

Act No. 372
Public Acts of 1988
Approved by the Governor
December 20, 1988
Filed with the Secretary of State
December 21, 1988

**STATE OF MICHIGAN
84TH LEGISLATURE
REGULAR SESSION OF 1988**

Introduced by Reps. Bandstra, Sikkema, Clack, Stopczynski, Martin, Fitzgerald, Van Singel, Hoffman, Strand, Krause, Miller, Randall, Hoekman, Emmons, Bender, Power, Keith, Rocca, Gagliardi, Lynn Owen, Ciaramitaro, Trim, Leland, Giese, Bankes, Dunaskiss and DeLange

ENROLLED HOUSE BILL No. 4157

AN ACT to amend the title and sections 2, 3, 5, 8, 9, and 13 of Act No. 238 of the Public Acts of 1975, 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 powers and duties of the state department of social services to prevent child abuse and neglect; 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," sections 2, 3, 8, 9, and 13 as amended by Act No. 418 of the Public Acts of 1984, being sections 722.622, 722.623, 722.625, 722.628, 722.629, and 722.633 of the Michigan Compiled Laws; and to add section 12a.

The People of the State of Michigan enact:

Section 1. The title and sections 2, 3, 5, 8, 9, and 13 of Act No. 238 of the Public Acts of 1975, sections 2, 3, 8, 9, and 13 as amended by Act No. 418 of the Public Acts of 1984, being sections 722.622, 722.623, 722.625, 722.628, 722.629, and 722.633 of the Michigan Compiled Laws, are amended and section 12a is added to read as follows:

TITLE

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.

Sec. 2. As used in this act:

(a) "Central registry" means the system or organized mode of keeping 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 and which is maintained at the department.

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

(c) "Child abuse" means harm or threatened harm by a person to a child's health or welfare which occurs through nonaccidental physical or mental injury; sexual abuse; sexual exploitation; or maltreatment.

(d) "Child neglect" means harm to a child's health or welfare by a parent, legal guardian, or person who has custodial care of the child which 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 person who has custodial care of the child to intervene to eliminate that risk when that person is able to do so and has knowledge of the risk.

(e) "Sexual abuse" means engaging in sexual contact or sexual penetration as defined in section 520a of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.520a of the Michigan Compiled Laws, with a child.

(f) "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 Act No. 328 of the Public Acts of 1931, being section 750.145c of the Michigan Compiled Laws.

(g) "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.

(h) "Department" means the state department of social services.

(i) "Expunge" means to physically remove or eliminate and destroy a record or report.

(j) "Local office file" means the system or organized mode of keeping a record of a written report, document, or photograph filed with and maintained by a county or a regionally based office of the department.

(k) "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 a person who cares for the child in a licensed or unlicensed day care center, group day care home, or family day care home as defined in section 1 of Act No. 116 of the Public Acts of 1973, being section 722.111 of the Michigan Compiled Laws.

Sec. 3. (1) A physician, coroner, dentist, medical examiner, nurse, a person licensed to provide emergency medical care, audiologist, psychologist, family therapist, certified social worker, social worker, social work technician, school administrator, school counselor or teacher, law enforcement officer, or regulated child care provider who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the department. Within 72 hours after making the oral report, the reporting person shall file a written report as required in this act. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of the hospital, agency, or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. One report from a hospital, agency, or school shall be considered adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.

(2) The written report shall contain the name of the child and a description of the abuse or neglect. If possible, the report shall contain the names and addresses of the child's parents, the child's guardian, the persons with whom the child resides, and the child's age. The report shall contain other information available to the reporting person which might establish the cause of the abuse or neglect, and the manner in which the abuse or neglect occurred.

(3) The department shall inform the reporting person of the required contents of the written report at the time the oral report is made by the reporting person.

(4) The written report required in this section shall be mailed or otherwise transmitted to the county department of social services of the county in which the child suspected of being abused or neglected is found.

(5) Upon receipt of a written report of suspected child abuse or neglect, the department may provide copies to the prosecuting attorney and the probate court of the counties in which the child suspected of being abused or neglected resides and is found.

(6) If the report or subsequent investigation indicates a violation of sections 136b and 145c or sections 520b to 520g of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.136b, 750.145c and 750.520b to 750.520g of the Michigan Compiled Laws, or if the report or subsequent investigation indicates that the suspected abuse was not committed by a person responsible for the child's health or welfare, and the department believes that the report has basis in fact, the department shall transmit a copy of the written report and the results of any investigation to the prosecuting attorney of the counties in which the child resides and is found.

(7) If a local law enforcement agency receives a written report of suspected child abuse or neglect, whether from the reporting person or the department, the report or subsequent investigation indicates that the abuse or neglect was committed by a person responsible for the child's health or welfare, and the local law enforcement agency believes that the report has basis in fact, the local law enforcement agency shall provide a copy of the written report and the results of any investigation to the county department of social services of the county in which the abused or neglected child is found. Nothing in this subsection or subsection (6) shall be construed to relieve the department of its responsibility to investigate reports of suspected child abuse or neglect under this act.

(8) For purposes of this act, the pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age shall be reasonable cause to suspect child abuse and neglect have occurred.

Sec. 5. Except as provided in section 7(1)(a) and (b), the identity of a reporting person shall be confidential subject to disclosure only with the consent of that person or by judicial process. A person acting in good faith who makes a report, cooperates in an investigation, or assists in any other requirement of this act shall be immune from civil or criminal liability which might otherwise be incurred thereby. A person making a report or assisting in any other requirement of this act shall be presumed to have acted in good faith. This immunity from civil or criminal liability extends only to acts done pursuant to this act and does not extend to a negligent act which causes personal injury or death or to the malpractice of a physician which results in personal injury or death.

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

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

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

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

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

(c) Abuse or neglect resulting in severe physical injury to the child requires medical treatment or hospitalization. For purposes of this subdivision, "severe physical injury" means brain damage, skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well-being of a child.

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

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

(4) Law enforcement officials shall cooperate with the department in conducting investigations pursuant to subsections (1) and (3) and shall comply with sections 5 and 7.

(5) Involvement of law enforcement officials pursuant to this section shall not relieve or prevent the department from proceeding with its investigation or treatment if there is reasonable cause to suspect that the child abuse or neglect was committed by a person responsible for the child's health or welfare.

(6) In each county, the prosecuting attorney and the department shall develop and establish procedures for involving law enforcement officials as provided in this section.

(7) If there is reasonable cause to suspect that a child in the care of or under the control of a public or private agency, institution, or facility is an abused or neglected child, the agency, institution, or facility shall be investigated by an agency administratively independent of the agency, institution, or facility being investigated. If the investigation produces evidence of a violation of section 145c or sections 520b to 520g of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.145c and 750.520b to 750.520g of the Michigan Compiled Laws, the investigating agency shall transmit a copy of the results of the investigation to the prosecuting attorney of the county in which the agency, institution, or facility is located. The prosecuting attorney may proceed under sections 135 to 145c or 520b to 520g of Act No. 328 of the Public Acts of 1931, as amended, being sections 750.135 to 750.145c and 750.520b to 750.520g of the Michigan Compiled Laws, when a violation of these sections has occurred.

(8) Schools and other institutions shall cooperate with the department during an investigation of a report of child abuse or neglect. Cooperation includes allowing access to the child without parental consent if access is necessary to complete the investigation or to prevent abuse or neglect of the child. However, the person responsible for the child's health or welfare shall be notified of the department's contact with the child at the time or as soon afterward as the person can be reached and no child shall be subjected to a search at a school which requires the child to remove his or her clothing to expose his buttocks or genitalia or her breasts, buttocks or genitalia unless the department has obtained an order from a court of competent jurisdiction permitting such a search. If the access occurs within a hospital, the investigation shall be conducted so as not to interfere with the medical treatment of the child or other patients.

(9) Upon completion of the investigation by the local law enforcement agency or the department, the law enforcement agency or department may inform the person who made the report as to the disposition of the report.

Sec. 9. (1) The department, in discharging its responsibilities under this act, shall provide, directly or through the purchase of services from other agencies and professions, multidisciplinary services such as those of a pediatrician, psychologist, psychiatrist, public health nurse, social worker, or attorney through the establishment of regionally based or strategically located teams. The department shall prepare a biennial report to the legislature containing information on the activities of the teams created pursuant to this subsection and including recommendations by the teams and the department regarding child abuse and neglect when committed by persons responsible for the child's health or welfare.

(2) The department shall assure a continuing education program for department, probate court, and private agency personnel. The program shall include responsibilities, obligations, and powers under this act and the diagnosis and treatment of child abuse and neglect when committed by persons responsible for the child's health or welfare.

(3) The department shall provide for the dissemination of information to the general public with respect to the problem of child abuse and neglect in this state and the facilities, prevention, and treatment methods available to combat child abuse and neglect when committed by persons responsible for the child's health or welfare.

Sec. 12a. This act does not preclude or hinder a hospital, school, or other agency from investigating reported claims of child abuse or neglect by its employees or from taking disciplinary action based upon that investigation against its employees.

Sec. 13. (1) A person, required to report an instance of suspected child abuse or neglect, who is required to report under this act and who fails to do so, is civilly liable for the damages proximately caused by the failure.

(2) A person, required to report an instance of suspected child abuse or neglect, who is required to report under this act and who knowingly fails to do so, is guilty of a misdemeanor.

(3) A person who permits or encourages the unauthorized dissemination of information contained in the central registry and in reports and records made pursuant to this act is guilty of a misdemeanor and is civilly liable for the damages proximately caused by the dissemination.

(4) A person who willfully maintains a report or record required to be expunged under section 7(3) is guilty of a misdemeanor.

(5) A person who knowingly and maliciously makes a false report of child abuse or neglect under this act is guilty of a misdemeanor.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.