HOUSE BILL No. 4261

February 21, 1989, Introduced by Reps. Hunter, DeMars, Brown, Berman, Murphy, Ciaramitaro, Joe Young, Jr., Gire, Scott, Honigman, Jondahl. Wallace, Webb, Kilpatrick, Bankes, Stabenow, Saunders, Martin, Leland, Barns and Hollister and referred to the Committee on Social Services and Youth.

A bill to amend the title and sections 2, 3, 4, 6, 7, 8, and 9 of Act No. 238 of the Public Acts of 1975, entitled as amended "Child protection law,"

sections 2, 3, 8, and 9 as amended by Act No. 372 of the Public Acts of 1988 and sections 4, 6, and 7 as amended by Act No. 418 of the Public Acts of 1984, being sections 722.622, 722.623, 722.624, 722.626, 722.627, 722.628, and 722.629 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- Section 1. The title and sections 2, 3, 4, 6, 7, 8, and 9

 2 of Act No. 238 of the Public Acts of 1975, sections 2, 3, 8, and
- 3 9 as amended by Act No. 372 of the Public Acts of 1988 and sec-
- 4 tions 4, 6, and 7 as amended by Act No. 418 of the Public Acts of
- 5 1984, being sections 722.622, 722.623, 722.624, 722.626, 722.627,

00593'89 j MGM

- 1 722.628, and 722.629 of the Michigan Compiled Laws, are amended 2 to read as follows:
- 3 TITLE
- 4 An act to require the reporting of child abuse and neglect
- 5 by certain persons; to permit the reporting of child abuse and
- 6 neglect by all persons; to provide for the protection of children
- 7 who are abused or neglected; to authorize limited detainment in
- 8 protective custody; to authorize medical examinations; to pre-
- 9 scribe the powers and duties of the -state department of social-
- 10 CHILDREN AND FAMILY services AGENCY to prevent child abuse and
- 11 neglect; to prescribe certain powers and duties of local law
- 12 enforcement agencies; to safeguard and enhance the welfare of
- 13 children and preserve family life; to provide for the appointment
- 14 of legal counsel; to provide for the abrogation of privileged
- 15 communications; to provide civil and criminal immunity for cer-
- 16 tain persons; to provide rules of evidence in certain cases; to
- 17 provide for confidentiality of records; to provide for the expun-
- 18 gement of certain records; to prescribe penalties; and to repeal
- 19 certain acts and parts of acts.
- 20 Sec. 2. As used in this act:
- 21 (A) "AGENCY" MEANS THE CHILDREN AND FAMILY SERVICES AGENCY
- 22 CREATED UNDER THE CHILDREN AND FAMILY SERVICES AGENCY ACT.
- 23 (B) (a) "Central registry" means the system or organized
- 24 mode of keeping a record of all reports filed with the
- 25 -department AGENCY pursuant to this act in which relevant and
- 26 accurate evidence of child abuse or neglect is found to exist and
- 27 which is maintained at the -department AGENCY.

- (C) $\frac{(b)}{(b)}$ "Child" means a person under 18 years of age.
- 2 (D) -(c)- "Child abuse" means harm or threatened harm by a
- 3 person to a child's health or welfare which occurs through nonac-
- 4 cidental physical or mental injury; sexual abuse; sexual exploi-
- 5 tation; or maltreatment.
- 6 (E) $\frac{-(d)}{}$ "Child neglect" means harm to a child's health or
- 7 welfare by a parent, legal guardian, or person who has custodial
- 8 care of the child which occurs through either of the following:
- 9 (i) Negligent treatment, including the failure to provide
- 10 adequate food, clothing, shelter, or medical care.
- (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 person who has custodial care of the child to intervene to elimi-
- 14 nate that risk when that person is able to do so and has knowl-
- 15 edge of the risk.
- 16 (F) "DISTRICT AGENCY" MEANS A DISTRICT CHILDREN AND FAMILY
- 17 SERVICES AGENCY CREATED UNDER THE CHILDREN AND FAMILY SERVICES
- 18 ACT.
- 19 (G) (e) "Sexual abuse" means engaging in sexual contact or
- 20 sexual penetration as defined in section 520a of the Michigan
- 21 penal code, Act No. 328 of the Public Acts of 1931, being section
- 22 750.520a of the Michigan Compiled Laws, with a child.
- 23 (H) (f) "Sexual exploitation" includes allowing, permit-
- 24 ting, or encouraging a child to engage in prostitution, or allow-
- 25 ing, permitting, encouraging, or engaging in the photographing,
- 26 filming, or depicting of a child engaged in a listed sexual act

- 1 as defined in section 145c of Act No. 328 of the Public Acts of
- 2 1931, being section 750.145c of the Michigan Compiled Laws.
- 3 (I) -(g)- "Relevant evidence" means evidence having a ten-
- 4 dency to make the existence of a fact that is at issue more prob-
- 5 able than it would be without the evidence.
- 6 (h) "Department" means the state department of social
- 7 services.
- 8 (J) (i) "Expunge" means to physically remove or eliminate
- 9 and destroy a record or report.
- 10 (K) (j) "Local office file" means the system or organized
- 11 mode of keeping a record of a written report, document, or photo-
- 12 graph filed with and maintained by a -county or a regionally
- 13 based office of DISTRICT AGENCY OR the department AGENCY.
- 14 (ℓ) (ℓ) "Person responsible for the child's health or
- 15 welfare" means a parent, legal guardian, person 18 years of age
- 16 or older who resides for any length of time in the same home in
- 17 which the child resides, or a person who cares for the child in a
- 18 licensed or unlicensed day care center, group day care home, or
- 19 family day care home as defined in section 1 of Act No. 116 of
- 20 the Public Acts of 1973, being section 722.111 of the Michigan
- 21 Compiled Laws.
- Sec. 3. (1) A physician, coroner, dentist, medical examin-
- 23 er, nurse, a person licensed to provide emergency medical care,
- 24 audiologist, psychologist, family therapist, certified social
- 25 worker, social worker, social work technician, school administra-
- 26 tor, school counselor or teacher, law enforcement officer, or
- 27 regulated child care provider who has reasonable cause to suspect

- 1 child abuse or neglect shall make immediately, by telephone or
- 2 otherwise, an oral report, or cause an oral report to be made, of
- 3 the suspected child abuse or neglect to the -department AGENCY.
- 4 Within 72 hours after making the oral report, the reporting
- 5 person shall file a written report as required in this act. If
- 6 the reporting person is a member of the staff of a hospital,
- 7 agency, or school, the reporting person shall notify the person
- 8 in charge of the hospital, agency, or school of his or her find-
- 9 ing and that the report has been made, and shall make a copy of
- 10 the written report available to the person in charge. One report
- 11 from a hospital, agency, or school shall be considered adequate
- 12 to meet the reporting requirement. A member of the staff of a
- 13 hospital, agency, or school shall not be dismissed or otherwise
- 14 penalized for making a report required by this act or for cooper-
- 15 ating in an investigation.
- 16 (2) The written report shall contain the name of the child
- 17 and a description of the abuse or neglect. If possible, the
- 18 report shall contain the names and addresses of the child's par-
- 19 ents, the child's quardian, the persons with whom the child
- 20 resides, and the child's age. The report shall contain other
- 21 information available to the reporting person which might estab-
- 22 lish the cause of the abuse or neglect, and the manner in which
- 23 the abuse or neglect occurred.
- 24 (3) The department AGENCY shall inform the reporting
- 25 person of the required contents of the written report at the time
- 26 the oral report is made by the reporting person.

- 1 (4) The written report required in this section shall be
- 2 mailed or otherwise transmitted to the county department of
- 3 social services of DISTRICT AGENCY IN the county in which the
- 4 child suspected of being abused or neglected is found.
- 5 (5) Upon receipt of a written report of suspected child
- 6 abuse or neglect, the -department AGENCY may provide copies to
- 7 the prosecuting attorney and the probate court of the counties in
- 8 which the child suspected of being abused or neglected resides
- 9 and is found.
- 10 (6) If the report or subsequent investigation indicates a
- 11 violation of sections 136b and 145c or sections 520b to 520g of
- 12 the Michigan penal code, Act No. 328 of the Public Acts of 1931,
- 13 being sections 750.136b, 750.145c and 750.520b to 750.520g of the
- 14 Michigan Compiled Laws, or if the report or subsequent investiga-
- 15 tion indicates that the suspected abuse was not committed by a
- 16 person responsible for the child's health or welfare, and the
- 17 -department AGENCY believes that the report has basis in fact,
- 18 the -department- AGENCY shall transmit a copy of the written
- 19 report and the results of any investigation to the prosecuting
- 20 attorney of the counties in which the child resides and is
- 21 found.
- 22 (7) If a local law enforcement agency receives a written
- 23 report of suspected child abuse or neglect, whether from the
- 24 reporting person or the -department AGENCY, the report or subse-
- 25 quent investigation indicates that the abuse or neglect was com-
- 26 mitted by a person responsible for the child's health or welfare,
- 27 and the local law enforcement agency believes that the report has

- 1 basis in fact, the local law enforcement agency shall provide a
- 2 copy of the written report and the results of any investigation
- 3 to the county department of social services of. AGENCY OR DIS-
- 4 TRICT AGENCY IN the county in which the abused or neglected child
- 5 is found. Nothing in this subsection or subsection (6) shall be
- 6 construed to relieve the -department AGENCY of its responsibil-
- 7 ity to investigate reports of suspected child abuse or neglect
- 8 under this act.
- 9 (8) For purposes of this act, the pregnancy of a child less.
- 10 than 12 years of age or the presence of a venereal disease in a
- 11 child who is over 1 month of age but less than 12 years of age
- 12 shall be reasonable cause to suspect child abuse and neglect have
- 13 occurred.
- 14 Sec. 4. In addition to those persons required to report
- 15 child abuse or neglect under section 3, any person, including a
- 16 child, who has reasonable cause to suspect child abuse or neglect
- 17 may report the matter to the department AGENCY or a law
- 18 enforcement agency.
- 19 Sec. 6. (1) If a child suspected of being abused or
- 20 neglected is admitted to a hospital or brought to a hospital for
- 21 outpatient services and the attending physician determines that
- 22 the release of the child would endanger the child's health or
- 23 welfare, the attending physician shall notify the person in
- 24 charge and the -department AGENCY. The person in charge may
- 25 detain the child in temporary protective custody until the next
- 26 regular business day of the probate court, at which time the
- 27 probate court shall order the child detained in the hospital or

- 1 in some other suitable place pending a preliminary hearing as
- 2 required by section 14 of chapter -12A- XIIA of Act No. 288 of
- 3 the Public Acts of 1939, as amended, being section 712A.14 of the
- 4 Michigan Compiled Laws, or order the child released to the
- 5 child's parent, guardian, or custodian.
- 6 (2) When a child suspected of being an abused or neglected
- 7 child is seen by a physician, the physician shall make the neces-
- 8 sary examinations, which may include physical examinations,
- 9 x-rays, photographs, laboratory studies, and other pertinent
- 10 studies. The physician's written report to the department
- 11 AGENCY shall contain summaries of the evaluation, including medi-
- 12 cal test results.
- (3) If a report is made by a person other than a physician,
- 14 or if the physician's report is not complete, the -department-
- 15 AGENCY may request a court order for a medical evaluation of the
- 16 child. The department AGENCY shall have a medical evaluation
- 17 made without a court order if the child's health is seriously
- 18 endangered and a court order cannot be obtained.
- 19 Sec. 7. (1) The -department AGENCY shall maintain a cen-
- 20 tral registry system to carry out the intent of this act. A
- 21 written report, document, or photograph filed with the
- 22 -department AGENCY pursuant to this act shall be a confidential
- 23 record 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
- 26 or neglect.

- (b) A police or other law enforcement agency investigating a
 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.
- (f) A person named in the report or record, if the identity
- 16 of the reporting person is protected pursuant to section 5.
- 17 (q) A court which determines the information is necessary to
- 18 decide an issue before the court.
- (h) A grand jury which 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, except information identifying a
- 23 person named in the report or record shall not be made available
- 24 unless the -department- AGENCY has obtained that person's written
- 25 consent. The person, agency, or organization shall not conduct a
- 26 personal interview with a family without the family's prior
- 27 consent and shall not disclose information which would identify

- 1 the child or the child's family or other identifying
- 2 information.
- 3 (j) A person appointed as legal counsel pursuant to
- 4 section 10.
- 5 (2) A person or entity to whom a report, document, or photo-
- 6 graph is made available shall make the report, document, or pho-
- 7 tograph available only to a person or entity described in
- 8 subsection (1)(a) to (j). This subsection shall not be construed
- 9 to require a court proceeding which otherwise would be open to
- 10 the public to be closed.
- 11 (3) A person who is the subject of a report or record made
- 12 pursuant to this act may request the -department- AGENCY to amend
- 13 an inaccurate report or record from the central registry and
- 14 local office file. A person who is the subject of a report or
- 15 record made pursuant to this act may request the -department -
- 16 AGENCY to expunge from the central registry a report or record in
- 17 which no relevant and accurate evidence of abuse or neglect is
- 18 found to exist. A report or record filed in a local office file
- 19 shall not be subject to expunction except as the -department-
- 20 AGENCY shall authorize, when considered in the best interest of
- 21 the child. If the -department AGENCY refuses the request for
- 22 amendment or expunction, or fails to act within 30 days after
- 23 receiving the request, the person shall be granted a hearing to
- 24 determine by a preponderance of the evidence whether the report
- 25 or record in whole or in part should be amended or expunged from
- 26 the central registry on the grounds that the report or record is
- 27 not relevant or accurate evidence of abuse or neglect. The

- 1 hearing shall be before a hearing officer appointed by the
- 2 -department AGENCY and shall be conducted pursuant to the admin-
- 3 istrative procedures act of 1969, Act No. 306 of the Public Acts
- 4 of 1969, as amended, being sections 24.201 to $\frac{24.315}{24.328}$ 24.328 of
- 5 the Michigan Compiled Laws. If the investigation of a report
- 6 conducted pursuant to this act fails to disclose evidence of
- 7 abuse or neglect, the information identifying the subject of the
- 8 report shall be expunded from the central registry. If evidence
- 9 of abuse or neglect exists, the information identifying the
- 10 subject of the report shall be expunded when the child alleged to
- 11 be abused or neglected reaches the age of 18, or 10 years after
- 12 the report is received by the -department AGENCY, whichever
- 13 occurs later.
- 14 Sec. 8. (1) Within 24 hours after receiving a report made
- 15 pursuant to this act, the department AGENCY shall refer the
- 16 report to the prosecuting attorney if the report meets the
- 17 requirements of section 3(6) or shall commence an investigation
- 18 of the child suspected of being abused or neglected. Within
- 19 24 hours after receiving a report, whether from the reporting
- 20 person or from the department AGENCY under section 3(6), the
- 21 local law enforcement agency shall refer the report to the
- 22 -department AGENCY if the report meets the requirements of
- 23 section 3(7) or shall commence an investigation of the child sus-
- 24 pected of being abused or neglected. If the child suspected of
- 25 being abused is not in the physical custody of the parent or
- 26 legal guardian and informing the parent or legal guardian would
- 27 not endanger the child's health or welfare, the LOCAL LAW

- 1 ENFORCEMENT agency or the -department AGENCY shall inform the
- 2 child's parent or legal guardian of the investigation as soon as
- 3 the LOCAL LAW ENFORCEMENT agency or the department AGENCY dis-
- 4 covers the identity of the child's parent or legal guardian.
- 5 (2) In the course of its investigation, the department
- 6 AGENCY shall determine if the child is abused or neglected. The
- 7 department AGENCY shall cooperate with law enforcement offi-
- 8 cials, courts of competent jurisdiction, and appropriate state
- 9 agencies providing human services in relation to preventing,
- 10 identifying, and treating child abuse and neglect; shall provide,
- 11 enlist, and coordinate the necessary services, directly or
- 12 through the purchase of services from other agencies and profes-
- 13 sions; and shall take necessary action to prevent further abuses,
- 14 to safeguard and enhance the welfare of the child, and to pre-
- 15 serve family life where possible.
- 16 (3) In conducting its investigation, the -department AGENCY
- 17 shall seek the assistance of and cooperate with law enforcement
- 18 officials within 24 hours after becoming aware that 1 or more of
- 19 the following conditions exists:
- 20 (a) Abuse or neglect is the suspected cause of a child's
- 21 death.
- (b) The child is the victim of suspected sexual abuse or
- 23 sexual exploitation.
- (c) Abuse or neglect resulting in severe physical injury to
- 25 the child requires medical treatment or hospitalization. For
- 26 purposes of this subdivision, "severe physical injury" means
- 27 brain damage, skull or bone fracture, subdural hemorrhage or

- 1 hematoma, dislocation, sprains, internal injuries, poiscning,
- 2 burns, scalds, severe cuts, or any other physical injury that
- 3 seriously impairs the health or physical well-being of a child.
- 4 (d) Law enforcement intervention is necessary for the pro-
- 5 tection of the child, a department AN AGENCY employee, or
- 6 another person involved in the investigation.
- 7 (e) The alleged perpetrator of the child's injury is not a
- 8 person responsible for the child's health or welfare.
- 9 (4) Law enforcement officials shall cooperate with the
- 10 -department- AGENCY in conducting investigations pursuant to sub-
- 11 sections (1) and (3) and shall comply with sections 5 and 7.
- 12 (5) Involvement of law enforcement officials pursuant to
- 13 this section shall not relieve or prevent the department AGENCY
- 14 from proceeding with its investigation or treatment if there is
- 15 reasonable cause to suspect that the child abuse or neglect was
- 16 committed by a person responsible for the child's health or
- 17 welfare.
- 18 (6) In each county, the prosecuting attorney and the
- 19 -department AGENCY OR DISTRICT AGENCY shall develop and estab-
- 20 lish procedures for involving law enforcement officials as pro-
- 21 vided in this section.
- 22 (7) If there is reasonable cause to suspect that a child in
- 23 the care of or under the control of a public or private agency,
- 24 institution, or facility is an abused or neglected child, the
- 25 PUBLIC OR PRIVATE agency, institution, or facility shall be
- 26 investigated by an -agency ORGANIZATION administratively
- 27 independent of the PUBLIC OR PRIVATE agency, institution, or

- 1 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, Act No. 328 of the Public Acts of
- 4 1931, being sections 750.145c and 750.520b to 750.520g of the
- 5 Michigan Compiled Laws, the investigating agency ORGANIZATION
- 6 shall transmit a copy of the results of the investigation to the
- 7 prosecuting attorney of the county in which the PUBLIC OR PRIVATE
- 8 agency, institution, or facility is located. The prosecuting
- 9 attorney may proceed under sections 135 to 145c or 520b to 520g
- 10 of Act No. 328 of the Public Acts of 1931, as amended, being
- 11 sections 750.135 to 750.145c and 750.520b to 750.520g of the
- 12 Michigan Compiled Laws, when a violation of these sections has
- 13 occurred.
- (8) Schools and other institutions shall cooperate with the
- 15 -department AGENCY during an investigation of a report of child
- 16 abuse or neglect. Cooperation includes allowing access to the
- 17 child without parental consent if access is necessary to complete
- 18 the investigation or to prevent abuse or neglect of the child.
- 19 However, the person responsible for the child's health or welfare
- 20 shall be notified of the department's AGENCY'S contact with the
- 21 child at the time or as soon afterward as the person can be
- 22 reached and no child shall be subjected to a search at a school
- 23 which requires the child to remove his or her clothing to expose
- 24 his buttocks or genitalia or her breasts, buttocks or genitalia
- 25 unless the -department- AGENCY has obtained an order from a court
- 26 of competent jurisdiction permitting such a search. If the
- 27 access occurs within a hospital, the investigation shall be

- 1 conducted so as not to interfere with the medical treatment of
- 2 the child or other patients.
- 3 (9) Upon completion of the investigation by the local law
- 4 enforcement agency or the -department AGENCY, the law enforce-
- 5 ment agency or -department- THE AGENCY may inform the person who
- 6 made the report as to the disposition of the report.
- 7 Sec. 9. (1) The department AGENCY, in discharging its
- 8 responsibilities under this act, shall provide, directly or
- 9 through the purchase of services from other agencies and profes-
- 10 sions, multidisciplinary services such as those of a pediatri-
- 11 cian, psychologist, psychiatrist, public health nurse, social
- 12 worker, or attorney through the establishment of regionally based
- 13 or strategically located teams. The -department AGENCY shall
- 14 prepare a biennial report to the legislature containing informa-
- 15 tion on the activities of the teams created pursuant to this sub-
- 16 section and including recommendations by the teams and the
- 17 -department AGENCY regarding child abuse and neglect when com-
- 18 mitted by persons responsible for the child's health or welfare.
- 19 (2) The department AGENCY shall assure a continuing educa-
- 20 tion program for department AGENCY, probate court, and private
- 21 agency personnel. The program shall include responsibilities,
- 22 obligations, and powers under this act and the diagnosis and
- 23 treatment of child abuse and neglect when committed by persons
- 24 responsible for the child's health or welfare.
- 25 (3) The department AGENCY shall provide for the dissemina-
- 26 tion of information to the general public with respect to the
- 27 problem of child abuse and neglect in this state and the

1 facilities, prevention, and treatment methods available to combat 2 child abuse and neglect when committed by persons responsible for 3 the child's health or welfare. Section 2. This amendatory act shall take effect October 1, 5 1990. Section 3. This amendatory act shall not take effect unless 7 all of the following bills of the 85th Legislature are enacted 8 into law: 9 (a) Senate Bill No. or House Bill No. 4251 (request 10 no. 00593'89 . (b) Senate Bill No. ___ or House Bill No. 4252 (request 11 12 no. 00593'89 a). (c) Senate Bill No. ____ or House Bill No. _4253 (request 14 no. 00593'89 b). (d) Senate Bill No. or House Bill No. 4254 (request 15 16 no. 00593'89 c). (e) Senate Bill No. ____ or House Bill No. 4255 (request 18 no. 00593'89 d). (f) Senate Bill No. ____ or House Bill No. 4256 (request 19 20 no. 00593'89 e). (g) Senate Bill No. ____ or House Bill No. $\frac{4257}{}$ (request 22 no. 00593'89 f). (h) Senate Bill No. ____ or House Bill No. $\frac{4258}{}$ (request 23 24 no. 00593'89 g). (i) Senate Bill No. or House Bill No. 4259 (request 25 26 no. 00593'89 h).

		/ 1. a			4260	
1	• .	(j) Senate Bill	Noor	House Bill	No. 4200	(request
2	no.	00593'89 i).	• ,	· · · · · · · · · · · · · · · · · · ·	•	· · · · · · · ·
3		(k) Senate Bill	No or	House Bill	No. <u>4262</u>	(request
4	no.	00593'89 k).	-			
5		(1) Senate Bill	No or	House Bill	No. 4263	(request
		00593'89 1).		•		
7		(m) Senate Bill	No or	House Bill	No. 4264	(request
		00593'89 m).				
9		(n) Senate Bill	No or	House Bill	No. 4265	(request
10	no.	00593'89 n).				
1 1		(o) Senate Bill	No or	House Bill	No. <u>4266</u>	(request
12	no.	00593'89 0).				
13		(p) Senate Bill	No or	House Bill	No. <u>4267</u>	(request
14	no.	00593'89 p).				
15		(q) Senate Bill	No or	House Bill	No. 4268	(request
		00593'89 q).				
17		(r) Senate Bill	No or	House Bill	No. 4269	(request
18	no.	00593'89 r).				
19		(s) Senate Bill	No or	House Bill	No. 4270	(request

20 no. 00593'89 s).