

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Senator McManus

ENROLLED SENATE BILL No. 1032

AN ACT to amend 1975 PA 238, entitled "An act to require the reporting of child abuse and neglect by certain persons; to permit the reporting of child abuse and neglect by all persons; to provide for the protection of children who are abused or neglected; to authorize limited detainment in protective custody; to authorize medical examinations; to prescribe the powers and duties of the state department of social services to prevent child abuse and neglect; to prescribe certain powers and duties of local law enforcement agencies; to safeguard and enhance the welfare of children and preserve family life; to provide for the appointment of legal counsel; to provide for the abrogation of privileged communications; to provide civil and criminal immunity for certain persons; to provide rules of evidence in certain cases; to provide for confidentiality of records; to provide for the expungement of certain records; to prescribe penalties; and to repeal certain acts and parts of acts," by amending sections 2, 7, and 10 (MCL 722.622, 722.627, and 722.630), section 2 as amended by 1996 PA 581 and section 7 as amended by 1997 PA 168.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

(a) "Attorney" means, if appointed to represent a child under the provisions referenced in section 10, an attorney serving as the child's legal advocate in the manner defined and described in section 13a of chapter XIIA of 1939 PA 288, MCL 712A.13a.

(b) "Central registry" means the system maintained at the department that is used to keep a record of all reports filed with the department pursuant to this act in which relevant and accurate evidence of child abuse or neglect is found to exist.

(c) "Child" means a person under 18 years of age.

(d) "Child abuse" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare, or by a teacher or teacher's aide, that occurs through nonaccidental physical or mental injury; sexual abuse; sexual exploitation; or maltreatment.

(e) "Child neglect" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following:

(i) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(ii) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or any other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

(f) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(g) "Department" means the family independence agency.

- (h) "Director" means the director of the department.
- (i) "Expunge" means to physically remove or eliminate and destroy a record or report.
- (j) "Lawyer-guardian ad litem" means an attorney appointed under section 10 who has the powers and duties referenced by section 10.
- (k) "Local office file" means the system used to keep a record of a written report, document, or photograph filed with and maintained by a county or a regionally based office of the department.
- (l) "Person responsible for the child's health or welfare" means a parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides, or an owner, operator, volunteer, or employee of any of the following:
 - (i) A licensed or unlicensed child care organization as defined in section 1 of 1973 PA 116, MCL 722.111.
 - (ii) A licensed or unlicensed adult foster care family home or adult foster care small group home as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.
- (m) "Relevant evidence" means evidence having a tendency to make the existence of a fact that is at issue more probable than it would be without the evidence.
- (n) "Sexual abuse" means engaging in sexual contact or sexual penetration as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, with a child.
- (o) "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in section 145c of 1931 PA 328, MCL 750.145c.
- (p) "Specified information" means information in a child protective services record that relates specifically to referrals or reports of substantiated reports of child abuse or neglect. Specified information does not include any of the following:
 - (i) Except as provided in this subparagraph regarding a perpetrator of child abuse or neglect, personal identification information for any individual identified in a child protective services record. The exclusion of personal identification information as specified information prescribed by this subparagraph does not include personal identification information identifying an individual alleged to have perpetrated child abuse or neglect, which allegation has been substantiated.
 - (ii) Information in a law enforcement report as provided in section 7(8).
 - (iii) Any other information that is specifically designated as confidential under other law.

Sec. 7. (1) The department shall maintain a statewide, electronic central registry to carry out the intent of this act.

(2) Unless made public as specified information released under section 7d, a written report, document, or photograph filed with the department as provided in this act is a confidential record available only to 1 or more of the following:

- (a) A legally mandated public or private child protective agency investigating a report of known or suspected child abuse or neglect.
- (b) A police or other law enforcement agency investigating a report of known or suspected child abuse or neglect.
- (c) A physician who is treating a child whom the physician reasonably suspects may be abused or neglected.
- (d) A person legally authorized to place a child in protective custody when the person is confronted with a child whom the person reasonably suspects may be abused or neglected and the confidential record is necessary to determine whether to place the child in protective custody.
- (e) A person, agency, or organization, including a multidisciplinary case consultation team, authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or record under this act, or who is responsible for the child's health or welfare.
- (f) A person named in the report or record as a perpetrator or alleged perpetrator of the child abuse or neglect or a victim who is an adult at the time of the request, if the identity of the reporting person is protected as provided in section 5.
- (g) A court that determines the information is necessary to decide an issue before the court.
- (h) A grand jury that determines the information is necessary in the conduct of the grand jury's official business.

(i) A person, agency, or organization engaged in a bona fide research or evaluation project. The person, agency, or organization shall not release information identifying a person named in the report or record unless that person's written consent is obtained. The person, agency, or organization shall not conduct a personal interview with a family without the family's prior consent and shall not disclose information that would identify the child or the child's family or other identifying information. The department director may authorize the release of information to a person, agency, or organization described in this subdivision if the release contributes to the purposes of this act and the person, agency,

or organization has appropriate controls to maintain the confidentiality of personally identifying information for a person named in a report or record made under this act.

(j) A lawyer-guardian ad litem or other attorney appointed as provided by section 10.

(k) A child placing agency licensed under 1973 PA 116, MCL 722.111 to 722.128, for the purpose of investigating an applicant for adoption, a foster care applicant or licensee or an employee of a foster care applicant or licensee, an adult member of an applicant's or licensee's household, or other persons in a foster care or adoptive home who are directly responsible for the care and welfare of children, to determine suitability of a home for adoption or foster care. The child placing agency shall disclose the information to a foster care applicant or licensee under 1973 PA 116, MCL 722.111 to 722.128, or to an applicant for adoption.

(l) Juvenile court staff authorized by the court to investigate foster care applicants and licensees, employees of foster care applicants and licensees, adult members of the applicant's or licensee's household, and other persons in the home who are directly responsible for the care and welfare of children, for the purpose of determining the suitability of the home for foster care. The court shall disclose this information to the applicant or licensee.

(m) Subject to section 7a, a standing or select committee or appropriations subcommittee of either house of the legislature having jurisdiction over protective services matters for children.

(n) The children's ombudsman appointed under the children's ombudsman act, 1994 PA 204, MCL 722.921 to 722.935.

(o) A child fatality review team established under section 7b and authorized under that section to investigate and review a child death.

(p) A county medical examiner or deputy county medical examiner appointed under 1953 PA 181, MCL 52.201 to 52.216, for the purpose of carrying out his or her duties under that act.

(3) A person or entity to whom information described in subsection (2) is disclosed shall make the information available only to a person or entity described in subsection (2). This subsection does not require a court proceeding to be closed that otherwise would be open to the public.

(4) If a report of suspected child abuse or neglect is substantiated, the department shall maintain a record in the central registry and, within 30 days after the substantiation, shall notify in writing each individual who is named in the record as a perpetrator of the child abuse or neglect. The notice shall set forth the individual's right to request expunction of the record and the right to a hearing if the department refuses the request. The notice shall state that the record may be released under section 7d. The notice shall not identify the person reporting the suspected child abuse or neglect.

(5) A person who is the subject of a report or record made under this act may request the department to amend an inaccurate report or record from the central registry and local office file. A person who is the subject of a report or record made under this act may request the department to expunge from the central registry a report or record in which no relevant and accurate evidence of abuse or neglect is found to exist. A report or record filed in a local office file is not subject to expunction except as the department authorizes, when considered in the best interest of the child.

(6) If the department refuses a request for amendment or expunction under subsection (5), or fails to act within 30 days after receiving the request, the department shall hold a hearing to determine by a preponderance of the evidence whether the report or record in whole or in part should be amended or expunged from the central registry on the grounds that the report or record is not relevant or accurate evidence of abuse or neglect. The hearing shall be before a hearing officer appointed by the department and shall be conducted pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(7) If the investigation of a report conducted under this act fails to disclose evidence of abuse or neglect, the information identifying the subject of the report shall be expunged from the central registry. If evidence of abuse or neglect exists, the information identifying the subject of the report shall be expunged when the child alleged to be abused or neglected reaches the age of 18, or 10 years after the report is received by the department, whichever occurs later.

(8) In releasing information under this act, the department shall not include a report compiled by a police agency or other law enforcement agency related to an investigation of suspected child abuse or neglect. This subsection does not prevent the department from including reports of convictions of crimes related to child abuse or neglect.

Sec. 10. In each case filed under this act in which judicial proceedings are necessary, the court shall appoint a lawyer-guardian ad litem to represent the child. A lawyer-guardian ad litem represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d. All provisions of section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under this act.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 954 of the 89th Legislature is enacted into law.

Enacting section 2. This amendatory act takes effect March 1, 1999.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Mary Annella

Clerk of the House of Representatives.

Approved _____

Governor.