cited as 'Dominick's Law'."