

HOUSE BILL No. 5964

April 25, 2002, Introduced by Reps. Bernero, Waters, George, Phillips and Schauer and referred to the Committee on Family and Children Services.

A bill to amend 1975 PA 238, entitled "Child protection law," by amending sections 5, 7, 7b, and 8 (MCL 722.625, 722.627, 722.627b, and 722.628), section 5 as amended by 1998 PA 428, section 7 as amended by 2000 PA 45, section 7b as added by 1997 PA 167, and section 8 as amended by 2000 PA 234.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) Except for records available under section
2 7(2)(a) and (b), the identity of a reporting person is confiden-
3 tial subject to disclosure only with the consent of that person
4 or by judicial process. A person acting in good faith who makes
5 a report, cooperates in an investigation, or assists in any other
6 requirement of this act is immune from civil or criminal
7 liability that might otherwise be incurred by that action. A
8 person making a report or assisting in any other requirement of

1 this act is presumed to have acted in good faith. This immunity
2 from civil or criminal liability extends only to acts done
3 ~~pursuant to~~ IN ACCORDANCE WITH this act and does not extend to
4 a negligent act that causes personal injury or death or to the
5 malpractice of a physician that results in personal injury or
6 death.

7 (2) UPON THE REQUEST OF A MEMBER OF THE STATE LEGISLATURE,
8 THE DEPARTMENT OR A CHILD FATALITY REVIEW TEAM SHALL GIVE THE
9 LEGISLATOR ACCESS TO A DEPARTMENT OR CHILD FATALITY REVIEW TEAM
10 REPORT, RECORD, OR OTHER MATERIAL THAT WAS COMPILED UNDER THIS
11 ACT AND THAT RELATES TO A CHILD WHO HAS DIED, BUT ONLY IF THE
12 LEGISLATOR IS 1 OR MORE OF THE FOLLOWING:

13 (A) SERVING THE LEGISLATIVE DISTRICT IN WHICH THE CHILD'S
14 DEATH OCCURRED.

15 (B) SERVING THE LEGISLATIVE DISTRICT IN WHICH THE CHILD
16 RESIDED AT THE TIME OF THE CHILD'S DEATH.

17 (C) A MEMBER OF A SENATE OR HOUSE STANDING COMMITTEE OR
18 APPROPRIATIONS SUBCOMMITTEE THAT HAS JURISDICTION OVER THE ISSUE
19 OF CHILD PROTECTION.

20 (3) SUBSECTION (2) DOES NOT APPLY TO INFORMATION MADE CONFIDENTIAL
21 BY SUBSECTION (1) OR A REPORT PROHIBITED FROM RELEASE
22 UNDER SECTION 7(8). ACCESS TO A REPORT, RECORD, OR OTHER MATERIAL
23 GIVEN AS REQUIRED BY THIS SECTION DOES NOT MAKE THE REPORT,
24 RECORD, OR OTHER MATERIAL SUBJECT TO THE FREEDOM OF INFORMATION
25 ACT, 1976 PA 442, MCL 15.231 TO 15.246.

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

1 (2) Unless ACCESS IS PROVIDED UNDER SECTION 5 OR UNLESS made
2 public as specified information released under section 7d, a
3 written report, document, or photograph filed with the department
4 as provided in this act is a confidential record available only
5 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.

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

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

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

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

23 (f) A person named in the report or record as a perpetrator
24 or alleged perpetrator of the child abuse or neglect or a victim
25 who is an adult at the time of the request, if the identity of
26 the reporting person is protected as provided in section 5.

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

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

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

20 (j) A lawyer-guardian ad litem or other attorney appointed
21 as provided by section 10.

22 (k) A child placing agency licensed under 1973 PA 116, MCL
23 722.111 to 722.128, for the purpose of investigating an applicant
24 for adoption, a foster care applicant or licensee or an employee
25 of a foster care applicant or licensee, an adult member of an
26 applicant's or licensee's household, or other persons in a foster
27 care or adoptive home who are directly responsible for the care

1 and welfare of children, to determine suitability of a home for
2 adoption or foster care. The child placing agency shall disclose
3 the information to a foster care applicant or licensee under 1973
4 PA 116, MCL 722.111 to 722.128, or to an applicant for adoption.

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

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

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

19 (o) A child fatality review team established under section
20 7b and authorized under that section to investigate and review a
21 child death.

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

25 (q) A citizen review panel established by the department.
26 Access under this subdivision shall be limited to information the

1 department determines is necessary for the panel to carry out its
2 prescribed duties.

3 (3) Subject to subsection (9), a person or entity to whom
4 information described in subsection (2) is disclosed shall make
5 the information available only to a person or entity described in
6 subsection (2). This subsection does not require a court pro-
7 ceeding to be closed that otherwise would be open to the public.

8 (4) If the department classifies a report of suspected child
9 abuse or neglect as a central registry case, the department shall
10 maintain a record in the central registry and, within 30 days
11 after the classification, shall notify in writing each individual
12 who is named in the record as a perpetrator of the child abuse or
13 neglect. The notice shall set forth the individual's right to
14 request expunction of the record and the right to a hearing if
15 the department refuses the request. The notice shall state that
16 the record may be released under section 7d. The notice shall
17 not identify the person reporting the suspected child abuse or
18 neglect.

19 (5) A person who is the subject of a report or record made
20 under this act may request the department to amend an inaccurate
21 report or record from the central registry and local office
22 file. A person who is the subject of a report or record made
23 under this act may request the department to expunge from the
24 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

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

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

14 (7) If the investigation of a report conducted under this
15 act fails to disclose evidence of abuse or neglect, the informa-
16 tion identifying the subject of the report shall be expunged from
17 the central registry. If evidence of abuse or neglect exists,
18 the department shall maintain the information in the central reg-
19 istry until the department receives reliable information that the
20 perpetrator of the abuse or neglect is dead.

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

1 (9) A member or staff member of a citizen review panel shall
2 not disclose identifying information about a specific child
3 protection case to an individual, partnership, corporation, asso-
4 ciation, governmental entity, or other legal entity. A member or
5 staff member of a citizen review panel is a member of a board,
6 council, commission, or statutorily created task force of a gov-
7 ernmental agency for the purposes of section 7 of 1964 PA 170,
8 MCL 691.1407. Information obtained by a citizen review panel is
9 not subject to the freedom of information act, 1976 PA 442, MCL
10 15.231 to 15.246.

11 Sec. 7b. (1) By January 1, 1999, each county may have in
12 place a standing child fatality review team. Two or more coun-
13 ties may appoint a single child fatality review team for those
14 counties. The membership of a child fatality review team shall
15 consist of at least all of the following:

16 (a) A county medical examiner or deputy county medical
17 examiner appointed under ~~1963~~ 1953 PA 181, MCL 52.201 to
18 52.216.

19 (b) A representative of a local law enforcement agency.

20 (c) A representative of the department.

21 (d) The county prosecuting attorney or a designated assist-
22 ant county prosecutor.

23 (e) A representative of the department of community health
24 or a local health department.

25 (2) A child fatality review team established under subsec-
26 tion (1) shall review each child fatality occurring in the county
27 or counties that established the child fatality review team.

1 (3) The department shall make available to each child
2 fatality review team established under subsection (1) profession-
3 al, interagency training and orientation on the review of child
4 fatalities. The department shall make available, as necessary,
5 training on specific types of child fatalities, investigation
6 techniques, and prevention initiatives.

7 (4) By January 1, 1998, the department shall establish a
8 multiagency, multidisciplinary advisory committee to identify and
9 make recommendations on policy and statutory changes pertaining
10 to child fatalities and to guide statewide prevention, education,
11 and training efforts.

12 (5) The advisory committee created under subsection (4) con-
13 sists of the following:

14 (a) Two representatives of the family independence agency.

15 (b) Two representatives of the department of community
16 health.

17 (c) One county medical examiner.

18 (d) One representative of law enforcement.

19 (e) One county prosecuting attorney.

20 (f) The children's ombudsman or his or her designee.

21 (6) Using the annual compilation of child fatalities
22 reported by the state registrar under part 28 of the public
23 health code, 1978 PA 368, MCL 333.2801 to 333.2899, and data
24 received from the child fatality review teams established under
25 subsection (1), the advisory committee established under subsec-
26 tion (4) shall publish an annual report on child fatalities. The

1 advisory committee shall include in the report, at a minimum, all
2 of the following:

3 (a) The total number of child fatalities and the type or
4 cause of each child fatality.

5 (b) The number of child fatalities that occurred while the
6 child was in foster care.

7 (c) The number of cases where the child's death occurred
8 within 5 years after family preservation or family
9 reunification.

10 (d) Trends in child fatalities.

11 (7) The advisory committee established under subsection (4)
12 shall break down the information required under subsection (6) by
13 county or by groups of counties as described in subsection (1).

14 The information contained in the report is public information.

15 The advisory committee shall not include identifying information
16 of persons named in the report. The advisory committee shall
17 transmit a copy of the report required under subsection (6) to
18 the governor and to the standing committees of the legislature
19 with jurisdiction over matters pertaining to child protection.

20 (8) Information obtained by a child fatality review team
21 established under subsection (1) is confidential and may be dis-
22 closed by the child fatality review team only to the department,
23 the children's ombudsman, the county prosecutor's office, local
24 law enforcement, ~~or~~ another child fatality review team, OR A
25 STATE LEGISLATOR AS PROVIDED IN SECTION 5. The information is
26 not subject to the freedom of information act, 1976 PA 442, MCL
27 15.231 to 15.246.

1 (9) An individual who is a member of a child fatality review
2 team established under subsection (1) or of the advisory commit-
3 tee established under subsection (4) is a member of a board,
4 council, commission, or statutorily created task force of a gov-
5 ernmental agency for the purposes of section 7 of 1964 PA 170,
6 MCL 691.1407.

7 Sec. 8. (1) Within 24 hours after receiving a report made
8 under this act, the department shall refer the report to the
9 prosecuting attorney if the report meets the requirements of
10 section 3(6) or shall commence an investigation of the child sus-
11 pected of being abused or neglected. Within 24 hours after
12 receiving a report whether from the reporting person or from the
13 department under section 3(6), the local law enforcement agency
14 shall refer the report to the department if the report meets the
15 requirements of section 3(7) or shall commence an investigation
16 of the child suspected of being abused or neglected. If the
17 child suspected of being abused is not in the physical custody of
18 the parent or legal guardian and informing the parent or legal
19 guardian would not endanger the child's health or welfare, the
20 agency or the department shall inform the child's parent or legal
21 guardian of the investigation as soon as the agency or the
22 department discovers the identity of the child's parent or legal
23 guardian.

24 (2) In the course of its investigation, the department shall
25 determine if the child is abused or neglected. The department
26 shall cooperate with law enforcement officials, courts of
27 competent jurisdiction, and appropriate state agencies providing

1 human services in relation to preventing, identifying, and
2 treating child abuse and neglect; shall provide, enlist, and
3 coordinate the necessary services, directly or through the pur-
4 chase of services from other agencies and professions; and shall
5 take necessary action to prevent further abuses, to safeguard and
6 enhance the child's welfare, and to preserve family life where
7 possible.

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

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

14 (b) The child is the victim of suspected sexual abuse or
15 sexual exploitation.

16 (c) Abuse or neglect resulting in severe physical injury to
17 the child requires medical treatment or hospitalization. For
18 purposes of this subdivision and section 17, "severe physical
19 injury" means brain damage, skull or bone fracture, subdural hem-
20 orrhage or hematoma, dislocation, sprains, internal injuries,
21 poisoning, burns, scalds, severe cuts, or any other physical
22 injury that seriously impairs the health or physical well-being
23 of a child.

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

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

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

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

14 (6) In each county, the prosecuting attorney and the depart-
15 ment shall develop and establish procedures for involving law
16 enforcement officials as provided in this section. In each
17 county, the prosecuting attorney and the department shall adopt
18 and implement standard child abuse and neglect investigation and
19 interview protocols using as a model the protocols developed by
20 the governor's task force on children's justice as published in
21 FIA Publication 794 (revised 8-98) and FIA Publication 779
22 (8-98), or an updated version of those publications.

23 (7) If there is reasonable cause to suspect that a child in
24 the care of or under the control of a public or private agency,
25 institution, or facility is an abused or neglected child, the
26 agency, institution, or facility shall be investigated by an
27 agency administratively independent of the agency, institution,

1 or facility being investigated. If the investigation produces
2 evidence of a violation of section 145c or sections 520b to 520g
3 of the Michigan penal code, 1931 PA 328, MCL 750.145c and
4 750.520b to 750.520g, the investigating agency shall transmit a
5 copy of the results of the investigation to the prosecuting
6 attorney of the county in which the agency, institution, or
7 facility is located.

8 (8) A school or other institution shall cooperate with the
9 department during an investigation of a report of child abuse or
10 neglect. Cooperation includes allowing access to the child with-
11 out parental consent if access is determined by the department to
12 be necessary to complete the investigation or to prevent abuse or
13 neglect of the child. However, the department shall notify the
14 person responsible for the child's health or welfare about the
15 department's contact with the child at the time or as soon after-
16 ward as the person can be reached. The department may delay the
17 notice if the notice would compromise the safety of the child or
18 child's siblings or the integrity of the investigation, but only
19 for the time 1 of those conditions exists.

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

22 (a) Before contact with the child, the department investiga-
23 tor shall review with the designated school staff person the
24 department's responsibilities under this act and the investiga-
25 tion procedure.

26 (b) After contact with the child, the department
27 investigator shall meet with the designated school staff person

1 and the child about the response the department will take as a
2 result of contact with the child. The department may also meet
3 with the designated school staff person without the child present
4 and share additional information the investigator determines may
5 be shared subject to the confidentiality provisions of this act.

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

9 (10) A child shall not be subjected to a search at a school
10 that requires the child to remove his or her clothing to expose
11 his buttocks or genitalia or her breasts, buttocks, or genitalia
12 unless the department has obtained an order from a court of com-
13 petent jurisdiction permitting such a search. If the access
14 occurs within a hospital, the investigation shall be conducted so
15 as not to interfere with the medical treatment of the child or
16 other patients.

17 (11) The department shall enter each report made under this
18 act that is the subject of a field investigation into the CPSI
19 system. The department shall maintain a report entered on the
20 CPSI system as required by this subsection until the child about
21 whom the investigation is made is 18 years old or until 10 years
22 after the investigation is commenced, whichever is later, or, if
23 the case is classified as a central registry case, until the
24 department receives reliable information that the perpetrator of
25 the abuse or neglect is dead. Unless ACCESS IS PROVIDED UNDER
26 SECTION 5 OR UNLESS made public as specified information released
27 under section 7d, a report that is maintained on the CPSI system

1 is confidential and is not subject to the disclosure requirements
2 of the freedom of information act, 1976 PA 442, MCL 15.231 to
3 15.246.

4 (12) After completing a field investigation and based on its
5 results, the department shall determine in which single category,
6 prescribed by section 8d, to classify the allegation of child
7 abuse or neglect.

8 (13) ~~Except as provided in~~ SUBJECT TO subsection (14),
9 upon completion of the investigation by the local law enforcement
10 agency or the department, the law enforcement agency or depart-
11 ment may inform the person who made the report as to the disposi-
12 tion of the report.

13 (14) If the person who made the report is mandated to report
14 under section 3, upon completion of the investigation by the
15 department, the department shall inform the person in writing as
16 to the disposition of the case and shall include in the informa-
17 tion at least all of the following:

18 (a) What determination the department made under subsection
19 (12) and the rationale for that decision.

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

22 (c) Notification that the information being conveyed is
23 confidential.

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

1 (16) Unless section 5 of chapter XII of the probate code of
2 1939, 1939 PA 288, MCL 712.5, requires a physician to report to
3 the department, the surrender of a newborn in compliance with
4 chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1
5 to 712.20, is not reasonable cause to suspect child abuse or
6 neglect and, therefore, is not subject to the section 3 reporting
7 requirement. This subsection does not apply to circumstances
8 that arise on or after the date that chapter XII of the probate
9 code of 1939, 1939 PA 288, MCL 712.1 to 712.20, is repealed.