

HOUSE BILL No. 4097

February 6, 1991, Introduced by Reps. Hunter, Ciaramitaro, Brown, Power, Munsell, Berman and Bandstra and referred to the Committee on Social Services and Youth.

A bill to amend sections 2 and 7 of Act No. 238 of the Public Acts of 1975, entitled as amended "Child protection law," section 2 as amended by Act No. 212 of the Public Acts of 1990 and section 7 as amended by Act No. 418 of the Public Acts of 1984, being sections 722.622 and 722.627 of the Michigan Compiled Laws; and to add section 7a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2 and 7 of Act No. 238 of the Public
2 Acts of 1975, section 2 as amended by Act No. 212 of the Public
3 Acts of 1990 and section 7 as amended by Act No. 418 of the
4 Public Acts of 1984, being sections 722.622 and 722.627 of the
5 Michigan Compiled Laws, are amended and section 7a is added to
6 read as follows:

1 Sec. 2. As used in this act:

2 (a) "Central registry" means the system or organized mode of
3 keeping a record of all reports filed with the department pursu-
4 ant to this act in which relevant and accurate evidence of child
5 abuse or neglect is found to exist and ~~which~~ is maintained at
6 the department.

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

8 (c) "Child abuse" means harm or threatened harm to a child's
9 health or welfare by a parent, legal guardian, or any other
10 person responsible for the child's health or welfare or by a
11 teacher or teacher's aide ~~which~~ THAT occurs through nonacciden-
12 tal physical or mental injury; sexual abuse; sexual exploitation;
13 or maltreatment.

14 (d) "Child neglect" means harm or threatened harm to a
15 child's health or welfare by a parent, legal guardian, or any
16 other person responsible for the child's health or welfare
17 ~~which~~ THAT occurs through either of the following:

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

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

25 (e) "Department" means the state department of social
26 services.

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

3 (G) "EXECUTIVE DIRECTOR" MEANS THAT TERM AS DEFINED IN
4 SECTION 113 OF THE SOCIAL WELFARE ACT, ACT NO. 280 OF THE PUBLIC
5 ACTS OF 1939, BEING SECTION 400.113 OF THE MICHIGAN COMPILED
6 LAWS.

7 (H) ~~(g)~~ "Local office file" means the system or organized
8 mode of keeping a record of a written report, document, or photo-
9 graph filed with and maintained by a county or a regionally based
10 office of the department.

11 (I) ~~(h)~~ "Person responsible for the child's health or
12 welfare" means a parent, legal guardian, person 18 years of age
13 or older who resides for any length of time in the same home in
14 which the child resides, or an owner, operator, volunteer, or
15 employee of 1 or both of the following:

16 (i) A licensed or unlicensed child care organization as
17 defined in section 1 of Act No. 116 of the Public Acts of 1973,
18 being section 722.111 of the Michigan Compiled Laws.

19 (ii) A licensed or unlicensed adult foster care family home
20 or adult foster care small group home as defined in section 3 of
21 the adult foster care facility licensing act, Act No. 218 of the
22 Public Acts of 1979, being section 400.703 of the Michigan
23 Compiled Laws.

24 (J) ~~(i)~~ "Relevant evidence" means evidence having a ten-
25 dency to make the existence of a fact that is at issue more prob-
26 able than it would be without the evidence.

1 (K) ~~(j)~~ "Sexual abuse" means engaging in sexual contact or
2 sexual penetration as defined in section 520a of the Michigan
3 penal code, Act No. 328 of the Public Acts of 1931, being section
4 750.520a of the Michigan Compiled Laws, with a child.

5 (l) ~~(k)~~ "Sexual exploitation" includes allowing, permit-
6 ting, or encouraging a child to engage in prostitution, or allow-
7 ing, permitting, encouraging, or engaging in the photographing,
8 filming, or depicting of a child engaged in a listed sexual act
9 as defined in section 145c of Act No. 328 of the Public Acts of
10 1931, being section 750.145c of the Michigan Compiled Laws.

11 Sec. 7. (1) The department shall maintain a central regis-
12 try system to carry out the intent of this act. A written
13 report, document, or photograph filed with the department pursu-
14 ant to this act shall be a confidential record available only to
15 1 or more of the following:

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

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

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

23 (d) A person legally authorized to place a child in protec-
24 tive custody when the person is confronted with a child whom the
25 person reasonably suspects may be abused or neglected and the
26 confidential record is necessary to determine whether to place
27 the child in protective custody.

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

6 (f) A person named in the report or record, if the identity
7 of the reporting person is protected pursuant to section 5.

8 (g) A court ~~which~~ THAT determines the information is nec-
9 essary to decide an issue before the court.

10 (h) A grand jury ~~which~~ THAT determines the information is
11 necessary ~~in the conduct of~~ FOR CONDUCTING the grand jury's
12 official business.

13 (i) A person, agency, or organization engaged in a bona fide
14 research or evaluation project, except information identifying a
15 person named in the report or record shall not be made available
16 unless the department has obtained that person's written
17 consent. The person, agency, or organization shall not conduct a
18 personal interview with a family without the family's prior con-
19 sent and shall not disclose information ~~which~~ THAT would iden-
20 tify the child or the child's family or other identifying
21 information.

22 (j) A person appointed as legal counsel pursuant to
23 section 10.

24 (K) SUBJECT TO SECTION 7A, A STANDING COMMITTEE OR APPROPRI-
25 ATIONS SUBCOMMITTEE OF EITHER HOUSE OF THE LEGISLATURE HAVING
26 JURISDICTION OVER PROTECTIVE SERVICES MATTERS FOR CHILDREN.

1 (2) A person or entity to whom a report, document, or
2 photograph is made available shall make the report, document, or
3 photograph available only to a person or entity described in
4 subsection (1)(a) to ~~(j)~~ (K). This subsection shall not be
5 construed to require a court proceeding ~~which~~ THAT otherwise
6 would be open to the public to be closed.

7 (3) A person who is the subject of a report or record made
8 pursuant to this act may request the department to amend an inac-
9 curate report or record from the central registry and local
10 office file. A person who is the subject of a report or record
11 made pursuant to this act may request the department to expunge
12 from the central registry a report or record in which no relevant
13 and accurate evidence of abuse or neglect is found to exist. A
14 report or record filed in a local office file shall not be
15 subject to expunction except as the department shall authorize,
16 when considered in the best interest of the child. If the
17 department refuses the request for amendment or expunction, or
18 fails to act within 30 days after receiving the request, the
19 person shall be granted a hearing to determine by a preponderance
20 of the evidence whether the report or record in whole or in part
21 should be amended or expunged from the central registry on the
22 grounds that the report or record is not relevant or accurate
23 evidence of abuse or neglect. The hearing shall be before a
24 hearing officer appointed by the department and shall be con-
25 ducted pursuant to the administrative procedures act of 1969, Act
26 No. 306 of the Public Acts of 1969, as amended, being
27 sections 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled

1 Laws. If the investigation of a report conducted pursuant to
2 this act fails to disclose evidence of abuse or neglect, the
3 information identifying the subject of the report shall be
4 expunged from the central registry. If evidence of abuse or
5 neglect exists, the information identifying the subject of the
6 report shall be expunged when the child alleged to be abused or
7 neglected reaches the age of 18, or 10 years after the report is
8 received by the department, whichever occurs later.

9 SEC. 7A. THE DEPARTMENT SHALL MAKE INFORMATION CONTAINED IN
10 THE CENTRAL REGISTRY AND REPORTS AND RECORDS MADE PURSUANT TO
11 THIS ACT AVAILABLE TO A STANDING COMMITTEE OR APPROPRIATIONS SUB-
12 COMMITTEE OF EITHER HOUSE OF THE LEGISLATURE HAVING JURISDICTION
13 OVER PROTECTIVE SERVICES MATTERS FOR CHILDREN DURING A MEETING OF
14 THAT STANDING COMMITTEE OR SUBCOMMITTEE HELD IN CLOSED SESSION,
15 PURSUANT TO THE OPEN MEETINGS ACT, ACT NO. 267 OF THE PUBLIC ACTS
16 OF 1976, BEING SECTIONS 15.261 TO 15.275 OF THE MICHIGAN COMPILED
17 LAWS, IF EITHER OF THE FOLLOWING APPLY:

18 (A) THE CHAIRPERSON OF THE STANDING COMMITTEE OR SUBCOMMIT-
19 TEE REQUESTS THE DEPARTMENT TO MAKE THE INFORMATION AVAILABLE TO
20 THAT STANDING COMMITTEE OR SUBCOMMITTEE FOR THE PURPOSE OF HAVING
21 THAT STANDING COMMITTEE OR SUBCOMMITTEE REVIEW THE DEPARTMENT'S
22 PROTECTIVE SERVICES PROGRAM FOR CHILDREN.

23 (B) THE EXECUTIVE DIRECTOR DETERMINES THAT THE INFORMATION
24 SHOULD BE BROUGHT BEFORE A STANDING COMMITTEE OR SUBCOMMITTEE FOR
25 THE PURPOSE OF HAVING THAT STANDING COMMITTEE OR SUBCOMMITTEE
26 REVIEW THE DEPARTMENT'S PROTECTIVE SERVICES PROGRAM FOR CHILDREN,
27 AND THE CHAIRPERSON OF THAT STANDING COMMITTEE OR SUBCOMMITTEE

1 GRANTS A REQUEST MADE BY THE EXECUTIVE DIRECTOR TO MAKE THE
2 INFORMATION AVAILABLE TO THAT COMMITTEE OR SUBCOMMITTEE.