

1998 PUBLIC AND LOCAL ACTS

[No. 428]

(HB 4232)

AN ACT to amend 1975 PA 238, entitled "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," by amending sections 2, 5, 7, and 18 (MCL 722.622, 722.625, 722.627, and 722.638), section 2 as amended by 1996 PA 581, section 5 as amended by 1994 PA 393, and section 7 as amended and section 18 as added by 1997 PA 168, and by adding sections 7c, 7d, 7e, 7f, 7g, 7h, 7i, and 9a; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

722.622 Definitions. [M.S.A. 25.248(2)]

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) "Controlled substance" means that term as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(f) "Department" means the family independence agency.

(g) "Director" means the director of the department.

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

(i) "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.

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(j) "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 1973 PA 116, MCL 722.111.

(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, 1979 PA 218, MCL 400.703.

(k) "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.

(l) "Sexual abuse" means engaging in sexual contact or sexual penetration as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, with a child.

(m) "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 1931 PA 328, MCL 750.145c.

(n) "Specified information" means information in a child protective services record that relates specifically to referrals or reports of substantiated reports of child abuse or neglect. Specified information does not include any of the following:

(i) Except as provided in this subparagraph regarding a perpetrator of child abuse or neglect, personal identification information for any individual identified in a child protective services record. The exclusion of personal identification information as specified information prescribed by this subparagraph does not include personal identification information identifying an individual alleged to have perpetrated child abuse or neglect, which allegation has been substantiated.

(ii) Information in a law enforcement report as provided in section 7(8).

(iii) Any other information that is specifically designated as confidential under other law.

722.625 Identity of reporting person; confidentiality; disclosure; immunity; good faith presumed. [M.S.A. 25.248(5)]

Sec. 5. Except for records available under section 7(2)(a) and (b), the identity of a reporting person is confidential subject to disclosure only with the consent of that person or by judicial process. A person acting in good faith who makes a report, cooperates in an investigation, or assists in any other requirement of this act is immune from civil or criminal liability that might otherwise be incurred by that action. A person making a report or assisting in any other requirement of this act is presumed to have acted in good faith. This immunity from civil or criminal liability extends only to acts done pursuant to this act and does not extend to a negligent act that causes personal injury or death or to the malpractice of a physician that results in personal injury or death.

722.627 Central registry; availability of confidential records; closed court proceeding not required; notice to individuals; amending or expunging certain reports and records; hearing; evidence; release of reports compiled by law enforcement agency. [M.S.A. 25.248(7)]

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

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(2) Unless made public as specified information released under section 7d, a written report, document, or photograph filed with the department as provided in 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 as a perpetrator or alleged perpetrator of the child abuse or neglect or a victim who is an adult at the time of the request, if the identity of the reporting person is protected as provided in 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. The person, agency, or organization shall not release information identifying a person named in the report or record unless that person's written consent is obtained. 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. The department director may authorize the release of information to a person, agency, or organization described in this subdivision if the release contributes to the purposes of this act and the person, agency, or organization has appropriate controls to maintain the confidentiality of personally identifying information for a person named in a report or record made under this act.

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

(k) A child placing agency licensed under 1973 PA 116, MCL 722.111 to 722.128, 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 1973 PA 116, MCL 722.111 to 722.128, 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.

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(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.

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

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

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

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

(4) If a report of suspected child abuse or neglect is substantiated, the department shall maintain a record in the central registry and, within 30 days after the substantiation, shall notify in writing each individual who is named in the record as a perpetrator of the child abuse or neglect. The notice shall set forth the individual's right to request expunction of the record and the right to a hearing if the department refuses the request. The notice shall state that the record may be released under section 7d. The notice shall not identify the person reporting the suspected child abuse or neglect.

(5) A person who is the subject of a report or record made under 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 under 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 is not subject to expunction except as the department authorizes, when considered in the best interest of the child.

(6) If the department refuses a request for amendment or expunction under subsection (5), or fails to act within 30 days after receiving the request, the department shall hold 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, 1969 PA 306, MCL 24.201 to 24.328.

(7) If the investigation of a report conducted under 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.

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

722.627c Release of information from child protective services records; decision by director; determination. [M.S.A. 25.248(7c)]

Sec. 7c. (1) Sections 7d to 7i govern the director's decisions to release specified information from child protective services records.

(2) The director may designate another individual to act for the director under sections 7d to 7i, and a reference to the director under those sections applies to an individual designated by the director.

(3) For the purposes of sections 7d to 7i, a child's best interest shall be determined based on all of the following:

(a) Protection of the child's safety.

(b) Preservation of the child's physical, mental, and emotional health.

(c) Consideration of the child's likelihood of establishing a successful and timely permanent family and community relationship.

(4) Sections 7d to 7i do not subject a report or record that is confidential under this act to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

722.627d Release of information by director; preliminary decision to release or deny information; extension of time period; evidence. [M.S.A. 25.248(7d)]

Sec. 7d. (1) Subject to sections 7c to 7i, at the director's initiative or upon written request, the director may release specified information. If a written request for specified information is submitted to the department, the director shall make a preliminary decision to release or to deny release of the specified information within 14 days after receipt of the request. After notifying the requester, the director may extend that time period for an additional 14 days if the additional time is necessary to research and compile the requested specified information.

(2) The director may release specified information under this section if there is clear and convincing evidence that either of the following is true:

(a) The release of the specified information is in the best interest of the child to whom the specified information relates.

(b) The release of the specified information is not in conflict with the best interest of the child to whom the specified information relates, and 1 or more of the following are true:

(i) The release is in the best interest of a member of the child's family or of an individual who resides in the same home in which the child resides. For the purposes of this subparagraph, the child's family includes the child's parents, legal guardians, grandparents, and siblings.

(ii) The release clarifies actions taken by the department on a specific case.

(iii) The report or record containing the specified information concerns a child who has died or concerns a member of that child's family.

(iv) All or part of the report or record containing the specified information is publicly disclosed in a judicial proceeding.

(v) A child abuse or neglect complaint or investigation to which the report or record containing the specified information relates has been part of the subject matter of a published or broadcast media story.

(vi) The report or record containing the specified information concerns a substantiated report of sexual abuse, serious injury, or life threatening harm involving the child or a sibling of the child identified in the request.

722.627e Release of information by director; prohibitions. [M.S.A. 25.248(7e)]

Sec. 7e. (1) The director shall not deny a request for specified information under section 7d based upon a desire to shield a lack of or an inappropriate performance by the department.

(2) Regardless of the director's determination that specified information may be released under section 7d, the director shall not release the specified information if 1 or more of the following are true:

(a) The request for release does not include information sufficient to identify the specific case to which the request relates.

(b) An investigation of the report of child abuse or neglect to which the specified information relates is in progress and the report has not been substantiated or unsubstantiated.

(c) A hearing is pending under section 7(6).

(d) There is an ongoing criminal investigation and, as determined by the local prosecuting attorney, release would interfere with the criminal investigation.

(e) The individual who submits the request is serving a sentence of imprisonment in a state, county, or federal correctional facility in this state or in another state.

(f) The child to whom the report or record relates is 18 years of age or older.

722.627f Release of information by director; preliminary decision to release or deny request; notice; final decision; writing; right to appeal. [M.S.A. 25.248(7f)]

Sec. 7f. (1) Not less than 14 days before specified information is released or within 14 days after making a decision to deny a request for release of specified information under section 7d, the director shall give notice as provided in this subsection and section 7g of a preliminary decision to release or to deny a request to release specified information. The notice shall be in writing and shall be made by personal service or by registered or certified mail, return receipt requested and deliverable to the addressee only. The notice shall include at least all of the following:

(a) The basis on which the specified information is being released or the basis for denial of the request for release.

(b) A statement that the decision becomes a final decision unless information that could be the basis for a different decision is submitted to the director in writing within 14 days after the notice is given.

(c) A statement that there is a right to appeal a final decision as provided in section 7h. The notice shall include information regarding where to file the appeal and describing appellate procedures.

(2) If, within 14 days after giving notice, the director does not receive information in writing that could be the basis for a different decision, the director's decision is final.

(3) If the director does receive information as described in subsection (2), the director shall make a final decision to release or deny a request to release the specified information within 7 days after receipt of the information. The director shall give notice of a final decision made under this subsection to each individual required to be notified under section 7g(1) or (2). The notice required by this subsection shall be in writing and shall include at least notification of the right to appeal a final decision as provided in section 7h.

722.627g Release of information by director; individuals to be notified. [M.S.A. 25.248(7g)]

Sec. 7g. (1) If the director decides to release specified information under section 7d, the department shall give each notice required under section 7f to each of the following:

(a) Each individual named in the report as a perpetrator or an alleged perpetrator of the child's abuse or neglect, unless the individual named in the report has been convicted of a crime relating to the abuse or neglect, and no appeal is pending.

(b) Each parent or legal guardian of the child.

(c) Each attorney representing the child who is the subject of the case, or representing an individual listed in subdivision (a) or (b), if the department has notice of that representation.

(d) The child's guardian ad litem.

(2) If the director denies a request for release of information under section 7d, the department shall notify only the requesting person.

(3) If an individual required to be notified under subsection (1)(a) is named as a perpetrator of child abuse or neglect in a report that contains specified information requested to be released, and that individual was not previously notified under section 7(4), the department shall notify that individual as required by section 7(4) not less than 14 days before the specified information is released. If an individual who is required to be notified under this subsection requests expunction of the record within 14 days after the notice is given, the specified information shall not be released under this section until the procedures governing expunction under section 7 are completed. If an individual who is required to be notified under this subsection does not request expunction within 14 days, the procedures for release of specified information under sections 7c to 7i shall be followed, and the individual does not have a right to appeal the decision to release.

722.627h Appeal of director's decision. [M.S.A. 25.248(7h)]

Sec. 7h. (1) Before the release of specified information under section 7d and except as provided in section 7g, an individual required to be notified under section 7g may appeal the director's decision to the circuit court. If an appeal is filed and the department notified before the release, the specified information shall not be released until the decision to release is upheld by the circuit court. If the director denies a request to release specified information under section 7d, within 30 days after notice of the denial, the person whose request is denied may file an appeal of the denial with the circuit court. The court shall uphold a decision to release or to deny release of specified information unless the court finds that the director's decision was an abuse of the director's discretion based upon the criteria for releasing or not releasing specified information prescribed by sections 7c to 7i.

(2) Proceedings on an appeal filed under this section are confidential, and any record of these proceedings shall not be released unless the court upholds a decision to release specified information or reverses the denial of a request for release. The court shall conduct its review so that a person whose request for specified information was denied does not have access to that specified information during the appeal proceedings.

(3) If the court reverses the director's decision to release or to deny release of specified information in an appeal under this section, the court may order the department to pay the appellant's costs and reasonable attorney fees that are related to the appeal.

722.627i Fee; federal assurances and waivers. [M.S.A. 25.248(7i)]

Sec. 7i. (1) The department may charge a fee for a copy of specified information released under section 7d in the same manner that a public body is authorized to charge a fee under section 4 of the freedom of information act, 1976 PA 442, MCL 15.234.

(2) Sections 7c to 7i shall not be enforced and the family independence agency shall not utilize or implement those provisions unless the family independence agency consults with and receives assurances from the federal government, including any necessary federal waivers, that utilization and implementation of those provisions do not jeopardize this state's receipt of federal money.

722.629a Annual report. [M.S.A. 25.248(9a)]

Sec. 9a. The agency within the department that is responsible for administering and providing services under this act shall make an annual comprehensive report to the legislature that includes at least all of the following:

(a) Statistical information including at least all of the following:

(i) Total reports of abuse and neglect investigated under this act and the number that were substantiated and unsubstantiated.

(ii) Characteristics of perpetrators of abuse and neglect and the child victims such as age, sex, relationship, socioeconomic status, race, and ethnicity.

(iii) The occupation or description listed under section 3 in which the individual who made the report fits, or other description if the individual is not within a group required to report under this act.

(iv) Statistics relating to the central registry such as number of individuals and their characteristics.

(v) Statistics relating to the basis for determining that reported cases of abuse or neglect are unsubstantiated.

(b) Policy related to child protective services including, but not limited to, major policy changes and court decisions affecting the administration of this act.

722.638 Submission of petition for authorization under §712A.2; conditions; request for termination of parental rights; conference. [M.S.A. 25.248(18)]

Sec. 18. (1) The department shall submit a petition for authorization by the court under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, if 1 or more of the following apply:

(a) The department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included 1 or more of the following:

(i) Abandonment of a young child.

(ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.

(iii) Battering, torture, or other severe physical abuse.

(iv) Loss or serious impairment of an organ or limb.

(v) Life threatening injury.

(vi) Murder or attempted murder.

(b) The department determines that there is risk of harm to the child and either of the following is true:

(i) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.

(ii) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of chapter XIIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.

(2) In a petition submitted as required by subsection (1), if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the family independence agency shall include a request for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIIA of 1939 PA 288, MCL 712A.19b.

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(3) If the department is considering petitioning for termination of parental rights at the initial dispositional hearing as authorized under section 19b of chapter XIIA of 1939 PA 288, MCL 712A.19b, even though the facts of the child's case do not require departmental action under subsection (1), the department shall hold a conference among the appropriate agency personnel to agree upon the course of action. The department shall notify the attorney representing the child of the time and place of the conference, and the attorney may attend. If an agreement is not reached at this conference, the department director or the director's designee shall resolve the disagreement after consulting the attorneys representing both the department and the child.

Repeal of 1998 PA 383.

Enacting section 1. 1998 PA 383 is repealed.

Effective date of §§722.622, 722.625, and 722.627.

Enacting section 2. Sections 2, 5, and 7 of the child protection law, 1975 PA 238, MCL 722.622, 722.625, and 722.627, as amended by this amendatory act, take effect April 1, 1999.

Effective date of §§722.627c, 722.627d, 722.627e, 722.627f, 722.627g, 722.627h, 722.627i, and 722.629a.

Enacting section 3. Sections 7c, 7d, 7e, 7f, 7g, 7h, 7i, and 9a of the child protection law, 1975 PA 238, as added by this amendatory act, take effect April 1, 1999.

This act is ordered to take immediate effect.

Approved December 29, 1998.

Filed with Secretary of State December 30, 1998.
