

HOUSE BILL No. 4038

January 27, 2005, Introduced by Reps. Sheen, Jones, Hoogendyk, Drolet, Gosselin, Brandenburg, Pastor, Stakoe, Marleau, Shaffer, Hildenbrand, Van Regenmorter, Pavlov, Caswell, Gaffney, Gleason and Robertson and referred to the Committee on Family and Children Services.

A bill to amend 1975 PA 238, entitled "Child protection law," by amending sections 8 and 8c (MCL 722.628 and 722.628c), section 8 as amended by 2004 PA 195 and section 8c as added by 1997 PA 168.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8. (1) Within 24 hours after receiving a report made
2 under this act, the department shall refer the report to the
3 prosecuting attorney if the report meets the requirements of
4 section 3(6) or shall commence an investigation of the child
5 suspected of being abused or neglected. Within 24 hours after
6 receiving a report whether from the reporting person or from the
7 department under section 3(6), the local law enforcement agency

1 shall refer the report to the department if the report meets the
2 requirements of section 3(7) or shall commence an investigation of
3 the child suspected of being abused or neglected. If the child
4 suspected of being abused is not in the physical custody of the
5 parent or legal guardian and informing the parent or legal guardian
6 would not endanger the child's health or welfare, the agency or the
7 department shall inform the child's parent or legal guardian of the
8 investigation as soon as the agency or the department discovers the
9 identity of the child's parent or legal guardian.

10 (2) In the course of its investigation, the department shall
11 determine if the child is abused or neglected. The department shall
12 cooperate with law enforcement officials, courts of competent
13 jurisdiction, and appropriate state agencies providing human
14 services in relation to preventing, identifying, and treating child
15 abuse and neglect; shall provide, enlist, and coordinate the
16 necessary services, directly or through the purchase of services
17 from other agencies and professions; and shall take necessary
18 action to prevent further abuses, to safeguard and enhance the
19 child's welfare, and to preserve family life where possible. In the
20 course of an investigation, at the time that a department
21 investigator contacts an individual about whom a report has been
22 made under this act or contacts an individual responsible for the
23 health or welfare of a child about whom a report has been made
24 under this act, the department investigator shall advise that
25 individual of the department investigator's name, whom the
26 department investigator represents, and the specific complaints or
27 allegations made against the individual. The department shall

1 ensure that its policies, procedures, and administrative rules
2 ensure compliance with the provisions of this act.

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

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

9 (b) The child is the victim of suspected sexual abuse or
10 sexual exploitation.

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

19 (d) Law enforcement intervention is necessary for the
20 protection of the child, a department employee, or another person
21 involved in the investigation.

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

24 (4) Law enforcement officials shall cooperate with the
25 department in conducting investigations under subsections (1) and
26 (3) and shall comply with sections 5 and 7. The department and law
27 enforcement officials shall conduct investigations in compliance

1 with the protocols adopted and implemented as required by
2 subsection (6).

3 (5) Involvement of law enforcement officials under this
4 section does not relieve or prevent the department from proceeding
5 with its investigation or treatment if there is reasonable cause to
6 suspect that the child abuse or neglect was committed by a person
7 responsible for the child's health or welfare.

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

17 (7) If there is reasonable cause to suspect that a child in
18 the care of or under the control of a public or private agency,
19 institution, or facility is an abused or neglected child, the
20 agency, institution, or facility shall be investigated by an agency
21 administratively independent of the agency, institution, or
22 facility being investigated. If the investigation produces evidence
23 of a violation of section 145c or sections 520b to 520g of the
24 Michigan penal code, 1931 PA 328, MCL 750.145c and 750.520b to
25 750.520g, the investigating agency shall transmit a copy of the
26 results of the investigation to the prosecuting attorney of the
27 county in which the agency, institution, or facility is located.

1 (8) A school or other institution 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 without
4 parental consent if access is determined by the department to be
5 necessary to complete the investigation or to prevent abuse or
6 neglect of the child. However, the department shall notify the
7 person responsible for the child's health or welfare about the
8 department's contact with the child at the time or as soon
9 afterward as the person can be reached. The department may delay
10 the notice if the notice would compromise the safety of the child
11 or child's siblings or the integrity of the investigation, but only
12 for the time 1 of those conditions exists.

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

15 (a) Before contact with the child, the department investigator
16 shall review with the designated school staff person the
17 department's responsibilities under this act and the investigation
18 procedure.

19 **(B) THE DESIGNATED SCHOOL STAFF PERSON OR ANOTHER INDIVIDUAL**
20 **WITH WHOM THE CHILD IS FAMILIAR SHALL BE PRESENT DURING AN**
21 **INTERVIEW WITH THE CHILD BY THE DEPARTMENT INVESTIGATOR. THE**
22 **DESIGNATED SCHOOL STAFF PERSON OR OTHER INDIVIDUAL WITH WHOM THE**
23 **CHILD IS FAMILIAR WHO IS PRESENT DURING THE INTERVIEW MUST BE**
24 **SOMEONE WITH WHOM THE CHILD FEELS COMFORTABLE.**

25 (C) ~~-(b)-~~ After contact with the child, the department
26 investigator shall meet with the designated school staff person and
27 the child about the response the department will take as a result

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

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

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

16 (11) The department shall enter each report made under this
17 act that is the subject of a field investigation into the CPSI
18 system. The department shall maintain a report entered on the CPSI
19 system as required by this subsection until the child about whom
20 the investigation is made is 18 years old or until 10 years after
21 the investigation is commenced, whichever is later, or, if the case
22 is classified as a central registry case, until the department
23 receives reliable information that the perpetrator of the abuse or
24 neglect is dead. Unless made public as specified information
25 released under section 7d, a report that is maintained on the CPSI
26 system is confidential and is not subject to the disclosure
27 requirements of the freedom of information act, 1976 PA 442, MCL

1 15.231 to 15.246.

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

6 (13) Except as provided in subsection (14), upon completion of
7 the investigation by the local law enforcement agency or the
8 department, the law enforcement agency or department may inform the
9 person who made the report as to the disposition of the report.

10 (14) If the person who made the report is mandated to report
11 under section 3, upon completion of the investigation by the
12 department, the department shall inform the person in writing as to
13 the disposition of the case and shall include in the information at
14 least all of the following:

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

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

19 (c) Notification that the information being conveyed is
20 confidential.

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

24 (16) Unless section 5 of chapter XII of the probate code of
25 1939, 1939 PA 288, MCL 712.5, requires a physician to report to the
26 department, the surrender of a newborn in compliance with chapter
27 XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20,

1 is not reasonable cause to suspect child abuse or neglect and is
2 not subject to the section 3 reporting requirement. This subsection
3 does not apply to circumstances that arise on or after the date
4 that chapter XII of the probate code of 1939, 1939 PA 288, MCL
5 712.1 to 712.20, is repealed. This subsection applies to a newborn
6 whose birth is described in the born alive infant protection act
7 and who is considered to be a newborn surrendered under the safe
8 delivery of newborns law as provided in section 3 of chapter XII of
9 the probate code of 1939, 1939 PA 288, MCL 712.3.

10 (17) All department employees involved in investigating child
11 abuse or child neglect cases shall be trained in the legal duties
12 to protect the state and federal constitutional and statutory
13 rights of children and families from the initial contact of an
14 investigation through the time services are provided.

15 Sec. 8c. (1) During an investigation of suspected child abuse
16 or neglect, the child reported to have been abused or neglected
17 shall not be interviewed in the presence of an individual suspected
18 to have perpetrated the abuse.

19 (2) DURING AN INVESTIGATION OF SUSPECTED CHILD ABUSE OR
20 NEGLECT, THE CHILD REPORTED TO HAVE BEEN ABUSED OR NEGLECTED SHALL
21 BE INTERVIEWED IN THE PRESENCE OF A DESIGNATED SCHOOL STAFF PERSON
22 OR OTHER INDIVIDUAL WITH WHOM THE CHILD IS FAMILIAR. THE DESIGNATED
23 SCHOOL STAFF PERSON OR OTHER INDIVIDUAL WITH WHOM THE CHILD IS
24 FAMILIAR WHO IS PRESENT DURING THE INTERVIEW MUST BE SOMEONE WITH
25 WHOM THE CHILD FEELS COMFORTABLE.