

HOUSE BILL No. 5641

May 16, 2012, Introduced by Rep. O'Brien and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1975 PA 238, entitled
"Child protection law,"
by amending sections 7 and 8d (MCL 722.627 and 722.628d), section 7
as amended by 2011 PA 70 and section 8d as amended by 2006 PA 618.

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

7 (a) A legally mandated public or private child protective
8 agency investigating a report of known or suspected child abuse or
9 neglect or a legally mandated public or private child protective

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

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

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. In the event of a child's death,
24 a court that had jurisdiction over that child under section 2(b) of
25 chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

26 (h) A grand jury that determines the information is necessary
27 to conduct the grand jury's official business.

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

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

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

27 (l) Family division of circuit court staff authorized by the

1 court to investigate foster care applicants and licensees,
2 employees of foster care applicants and licensees, adult members of
3 the applicant's or licensee's household, and other persons in the
4 home who are directly responsible for the care and welfare of
5 children, for the purpose of determining the suitability of the
6 home for foster care. The court shall disclose this information to
7 the applicant or licensee.

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

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

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

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

19 (q) A citizen review panel established by the department.
20 Access under this subdivision is limited to information the
21 department determines is necessary for the panel to carry out its
22 prescribed duties.

23 (r) A child care regulatory agency.

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

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

27 (3) Subject to subsection (9), a person or entity to whom

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

5 (4) If the department classifies a report of suspected child
6 abuse or neglect as a central registry case, the department shall
7 maintain a record in the central registry and, within 30 days after
8 the classification, shall notify in writing each person who is
9 named in the record as a perpetrator of the child abuse or neglect.

10 **THE NOTICE SHALL BE SENT BY REGISTERED OR CERTIFIED MAIL, RETURN**
11 **RECEIPT REQUESTED, AND DELIVERY RESTRICTED TO THE ADDRESSEE.** The
12 notice shall set forth the person's right to request expunction of
13 the record and the right to a hearing if the department refuses the
14 request. The notice shall state that the record may be released
15 under section 7d. The notice shall not identify the person
16 reporting the suspected child abuse or neglect.

17 (5) A person who is the subject of a report or record made
18 under this act may request the department to amend an inaccurate
19 report or record from the central registry and local office file. A
20 person who is the subject of a report or record made under this act
21 may request the department to expunge from the central registry a
22 report or record ~~in which no relevant and accurate evidence of~~
23 ~~abuse or neglect is found to exist~~ **BY REQUESTING A HEARING UNDER**
24 **SUBSECTION (6).** A report or record filed in a local office file is
25 not subject to expunction except as the department authorizes, if
26 considered in the best interest of the child.

27 ~~(6) If the department refuses a request for amendment or~~

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~~expunction under subsection (5), or fails to act within 30 days~~

~~after receiving the request, A PERSON WHO IS THE SUBJECT OF A~~

~~REPORT OR RECORD MADE UNDER THIS ACT MAY, WITHIN 90 DAYS FROM THE~~

~~DATE OF SERVICE OF NOTICE OF THE RIGHT TO A HEARING, REQUEST THE~~

~~DEPARTMENT HOLD A HEARING TO REVIEW THE REQUEST FOR AMENDMENT OR~~

~~EXPUNCTION. IF THE HEARING REQUEST IS MADE WITHIN 90 DAYS OF THE~~

~~NOTICE, 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 held~~

~~before a hearing officer appointed by the department and shall be~~

~~conducted as prescribed by the administrative procedures act of~~

1969, 1969 PA 306, MCL 24.201 to 24.328. [THE DEPARTMENT MAY, FOR GOOD CAUSE, HOLD A HEARING UNDER THIS SUBSECTION IF THE DEPARTMENT DETERMINES THAT THE PERSON WHO IS THE SUBJECT OF THE REPORT OR RECORD SUBMITTED THE REQUEST FOR A HEARING WITHIN 60 DAYS AFTER THE 90-DAY NOTICE PERIOD EXPIRED.]

(7) If the investigation of a report conducted under this act

~~fails to disclose evidence of~~ DOES NOT SHOW abuse or neglect BY A

PREPONDERANCE OF EVIDENCE, OR IF A COURT DISMISSES A PETITION BASED

ON THE MERITS OF THE PETITION FILED UNDER SECTION 2(B) OF CHAPTER

XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.2, BECAUSE

THE PETITIONER HAS FAILED TO ESTABLISH THAT THE CHILD COMES WITHIN

THE JURISDICTION OF THE COURT, the information identifying the

subject of the report shall be expunged from the central registry.

If A PREPONDERANCE OF evidence of abuse or neglect exists, OR IF A

COURT TAKES JURISDICTION OF THE CHILD UNDER SECTION 2(B) OF CHAPTER

XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.2, the

department shall maintain the information in the central registry

AS FOLLOWS:

1 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), FOR A PERSON LISTED
2 AS A PERPETRATOR IN CATEGORY I OR II UNDER SECTION 8D, EITHER AS A
3 RESULT OF AN INVESTIGATION OR AS A RESULT OF THE RECLASSIFICATION
4 OF A CASE, THE DEPARTMENT SHALL MAINTAIN THE INFORMATION IN THE
5 CENTRAL REGISTRY FOR 10 YEARS.

6 (B) FOR A PERSON LISTED AS A PERPETRATOR IN CATEGORY I OR II
7 UNDER SECTION 8D THAT INVOLVED ANY OF THE CIRCUMSTANCES LISTED IN
8 SECTION 17(1) OR 18(1), THE DEPARTMENT SHALL MAINTAIN THE
9 INFORMATION IN THE CENTRAL REGISTRY until the department receives
10 reliable information that the perpetrator of the abuse or neglect
11 is dead.

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

18 (9) A member or staff member of a citizen review panel shall
19 not disclose identifying information about a specific child
20 protection case to an individual, partnership, corporation,
21 association, governmental entity, or other legal entity. A member
22 or staff member of a citizen review panel is a member of a board,
23 council, commission, or statutorily created task force of a
24 governmental agency for the purposes of section 7 of 1964 PA 170,
25 MCL 691.1407. Information obtained by a citizen review panel is not
26 subject to the freedom of information act, 1976 PA 442, MCL 15.231
27 to 15.246.

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

15 Sec. 8d. (1) For the department's determination required by
16 section 8, the categories, and the departmental response required
17 for each category, are the following:

18 (a) Category V - services not needed. Following a field
19 investigation, the department determines that there is no evidence
20 of child abuse or neglect.

21 (b) Category IV - community services recommended. Following a
22 field investigation, the department determines that there is not a
23 preponderance of evidence of child abuse or neglect, but the
24 structured decision-making tool indicates that there is future risk
25 of harm to the child. The department shall assist the child's
26 family in voluntarily participating in community-based services
27 commensurate with the risk to the child.

1 (c) Category III - community services needed. The department
2 determines that there is a preponderance of evidence of child abuse
3 or neglect, and the structured decision-making tool indicates a low
4 or moderate risk of future harm to the child. The department shall
5 assist the child's family in receiving community-based services
6 commensurate with the risk to the child. If the family does not
7 voluntarily participate in services, or the family voluntarily
8 participates in services, but does not progress toward alleviating
9 the child's risk level, the department shall consider reclassifying
10 the case as category II.

11 (d) Category II - child protective services required. The
12 department determines that there is evidence of child abuse or
13 neglect, and the structured decision-making tool indicates a high
14 or intensive risk of future harm to the child. The department shall
15 open a protective services case and provide the services necessary
16 under this act. The department shall also list the perpetrator of
17 the child abuse or neglect, based on the report that was the
18 subject of the field investigation, on the central registry, either
19 by name or as "unknown" if the perpetrator has not been identified
20 **AS PROVIDED IN SECTION 7(7).**

21 (e) Category I - court petition required. The department
22 determines that there is evidence of child abuse or neglect and 1
23 or more of the following are true:

24 (i) A court petition is required under another provision of
25 this act.

26 (ii) The child is not safe and a petition for removal is
27 needed.

1 (iii) The department previously classified the case as category
2 II and the child's family does not voluntarily participate in
3 services.

4 (iv) There is a violation, involving the child, of a crime
5 listed or described in section 8a(1)(b), (c), (d), or (f) or of
6 child abuse in the first or second degree as prescribed by section
7 136b of the Michigan penal code, 1931 PA 328, MCL 750.136b.

8 (2) In response to a category I classification, the department
9 shall do all of the following:

10 (a) If a court petition is not required under another
11 provision of this act, submit a petition for authorization by the
12 court under section 2(b) of chapter XIIIA of the probate code of
13 1939, 1939 PA 288, MCL 712A.2.

14 (b) Open a protective services case and provide the services
15 necessary under this act.

16 (c) List the perpetrator of the child abuse or neglect, based
17 on the report that was the subject of the field investigation, on
18 the central registry, either by name or as "unknown" if the
19 perpetrator has not been identified **AS PROVIDED IN SECTION 7(7)**.

20 (3) The department is not required to use the structured
21 decision-making tool for a nonparent adult who resides outside the
22 child's home who is the victim or alleged victim of child abuse or
23 neglect or for an owner, operator, volunteer, or employee of a
24 licensed or registered child care organization or a licensed or
25 unlicensed adult foster care family home or adult foster care small
26 group home as those terms are defined in section 3 of the adult
27 foster care facility licensing act, 1979 PA 218, MCL 400.703.

1 (4) If following a field investigation the department
2 determines that there is a preponderance of evidence that an
3 individual listed in subsection (3) was the perpetrator of child
4 abuse or neglect, the department shall list the perpetrator of the
5 child abuse or neglect on the central registry **AS PROVIDED IN**
6 **SECTION 7(7)**.

7 (5) The department shall furnish a written report described in
8 subsection (6) to the appropriate legislative standing committees
9 and the house and senate appropriations subcommittees for the
10 department within 4 months after each of the following time
11 periods:

12 (a) Beginning October 1, 2005 and ending September 30, 2006.

13 (b) Beginning October 1, 2006 and ending September 30, 2007.

14 (c) Beginning October 1, 2007 and ending September 30, 2008.

15 (6) The department shall include in a report required by
16 subsection (5) at least all of the following information regarding
17 all families that were classified in category III at some time
18 during the time period covered by the report:

19 (a) The total number of families classified in category III.

20 (b) The number of cases in category III closed or reclassified
21 during the time period covered by the report categorized as
22 follows:

23 (i) The number of cases referred to voluntary community
24 services and closed with no additional monitoring.

25 (ii) The number of cases referred to voluntary community
26 services and monitored for up to 90 days.

27 (iii) The number of cases for which the department entered more

1 than 1 determination that there was evidence of child abuse or
2 neglect.

3 (iv) The number of cases that the department reclassified from
4 category III to category II.

5 (v) The number of cases that the department reclassified from
6 category III to category I.

7 (vi) The number of cases that the department reclassified from
8 category III to category I that resulted in a removal.

9 (c) For the periods described in subsection (5)(b) and (c),
10 the number of cases that the department reclassified in each of
11 subparagraphs (iv), (v), and (vi) of subdivision (b) that were
12 referred to and provided voluntary community services before being
13 reclassified by the department.