

SENATE BILL No. 1383

June 9, 2010, Introduced by Senators SCOTT, HUNTER, JACOBS and OLSHOVE and referred to the Committee on Families and Human Services.

A bill to amend 1975 PA 238, entitled "Child protection law," by amending sections 2 and 7 (MCL 722.622 and 722.627), section 2 as amended by 2004 PA 563 and section 7 as amended by 2008 PA 300.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Adult foster care location authorized to care for a
3 child" means an adult foster care family home or adult foster care
4 small group home as defined in section 3 of the adult foster care
5 facility licensing act, 1979 PA 218, MCL 400.703, in which a child
6 is placed in accordance with section 5 of 1973 PA 116, MCL 722.115.

7 (b) "Attorney" means, if appointed to represent a child under
8 the provisions referenced in section 10, an attorney serving as the
9 child's legal advocate in the manner defined and described in

1 section 13a of chapter XIIIA of the probate code of 1939, 1939 PA
2 288, MCL 712A.13a, **OR AN ATTORNEY REPRESENTING A RESPONDENT IN A**
3 **PROCEEDING UNDER SECTION 2(B) OF CHAPTER XIIIA OF THE PROBATE CODE**
4 **OF 1939, 1939 PA 288, MCL 712A.2.**

5 (c) "Central registry" means the system maintained at the
6 department that is used to keep a record of all reports filed with
7 the department under this act in which relevant and accurate
8 evidence of child abuse or neglect is found to exist.

9 (d) "Central registry case" means a child protective services
10 case that the department classifies under sections 8 and 8d as
11 category I or category II. For a child protective services case
12 that was investigated before July 1, 1999, central registry case
13 means an allegation of child abuse or neglect that the department
14 substantiated.

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

16 (f) "Child abuse" means harm or threatened harm to a child's
17 health or welfare that occurs through nonaccidental physical or
18 mental injury, sexual abuse, sexual exploitation, or maltreatment,
19 by a parent, a legal guardian, or any other person responsible for
20 the child's health or welfare or by a teacher, a teacher's aide, or
21 a member of the clergy.

22 (g) "Child care organization" means that term as defined in
23 section 1 of 1973 PA 116, MCL 722.111.

24 (h) "Child care provider" means an owner, operator, employee,
25 or volunteer of a child care organization or of an adult foster
26 care location authorized to care for a child.

27 (i) "Child care regulatory agency" means the department of

1 ~~consumer and industry services~~ or a successor state department that
2 is responsible for the licensing or registration of child care
3 organizations or the licensing of adult foster care locations
4 authorized to care for a child.

5 (j) "Child neglect" means harm or threatened harm to a child's
6 health or welfare by a parent, legal guardian, or any other person
7 responsible for the child's health or welfare that occurs through
8 either of the following:

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

11 (ii) Placing a child at an unreasonable risk to the child's
12 health or welfare by failure of the parent, legal guardian, or
13 other person responsible for the child's health or welfare to
14 intervene to eliminate that risk when that person is able to do so
15 and has, or should have, knowledge of the risk.

16 (k) "Citizen review panel" means a panel established as
17 required by section 106 of title I of the child abuse prevention
18 and treatment act, Public Law 93-247, 42 ~~U.S.C.~~ USC 5106a.

19 (l) "Member of the clergy" means a priest, minister, rabbi,
20 Christian science practitioner, or other religious practitioner, or
21 similar functionary of a church, temple, or recognized religious
22 body, denomination, or organization.

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

25 (n) "CPSI system" means the child protective service
26 information system, which is an internal data system maintained
27 within and by the department, and which is separate from the

1 central registry and not subject to section 7.

2 (o) "Department" means the ~~family independence agency~~

3 **DEPARTMENT OF HUMAN SERVICES.**

4 (p) "Director" means the director of the department.

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

7 (r) "Lawyer-guardian ad litem" means an attorney appointed
8 under section 10 who has the powers and duties referenced by
9 section 10.

10 (s) "Local office file" means the system used to keep a record
11 of a written report, document, or photograph filed with and
12 maintained by a county or a regionally based office of the
13 department.

14 (t) "Nonparent adult" means a person who is 18 years of age or
15 older and who, regardless of the person's domicile, meets all of
16 the following criteria in relation to a child:

17 (i) Has substantial and regular contact with the child.

18 (ii) Has a close personal relationship with the child's parent
19 or with a person responsible for the child's health or welfare.

20 (iii) Is not the child's parent or a person otherwise related to
21 the child by blood or affinity to the third degree.

22 (u) "Person responsible for the child's health or welfare"
23 means a parent, legal guardian, person 18 years of age or older who
24 resides for any length of time in the same home in which the child
25 resides, or, except when used in section 7(2)(e) or 8(8), nonparent
26 adult; or an owner, operator, volunteer, or employee of 1 or more
27 of the following:

1 (i) A licensed or registered child care organization.

2 (ii) A licensed or unlicensed adult foster care family home or
3 adult foster care small group home as defined in section 3 of the
4 adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

5 (v) "Relevant evidence" means evidence having a tendency to
6 make the existence of a fact that is at issue more probable than it
7 would be without the evidence.

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

11 (x) "Sexual exploitation" includes allowing, permitting, or
12 encouraging a child to engage in prostitution, or allowing,
13 permitting, encouraging, or engaging in the photographing, filming,
14 or depicting of a child engaged in a listed sexual act as defined
15 in section 145c of the Michigan penal code, 1931 PA 328, MCL
16 750.145c.

17 (y) "Specified information" means information in a children's
18 protective services case record related specifically to the
19 department's actions in responding to a complaint of child abuse or
20 neglect. Specified information does not include any of the
21 following:

22 (i) Except as provided in this subparagraph regarding a
23 perpetrator of child abuse or neglect, personal identification
24 information for any individual identified in a child protective
25 services record. The exclusion of personal identification
26 information as specified information prescribed by this
27 subparagraph does not include personal identification information

1 identifying an individual alleged to have perpetrated child abuse
2 or neglect, which allegation has been classified as a central
3 registry case.

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

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

8 (iv) Any information not related to the department's actions in
9 responding to a report of child abuse or neglect.

10 (z) "Structured decision-making tool" means the department
11 document labeled "DSS-4752 (P3) (3-95)" or a revision of that
12 document that better measures the risk of future harm to a child.

13 (aa) "Substantiated" means a child protective services case
14 classified as a central registry case.

15 (bb) "Unsubstantiated" means a child protective services case
16 the department classifies under sections 8 and 8d as category III,
17 category IV, or category V.

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

20 (2) Unless made public as specified information released under
21 section 7d, a written report, document, or photograph filed with
22 the department as provided in this act is a confidential record
23 available only to 1 or more of the following:

24 (a) A legally mandated public or private child protective
25 agency investigating a report of known or suspected child abuse or
26 neglect or a legally mandated public or private child protective
27 agency, ~~or~~ foster care agency, **OR OTHER CHILD CARE ORGANIZATION**

1 prosecuting a disciplinary action against its own employee
2 involving child protective services or foster records.

3 (b) A police or other law enforcement agency investigating a
4 report of known or suspected child abuse or neglect, **A CRIME**
5 **INVOLVING HARM TO A CHILD, OR A VIOLATION OF THIS ACT.**

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

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

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

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

22 (g) A court that determines the information is necessary to
23 decide an issue before the court **OR A COURT WITH JURISDICTION OVER**
24 **ABUSE OR NEGLECT MATTERS UNDER SECTION 2(B) OF CHAPTER XIIA OF THE**
25 **PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.2, TO ADVISE THE COURT**
26 **OF PRIOR CHILD PROTECTIVE SERVICES HISTORY.**

27 (h) A grand jury that determines the information is necessary

1 to conduct the grand jury's official business.

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

16 (j) A lawyer-guardian ad litem or other attorney appointed as
17 provided by section 10 **OR AN ATTORNEY REPRESENTING A RESPONDENT IN**
18 **A PROCEEDING UNDER SECTION 2(B) OF CHAPTER XIIA OF THE PROBATE CODE**
19 **OF 1939, 1939 PA 288, MCL 712A.2.**

20 (k) A child placing agency licensed under 1973 PA 116, MCL
21 722.111 to 722.128, **OR LICENSED UNDER THE LAWS OF ANOTHER**
22 **JURISDICTION**, for the purpose of investigating an applicant for
23 adoption, a foster care applicant or licensee or an employee of a
24 foster care applicant or licensee, an adult member of an
25 applicant's or licensee's household, or other persons in a foster
26 care or adoptive home who are directly responsible for the care and
27 welfare of children, to determine suitability of a home for

1 adoption or foster care. The child placing agency shall disclose
2 the information to a foster care applicant or licensee under 1973
3 PA 116, MCL 722.111 to 722.128, or to an applicant for adoption.

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

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

15 (n) The children's ombudsman appointed under the children's
16 ombudsman act, 1994 PA 204, MCL 722.921 to 722.932.

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

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

23 (q) A citizen review panel established by the department.
24 Access under this subdivision is limited to information the
25 department determines is necessary for the panel to carry out its
26 prescribed duties.

27 (r) A child care regulatory agency.

1 (s) A foster care review board for the purpose of meeting the
2 requirements of 1984 PA 422, MCL 722.131 to 722.139a.

3 (t) A local friend of the court office.

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

9 (4) If the department classifies a report of suspected child
10 abuse or neglect as a central registry case, the department shall
11 maintain a record in the central registry and, within 30 days after
12 the classification, shall notify in writing each person who is
13 named in the record as a perpetrator of the child abuse or neglect.
14 The notice shall set forth the person's right to request expunction
15 of the record and the right to a hearing if the department refuses
16 the 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) 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 file. A
22 person who is the subject of a report or record made under this act
23 may request the department to expunge from the central registry a
24 report or record in which no relevant and accurate evidence of
25 abuse or neglect is found to exist. A report or record filed in a
26 local office file is not subject to expunction except as the
27 department authorizes, if considered in the best interest of the

1 child.

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

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

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

25 (9) A member or staff member of a citizen review panel shall
26 not disclose identifying information about a specific child
27 protection case to an individual, partnership, corporation,

1 association, governmental entity, or other legal entity. A member
2 or staff member of a citizen review panel is a member of a board,
3 council, commission, or statutorily created task force of a
4 governmental agency for the purposes of section 7 of 1964 PA 170,
5 MCL 691.1407. Information obtained by a citizen review panel is not
6 subject to the freedom of information act, 1976 PA 442, MCL 15.231
7 to 15.246.

8 (10) An agency obtaining a confidential record under
9 subsection (2)(a) may seek an order from the court having
10 jurisdiction over the child or from the family division of the
11 Ingham county circuit court that allows the agency to disseminate
12 confidential child protective services or foster care information
13 to pursue sanctions for alleged dereliction, malfeasance, or
14 misfeasance of duty against an employee of the agency, to a
15 recognized labor union representative of the employee's bargaining
16 unit, or to an arbitrator or an administrative law judge who
17 conducts a hearing involving the employee's alleged dereliction,
18 malfeasance, or misfeasance of duty to be used solely in connection
19 with that hearing. Information released under this subsection shall
20 be released in a manner that maintains the greatest degree of
21 confidentiality while allowing review of employee performance.