

HOUSE BILL No. 6081

September 16, 1998, Introduced by Reps. Baird, Gire, Price, Brater and LaForge and referred to the Committee on Human Services and Children.

A bill to amend 1975 PA 238, entitled "Child protection law," by amending sections 7 and 8 (MCL 722.627 and 722.628), section 7 as amended by 1997 PA 168 and section 8 as amended by 1997 PA 166, and by adding sections 8d and 17a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. (1) The department shall maintain a statewide,
2 electronic central registry to carry out the intent of this act.
3 A written report, document, or photograph filed with the depart-
4 ment as provided in this act is a confidential record available
5 only to 1 or more of the following:

6 (a) A legally mandated public or private child protective
7 agency investigating a report of known or suspected child abuse
8 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) A physician who is treating a child whom the physician
4 reasonably suspects may be abused or neglected.

5 (d) A person legally authorized to place a child in protec-
6 tive custody when the person is confronted with a child whom the
7 person reasonably suspects may be abused or neglected and the
8 confidential record is necessary to determine whether to place
9 the child in protective custody.

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

15 (f) A person named in the report or record, if the identity
16 of the reporting person is protected as provided in section 5.

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

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

21 (i) A person, agency, or organization engaged in a bona fide
22 research or evaluation project. The person, agency, or organiza-
23 tion shall not release information identifying a person named in
24 the report or record unless that person's written consent is
25 obtained. The person, agency, or organization shall not conduct
26 a personal interview with a family without the family's prior
27 consent and shall not disclose information that would identify

1 the child or the child's family or other identifying
2 information. The department director may authorize the release
3 of information to a person, agency, or organization described in
4 this subdivision if the release contributes to the purposes of
5 this act and the person, agency, or organization has appropriate
6 controls to maintain the confidentiality of personally identify-
7 ing information for a person named in a report or record made
8 under this act.

9 (j) A person appointed as legal counsel as prescribed in
10 section 10.

11 (k) A child placing agency licensed under 1973 PA 116, MCL
12 722.111 to 722.128, for the purpose of investigating an applicant
13 for adoption, a foster care applicant or licensee or an employee
14 of a foster care applicant or licensee, an adult member of an
15 applicant's or licensee's household, or other persons in a foster
16 care or adoptive home who are directly responsible for the care
17 and welfare of children, to determine suitability of a home for
18 adoption or foster care. The child placing agency shall disclose
19 the information to a foster care applicant or licensee under 1973
20 PA 116, MCL 722.111 to 722.128, or to an applicant for adoption.

21 (l) Juvenile court staff authorized by the court to investi-
22 gate foster care applicants and licensees, employees of foster
23 care applicants and licensees, adult members of the applicant's
24 or licensee's household, and other persons in the home who are
25 directly responsible for the care and welfare of children, for
26 the purpose of determining the suitability of the home for foster

1 care. The court shall disclose this information to the applicant
2 or licensee.

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

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

9 (o) A child fatality review team established under section
10 7b and authorized under that section to investigate and review a
11 child death.

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

15 (2) A person or entity to whom information described in sub-
16 section (1) is disclosed shall make the information available
17 only to ~~a~~ ANOTHER person or entity described in
18 subsection (1). This subsection does not require a court pro-
19 ceeding to be closed that otherwise would be open to the public.

20 (3) If a report of suspected child abuse or neglect is sub-
21 stantiated, the department shall maintain a record in the central
22 registry. ~~and, within~~ A RECORD OF SUBSTANTIATED ABUSE OR
23 NEGLECT SHALL INCLUDE THE REASON AN INDIVIDUAL NAMED AS A PERPE-
24 TRATOR IS INCLUDED IN THE REGISTRY. THE REASON FOR SUBSTANTIAT-
25 ING A REPORT OF ABUSE OR NEGLECT SHALL BE CONSISTENT WITH THE
26 REASON FOR PLACING AN INDIVIDUAL ON THE REGISTRY. IF THE REASONS
27 ARE INCONSISTENT, THE RECORD SHALL INCLUDE AN EXPLANATION FOR THE

1 INCONSISTENCIES. WITHIN 30 days after the substantiation, THE
2 DEPARTMENT shall notify in writing each individual who is named
3 in the record as a perpetrator of the child abuse or neglect.
4 The notice shall set forth the individual's right to request
5 expunction of the record and the right to a hearing if the
6 department refuses the request. The notice shall not identify
7 the person reporting the suspected child abuse or neglect.

8 (4) A person who is the subject of a report or record made
9 under this act may request the department to amend an inaccurate
10 report or record from the central registry and local office
11 file. A person who is the subject of a report or record made
12 under this act may request the department to expunge from the
13 central registry a report or record in which no relevant and
14 accurate evidence of abuse or neglect is found to exist. A
15 report or record filed in a local office file is not subject to
16 expunction except as the department authorizes, when considered
17 in the best interest of the child.

18 (5) If the department refuses a request for amendment or
19 expunction under subsection (4), or fails to act within 30 days
20 after receiving the request as required under subsection (4), the
21 department shall hold a hearing to determine by a preponderance
22 of the evidence whether the report or record in whole or in part
23 should be amended or expunged from the central registry on the
24 grounds that the report or record is not relevant ~~or~~ AND accu-
25 rate evidence of abuse or neglect. The hearing shall be before a
26 hearing officer appointed by the department and shall be

1 conducted pursuant to the administrative procedures act of 1969,
2 1969 PA 306, MCL 24.201 to 24.328.

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

11 (7) In releasing information under this act, the department
12 shall not include a report compiled by a police agency or other
13 law enforcement agency related to an investigation of suspected
14 child abuse or neglect. This subsection does not prevent the
15 department from including reports of convictions of crimes
16 related to child abuse or neglect.

17 Sec. 8. (1) Within 24 hours after receiving a report made
18 under this act, the department shall refer the report to the
19 prosecuting attorney if the report meets the requirements of
20 section 3(6) or shall commence an investigation of the child sus-
21 pected of being abused or neglected. Within 24 hours after
22 receiving a report whether from the reporting person or from the
23 department under section 3(6), the local law enforcement agency
24 shall refer the report to the department if the report meets the
25 requirements of section 3(7) or shall commence an investigation
26 of the child suspected of being abused or neglected. If the
27 child suspected of being abused is not in the physical custody of

1 the parent or legal guardian, and informing the parent or legal
2 guardian would not endanger the child's health or welfare, the
3 agency or the department shall inform the child's parent or legal
4 guardian of the investigation as soon as the agency or the
5 department discovers the identity of the child's parent or legal
6 guardian.

7 (2) In the course of its investigation, the department shall
8 determine if the child is abused or neglected. The department
9 shall cooperate with law enforcement officials, courts of compe-
10 tent jurisdiction, and appropriate state agencies providing human
11 services in relation to preventing, identifying, and treating
12 child abuse and neglect; shall provide, enlist, and coordinate
13 the necessary services, directly or through the purchase of serv-
14 ices from other agencies and professions; and shall take neces-
15 sary action to prevent further abuses, to safeguard and enhance
16 the welfare of the child, and to preserve family life where
17 possible.

18 (3) In conducting its investigation, the department shall
19 seek the assistance of and cooperate with law enforcement offi-
20 cials within 24 hours after becoming aware that 1 or more of the
21 following conditions exist:

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

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

26 (c) Abuse or neglect resulting in severe physical injury to
27 the child requires medical treatment or hospitalization. For

1 purposes of this subdivision and section 17, "severe physical
2 injury" means brain damage, skull or bone fracture, subdural hem-
3 orrhage or hematoma, dislocation, sprains, internal injuries,
4 poisoning, burns, scalds, severe cuts, or any other physical
5 injury that seriously impairs the health or physical well-being
6 of a child.

7 (d) Law enforcement intervention is necessary for the pro-
8 tection of the child, a department employee, or another person
9 involved in the investigation.

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

12 (4) Law enforcement officials shall cooperate with the
13 department in conducting investigations under subsections (1) and
14 (3) and shall comply with sections 5 and 7. The department and
15 law enforcement officials shall conduct investigations in compli-
16 ance with the protocol adopted and implemented as required by
17 subsection (6).

18 (5) Involvement of law enforcement officials under this sec-
19 tion does not relieve or prevent the department from proceeding
20 with its investigation or treatment if there is reasonable cause
21 to suspect that the child abuse or neglect was committed by a
22 person responsible for the child's health or welfare.

23 (6) In each county, the prosecuting attorney and the depart-
24 ment shall develop and establish procedures for involving law
25 enforcement officials as provided in this section. In each
26 county, the prosecuting attorney and the department shall adopt
27 and implement a standard child abuse and neglect investigation

1 and interview protocol using as a model the protocol developed by
2 the governor's task force on children's justice as published in
3 DSS Publication 794 (8-93).

4 (7) If there is reasonable cause to suspect that a child in
5 the care of or under the control of a public or private agency,
6 institution, or facility is an abused or neglected child, the
7 agency, institution, or facility shall be investigated by an
8 agency administratively independent of the agency, institution,
9 or facility being investigated. If the investigation produces
10 evidence of a violation of section 145c or sections 520b to 520g
11 of the Michigan penal code, 1931 PA 328, MCL 750.145c and
12 750.520b to 750.520g, the investigating agency shall transmit a
13 copy of the results of the investigation to the prosecuting
14 attorney of the county in which the agency, institution, or
15 facility is located.

16 (8) Schools and other institutions shall cooperate with the
17 department during an investigation of a report of child abuse or
18 neglect. Cooperation includes allowing access to the child with-
19 out parental consent if access is necessary to complete the
20 investigation or to prevent abuse or neglect of the child.
21 However, the department shall notify the person responsible for
22 the child's health or welfare about the department's contact with
23 the child at the time or as soon afterward as the person can be
24 reached. The department may delay the notice if the notice would
25 compromise the safety of the child or child's siblings or the
26 integrity of the investigation, but only for the time 1 of those
27 conditions exists.

1 (9) If the department has contact with a child in a school,
2 all of the following apply:

3 (a) Before contact with the child, the department investiga-
4 tor shall review with the designated school staff person the
5 department's responsibilities under this act and the investiga-
6 tion procedure.

7 (b) After contact with the child, the department investiga-
8 tor shall meet with the designated school staff person and the
9 child about the response the department will take as a result of
10 contact with the child. The department may also meet with the
11 designated school staff person without the child present and
12 share additional information the investigator determines may be
13 shared subject to the confidentiality provisions of this act.

14 (c) Lack of cooperation by the school does not relieve or
15 prevent the department from proceeding with its responsibilities
16 under this act.

17 (10) A child shall not be subjected to a search at a school
18 that requires the child to remove his or her clothing to expose
19 his buttocks or genitalia or her breasts, buttocks, or genitalia
20 unless the department has obtained an order from a court of com-
21 petent jurisdiction permitting such a search. If the access
22 occurs within a hospital, the investigation shall be conducted so
23 as not to interfere with the medical treatment of the child or
24 other patients.

25 (11) Except as provided in subsection (12), upon completion
26 of the investigation by the local law enforcement agency or the
27 department, the law enforcement agency or department may inform

1 the person who made the report as to the disposition of the
2 report.

3 (12) If the person who made the report is mandated to report
4 under section 3, upon completion of the investigation by the
5 department, the department shall inform the person in writing as
6 to the disposition of the case and shall include in the informa-
7 tion at least all of the following:

8 (a) Whether the case was substantiated and the rationale for
9 that decision.

10 (b) Whether legal action was commenced and, if so, the
11 nature of that action.

12 (c) Notification that the information being conveyed is
13 confidential.

14 (13) Information sent under subsection (12) shall not
15 include personally identifying information for a person named in
16 a report or record made under this act.

17 (14) THE DEPARTMENT SHALL HAVE LEGAL REPRESENTATION IN EACH
18 CASE UNDER THIS ACT IN WHICH A JUDICIAL PROCEEDING IS NECESSARY.

19 SEC. 8D. (1) THE INVESTIGATION OF A REPORT MADE UNDER SEC-
20 TION 3 SHALL INCLUDE, WHEN AVAILABLE, DOCUMENTATION OF BACKGROUND
21 INFORMATION INDICATING VIOLENT BEHAVIOR BY A PARENT, GUARDIAN, OR
22 PERSON RESPONSIBLE FOR THE CHILD'S HEALTH OR WELFARE THAT PLACES
23 A CHILD AT RISK. THE SOURCE OF INFORMATION INDICATING VIOLENT
24 BEHAVIOR MAY INCLUDE, BUT IS NOT LIMITED TO, 1 OR MORE OF THE
25 FOLLOWING:

26 (A) A DEPARTMENT INVESTIGATION.

1 (B) A RECORDED ENTRY IN THE CENTRAL REGISTRY MAINTAINED
2 UNDER SECTION 7.

3 (C) A RECORDED ENTRY UNDER THE SEX OFFENDERS REGISTRATION
4 ACT, 1994 PA 295, MCL 28.721 TO 28.732.

5 (D) DOCUMENTATION OF CRIMINAL HISTORY.

6 (2) INCONSISTENT EXPLANATIONS OF A CHILD'S INJURIES WEIGH
7 HEAVILY AS A MAJOR RISK FACTOR IN AN INVESTIGATION OF A REPORT OF
8 CHILD ABUSE OR NEGLECT.

9 (3) THE DEPARTMENT SHALL INCLUDE IN THE REPORT OF AN INVES-
10 TIGATION ALL DOCUMENTATION OF MEDICAL EVIDENCE CONCERNING PHYSI-
11 CAL ABUSE OR NEGLECT PROVIDED BY A MEDICAL PROFESSIONAL INCLUD-
12 ING, BUT NOT LIMITED TO, ALL THE DOCUMENTATION REFERENCED IN SEC-
13 TION 6.

14 (4) THE DEPARTMENT SHALL MAKE A PREVENTION SERVICES REFERRAL
15 WITHIN 5 DAYS FROM MAKING THE DETERMINATION THAT THE REFERRAL IS
16 NECESSARY IN THE CASE OF AN UNSUBSTANTIATED ALLEGATION OF CHILD
17 ABUSE OR NEGLECT.

18 (5) THE DEPARTMENT SHALL SUBSTANTIATE A REPORT OF PARENTAL
19 NEGLECT IF THE PARENT, GUARDIAN, OR PERSON RESPONSIBLE FOR THE
20 CHILD'S HEALTH OR WELFARE IS AWARE OF INTRA-FAMILIAL SIBLING VIO-
21 LENCE AND FAILS TO PROTECT THE ABUSED CHILD.

22 SEC. 17A. WITHIN 24 HOURS AFTER THE DEPARTMENT DETERMINES
23 THAT A CHILD WAS EITHER SEVERELY PHYSICALLY INJURED AS DEFINED IN
24 SECTION 8 OR SEXUALLY ABUSED BY A SIBLING, THE DEPARTMENT SHALL
25 MAKE THE APPROPRIATE REFERRALS FOR BOTH THE CHILD VICTIM AND THE
26 CHILD PERPETRATOR.