Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 29 and 30 (as passed by the Senate)
Sponsor: Senator Peter J. Lucido
Committee: Judiciary and Public Safety

Date Completed: 7-15-19

RATIONALE

The Michigan Penal Code provides the definitions of child abuse in the first-, second- third-, and fourth degree, and prescribes the penalties for committing each of those offenses. First-degree child abuse is punishable by life imprisonment, or imprisonment for any term of years. A first offense of second-degree child abuse is punishable by up to 10 years' imprisonment, and a second or subsequent offense is punishable by up to 20 years' imprisonment. Third-degree child abuse is punishable by up to two years' imprisonment, and fourth-degree child abuse is punishable by imprisonment for up to one year. The Penal Code, however, does not prescribe a longer term of imprisonment for a second or subsequent third- or fourth-degree child abuse conviction.

In order to better deter child abuse, it has been suggested that the Penal Code be amended to prescribe enhanced penalties for third- and fourth-degree child abuse when the individual convicted of the crime has a prior conviction for child abuse in any degree.

CONTENT

Senate Bill 29 would amend the Michigan Penal Code to prescribe enhanced penalties for an individual convicted of third- or fourth-degree child abuse following a prior conviction.

Senate Bill 30 would amend the sentencing guidelines in the Code of Criminal Procedure to establish designations for third- and fourth-degree child abuse with prior conviction.

Senate Bill 30 is tie-barred to Senate Bill 29. Each bill would take effect 90 days after its enactment.

Senate Bill 29

Second-Degree Child Abuse

Under Section 136b of the Penal Code, a person is guilty of second-degree child abuse if any of the following apply:

-- The person's omission or 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 rule 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, a maximum of 10 years.
-- For a second or subsequent offense, a maximum of 20 years.

Where the Code refers to "a second or subsequent offense", the bill would refer to an offense following a prior conviction. "Prior conviction" would mean a violation of Section 136b or a violation of a law of another state substantially corresponding to Section 136b.

Third-Degree Child Abuse

Under Section 136b, a person is guilty of third-degree child abuse if he or she knowingly or intentionally causes physical harm to a child, or 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 up to two years' imprisonment. Under the bill, third-degree child abuse would be punishable by imprisonment as follows:

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

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 misdemeanor punishable by up to one year's imprisonment. Under the bill, fourth-degree child abuse would be a crime punishable as follows:

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

Prior Conviction

The bill specifies that if a prosecuting attorney intended to seek an enhanced sentence based on the defendant having one or more prior convictions, he or she would have to include on the complaint and information a statement listing the prior conviction. The court would have to determine the existence of the prior conviction, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction could be established by any evidence relevant for that purpose, including one 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; or d) the defendant's statement.

Senate Bill 30

Under the Code of Criminal Procedure, a second or subsequent offense of second-degree child abuse is a Class B felony against a person, with a statutory maximum sentence of 20 years. The bill would refer to second-degree child abuse with prior conviction.

Under the bill, third-degree child abuse with a prior conviction would be a Class E felony against a person, with a statutory maximum sentence of five years' imprisonment. Fourth- degree child abuse with a prior conviction would be a Class B felony against a person, with a statutory maximum of two years' imprisonment.

MCL 750.136b (S.B. 29)
    777.16g (S.B. 30)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument
The bills would improve protections for some of the State's most vulnerable residents: children. Currently, Michigan law does not go far enough to safeguard children from a pattern of behavior that has lifelong negative implications. The bills would signal that abusing children will not tolerated. Subjecting repeat abusers to enhanced sentences for second or subsequent convictions of third- or fourth-degree child abuse would deter future instances of abuse. The State has a substantial interest in protecting children from repeat offenders, and the bills would grant a judge greater discretion over sentencing individuals who are repeatedly committing child abuse.

A prosecutor would retain discretion over bringing charges, and, because sentencing guidelines are advisory and not compulsory, a judge would retain discretion over issuing what he or she believed was an appropriate sentence.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 29

The bill could have a negative fiscal impact on the State and local government. More felony arrests and convictions could increase demands on court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately $3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately $3,764 per prisoner per year. Any associated increase in fine revenue increases funding to public libraries.

Senate Bill 30

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: Joe Carrasco