

HOUSE BILL No. 4586

April 29, 2003, Introduced by Reps. Vander Veen, Hager, Voorhees, Pastor, LaJoy, Pappageorge, Garfield, Brandenburg, Huizenga, Ehardt, Middaugh, Hoogendyk, Emmons, Amos, Taub, Ruth Johnson and Richardville 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 2002 PA 661, and section 8 as amended by 2002 PA 690.

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
3 confidential subject to disclosure only with the consent of that
4 person or by judicial process. A person acting in good faith who
5 makes a report, cooperates in an investigation, or assists in
6 ~~any other~~ a requirement of this act is immune from civil or
7 criminal liability that might otherwise be incurred by that
8 action. A person making a report or assisting in ~~any other~~ a
9 requirement of this act is presumed to have acted in good faith.

1 This immunity from civil or criminal liability extends only to
2 acts done ~~pursuant to~~ **in accordance with** this act and does not
3 extend to a negligent act that causes personal injury or death or
4 to the malpractice of a physician that results in personal injury
5 or death.

6 (2) **Except for the information made confidential by**
7 **subsection (1) or a report prohibited from release under section**
8 **7(8), a department record related to a child who is the subject**
9 **of a report or record made under this act is a public record**
10 **after that child is dead. A department record described in this**
11 **subsection is subject to the freedom of information act, 1976 PA**
12 **442, MCL 15.231 to 15.246.**

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

15 (2) Unless made public **under section 5 or made public** as
16 specified information released under section 7d, a written
17 report, document, or photograph filed with the department as
18 provided in this act is a confidential record available only to 1
19 or more of the following:

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

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

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

27 (d) A person legally authorized to place a child in

1 protective custody when the person is confronted with a child
2 whom the person reasonably suspects may be abused or neglected
3 and the confidential record is necessary to determine whether to
4 place the child in protective custody.

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

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

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

16 (h) A grand jury that determines the information is necessary
17 ~~in the~~ to conduct ~~of~~ the grand jury's official business.

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

1 described in this subdivision if the release contributes to the
2 purposes of this act and the person, agency, or organization has
3 appropriate controls to maintain the confidentiality of
4 personally identifying information for a person named in a report
5 or record made under this act.

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

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

19 (l) ~~Juvenile~~ **Family division of circuit** court staff
20 authorized by the court to investigate foster care applicants and
21 licensees, employees of foster care applicants and licensees,
22 adult members of the applicant's or licensee's household, and
23 other persons in the home who are directly responsible for the
24 care and welfare of children, for the purpose of determining the
25 suitability of the home for foster care. The court shall
26 disclose this information to the applicant or licensee.

27 (m) Subject to section 7a, a standing or select committee or

1 appropriations subcommittee of either house of the legislature
2 having jurisdiction over **child** protective services matters. ~~for~~
3 ~~children.~~

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

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

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

12 (q) A citizen review panel established by the department.
13 Access under this subdivision ~~shall be~~ **is** limited to
14 information the department determines is necessary for the panel
15 to carry out its prescribed duties.

16 (r) A child care regulatory agency.

17 (3) Subject to subsection (9), a person or entity to whom
18 information described in subsection (2) is disclosed shall make
19 the information available only to a person or entity described in
20 subsection (2). This subsection does not require a court
21 proceeding to be closed that otherwise would be open to the
22 public.

23 (4) If the department classifies a report of suspected child
24 abuse or neglect as a central registry case, the department shall
25 maintain a record in the central registry and, within 30 days
26 after the classification, shall notify in writing each
27 ~~individual~~ **person** who is named in the record as a perpetrator

1 of the child abuse or neglect. The notice shall set forth the
2 ~~individual's~~ **person's** right to request expunction of the record
3 and the right to a hearing if the department refuses the
4 request. The notice shall state that the record may be released
5 under section 7d. The notice shall not identify the person
6 reporting the suspected child abuse or neglect.

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

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

1 (7) If the investigation of a report conducted under this act
2 fails to disclose evidence of abuse or neglect, the information
3 identifying the subject of the report shall be expunged from the
4 central registry. If evidence of abuse or neglect exists, the
5 department shall maintain the information in the central registry
6 until the department receives reliable information that the
7 perpetrator of the abuse or neglect is dead.

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

14 (9) A member or staff member of a citizen review panel shall
15 not disclose identifying information about a specific child
16 protection case to an individual, partnership, corporation,
17 association, governmental entity, or other legal entity. A
18 member or staff member of a citizen review panel is a member of a
19 board, council, commission, or statutorily created task force of
20 a governmental agency for the purposes of section 7 of 1964
21 PA 170, MCL 691.1407. Information obtained by a citizen review
22 panel is not subject to the freedom of information act, 1976
23 PA 442, MCL 15.231 to 15.246.

24 Sec. 8. (1) Within 24 hours after receiving a report made
25 under this act, the department shall refer the report to the
26 prosecuting attorney if the report meets the requirements of
27 section 3(6) or shall commence an investigation of the child

1 suspected of being abused or neglected. Within 24 hours after
2 receiving a report whether from the reporting person or from the
3 department under section 3(6), the local law enforcement agency
4 shall refer the report to the department if the report meets the
5 requirements of section 3(7) or shall commence an investigation
6 of the child suspected of being abused or neglected. If the
7 child suspected of being abused is not in the physical custody of
8 the parent or legal guardian and informing the parent or legal
9 guardian would not endanger the child's health or welfare, the
10 agency or the department shall inform the child's parent or legal
11 guardian of the investigation as soon as the agency or the
12 department discovers the identity of the child's parent or legal
13 guardian.

14 (2) In the course of its investigation, the department shall
15 determine if the child is abused or neglected. The department
16 shall cooperate with law enforcement officials, courts of
17 competent jurisdiction, and appropriate state agencies providing
18 human services in relation to preventing, identifying, and
19 treating child abuse and neglect; shall provide, enlist, and
20 coordinate the necessary services, directly or through the
21 purchase of services from other agencies and professions; and
22 shall take necessary action to prevent further ~~abuses~~ **abuse**, to
23 safeguard and enhance the child's welfare, and to preserve family
24 life where possible.

25 (3) In conducting its investigation, the department shall
26 seek the assistance of and cooperate with law enforcement
27 officials within 24 hours after becoming aware that 1 or more of

1 the following conditions exist:

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

4 (b) The child is the victim of suspected sexual abuse or
5 sexual exploitation.

6 (c) Abuse or neglect resulting in severe physical injury to
7 the child requires medical treatment or hospitalization. For
8 purposes of this subdivision and section 17, "severe physical
9 injury" or "**severely physically injured**" means brain damage,
10 skull or bone fracture, subdural hemorrhage or hematoma,
11 dislocation, sprains, internal injuries, poisoning, burns,
12 scalds, severe cuts, or any other physical injury that seriously
13 impairs the health or physical well-being of a child.

14 (d) Law enforcement intervention is necessary for the
15 protection of the child, a department employee, or another person
16 involved in the investigation.

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

19 (4) Law enforcement officials shall cooperate with the
20 department in conducting investigations under subsections (1) and
21 (3) and shall comply with sections 5 and 7. The department and
22 law enforcement officials shall conduct investigations in
23 compliance with the protocols adopted and implemented as required
24 by subsection (6).

25 (5) Involvement of law enforcement officials under this
26 section does not relieve or prevent the department from
27 proceeding with its investigation or treatment if there is

1 reasonable cause to suspect that the child abuse or neglect was
2 committed by a person responsible for the child's health or
3 welfare.

4 (6) In each county, the prosecuting attorney and the
5 department shall develop and establish procedures for involving
6 law enforcement officials as provided in this section. In each
7 county, the prosecuting attorney and the department shall adopt
8 and implement standard child abuse and neglect investigation and
9 interview protocols using as a model the protocols developed by
10 the governor's task force on children's justice as published in
11 FIA Publication 794 (revised 8-98) and FIA Publication 779
12 (8-98), or an updated version of those publications.

13 (7) If there is reasonable cause to suspect that a child in
14 the care of or under the control of a public or private agency,
15 institution, or facility is an abused or neglected child, the
16 agency, institution, or facility shall be investigated by an
17 agency administratively independent of the agency, institution,
18 or facility being investigated. If the investigation produces
19 evidence of a violation of section 145c or sections 520b to 520g
20 of the Michigan penal code, 1931 PA 328, MCL 750.145c and
21 750.520b to 750.520g, the investigating agency shall transmit a
22 copy of the results of the investigation to the prosecuting
23 attorney of the county in which the agency, institution, or
24 facility is located.

25 (8) A school or other institution shall cooperate with the
26 department during an investigation of a report of child abuse or
27 neglect. Cooperation includes allowing access to the child

1 without parental consent if access is determined by the
2 department to be necessary to complete the investigation or to
3 prevent abuse or neglect of the child. ~~However, the~~ **The**
4 department shall notify the person responsible for the child's
5 health or welfare about the department's contact with the child
6 at the time or as soon afterward as the person can be reached.
7 The department may delay the notice if the notice would
8 compromise the safety of the child or child's siblings or the
9 integrity of the investigation, but only for the time 1 of those
10 conditions exists.

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

13 (a) Before contact with the child, the department
14 investigator shall review with the designated school staff person
15 the department's responsibilities under this act and the
16 investigation procedure.

17 (b) After contact with the child, the department investigator
18 shall meet with the designated school staff person and the child
19 about the response the department will take as a result of
20 contact with the child. The department may also meet with the
21 designated school staff person without the child present and
22 share additional information the investigator determines may be
23 shared subject to the confidentiality provisions of this act.

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

27 (10) A child shall not be subjected to a search at a school

1 that requires the child to remove his or her clothing to expose
2 his buttocks or genitalia or her breasts, buttocks, or genitalia
3 unless the department has obtained an order from a court of
4 competent jurisdiction permitting such a search. If the ~~access~~
5 **contact with the child** occurs within a hospital, the
6 investigation shall be conducted so as not to interfere with the
7 medical treatment of the child or other patients.

8 (11) The department shall enter each report made under this
9 act that is the subject of a field investigation into the CPSI
10 system. The department shall maintain a report entered on the
11 CPSI system as required by this subsection until the child about
12 whom the investigation is made is 18 years old or until 10 years
13 after the investigation is commenced, whichever is later, or, if
14 the case is classified as a central registry case, until the
15 department receives reliable information that the perpetrator of
16 the abuse or neglect is dead. Unless made public **under section 5**
17 **or made public** as specified information released under section
18 7d, a report that is maintained on the CPSI system is
19 confidential and is not subject to the disclosure requirements of
20 the freedom of information act, 1976 PA 442, MCL 15.231 to
21 15.246.

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

26 (13) ~~Except as provided in~~ **Subject to** subsection (14), upon
27 completion of the investigation by the local law enforcement

1 agency or the department, the law enforcement agency or
2 department may inform the person who made the report as to the
3 disposition of the report.

4 (14) If the person who made the report is mandated to report
5 under section 3, upon completion of the investigation by the
6 department, the department shall inform the person in writing as
7 to the disposition of the case and shall include in the
8 information at least all of the following:

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

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

13 (c) Notification that the information being conveyed is
14 confidential.

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

18 (16) Unless section 5 of chapter XII of the probate code of
19 1939, 1939 PA 288, MCL 712.5, requires a physician to report to
20 the department, the surrender of a newborn in compliance with
21 chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1
22 to 712.20, is not reasonable cause to suspect child abuse or
23 neglect and ~~—, therefore,~~ is not subject to the section 3
24 reporting requirement. This subsection does not apply to
25 circumstances that arise on or after the date that chapter XII of
26 the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20, is
27 repealed. This subsection applies to a newborn whose birth is

1 described in the born alive infant protection act, **2002 PA 687,**
2 **MCL 333.1071 to 333.1073,** and who is considered to be a newborn
3 surrendered under the safe delivery of newborns law, ~~as provided~~
4 ~~in section 3 of~~ chapter XII of the probate code of 1939, 1939
5 PA 288, MCL ~~712.3~~ **712.1 to 712.20.**