

SENATE BILL NO. 604

June 11, 1997, Introduced by Senators STEIL, GOUGEON, CISKY, STILLE, ROGERS, SHUGARS, GEAKE, VAN REGENMORTER, EMMONS, KOIVISTO, NORTH, O'BRIEN, MC MANUS, BENNETT and GAST and referred to the Committee on Families, Mental Health and Human Services.

A bill 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 3 and 8 (MCL 722.623 and 722.628), section 3 as amended by 1994 PA 177 and section 8 as amended by 1988 PA 372.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) A physician, coroner, dentist, registered
2 dental hygienist, medical examiner, nurse, a person licensed to
3 provide emergency medical care, audiologist, psychologist, mar-
4 riage and family therapist, licensed professional counselor, cer-
5 tified social worker, social worker, social work technician,
6 school administrator, school counselor or teacher, law enforce-
7 ment officer, or regulated child care provider who has reasonable
8 cause to suspect child abuse or neglect shall make immediately,
9 by telephone or otherwise, an oral report, or cause an oral
10 report to be made, of the suspected child abuse or neglect to the
11 department. Within 72 hours after making the oral report, the
12 reporting person shall file a written report as required in this
13 act. If the reporting person is a member of the staff of a hos-
14 pital, agency, or school, the reporting person shall notify the
15 person in charge of the hospital, agency, or school of his or her
16 finding and that the report has been made, and shall make a copy
17 of the written report available to the person in charge. One
18 report from a hospital, agency, or school ~~shall be~~ IS consid-
19 ered adequate to meet the reporting requirement. A member of the
20 staff of a hospital, agency, or school shall not be dismissed or
21 otherwise penalized for making a report required by this act or
22 for cooperating in an investigation.

23 (2) The written report shall contain the name of the child
24 and a description of the abuse or neglect. If possible, the
25 report shall contain the names and addresses of the child's par-
26 ents, the child's guardian, the persons with whom the child
27 resides, and the child's age. The report shall contain other

1 information available to the reporting person which might
2 establish the cause of the abuse or neglect —, and the manner in
3 which the abuse or neglect occurred.

4 (3) The department shall inform the reporting person of the
5 required contents of the written report at the time the oral
6 report is made by the reporting person.

7 (4) The written report required in this section shall be
8 mailed or otherwise transmitted to the county department of
9 social services of the county in which the child suspected of
10 being abused or neglected is found.

11 (5) Upon receipt of a written report of suspected child
12 abuse or neglect, the department may provide copies to the prose-
13 cuting attorney and the probate court of the counties in which
14 the child suspected of being abused or neglected resides and is
15 found.

16 (6) If the report or subsequent investigation indicates a
17 violation of sections 136b and 145c or sections 520b to 520g of
18 the Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~
19 ~~being sections 750.136b, 750.145c and 750.520b to 750.520g of the~~
20 ~~Michigan Compiled Laws~~ 1931 PA 328, MCL 750.136B, 750.145C, AND
21 750.520B TO 750.520G, or if the report or subsequent investiga-
22 tion indicates that the suspected abuse was not committed by a
23 person responsible for the child's health or welfare, and the
24 department believes that the report has basis in fact, the
25 department shall transmit a copy of the written report and the
26 results of any investigation to the prosecuting attorney of the
27 counties in which the child resides and is found.

1 (7) If a local law enforcement agency receives a written
2 report of suspected child abuse or neglect, whether from the
3 reporting person or the department, the report or subsequent
4 investigation indicates that the abuse or neglect was committed
5 by a person responsible for the child's health or welfare, and
6 the local law enforcement agency believes that the report has
7 basis in fact, the local law enforcement agency shall provide a
8 copy of the written report and the results of any investigation
9 to the county department of social services of the county in
10 which the abused or neglected child is found. Nothing in this
11 subsection or subsection (6) ~~shall be construed to relieve~~
12 RELIEVES the department of its responsibility to investigate
13 reports of suspected child abuse or neglect under this act.

14 (8) IF THE DEPARTMENT AND A LAW ENFORCEMENT AGENCY INVESTI-
15 GATE THE SAME REPORT OF SUSPECTED CHILD ABUSE OR NEGLECT, AND THE
16 LAW ENFORCEMENT AGENCY TERMINATES ITS INVESTIGATION AND CLOSES
17 ITS CASE BECAUSE OF INSUFFICIENT EVIDENCE TO INITIATE A CRIMINAL
18 PROSECUTION, THE DEPARTMENT SHALL NOT TERMINATE ITS INVESTIGATION
19 OR CLOSE ITS CASE BASED SOLELY ON THE LAW ENFORCEMENT AGENCY'S
20 DECISION TO TERMINATE ITS INVESTIGATION AND CLOSE ITS CASE.

21 (9) ~~(8)~~ For purposes of this act, the pregnancy of a child
22 less than 12 years of age or the presence of a venereal disease
23 in a child who is over 1 month of age but less than 12 years of
24 age shall be reasonable cause to suspect child abuse and neglect
25 have occurred.

26 Sec. 8. (1) Within 24 hours after receiving a report made
27 pursuant to this act, the department shall refer the report to

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

16 (2) In the course of its investigation, the department shall
17 determine if the child is abused or neglected. The department
18 shall cooperate with law enforcement officials, courts of compe-
19 tent jurisdiction, and appropriate state agencies providing human
20 services in relation to preventing, identifying, and treating
21 child abuse and neglect; shall provide, enlist, and coordinate
22 the necessary services, directly or through the purchase of serv-
23 ices from other agencies and professions; and shall take neces-
24 sary action to prevent further abuses, to safeguard and enhance
25 the welfare of the child, and to preserve family life where
26 possible.

1 (3) In conducting its investigation, the department shall
2 seek the assistance of and cooperate with law enforcement
3 officials within 24 hours after becoming aware that 1 or more of
4 the following conditions exists:

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

7 (b) The child is the victim of suspected sexual abuse or
8 sexual exploitation.

9 (c) Abuse or neglect resulting in severe physical injury to
10 the child requires medical treatment or hospitalization. For
11 purposes of this subdivision, "severe physical injury" means
12 brain damage, skull or bone fracture, subdural hemorrhage or
13 hematoma, dislocation, sprains, internal injuries, poisoning,
14 burns, scalds, severe cuts, or any other physical injury that
15 seriously impairs the health or physical well-being of a child.

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

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

21 (4) Law enforcement officials shall cooperate with the
22 department in conducting investigations pursuant to subsections
23 (1) and (3) and shall comply with sections 5 and 7.

24 (5) Involvement of law enforcement officials pursuant to
25 this section ~~shall~~ DOES not relieve or prevent the department
26 from proceeding with its investigation or treatment if there is
27 reasonable cause to suspect that the child abuse or neglect was

1 committed by a person responsible for the child's health or
2 welfare. THE DEPARTMENT SHALL NOT TERMINATE ITS INVESTIGATION OR
3 CLOSE ITS CASE BASED SOLELY ON A LAW ENFORCEMENT AGENCY'S DECI-
4 SION TO TERMINATE ITS INVESTIGATION OR CLOSE ITS CASE BECAUSE OF
5 INSUFFICIENT EVIDENCE TO PROCEED WITH A CRIMINAL PROSECUTION.

6 (6) In each county, the prosecuting attorney and the depart-
7 ment shall develop and establish procedures for involving law
8 enforcement officials as provided in this section.

9 (7) If there is reasonable cause to suspect that a child in
10 the care of or under the control of a public or private agency,
11 institution, or facility is an abused or neglected child, the
12 agency, institution, or facility shall be investigated by an
13 agency administratively independent of the agency, institution,
14 or facility being investigated. If the investigation produces
15 evidence of a violation of section 145c or sections 520b to 520g
16 of the Michigan penal code, ~~Act No. 328 of the Public Acts of~~
17 ~~1931, being sections 750.145c and 750.520b to 750.520g of the~~
18 ~~Michigan Compiled Laws~~ 1931 PA 328, MCL 750.145C AND 750.520B TO
19 750.520G, the investigating agency shall transmit a copy of the
20 results of the investigation to the prosecuting attorney of the
21 county in which the agency, institution, or facility is located.
22 The prosecuting attorney may proceed under sections 135 to 145c
23 or 520b to 520g of ~~Act No. 328 of the Public Acts of 1931, as~~
24 ~~amended, being sections 750.135 to 750.145c and 750.520b to~~
25 ~~750.520g of the Michigan Compiled Laws~~ THE MICHIGAN PENAL CODE,
26 1931 PA 328, MCL 750.135 TO 750.145C AND 750.520B TO 750.520G,
27 when a violation of these sections has occurred.

1 (8) Schools and other institutions shall cooperate with the
2 department during an investigation of a report of child abuse or
3 neglect. Cooperation includes allowing access to the child with-
4 out parental consent if access is necessary to complete the
5 investigation or to prevent abuse or neglect of the child.
6 However, the person responsible for the child's health or welfare
7 shall be notified of the department's contact with the child at
8 the time or as soon afterward as the person can be reached and no
9 child shall be subjected to a search at a school which requires
10 the child to remove his or her clothing to expose his buttocks or
11 genitalia or her breasts, buttocks or genitalia unless the
12 department has obtained an order from a court of competent juris-
13 diction permitting such a search. If the access occurs within a
14 hospital, the investigation shall be conducted so as not to
15 interfere with the medical treatment of the child or other
16 patients.

17 (9) Upon completion of the investigation by the local law
18 enforcement agency or the department, the law enforcement agency
19 or department may inform the person who made the report as to the
20 disposition of the report.