

HOUSE BILL No. 5966

April 25, 2002, Introduced by Reps. DeWeese and Hager and referred to the Committee on Family and Children Services.

A bill to amend 1975 PA 238, entitled
"Child protection law,"
by amending sections 5, 7, and 8 (MCL 722.625, 722.627, and
722.628), section 5 as amended by 1998 PA 428, section 7 as
amended by 2000 PA 45, and section 8 as amended by 2000 PA 234.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) Except for records available under section
2 7(2)(a) and (b), the identity of a reporting person is confiden-
3 tial subject to disclosure only with the consent of that person
4 or by judicial process. A person acting in good faith who makes
5 a report, cooperates in an investigation, or assists in any other
6 requirement of this act is immune from civil or criminal liabil-
7 ity that might otherwise be incurred by that action. A person
8 making a report or assisting in any other requirement of this act
9 is presumed to have acted in good faith. This immunity from

1 civil or criminal liability extends only to acts done ~~pursuant~~
2 ~~to~~ IN ACCORDANCE WITH this act and does not extend to a negli-
3 gent act that causes personal injury or death or to the malprac-
4 tice of a physician that results in personal injury or death.

5 (2) EXCEPT FOR THE INFORMATION MADE CONFIDENTIAL BY SUBSEC-
6 TION (1) OR A REPORT PROHIBITED FROM RELEASE UNDER SECTION 7(8),
7 A DEPARTMENT RECORD RELATED TO A CHILD WHO IS THE SUBJECT OF A
8 REPORT OR RECORD MADE UNDER THIS ACT IS A PUBLIC RECORD AFTER
9 THAT CHILD IS DEAD. SUCH A RECORD IS SUBJECT TO THE FREEDOM OF
10 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

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

13 (2) Unless IT BECOMES PUBLIC INFORMATION UNDER SECTION 5 OR
14 IS made public as specified information released under
15 section 7d, a written report, document, or photograph filed with
16 the department as provided in this act is a confidential record
17 available only to 1 or more of the following:

18 (a) A legally mandated public or private child protective
19 agency investigating a report of known or suspected child abuse
20 or neglect.

21 (b) A police or other law enforcement agency investigating a
22 report of known or suspected child abuse or neglect.

23 (c) A physician who is treating a child whom the physician
24 reasonably suspects may be abused or neglected.

25 (d) A person legally authorized to place a child in protec-
26 tive custody when the person is confronted with a child whom the
27 person reasonably suspects may be abused or neglected and the

1 confidential record is necessary to determine whether to place
2 the child in protective custody.

3 (e) A person, agency, or organization, including a multidis-
4 ciplinary case consultation team, authorized to diagnose, care
5 for, treat, or supervise a child or family who is the subject of
6 a report or record under this act, or who is responsible for the
7 child's health or welfare.

8 (f) A person named in the report or record as a perpetrator
9 or alleged perpetrator of the child abuse or neglect or a victim
10 who is an adult at the time of the request, if the identity of
11 the reporting person is protected as provided in section 5.

12 (g) A court that determines the information is necessary to
13 decide an issue before the court.

14 (h) A grand jury that determines the information is neces-
15 sary in the conduct of the grand jury's official business.

16 (i) A person, agency, or organization engaged in a bona fide
17 research or evaluation project. The person, agency, or organiza-
18 tion shall not release information identifying a person named in
19 the report or record unless that person's written consent is
20 obtained. The person, agency, or organization shall not conduct
21 a personal interview with a family without the family's prior
22 consent and shall not disclose information that would identify
23 the child or the child's family or other identifying
24 information. The department director may authorize the release
25 of information to a person, agency, or organization described in
26 this subdivision if the release contributes to the purposes of
27 this act and the person, agency, or organization has appropriate

1 controls to maintain the confidentiality of personally
2 identifying information for a person named in a report or record
3 made under this act.

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

6 (k) A child placing agency licensed under 1973 PA 116, MCL
7 722.111 to 722.128, for the purpose of investigating an applicant
8 for adoption, a foster care applicant or licensee or an employee
9 of a foster care applicant or licensee, an adult member of an
10 applicant's or licensee's household, or other persons in a foster
11 care or adoptive home who are directly responsible for the care
12 and welfare of children, to determine suitability of a home for
13 adoption or foster care. The child placing agency shall disclose
14 the information to a foster care applicant or licensee under 1973
15 PA 116, MCL 722.111 to 722.128, or to an applicant for adoption.

16 (l) Juvenile court staff authorized by the court to investi-
17 gate foster care applicants and licensees, employees of foster
18 care applicants and licensees, adult members of the applicant's
19 or licensee's household, and other persons in the home who are
20 directly responsible for the care and welfare of children, for
21 the purpose of determining the suitability of the home for foster
22 care. The court shall disclose this information to the applicant
23 or licensee.

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

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

3 (o) A child fatality review team established under section
4 7b and authorized under that section to investigate and review a
5 child death.

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

9 (q) A citizen review panel established by the department.
10 Access under this subdivision shall be limited to information the
11 department determines is necessary for the panel to carry out its
12 prescribed duties.

13 (3) Subject to subsection (9), a person or entity to whom
14 information described in subsection (2) is disclosed shall make
15 the information available only to a person or entity described in
16 subsection (2). This subsection does not require a court pro-
17 ceeding to be closed that otherwise would be open to the public.

18 (4) If the department classifies a report of suspected child
19 abuse or neglect as a central registry case, the department shall
20 maintain a record in the central registry and, within 30 days
21 after the classification, shall notify in writing each individual
22 who is named in the record as a perpetrator of the child abuse or
23 neglect. The notice shall set forth the individual's right to
24 request expunction of the record and the right to a hearing if
25 the department refuses the request. The notice shall state that
26 the record may be released under section 7d. The notice shall

1 not identify the person reporting the suspected child abuse or
2 neglect.

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

13 (6) If the department refuses a request for amendment or
14 expunction under subsection (5), or fails to act within 30 days
15 after receiving the request, the department shall hold a hearing
16 to determine by a preponderance of the evidence whether the
17 report or record in whole or in part should be amended or
18 expunged from the central registry on the grounds that the report
19 or record is not relevant or accurate evidence of abuse or
20 neglect. The hearing shall be before a hearing officer appointed
21 by the department and shall be conducted as prescribed by the
22 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
23 24.328.

24 (7) If the investigation of a report conducted under this
25 act fails to disclose evidence of abuse or neglect, the informa-
26 tion identifying the subject of the report shall be expunged from
27 the central registry. If evidence of abuse or neglect exists,

1 the department shall maintain the information in the central
2 registry until the department receives reliable information that
3 the perpetrator of the abuse or neglect is dead.

4 (8) In releasing information under this act, the department
5 shall not include a report compiled by a police agency or other
6 law enforcement agency related to an ongoing investigation of
7 suspected child abuse or neglect. This subsection does not pre-
8 vent the department from releasing reports of convictions of
9 crimes related to child abuse or neglect.

10 (9) A member or staff member of a citizen review panel shall
11 not disclose identifying information about a specific child pro-
12 tection case to an individual, partnership, corporation, associa-
13 tion, governmental entity, or other legal entity. A member or
14 staff member of a citizen review panel is a member of a board,
15 council, commission, or statutorily created task force of a gov-
16 ernmental agency for the purposes of section 7 of 1964 PA 170,
17 MCL 691.1407. Information obtained by a citizen review panel is
18 not subject to the freedom of information act, 1976 PA 442, MCL
19 15.231 to 15.246.

20 Sec. 8. (1) Within 24 hours after receiving a report made
21 under this act, the department shall refer the report to the
22 prosecuting attorney if the report meets the requirements of
23 section 3(6) or shall commence an investigation of the child sus-
24 pected of being abused or neglected. Within 24 hours after
25 receiving a report whether from the reporting person or from the
26 department under section 3(6), the local law enforcement agency
27 shall refer the report to the department if the report meets the

1 requirements of section 3(7) or shall commence an investigation
2 of the child suspected of being abused or neglected. If the
3 child suspected of being abused is not in the physical custody of
4 the parent or legal guardian and informing the parent or legal
5 guardian would not endanger the child's health or welfare, the
6 agency or the department shall inform the child's parent or legal
7 guardian of the investigation as soon as the agency or the
8 department discovers the identity of the child's parent or legal
9 guardian.

10 (2) In the course of its investigation, the department shall
11 determine if the child is abused or neglected. The department
12 shall cooperate with law enforcement officials, courts of compe-
13 tent jurisdiction, and appropriate state agencies providing human
14 services in relation to preventing, identifying, and treating
15 child abuse and neglect; shall provide, enlist, and coordinate
16 the necessary services, directly or through the purchase of serv-
17 ices from other agencies and professions; and shall take neces-
18 sary action to prevent further abuses, to safeguard and enhance
19 the child's welfare, and to preserve family life where possible.

20 (3) In conducting its investigation, the department shall
21 seek the assistance of and cooperate with law enforcement offi-
22 cials within 24 hours after becoming aware that 1 or more of the
23 following conditions exist:

24 (a) Abuse or neglect is the suspected cause of a child's
25 death.

26 (b) The child is the victim of suspected sexual abuse or
27 sexual exploitation.

1 (c) Abuse or neglect resulting in severe physical injury to
2 the child requires medical treatment or hospitalization. For
3 purposes of this subdivision and section 17, "severe physical
4 injury" means brain damage, skull or bone fracture, subdural hem-
5 orrhage or hematoma, dislocation, sprains, internal injuries,
6 poisoning, burns, scalds, severe cuts, or any other physical
7 injury that seriously impairs the health or physical well-being
8 of a child.

9 (d) Law enforcement intervention is necessary for the pro-
10 tection of the child, a department employee, or another person
11 involved in the investigation.

12 (e) The alleged perpetrator of the child's injury is not a
13 person responsible for the child's health or welfare.

14 (4) Law enforcement officials shall cooperate with the
15 department in conducting investigations under subsections (1) and
16 (3) and shall comply with sections 5 and 7. The department and
17 law enforcement officials shall conduct investigations in compli-
18 ance with the protocols adopted and implemented as required by
19 subsection (6).

20 (5) Involvement of law enforcement officials under this sec-
21 tion does not relieve or prevent the department from proceeding
22 with its investigation or treatment if there is reasonable cause
23 to suspect that the child abuse or neglect was committed by a
24 person responsible for the child's health or welfare.

25 (6) In each county, the prosecuting attorney and the depart-
26 ment shall develop and establish procedures for involving law
27 enforcement officials as provided in this section. In each

1 county, the prosecuting attorney and the department shall adopt
2 and implement standard child abuse and neglect investigation and
3 interview protocols using as a model the protocols developed by
4 the governor's task force on children's justice as published in
5 FIA Publication 794 (revised 8-98) and FIA Publication 779
6 (8-98), or an updated version of those publications.

7 (7) If there is reasonable cause to suspect that a child in
8 the care of or under the control of a public or private agency,
9 institution, or facility is an abused or neglected child, the
10 agency, institution, or facility shall be investigated by an
11 agency administratively independent of the agency, institution,
12 or facility being investigated. If the investigation produces
13 evidence of a violation of section 145c or sections 520b to 520g
14 of the Michigan penal code, 1931 PA 328, MCL 750.145c and
15 750.520b to 750.520g, the investigating agency shall transmit a
16 copy of the results of the investigation to the prosecuting
17 attorney of the county in which the agency, institution, or
18 facility is located.

19 (8) A school or other institution shall cooperate with the
20 department during an investigation of a report of child abuse or
21 neglect. Cooperation includes allowing access to the child with-
22 out parental consent if access is determined by the department to
23 be necessary to complete the investigation or to prevent abuse or
24 neglect of the child. However, the department shall notify the
25 person responsible for the child's health or welfare about the
26 department's contact with the child at the time or as soon
27 afterward as the person can be reached. The department may delay

1 the notice if the notice would compromise the safety of the child
2 or child's siblings or the integrity of the investigation, but
3 only for the time 1 of those conditions exists.

4 (9) If the department has contact with a child in a school,
5 all of the following apply:

6 (a) Before contact with the child, the department investiga-
7 tor shall review with the designated school staff person the
8 department's responsibilities under this act and the investiga-
9 tion procedure.

10 (b) After contact with the child, the department investiga-
11 tor shall meet with the designated school staff person and the
12 child about the response the department will take as a result of
13 contact with the child. The department may also meet with the
14 designated school staff person without the child present and
15 share additional information the investigator determines may be
16 shared subject to the confidentiality provisions of this act.

17 (c) Lack of cooperation by the school does not relieve or
18 prevent the department from proceeding with its responsibilities
19 under this act.

20 (10) A child shall not be subjected to a search at a school
21 that requires the child to remove his or her clothing to expose
22 his buttocks or genitalia or her breasts, buttocks, or genitalia
23 unless the department has obtained an order from a court of com-
24 petent jurisdiction permitting such a search. If the access
25 occurs within a hospital, the investigation shall be conducted so
26 as not to interfere with the medical treatment of the child or
27 other patients.

1 (11) The department shall enter each report made under this
2 act that is the subject of a field investigation into the CPSI
3 system. The department shall maintain a report entered on the
4 CPSI system as required by this subsection until the child about
5 whom the investigation is made is 18 years old or until 10 years
6 after the investigation is commenced, whichever is later, or, if
7 the case is classified as a central registry case, until the
8 department receives reliable information that the perpetrator of
9 the abuse or neglect is dead. Unless IT BECOMES PUBLIC INFORMA-
10 TION UNDER SECTION 5 OR IS made public as specified information
11 released under section 7d, a report that is maintained on the
12 CPSI system is confidential and is not subject to the disclosure
13 requirements of the freedom of information act, 1976 PA 442, MCL
14 15.231 to 15.246.

15 (12) After completing a field investigation and based on its
16 results, the department shall determine in which single category,
17 prescribed by section 8d, to classify the allegation of child
18 abuse or neglect.

19 (13) ~~Except as provided in~~ SUBJECT TO subsection (14),
20 upon completion of the investigation by the local law enforcement
21 agency or the department, the law enforcement agency or depart-
22 ment may inform the person who made the report as to the disposi-
23 tion of the report.

24 (14) If the person who made the report is mandated to report
25 under section 3, upon completion of the investigation by the
26 department, the department shall inform the person in writing as

1 to the disposition of the case and shall include in the
2 information at least all of the following:

3 (a) What determination the department made under subsection
4 (12) and the rationale for that decision.

5 (b) Whether legal action was commenced and, if so, the
6 nature of that action.

7 (c) Notification that the information being conveyed is
8 confidential.

9 (15) Information sent under subsection (14) shall not
10 include personally identifying information for a person named in
11 a report or record made under this act.

12 (16) Unless section 5 of chapter XII of the probate code of
13 1939, 1939 PA 288, MCL 712.5, requires a physician to report to
14 the department, the surrender of a newborn in compliance with
15 chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1
16 to 712.20, is not reasonable cause to suspect child abuse or
17 neglect and, therefore, is not subject to the section 3 reporting
18 requirement. This subsection does not apply to circumstances
19 that arise on or after the date that chapter XII of the probate
20 code of 1939, 1939 PA 288, MCL 712.1 to 712.20, is repealed.