

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1032

A bill to amend 1975 PA 238, entitled
"Child protection law,"
by amending sections 2, 7, and 10 (MCL 722.622, 722.627, and
722.630), section 2 as amended by 1996 PA 581 and section 7 as
amended by 1997 PA 168.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (A) "ATTORNEY" MEANS, IF APPOINTED TO REPRESENT A CHILD
3 UNDER THE PROVISIONS REFERENCED IN SECTION 10, AN ATTORNEY SERV-
4 ING AS THE CHILD'S LEGAL ADVOCATE IN THE MANNER DEFINED AND
5 DESCRIBED IN SECTION 13A OF CHAPTER XIIA OF 1939 PA 288, MCL
6 712A.13A.

7 (B) ~~(a)~~ "Central registry" means the system maintained at
8 the department that is used to keep a record of all reports filed

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1 with the department pursuant to this act in which relevant and
2 accurate evidence of child abuse or neglect is found to exist.

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

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

10 (E) ~~(d)~~ "Child neglect" means harm or threatened harm to a
11 child's health or welfare by a parent, legal guardian, or any
12 other person responsible for the child's health or welfare that
13 occurs through either of the following:

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

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

21 (F) ~~(e)~~ "Controlled substance" means that term as defined
22 in section 7104 of the public health code, ~~Act No. 368 of the~~
23 ~~Public Acts of 1978, being section 333.7104 of the Michigan~~
24 ~~Compiled Laws~~ 1978 PA 368, MCL 333.7104.

25 (G) ~~(f)~~ "Department" means the family independence
26 agency.

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1 (H) ~~(g)~~ "Director" means the director of the department.

2 (I) ~~(h)~~ "Expunge" means to physically remove or eliminate
3 and destroy a record or report.

4 (J) "LAWYER-GUARDIAN AD LITEM" MEANS AN ATTORNEY APPOINTED
5 UNDER SECTION 10 WHO HAS THE POWERS AND DUTIES REFERENCED BY SEC-
6 TION 10.

7 (K) ~~(i)~~ "Local office file" means the system used to keep
8 a record of a written report, document, or photograph filed with
9 and maintained by a county or a regionally based office of the
10 department.

11 (l) ~~(j)~~ "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 any 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~~ 1973 PA 116,
19 MCL 722.111.

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

25 (M) ~~(k)~~ "Relevant evidence" means evidence having a ten-
26 dency to make the existence of a fact that is at issue more
27 probable than it would be without the evidence.

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1 (N) ~~(i)~~ "Sexual abuse" means engaging in sexual contact or
2 sexual penetration as THOSE TERMS ARE defined in section 520a of
3 the Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~
4 ~~being section 750.520a of the Michigan Compiled Laws~~ 1931 PA
5 328, MCL 750.520A, with a child.

6 (O) ~~(m)~~ "Sexual exploitation" includes allowing, permit-
7 ting, or encouraging a child to engage in prostitution, or allow-
8 ing, permitting, encouraging, or engaging in the photographing,
9 filming, or depicting of a child engaged in a listed sexual act
10 as defined in section 145c of ~~Act No. 328 of the Public Acts of~~
11 ~~1931, being section 750.145c of the Michigan Compiled Laws~~ 1931
12 PA 328, MCL 750.145C.

13 (P) "SPECIFIED INFORMATION" MEANS INFORMATION IN A CHILD
14 PROTECTIVE SERVICES RECORD THAT RELATES SPECIFICALLY TO REFERRALS
15 OR REPORTS OF SUBSTANTIATED REPORTS OF CHILD ABUSE OR NEGLECT.
16 SPECIFIED INFORMATION DOES NOT INCLUDE ANY OF THE FOLLOWING:

17 (i) EXCEPT AS PROVIDED IN THIS SUBPARAGRAPH REGARDING A PER-
18 PETRATOR OF CHILD ABUSE OR NEGLECT, PERSONAL IDENTIFICATION
19 INFORMATION FOR ANY INDIVIDUAL IDENTIFIED IN A CHILD PROTECTIVE
20 SERVICES RECORD. THE EXCLUSION OF PERSONAL IDENTIFICATION INFOR-
21 MATION AS SPECIFIED INFORMATION PRESCRIBED BY THIS SUBPARAGRAPH
22 DOES NOT INCLUDE PERSONAL IDENTIFICATION INFORMATION IDENTIFYING
23 AN INDIVIDUAL ALLEGED TO HAVE PERPETRATED CHILD ABUSE OR NEGLECT,
24 WHICH ALLEGATION HAS BEEN SUBSTANTIATED.

25 (ii) INFORMATION IN A LAW ENFORCEMENT REPORT AS PROVIDED IN
26 SECTION 7(8).

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1 (iii) ANY OTHER INFORMATION THAT IS SPECIFICALLY DESIGNATED
2 AS CONFIDENTIAL UNDER OTHER LAW.

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

5 ~~A~~

6 (2) UNLESS MADE PUBLIC AS SPECIFIED INFORMATION RELEASED
7 UNDER SECTION 7D, A written report, document, or photograph filed
8 with the department as provided in this act is a confidential
9 record available only to 1 or more of the following:

10 (a) A legally mandated public or private child protective
11 agency investigating a report of known or suspected child abuse
12 or neglect.

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

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

17 (d) A person legally authorized to place a child in protec-
18 tive custody when the person is confronted with a child whom the
19 person reasonably suspects may be abused or neglected and the
20 confidential record is necessary to determine whether to place
21 the child in protective custody.

22 (e) A person, agency, or organization, including a multidis-
23 ciplinary case consultation team, authorized to diagnose, care
24 for, treat, or supervise a child or family who is the subject of
25 a report or record under this act, or who is responsible for the
26 child's health or welfare.

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1 (f) A person named in the report or record AS A PERPETRATOR
2 OR ALLEGED PERPETRATOR OF THE CHILD ABUSE OR NEGLECT OR A VICTIM
3 WHO IS AN ADULT AT THE TIME OF THE REQUEST, if the identity of
4 the reporting person is protected as provided in section 5.

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

7 (h) A grand jury that determines the information is neces-
8 sary in the conduct of the grand jury's official business.

9 (i) A person, agency, or organization engaged in a bona fide
10 research or evaluation project. The person, agency, or organiza-
11 tion shall not release information identifying a person named in
12 the report or record unless that person's written consent is
13 obtained. The person, agency, or organization shall not conduct
14 a personal interview with a family without the family's prior
15 consent and shall not disclose information that would identify
16 the child or the child's family or other identifying
17 information. The department director may authorize the release
18 of information to a person, agency, or organization described in
19 this subdivision if the release contributes to the purposes of
20 this act and the person, agency, or organization has appropriate
21 controls to maintain the confidentiality of personally identify-
22 ing information for a person named in a report or record made
23 under this act.

24 (j) A ~~person appointed as legal counsel as prescribed in~~
25 LAWYER-GUARDIAN AD LITEM OR OTHER ATTORNEY APPOINTED AS PROVIDED
26 BY section 10.

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1 (k) A child placing agency licensed under 1973 PA 116, MCL
2 722.111 to 722.128, for the purpose of investigating an applicant
3 for adoption, a foster care applicant or licensee or an employee
4 of a foster care applicant or licensee, an adult member of an
5 applicant's or licensee's household, or other persons in a foster
6 care or adoptive home who are directly responsible for the care
7 and welfare of children, to determine suitability of a home for
8 adoption or foster care. The child placing agency shall disclose
9 the information to a foster care applicant or licensee under 1973
10 PA 116, MCL 722.111 to 722.128, or to an applicant for adoption.

11 (l) Juvenile court staff authorized by the court to investi-
12 gate foster care applicants and licensees, employees of foster
13 care applicants and licensees, adult members of the applicant's
14 or licensee's household, and other persons in the home who are
15 directly responsible for the care and welfare of children, for
16 the purpose of determining the suitability of the home for foster
17 care. The court shall disclose this information to the applicant
18 or licensee.

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

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

25 (o) A child fatality review team established under section
26 7b and authorized under that section to investigate and review a
27 child death.

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

4 (3) ~~(2)~~ A person or entity to whom information described
5 in subsection ~~(1)~~ (2) is disclosed shall make the information
6 available only to a person or entity described in subsection
7 ~~(1)~~ (2). This subsection does not require a court proceeding
8 to be closed that otherwise would be open to the public.

9 (4) ~~(3)~~ If a report of suspected child abuse or neglect is
10 substantiated, the department shall maintain a record in the cen-
11 tral registry and, within 30 days after the substantiation, shall
12 notify in writing each individual who is named in the record as a
13 perpetrator of the child abuse or neglect. The notice shall set
14 forth the individual's right to request expunction of the record
15 and the right to a hearing if the department refuses the
16 request. THE NOTICE SHALL STATE THAT THE RECORD MAY BE RELEASED
17 UNDER SECTION 7D. The notice shall not identify the person
18 reporting the suspected child abuse or neglect.

19 (5) ~~(4)~~ A person who is the subject of a report or record
20 made under this act may request the department to amend an inac-
21 curate report or record from the central registry and local
22 office file. A person who is the subject of a report or record
23 made under this act may request the department to expunge from
24 the central registry a report or record in which no relevant and
25 accurate evidence of abuse or neglect is found to exist. A
26 report or record filed in a local office file is not subject to

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1 expunction except as the department authorizes, when considered
2 in the best interest of the child.

3 (6) ~~-(5)-~~ If the department refuses a request for amendment
4 or expunction under subsection ~~-(4)-~~ (5), or fails to act within
5 30 days after receiving the request, ~~as required under subsec-~~
6 ~~tion (4),~~ the department shall hold a hearing to determine by a
7 preponderance of the evidence whether the report or record in
8 whole or in part should be amended or expunged from the central
9 registry on the grounds that the report or record is not relevant
10 or accurate evidence of abuse or neglect. The hearing shall be
11 before a hearing officer appointed by the department and shall be
12 conducted pursuant to the administrative procedures act of 1969,
13 1969 PA 306, MCL 24.201 to 24.328.

14 (7) ~~-(6)-~~ If the investigation of a report conducted under
15 this act fails to disclose evidence of abuse or neglect, the
16 information identifying the subject of the report shall be
17 expunged from the central registry. If evidence of abuse or
18 neglect exists, the information identifying the subject of the
19 report shall be expunged when the child alleged to be abused or
20 neglected reaches the age of 18, or 10 years after the report is
21 received by the department, whichever occurs later.

22 (8) ~~-(7)-~~ In releasing information under this act, the
23 department shall not include a report compiled by a police agency
24 or other law enforcement agency related to an investigation of
25 suspected child abuse or neglect. This subsection does not pre-
26 vent the department from including reports of convictions of
27 crimes related to child abuse or neglect.

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1 Sec. 10. ~~The court, in every~~ IN EACH case filed under
2 this act in which judicial proceedings are necessary, THE COURT
3 shall appoint ~~legal counsel~~ A LAWYER-GUARDIAN AD LITEM to rep-
4 resent the child. ~~The legal counsel, in general, shall be~~
5 ~~charged with the representation of the child's best interests.~~
6 ~~To that end, the attorney shall make further investigation as he~~
7 ~~deems necessary to ascertain the facts, interview witnesses,~~
8 ~~examine witnesses in both the adjudicatory and dispositional~~
9 ~~hearings, make recommendations to the court, and participate in~~
10 ~~the proceedings to competently represent the child.~~ A
11 LAWYER-GUARDIAN AD LITEM REPRESENTS THE CHILD AND HAS POWERS AND
12 DUTIES IN RELATION TO THAT REPRESENTATION AS SET FORTH IN SECTION
13 17D OF CHAPTER XIIIA OF 1939 PA 288, MCL 712A.17D. ALL PROVISIONS
14 OF SECTION 17D OF CHAPTER XIIIA OF 1939 PA 288, MCL 712A.17D,
15 APPLY TO A LAWYER-GUARDIAN AD LITEM APPOINTED UNDER THIS ACT.

16 Enacting section 1. This amendatory act does not take
17 effect unless Senate Bill No. 954 of the 89th Legislature is
18 enacted into law.

19 Enacting section 2. This amendatory act takes effect March
20 1, 1999.