

Act No. 251
Public Acts of 1993
Approved by the Governor
November 18, 1993
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November 24, 1993

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Reps. Horton and DeLange

Reps. Alley, Bandstra, Bankes, Bodem, Brackenridge, Bullard, Byrum, DeMars, Dobb, Dolan, Freeman, Gagliardi, Gernaat, Gilmer, Gire, Gnodtke, Goschka, Gustafson, Hammerstrom, Harrison, Hill, Hood, Jacobetti, Jaye, Jersevic, Johnson, Kilpatrick, Llewellyn, London, Lowe, McBryde, McManus, Middaugh, Murphy, Olshove, Oxender, Parks, Points, Porreca, Profit, Rocca, Saunders, Scott, Shugars, Voorhees, Vorva, Walberg, Weeks, Wetters, Whyman, Joe Young, Jr. and Richard A. Young named co-sponsors

ENROLLED HOUSE BILL No. 4595

AN ACT to amend sections 2 and 7 of Act No. 238 of the Public Acts of 1975, entitled as amended "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," section 2 as amended by Act No. 212 of the Public Acts of 1990 and section 7 as amended by Act No. 78 of the Public Acts of 1991, 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:

Section 1. Sections 2 and 7 of Act No. 238 of the Public Acts of 1975, section 2 as amended by Act No. 212 of the Public Acts of 1990 and section 7 as amended by Act No. 78 of the Public Acts of 1991, being sections 722.622 and 722.627 of the Michigan Compiled Laws, are amended and section 7a is added to read as follows:

Sec. 2. As used in this act:

(a) "Central registry" means the system maintained at the department that is used to keep 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.

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

(c) "Child abuse" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare, or by a teacher or teacher's aide, that occurs through nonaccidental physical or mental injury; sexual abuse; sexual exploitation; or maltreatment.

(d) "Child neglect" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that 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 any other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.
- (e) "Department" means the state department of social services.
- (f) "Director" means the director of the department.
- (g) "Expunge" means to physically remove or eliminate and destroy a record or report.
- (h) "Local office file" means the system used to keep a record of a written report, document, or photograph filed with and maintained by a county or a regionally based office of the department.
- (i) "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 an owner, operator, volunteer, or employee of any of the following:
 - (i) A licensed or unlicensed child care organization as defined in section 1 of Act No. 116 of the Public Acts of 1973, being section 722.111 of the Michigan Compiled Laws.
 - (ii) A licensed or unlicensed adult foster care family home or adult foster care small group home as defined in section 3 of the adult foster care facility licensing act, Act No. 218 of the Public Acts of 1979, being section 400.703 of the Michigan Compiled Laws.
- (j) "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.
- (k) "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.
- (l) "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.

Sec. 7. (1) The department shall maintain a central registry to carry out the intent of this act. A written report, document, or photograph filed with the department pursuant to this act is a confidential record available only to 1 or more of the following:

- (a) A legally mandated public or private child protective agency investigating a report of known or suspected child abuse or neglect.
- (b) A police or other law enforcement agency investigating a report of known or suspected child abuse or neglect.
- (c) A physician who is treating a child whom the physician reasonably suspects may be abused or neglected.
- (d) A person legally authorized to place a child in protective custody when the person is confronted with a child whom the person reasonably suspects may be abused or neglected and the confidential record is necessary to determine whether to place the child in protective custody.
- (e) A person, agency, or organization, including a multidisciplinary case consultation team, authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or record under this act, or who is responsible for the child's health or welfare.
- (f) A person named in the report or record, if the identity of the reporting person is protected pursuant to section 5.
- (g) A court that determines the information is necessary to decide an issue before the court.
- (h) A grand jury that determines the information is necessary in the conduct of the grand jury's official business.
- (i) A person, agency, or organization engaged in a bona fide research or evaluation project, except information identifying a person named in the report or record shall not be made available unless the department has obtained that person's written consent. The person, agency, or organization shall not conduct a personal interview with a family without the family's prior consent and shall not disclose information that would identify the child or the child's family or other identifying information.
- (j) A person appointed as legal counsel pursuant to section 10.
- (k) A child placing agency licensed under Act No. 116 of the Public Acts of 1973, being sections 722.111 to 722.128 of the Michigan Compiled Laws, for the purpose of investigating an applicant for adoption, a foster care applicant or licensee or an employee of a foster care applicant or licensee, an adult member of an applicant's or licensee's household, or other persons in a foster care or adoptive home who are directly responsible for the care and welfare of children, to determine suitability of a home for adoption or foster care. The child placing agency shall disclose the information to a foster care applicant or licensee under Act No. 116 of the Public Acts of 1973, or to an applicant for adoption.

(l) Juvenile court staff authorized by the court to investigate foster care applicants and licensees, employees of foster care applicants and licensees, adult members of the applicant's or licensee's household, and other persons in the home who are directly responsible for the care and welfare of children, for the purpose of determining the suitability of the home for foster care. The court shall disclose this information to the applicant or licensee.

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

(2) A person or entity to whom a report, document, or photograph is made available shall make the report, document, or photograph available only to a person or entity described in subsection (1). This subsection shall not be construed to require a court proceeding to be closed that otherwise would be open to the public.

(3) A person who is the subject of a report or record made pursuant to this act may request the department to amend an inaccurate report or record from the central registry and local office file. A person who is the subject of a report or record made pursuant to this act may request the department to expunge from the central registry a report or record in which no relevant and accurate evidence of abuse or neglect is found to exist. A report or record filed in a local office file shall not be subject to expunction except as the department shall authorize, when considered in the best interest of the child. If the department refuses the request for amendment or expunction, or fails to act within 30 days after receiving the request, the person shall be granted a hearing to determine by a preponderance of the evidence whether the report or record in whole or in part should be amended or expunged from the central registry on the grounds that the report or record is not relevant or accurate evidence of abuse or neglect. The hearing shall be before a hearing officer appointed by the department and shall be conducted pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws. If the investigation of a report conducted pursuant to this act fails to disclose evidence of abuse or neglect, the information identifying the subject of the report shall be expunged from the central registry. If evidence of abuse or neglect exists, the information identifying the subject of the report shall be expunged when the child alleged to be abused or neglected reaches the age of 18, or 10 years after the report is received by the department, whichever occurs later.

Sec. 7a. (1) The department shall make information contained in the central registry and reports and records made pursuant to this act available to a standing or select committee or appropriations subcommittee of either house of the legislature having jurisdiction over protective services matters for children subject to all of the following:

(a) The department shall not provide confidential information protected by section 7 to the committee unless the committee members appointed and serving agree by roll call vote that the information is essential for the protection of Michigan children or for legislative oversight of the protective services program and that the confidential information will only be considered at a closed session of the committee. The affirmative vote required by this subdivision shall be by not less than the super majority required by section 7 of the open meetings act, Act No. 267 of the Public Acts of 1976, being section 15.267 of the Michigan Compiled Laws, and may serve as the vote required under that section for holding a closed session.

(b) In addition to compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws, a closed session held under this section shall comply with all of the following:

(i) Tape recording, camera, or other electronic equipment for documenting the proceedings shall not be permitted in the closed session.

(ii) Attendance at the closed session shall be limited to committee members, other members of the legislature and legislative staff at the discretion of the chairperson, and staff members from the department designated by the director.

(2) A person who discloses or causes to be disclosed confidential information to which the person has gained access at a meeting held under this section is guilty of a misdemeanor. A person who keeps a confidential record or file, or a copy of a confidential record or file, at the conclusion of a closed session held under this section, which record or file is obtained at that meeting, is guilty of a misdemeanor.