

SENATE BILL No. 870

April 29, 1992, Introduced by Senators V. SMITH, WELBORN, CHERRY and HART and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend sections 2, 5, 7, and 13 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, sections 5 and 13 as amended by Act No. 372 of the Public Acts of 1988, and section 7 as amended by Act No. 78 of the Public Acts of 1991, being sections 722.622, 722.625, 722.627, and 722.633 of the Michigan Compiled Laws, and to add sections 7a and 7b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2, 5, 7, and 13 of Act No. 238 of the
2 Public Acts of 1975, section 2 as amended by Act No. 212 of the
3 Public Acts of 1990, sections 5 and 13 as amended by Act No. 372
4 of the Public Acts of 1988, and section 7 as amended by Act
5 No. 78 of the Public Acts of 1991, being sections 722.622,

1 722.625, 722.627, and 722.633 of the Michigan Compiled Laws, are
2 amended and sections 7a and 7b are added to read as follows:

3 Sec. 2. As used in this act:

4 (a) "Central registry" means the RECORD-KEEPING system ~~or~~
5 ~~organized mode of keeping a record of all~~ THAT THE DEPARTMENT
6 MAINTAINS AT A SINGLE LOCATION FOR IDENTIFYING SUBSTANTIATED
7 reports filed with the department. ~~pursuant to this act in which~~
8 ~~relevant and accurate evidence of child abuse or neglect is found~~
9 ~~to exist and which is maintained at the department.~~

10 (b) "CENTRAL REGISTRY ENTRY" MEANS CHILD ABUSE OR NEGLECT
11 INFORMATION OBTAINED UNDER THIS ACT THAT IS ENTERED AND MAIN-
12 TAINED IN THE CENTRAL REGISTRY.

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

14 (d) ~~(c)~~ "Child abuse" 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 or by
17 a teacher or teacher's aide ~~which~~ THAT occurs through nonacci-
18 dental physical or mental injury; sexual abuse; sexual exploita-
19 tion; or maltreatment.

20 (e) "CHILD CARE ORGANIZATION" MEANS THAT TERM AS DEFINED IN
21 ACT NO. 116 OF THE PUBLIC ACTS OF 1973, BEING SECTIONS 722.111 TO
22 722.128 OF THE MICHIGAN COMPILED LAWS.

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

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

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

8 (G) ~~-(e)-~~ "Department" means the state department of social
9 services.

10 (H) ~~-(f)-~~ "Expunge" means to physically remove or eliminate
11 and destroy a REPORT, LOCAL OFFICE record, or ~~report~~ CENTRAL
12 REGISTRY ENTRY.

13 (I) "LOCAL OFFICE" MEANS A COUNTY OR REGIONALLY BASED OFFICE
14 OF THE DEPARTMENT.

15 (J) ~~-(g)-~~ "Local office file" means the RECORD-KEEPING
16 system ~~or organized mode of keeping a record of a written~~
17 ~~report, document, or photograph~~ THAT A LOCAL OFFICE MAINTAINS
18 FOR PRESERVING CHILD ABUSE OR NEGLECT REPORTS filed with ~~and~~
19 ~~maintained by a county or a regionally based office of the~~
20 ~~department~~ THE LOCAL OFFICE.

21 (K) "LOCAL OFFICE RECORD" MEANS A CHILD ABUSE OR NEGLECT
22 REPORT MADE UNDER THIS ACT THAT IS MAINTAINED IN A LOCAL OFFICE
23 FILE.

24 (l) ~~-(h)-~~ "Person responsible for the child's health or
25 welfare" means a parent, legal guardian, person 18 years of age
26 or older who resides for any length of time in the same home in

1 which the child resides, or an owner, operator, volunteer, or
2 employee of 1 or both of the following:

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

6 (ii) A licensed or unlicensed adult foster care family home
7 or adult foster care small group home as defined in section 3 of
8 the adult foster care facility licensing act, Act No. 218 of the
9 Public Acts of 1979, being section 400.703 of the Michigan
10 Compiled Laws.

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

14 (N) ~~(j)~~ "Sexual abuse" means engaging in sexual contact or
15 sexual penetration as defined in section 520a of the Michigan
16 penal code, Act No. 328 of the Public Acts of 1931, being section
17 750.520a of the Michigan Compiled Laws, with a child.

18 (O) ~~(k)~~ "Sexual exploitation" includes allowing, permit-
19 ting, or encouraging a child to engage in prostitution, or allow-
20 ing, permitting, encouraging, or engaging in the photographing,
21 filming, or depicting of a child engaged in a listed sexual act
22 as defined in section 145c of Act No. 328 of the Public Acts of
23 1931, being section 750.145c of the Michigan Compiled Laws.

24 (P) "SUBSTANTIATED REPORT" MEANS A REPORT OF CHILD ABUSE OR
25 NEGLECT, MADE UNDER THIS ACT, IN WHICH RELEVANT EVIDENCE OF CHILD
26 ABUSE OR NEGLECT IS FOUND FOLLOWING INVESTIGATION.

1 Sec. 5. Except ~~as provided~~ FOR INFORMATION MADE AVAILABLE
2 TO A PERSON LISTED in section 7(1)(a) ~~and~~ OR (b), the identity
3 of a reporting person ~~shall be~~ IS confidential subject to dis-
4 closure only with the consent of that person or by judicial
5 process. A person acting in good faith who makes a report, coop-
6 erates in an investigation, or assists in any other requirement
7 of this act ~~shall be~~ IS immune from civil or criminal liability
8 ~~which~~ THAT might otherwise be incurred ~~thereby~~ BY THE
9 PERSON'S ACTION. A person making a report or assisting in any
10 other requirement of this act ~~shall be~~ IS presumed to have
11 acted in good faith. This immunity from civil or criminal
12 liability extends only to acts done pursuant to this act and does
13 not extend to a negligent act ~~which~~ THAT causes personal injury
14 or death or to the malpractice of a physician ~~which~~ THAT
15 results in personal injury or death.

16 Sec. 7. (1) The department shall maintain a central regis-
17 try system ~~to carry out the intent of this act~~ IN WHICH THE
18 DEPARTMENT SHALL ENTER AND MAINTAIN INFORMATION REGARDING SUB-
19 STANTIATED REPORTS OF CHILD ABUSE OR NEGLECT AS PROVIDED IN SEC-
20 TIONS 7A AND 7B. A written report, document, or photograph filed
21 with the department pursuant to this act ~~shall be~~ IS a confi-
22 dential record available, SUBJECT TO PROTECTION OF THE REPORTING
23 PERSON'S IDENTITY AS PROVIDED IN SECTION 5, only to 1 or more of
24 the following:

25 (a) A legally mandated public or private child protective
26 agency investigating a report of known or suspected child abuse
27 or neglect.

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

3 (C) THE CHILD ABUSE VICTIM OR THE VICTIM'S PARENT OR
4 GUARDIAN.

5 (D) ~~-(e)-~~ A physician who is treating a child whom the phy-
6 sician reasonably suspects may be abused or neglected.

7 (E) ~~-(d)-~~ A person legally authorized to place a child in
8 protective custody when the person is confronted with a child
9 whom the person reasonably suspects may be abused or neglected
10 and the confidential ~~record~~ INFORMATION is necessary to deter-
11 mine whether to place the child in protective custody.

12 (F) ~~-(e)-~~ A person, agency, or organization, including a
13 multidisciplinary case consultation team, authorized to diagnose,
14 care for, treat, or supervise a child or family who is the
15 subject of a report, ~~or~~ LOCAL OFFICE record, OR CENTRAL REGIS-
16 TRY ENTRY under this act, or who is responsible for the child's
17 health or welfare.

18 (G) ~~-(f)-~~ A person named in the report, ~~or~~ LOCAL OFFICE
19 record, ~~if the identity of the reporting person is protected~~
20 ~~pursuant to section 5~~ OR CENTRAL REGISTRY ENTRY WHO IS ALLEGED
21 TO HAVE COMMITTED CHILD ABUSE OR NEGLECT.

22 (H) ~~-(g)-~~ A court ~~which~~ THAT determines the information is
23 necessary to decide an issue before the court.

24 (I) ~~-(h)-~~ A grand jury ~~which~~ THAT determines the informa-
25 tion is necessary in the conduct of the grand jury's official
26 business.

1 (J) ~~-(i)-~~ A person, agency, or organization engaged in a
2 bona fide research or evaluation project, except information
3 identifying a person named in ~~the~~ A report ~~or record~~ shall
4 not be made available unless the department has obtained that
5 person's written consent. The person, agency, or organization
6 shall not conduct a personal interview with a family without the
7 family's prior consent and shall not disclose information ~~which~~
8 THAT would identify the child or the child's family or other
9 identifying information.

10 (K) ~~-(j)-~~ A person appointed as legal counsel pursuant to
11 section 10.

12 (L) ~~-(k)-~~ A child placing agency licensed under Act No. 116
13 of the Public Acts of 1973, being sections 722.111 to 722.128 of
14 the Michigan Compiled Laws, for the purpose of investigating an
15 applicant for adoption, a foster care applicant or licensee, ~~or~~
16 an employee of a foster care applicant or licensee, an adult
17 member of an applicant's or licensee's household, or other per-
18 sons in a foster care or adoptive home who are directly responsi-
19 ble for the care and welfare of children, to determine suitabil-
20 ity of a home for adoption or foster care. The child placing
21 agency shall disclose the information to a foster care applicant
22 or licensee under Act No. 116 of the Public Acts of 1973, or to
23 an applicant for adoption.

24 (M) ~~-(l)-~~ Juvenile court staff authorized by the court to
25 investigate foster care applicants and licensees, employees of
26 foster care applicants and licensees, adult members of the
27 applicant's or licensee's household, and other persons in the

1 home who are directly responsible for the care and welfare of
2 children, for the purpose of determining the suitability of the
3 home for foster care. The court shall disclose this information
4 to the applicant or licensee.

5 (N) THE DEPARTMENT FOR THE PURPOSE OF INVESTIGATING A CHILD
6 CARE AIDE; A CHILD CARE ORGANIZATION APPLICANT, LICENSEE, OR REG-
7 ISTRANT; AN ADULT MEMBER OF AN APPLICANT'S, LICENSEE'S, OR
8 REGISTRANT'S HOUSEHOLD; OR ANOTHER PERSON DIRECTLY RESPONSIBLE
9 FOR CARE AND WELFARE OF CHILDREN IN A CHILD CARE ORGANIZATION.

10 (2) A person or entity to whom a report, document, or photo-
11 graph is made available shall make the report, document, or pho-
12 tograph available only ~~to a person or entity described~~ AS PRO-
13 VIDED FOR in subsection (1)(a) to ~~(i)~~ (N). This subsection
14 ~~shall~~ DOES not ~~be construed to~~ require a court proceeding to
15 be closed ~~which~~ THAT otherwise would be open to the public.

16 (3) A person who is the subject of a report, ~~or~~ LOCAL
17 OFFICE record, OR CENTRAL REGISTRY ENTRY made pursuant to this
18 act may request the department to amend an inaccurate report,
19 ~~or~~ LOCAL OFFICE record, ~~from the~~ OR central registry ~~and~~
20 ~~local office file~~ ENTRY. A person who is the subject of a
21 report ~~or record~~ made pursuant to this act may request the
22 department to expunge from OR TO NOT ENTER IN the central regis-
23 try a report ~~or record~~ in which no relevant and accurate evi-
24 dence of abuse or neglect is found to exist. A ~~report or record~~
25 ~~filed in a~~ local office ~~file shall not be~~ RECORD IS NOT
26 subject to expunction except as the department ~~shall authorize,~~

1 AUTHORIZES when considered in the best interest of the child OR
2 AS OTHERWISE PROVIDED BY THIS ACT.

3 (4) If the department refuses ~~the~~ A request for amendment
4 or expunction, DECIDES TO ENTER THE INFORMATION IN THE CENTRAL
5 REGISTRY, or fails to act within 30 days after receiving the
6 request, the person shall be granted a hearing, AS PROVIDED IN
7 SECTION 7A, to determine ~~by a preponderance of the evidence~~
8 whether the report ~~or record~~ in whole or in part should be
9 amended or SHOULD BE expunged from OR NOT ENTERED IN the central
10 registry. ~~on the grounds that the report or record is not rele-~~
11 ~~vant or accurate evidence of abuse or neglect.~~ The hearing shall
12 be before a hearing officer appointed by the department and shall
13 be conducted pursuant to the administrative procedures act of
14 1969, Act No. 306 of the Public Acts of 1969, as amended, being
15 sections 24.201 to 24.328 of the Michigan Compiled Laws. ~~If the~~
16 ~~investigation of a report conducted pursuant to this act fails to~~
17 ~~disclose evidence of abuse or neglect, the information identify-~~
18 ~~ing the subject of the report shall be expunged from the central~~
19 ~~registry. If evidence of abuse or neglect exists, the informa-~~
20 ~~tion identifying the subject of the report shall be expunged when~~
21 ~~the child alleged to be abused or neglected reaches the age of~~
22 ~~18, or 10 years after the report is received by the department,~~
23 ~~whichever occurs later.~~

24 SEC. 7A. (1) THE DEPARTMENT SHALL ENTER A REPORT OF KNOWN
25 OR SUSPECTED CHILD ABUSE OR NEGLECT IN THE CENTRAL REGISTRY IF A
26 DEPARTMENTAL EMPLOYEE SUBSTANTIATES THE REPORT. SUBSTANTIATION

1 OF A REPORT SHALL INCLUDE PERSONAL CONTACT WITH OR OBSERVATION OF
2 THE ALLEGED VICTIM OF THE CHILD ABUSE OR NEGLECT.

3 (2) THE DEPARTMENT SHALL NOTIFY THE SUBJECT OF A REPORT
4 DESCRIBED IN SUBSECTION (1) AS FOLLOWS:

5 (A) IF THE CENTRAL REGISTRY ENTRY IS SCHEDULED TO BE MADE ON
6 OR AFTER THE EFFECTIVE DATE OF THIS SECTION, NOTICE SHALL BE SENT
7 NOT LESS THAN 30 DAYS BEFORE THE REPORT IS SCHEDULED TO BE
8 ENTERED IN THE CENTRAL REGISTRY.

9 (B) IF THE CENTRAL REGISTRY ENTRY IS MADE BEFORE THE EFFEC-
10 TIVE DATE OF THIS SECTION, NOTICE SHALL BE SENT BEFORE THE
11 RELEASE OF ANY INFORMATION FROM THE CENTRAL REGISTRY.

12 (3) A NOTICE UNDER THIS SECTION SHALL BE BY FIRST-CLASS MAIL
13 AND SHALL SET FORTH THE REQUIREMENTS AND PROCEDURES PRESCRIBED BY
14 THIS ACT FOR A REPORT MADE TO THE DEPARTMENT UNDER THIS ACT. THE
15 DEPARTMENT IS NOT REQUIRED TO SEND A NOTICE IF A REPORT, LOCAL
16 OFFICE RECORD, OR CENTRAL REGISTRY ENTRY IS EXPUNGED OR NOT
17 ENTERED AS REQUIRED BY SECTION 7B(1).

18 (4) THE SUBJECT OF A REPORT, LOCAL OFFICE RECORD, OR CENTRAL
19 REGISTRY ENTRY IS ENTITLED TO A HEARING UNDER SECTION 7 ONLY IF
20 HE OR SHE REQUESTS AMENDMENT OR EXPUNCTION OF THE REPORT, RECORD,
21 OR ENTRY WITHIN 30 DAYS AFTER THE DEPARTMENT SENDS THE NOTICE
22 REQUIRED BY THIS SECTION. IF AN AMENDMENT OR EXPUNCTION IS
23 REQUESTED AFTER 30 DAYS AFTER THE DEPARTMENT SENDS THE NOTICE,
24 THE DEPARTMENT MAY DENY A HEARING UNLESS THE SUBJECT OF THE
25 REPORT SHOWS GOOD CAUSE FOR THE UNTIMELY REQUEST FOR AMENDMENT OR
26 EXPUNCTION.

1 SEC. 7B. (1) IF THE DEPARTMENT DETERMINES THAT A REPORT
2 MADE UNDER THIS ACT DOES NOT DISCLOSE EVIDENCE OF CHILD ABUSE OR
3 NEGLECT, THE REPORT SHALL BE EXPUNGED FROM OR NOT ENTERED IN THE
4 CENTRAL REGISTRY. A REPORT EXPUNGED FROM OR NOT ENTERED IN THE
5 CENTRAL REGISTRY UNDER THIS SUBSECTION MAY BE MAINTAINED AS A
6 LOCAL OFFICE RECORD, BUT SHALL BE EXPUNGED NOT LATER THAN 2 YEARS
7 AFTER THE DETERMINATION UNDER THIS SUBSECTION UNLESS THE DEPART-
8 MENT RECEIVES ANOTHER REPORT OF CHILD ABUSE OR NEGLECT INVOLVING
9 THE SAME INDIVIDUAL WITHIN THAT 2-YEAR PERIOD.

10 (2) IF A REPORT OF CHILD ABUSE OR NEGLECT IS A CRIMINAL CON-
11 VICTION FOR A CRIME RELATED TO THE CHILD ABUSE OR NEGLECT OR IS A
12 DETERMINATION BY THE COURT OF THE CHILD ABUSE OR NEGLECT, THE
13 DEPARTMENT MAY MAINTAIN THE CENTRAL REGISTRY ENTRY INDEFINITELY.

14 (3) IF THE CENTRAL REGISTRY ENTRY MAY NOT BE MAINTAINED
15 INDEFINITELY UNDER SUBSECTION (2), THE CENTRAL REGISTRY ENTRY
16 SHALL BE EXPUNGED WHEN THE YOUNGEST CHILD IN THE HOUSEHOLD OF THE
17 CHILD ALLEGED TO BE ABUSED OR NEGLECTED REACHES THE AGE OF 18 OR
18 6 YEARS AFTER THE ENTRY IS MADE BY THE DEPARTMENT, WHICHEVER
19 OCCURS EARLIER.

20 (4) THE AUDITOR GENERAL SHALL AUDIT THE CENTRAL REGISTRY NOT
21 LESS OFTEN THAN EVERY 5 YEARS TO DETERMINE IF THE DEPARTMENT IS
22 COMPLYING WITH THE PRESCRIPTIONS OF THIS ACT REGARDING THE MAIN-
23 TENANCE OF CENTRAL REGISTRY ENTRIES.

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

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

5 (3) A person who permits or encourages the unauthorized dis-
6 semination of information contained in the central registry, ~~—and~~
7 ~~in reports and records—~~ A LOCAL OFFICE FILE, OR A REPORT made
8 pursuant to this act is guilty of a misdemeanor and is civilly
9 liable for the damages proximately caused by the dissemination.

10 (4) A person who willfully maintains a report, ~~—or—~~ LOCAL
11 OFFICE record, OR CENTRAL REGISTRY ENTRY required to be expunged
12 under ~~—section 7(3)—~~ SECTIONS 7 TO 7B is guilty of a
13 misdemeanor.

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

17 Section 2. This amendatory act shall take effect April 1,
18 1993.