



# MICHIGAN STATE POLICE LEGAL UPDATE

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## CRIMINAL LAW

### Leaving an unattended child in a vehicle

Effective: April 1, 2009

Public Act 519 of 2008 added [MCL 750.135a](#) to the Michigan Penal Code. The new section makes it a crime for a person responsible for the care or welfare of a child to leave a child under 6 years old in a vehicle for a period of time that poses an *unreasonable* risk of harm or injury to the child, OR under circumstances that pose an *unreasonable* risk of harm or injury to the child.

For the purposes of the new section, a child is unattended if he or she is left alone or without supervision by a person 13 years old or older.

Violations of the new statute are punishable as follows:

- 93-day misdemeanor for child left unattended
- 1-year misdemeanor if the unattended child suffers physical harm
- 10-year felony if the unattended child suffers serious physical harm
- 15-year felony if the unattended child dies

The new statute uses the same definitions of “physical harm” and “serious physical harm” as used in the child abuse statute ([MCL 750.136b](#)).

It is important to note that for a violation to occur the risk to an unattended child must be unreasonable. While the legislature did not define what is unreasonable, it is clear they did not intend to punish the simple act of leaving a child unattended when no aggravating factors exist.

Officers investigating violations of the new statute should ensure they fully document factors that might affect reasonableness

(e.g., interior and exterior temperature, location, length of time, items in the vehicle, whether the vehicle is locked or running).

[Public Act 519 of 2008](#)

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### Child abuse statute amended

Effective: April 1, 2009

Public Act 577 of 2008 amended the child abuse statute ([MCL 750.136b](#)) as follows:

#### Second degree child abuse

Reckless acts may be punished as second degree child abuse if serious *mental* harm results. Previously, a reckless act could only be punished as second degree child abuse if the act caused serious *physical* harm.

#### Third degree child abuse

Reckless acts that endanger a child may be punished as third degree child abuse if the acts result in physical harm to a child. Previously, third degree child abuse only applied when a person intentionally caused physical harm to a child.

#### Fourth degree child abuse

Reckless acts that endanger a child may be punished as fourth degree child abuse, regardless of whether physical harm results. Previously, physical harm was required.

#### Reckless acts

As they pertain to third and fourth degree child abuse, the reckless acts referred to above are those acts “knowingly or intentionally” committed by the defendant when, under the circumstances, the acts create “an unreasonable risk of harm to a child.” This means the person need only intend to do an act that endangers a child, rather than intending the resulting harm.

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*Child abuse, continued...*

Officers investigating child abuse that might be charged under the new statutory language must provide their prosecutors with evidence – direct or circumstantial – that the person both intended the act and the act created an unreasonable risk of harm.

#### **Affirmative defense**

The amended statute creates an affirmative defense to child abuse. Under this defense, the defendant must prove by a preponderance of the evidence that his or her conduct “was a reasonable response to an act of domestic violence in light of all the facts and circumstances known to the defendant...”

To assist prosecutors dealing with this defense, officers investigating child abuse should look for and document indicators of domestic violence by the victim of the child abuse when it appears the defense might be raised.

[Public Act 577 of 2008](#)

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