

Testimony on HB 4071 & 4072: Child abuse definition and punishment

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We Oppose the bill because it is the wrong approach to the challenge of reducing child abuse. Rather than fairness and consistency, it makes the definition even more vague, makes the punishment more severe and unpredictable, and places the responsibility of finding justice on a system that is already short on fairness and good judgment. None of us wants child abuse, but this bill is not part of the solution.

Vague Definition.

The definition of developmental disability would include " diagnosed by a physician or other medical professional" (page 2, line 3). For mental health conditions, this would include nurse practitioners, counselors, psychologists, and social workers and use the definitions that are far too fluid and frequently lead to incorrect diagnoses.

In line 5 the condition must meet all of the following, (which sets a little higher standard) but look at the items: Mental ... impairment – not a precise term. Line 10 "likely to continue indefinitely" – most health issues are indefinite. Line 11 requires 3 or more, but look at the list of limitations: self care, self-direction... economic self-sufficiency. Aren't these things somewhat true of all children?

Line 20-23 says "Reflects the ... need for...generic care...or other services..." This is wide open to wishful interpretation. Lines 24-28 defines vulnerability for children under 5, but we all know that all children under 5 are vulnerable.

Lines 29 thru page 3, line 4 attempts to define mental illness. Mental illness could be as simple as depression, which affects about 1 out of 4 people sometime in life. This diagnosis can be assigned by a social worker, counselor or nurse practitioner. Depressed kids don't look any different and they don't wear a warning label. Furthermore, the average person doesn't know what to do differently with someone of this description. The same is true of kids with Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder. And mental health diagnoses are too often incorrect.

Page 3, line 9 lists "other person who cares for... or has authority over a child regardless of the length of time". Is there any assurance that the care-giver even knows about the special needs of the child? I recall, as a teacher, having a 6th hour class that was very difficult to work with. After some research, I found out that every student in the class was in special education, and no one had told me. I recall an honor roll student who was well adjusted and well behaved who was classified as special education. The situation for many adults who care for or have authority over children does not mesh well with the ambiguous language of this bill especially when those care-givers are not even informed of the special needs of the children.

Page 3, line 12, "Physical disability" means ...functional disorder –again it seems to be a broad term.

Page 4, lines 9-12 show us that first degree child abuse is punishable by life in prison. It seems that so serious a punishment should have a careful definition.

The bill proposes to increase the limit for second degree abuse to 15 years for such things as "serious mental harm" something hard to accurately define and difficult to defend oneself against. Please think about how long 15 years is. Think about all that has been accomplished or has transpired in your own life in the last 15 years. Fifteen years is a long time. Think about the financial burden for the taxpayes of 15 years of imprisonment. And what happens to the family of the defendant? Does the spouse file for divorce? Do the kids grow up with one parent in prison? What does that do to their sense of identity and security? The prisoner would probably lose all financial possessions and come out of prison as a pauper. With a conviction for child abuse, what jobs would no longer be open to him or her? Would he or she ever be able to own a gun for self-defense of home-defense?

Several conditions can lead to this increased 15-year sentence. Page 4, lines 16-18 mention an "omission" or "reckless act" Lines 20-21 say "likely to cause serious... mental harm...regardless of whether harm results." Again these are a "gray area". Lines 24-26 refer to rules promulgated by the Department of Health and Human Services, part of the Executive branch. Laws are supposed to come from the Legislative branch.

On page 5, lines 19-20 the bill proposes an increase in the sentence for the first offense of third degree child abuse of a vulnerable child if (line 11) the act "poses an unreasonable risk of harm". One person's concept of unreasonable risk is different from the next person's concept.

On page 6, lines 6-7, the bill proposes an increase in the sentence for the first offense of fourth degree child abuse of a vulnerable child if (page 5, line 25-27) the act "poses an unreasonable risk of harm... regardless of whether physical harm results". Again, one person's concept of unreasonable risk is different from the next person's concept. And the question becomes whether it "could have", "might have", "scares me", etc This is very different from defining the difference between 70 miles per hour and 80 miles per hour.

Page 6, lines 8-15, not proposed for change, are also problematic mentioning "reasonable discipline", "reasonable force" and "reasonable response" without clear definition of these terms. In a recent conversation, one Child Protective Service worker mentioned something about spanking a child and said "You can't do that any more." It raises the question of when did the Legislature decide that, and where is that in the Michigan Compiled Law?

By writing statute with such ambiguous wording the citizen becomes even more vulnerable to an overzealous prosecutor or CPS worker. Remember that some CPS workers or prosecutors were once victims themselves and are more likely to perceive others as guilty, and they are trying to right a wrong done to them in the past. A judge personally known to me has lived through an assault and is sometimes accused of being more severe with men, and some assert a connection between the two phenomena.

By haveng statute with such ambiguous terminology, the Legislature transfers its duty to define legal versus illegal behavior to the Executive Branch and to the Judicial Branch. The Legislature thus creates a situation that produces inconsistent results, or results that are subject to the mood and whim of members of the other Branches. A judge personally known to me stated that he wrote guidelines for deciding what parental behavior was permissible and what was not. The experience of 2020 in Portland, Oregon is an outstanding example of a city gone astray at the whim of the Executive and Judicial Branches of government. The experience of Michigan in the past year is an example of the Executive Branch of government issuing a record number of executive orders, while the Legislature has sat by nearly helpless. Many of Michigan citizens are angry and have reduced their loyalty to the state.

We do not need a law that increases the unfairness and resentment. Already the level of "discretion" of government officials is far too high. Already, the level of patriotism is far too low. Already the respect for government is far too low. Respect for the integrity of elections especially is far too low. Already the attitude of disgust and rebellion against executive orders is too strong.

Criminal proceedings of child abuse often go hand in hand with civil proceedings concerning custody and termination of parental rights, where there is great room for improvement. This bill does not address the far more serious problems with child protection and with Child Protective Services (CPS). Citizens For Parental Rights has heard from hundreds of parents about the improper and unfair treatment by CPS. ParentalRights.Org has heard from additional hundreds of parents and has spent truckloads of time and effort trying to rectify these issues, including a proposed U.S. Constitutional Amendment for Parental Rights.

Many have become aware of the flow of Federal money that affects the decisions of CPS and the Courts. A transcript of a recent Michigan case affirms this. Much of this money flows based on a per-child-taken-from-parents basis. Federal money flows to the states and to Departments of Health and Human Services and Child Protective Service agencies in several streams. These include money for placement in foster care, for Increasing Adoption Incentive Bonuses, and for adoption care. Five-figure bonuses are paid to private agencies for placement of a child with a "recruited" family.

Our recommendation is that House Bills 4071 and 4072 be put on the back burner and that the Committee thoroughly investigate and publish the details of the flow of money in child abuse and neglect cases. Then it may be time to separate the flow of money from the decision-makers. It would also be fitting and proper to pass a resolution asking the Congress to distribute this money based on state or county population rather than on a per-child-taken basis. Follow this by a phasing out of Federal involvement in this area of law since "We, the People" have not given the Congress power to deal with this area and since Amendment X states clearly that *"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."* It makes no sense that the people of Michigan should send their money for child protection to Washington D.C and receive a reduced amount back with strings attached. The Legislators and other elected officials are just as capable of dealing with family law and child protection as Members of Congress, and are in a better situation to do so since they are closer to the family and child situations and are not distracted by national matters.

Sincerely,

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(By way of further introduction I have a Bachelor's and a Master's degree in education, and a Master's in Counseling and Theology. I have earned over 30 certifications as an auto and truck mechanic and am currently self-employed in home construction and rehab. I am a Township Trustee and am on the Executive Committee of the major political party in my county. I also have volunteered at a free medical clinic as a counselor for over 10 years, and done considerable volunteer lobbying on child protection and parental rights.)

Good sources for more information

- www.parentalrights.org

- www.nccpr.org (National Coalition for Child Protection Reform)
- www.citizensforparentalrights.com
- The MaryAnne Godboldo case, over-reaction to "threatened harm" to a child's health. (<https://www.cchrint.org/issues/maryanne-godboldo/>, <https://detroit.cbslocal.com/tag/maryanne-godboldo/>)
- The Mike's Hard Lemonade Case is another where "common sense" was sadly lacking. (<https://www.aclu.org/press-releases/mikes-hard-lemonade-parental-rights-case-allowed-move-forward-against-judge-who-pre>)
- "Taking your baby to the emergency room? Bring your lawyer." (<https://tornfamily.com/>)
- "Unsubstantiated statements" in court by a CPS worker as it states in footnote 1, (http://publicdocs.courts.mi.gov/SCT/PUBLIC/ORDERS/160626_72_01.pdf)
- There is a partial explanation of this flow of money at our web-site: <https://citizensforparentalrights.com/federal-money-and-cps/>
- "If finding is not in the very first order, Title IV-E reimbursement is never available" (http://www.mncourts.gov/mncourtsgov/media/scao_library/CJI/2015-Title-IV-E-Judges-Presentation-Powerpoint.pdf)
- Arkansas Senator Alan Clark said, ***"No horror movie ever prepared you for ... It obliterates the mirage of what you thought being an American meant. It changes you and scars you forever."*** (<https://amiracleforus.wordpress.com/2017/08/03/how-cps-judges-break-law-to-destroy-families/>)
- Author Stephen Krason writes, "... the current CPS has not only damaged untold numbers of families but also undercut the legitimacy of parental authority through the continuous threat to parents of child removal." (<https://amiracleforus.wordpress.com/2015/04/23/protecting-families-and-children-from-the-child-protective-system/>)
- Many more books have been written on the alleged mistreatment by CPS.