

CHAPTER 1
REPORTING

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This chapter, focusing on civil, not criminal, responses to child maltreatment, addresses the responsibilities of certain professionals to report cases of suspected child abuse and neglect and the ability of *any person* to make such reports to the Michigan Department of Human Services (DHS). The chapter also describes the central registry system that contains substantiated cases of child abuse and neglect and provisions for expunction from that registry.

1.1. HISTORY, PHILOSOPHY AND PURPOSE

For many years child maltreatment was a hidden problem, relegated to understaffed and overwhelmed protective services far from public view. Leaders in the medical profession first brought the plight of the "battered child" to public attention. In 1946, Caffey provided the first serious medical report on the problems of possible child abuse and neglect by noting the frequent link between subdural hematoma and fracture of the long bones in children.¹ The most conclusive and influential study was produced in 1961 by Kempe and others who found hundreds of children severely injured by their parents. The condition was given a new medical term by the authors, "the battered child syndrome."²

Legal development followed quickly. In 1962, the Children's Bureau called a conference to formulate recommendations for meeting the medical and social challenge of child abuse. The result, published in 1963, was the first proposed mandatory reporting legislation.³ Within three years every state had enacted a reporting law -- many patterned after the Children's Bureau Model.⁴ Michigan's first mandatory reporting law was passed in 1963 and also was patterned after the federal model.

In the 1970s and 80s, widespread concern about other forms of child maltreatment, evolution of social responses to the problem, and an erosion of other family support networks, led to amended child protection legislation. In 1974, the U.S. Child Abuse Prevention and Treatment Act was passed which established certain eligibility criteria for states in order to qualify for federal funds. Nearly all States amended their laws to require the reporting of suspected child neglect as well as child abuse.

Reporting laws were also expanded to include important ancillary provisions, such as immunity for good faith reporting, penalties for failure to report,

¹. Caffey, " Multiple Fractures in the Long Bones of Children Suffering from Chronic Subdural Hematoma," 56 *American Journal of Roentgenology* 163 (1946)

². Kempe, Silverman, Steele, Droegemueller, and Silver, "The Battered Child Syndrome," 181 *A.M.A. Journal* (1962)

³. Shepard, "The Abused Child and the Law," 22 *Wash & Lee L. Rev.* 182 (1965) pp. 182 - 184

⁴. Model Child Protection Act With Commentary, Draft, Department of Health, Education and Welfare, U.S. Children's Bureau, August 1977

protective custody, the abrogation of certain privileged communications, and central registries of reports received.⁵ The federal law has been reauthorized several times, most recently in 1995.⁶ In 1975, Michigan updated its reporting law, called the "Child Protection Law," to reflect the federal recommendations.⁷ The Michigan statute has been amended several times since.

In recent years the extent of child abuse and neglect has become widely recognized. Public attention to the problem has grown dramatically and reports of suspected child abuse and neglect have skyrocketed. As measured by the increase in reports of child abuse and neglect, the child maltreatment reporting laws have been a success.

The Child Protection Law requires the DHS to cooperate with law enforcement. Other provisions of Michigan law provide for the criminal prosecution of child abuse and neglect in cases deemed appropriate by the prosecuting attorney.⁸ The philosophy and purpose of the Michigan Child Protection Law itself, however, remains a therapeutic one -- to discover cases of child maltreatment so that the child may be protected, preferably in his own home, and rehabilitative and supportive services provided to the family. The duty of child protective services is to safeguard the well-being of endangered children and to preserve family life where possible.⁹

The Child Protection Law deals primarily with discovery of suspected child abuse and neglect. Although new laws mandate that the DHS submit a petition to the court under certain circumstances [i.e. when a child is severely physically injured, sexually abused, or exposed to or have contact with methamphetamine production], most situations are dealt with voluntarily and without the need for court involvement.¹⁰ Occasionally, the coercive power of society is necessary to protect the child and to move toward rehabilitation of the home or, in the extreme case, toward termination of parental rights. The State can intervene coercively in family life only after due process of law. Child Protective Services has very limited authority to override parental wishes in conducting its investigation or suggesting services. If parents object to an investigation or to cooperating with treatment recommendations, the caseworker must leave the family alone, or petition the family court to order steps be taken to protect the child.

1.2. WHAT IS TO BE REPORTED?

1.2.1. Broad Definition

⁵. *Id.*

⁶. Child Abuse Prevention and Treatment Act, 42 USC 5106a

⁷. P.A. 1975, No. 238, MCL 722.621 - 722.638

⁸. *See in particular*, MCL 750.136b (criminal child abuse); MCL 750.145c (child pornography) MCL 750.520a (criminal sexual conduct)

⁹. MCL 722.628

¹⁰. MCL 722.637-638

Michigan's Child Protection Law defines "child abuse" and "child neglect" for purposes of reporting and requires certain persons to file reports with the DHS when they have "reasonable cause to suspect child abuse or neglect." The Child Protection Law is a means of discovering possible cases of child maltreatment and the Michigan legislature, like the Legislatures of most States, has opted to cast a rather wide net lest children in need of protection be missed. "Child" is defined as a person under 18 years of age.¹¹

1.2.2. *Child Abuse Definition*

(f) "Child abuse" means harm or threatened harm to a child's health or welfare that occurs through non-accidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy.¹²

"Sexual abuse" is defined in the child protection law as:

(w) *** engaging in sexual contact or sexual penetration as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, with a child.¹³

MCLA 750.520a is the criminal sexual conduct statute and defines sexual conduct and sexual penetration as follows:

(o) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

- (i) Revenge
- (ii) To inflict humiliation
- (iii) Out of anger

(p) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, and intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

¹¹. MCL 722.622(e). *See also* MCR 3.903(C)(2)

¹². MCL 722.622(f)

¹³. MCL 722.622(w)

"Sexual exploitation" is defined by the child protection law as follows:

(x) * * * allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in section 145c of Michigan Penal Code, 1931 PA 328, MCL 750.145c.

Listed sexual acts under MCL 750.145c (1)(h) includes: sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement or erotic nudity. Each of these terms is further defined in the statute.

1.2.3. *Child Neglect Definition*

(j) "Child neglect" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either of the following¹⁴:

- (i) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.
- (ii) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

The exact nature of the harm, which constitutes child neglect, is not specified more precisely in statute. Although the statute sets forth the means by which the harm can occur (through negligent treatment or placing the child at unreasonable risk), the degree of harm or the type of harm is not set forth and may be incapable of precise definition. Child neglect is a matter of community values that vary somewhat from community to community and change over time. Child neglect is also a matter of subjective judgment in case by case situations by judges, caseworkers, and others involved in child protection. Despite the imprecision of the definition and the fact that criminal penalties are involved for failure to report suspected child abuse and neglect, however, constitutional challenges for vagueness have been rebuffed.¹⁵

Pregnancy and venereal disease in a child under 12 is clearly to be reported to protective services.

¹⁴. MCL 722.622(j)

¹⁵. *People v. Cavaiani*, 172 Mich.App. 706 (1988)

For purposes of this act, the pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age is reasonable cause to suspect child abuse and neglect have occurred.¹⁶

1.2.4. *Person Responsible for the Child's Health and Welfare*

The Department is responsible for the investigation of child maltreatment complaints where the maltreatment is allegedly caused by a “person responsible for the child’s health and welfare” which means¹⁷:

“[A] parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides, or, except when used in section 7(2)(e) or 8(8), [a] nonparent adult; or an owner, operator, volunteer, or employee of 1 or more of the following:

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

1.3. QUANTUM OF SUSPICION - REASONABLE CAUSE TO SUSPECT

The Child Protection Law does not require that the reporter investigates the matter or knows with certainty that abuse or neglect has occurred. In fact, the statute does not even require that the reporter actually *suspect* child abuse or neglect. The threshold of concern is very, very low.

A mandated reporter must file a report based upon a *reasonable cause to suspect* child abuse or neglect. The reporter is not expected to investigate the matter, know the definitions of child maltreatment used in judicial proceedings, or even to know the name of the perpetrator. The Michigan law, like the laws in other States, is weighted toward encouraging persons to over-report rather than under-report. The law is intended to make reporting rather uncomplicated and places responsibility for investigation and subsequent action on protective services.

1.4. WHO IS TO REPORT; LIABILITY FOR FAILURE TO REPORT

1.4.1. *Mandated Reporters*

¹⁶. MCL 722.623(8)

¹⁷. MCL 722.622(u)

Typical of State child abuse reporting laws, Michigan names a large class of mandated reporters from among professionals who are in contact with children and whose training and expertise should make them sensitive to possible child maltreatment. Mandated reporters in Michigan are¹⁸:

A physician, dentist, physician's assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, social worker, licensed master's social worker, licensed bachelor's social worker, registered social service technician, social service technician, school administrator, school counselor or teacher, law enforcement officer, member of the clergy, or regulated child care provider who has reasonable cause to suspect child abuse or neglect. ***

A department employee who is 1 of the following and has reasonable cause to suspect child abuse or neglect shall make a report of suspected child abuse or neglect to the department¹⁹:

Eligibility specialist.
Family independence manager.
Family independence specialist.
Social services specialist.
Social work specialist.
Social work specialist manager.
Welfare services specialist.

1.4.2. *Penalty for Failure to Report or Malicious Reporting*

Persons required to report suspected child abuse or neglect, who fails to do so, may be held civilly liable for damages proximately caused.²⁰ The duty to report and liability for failure to do so extend to DHS employees including foster care workers.

In *Williams v. Coleman*, the Michigan Court of Appeals upheld a \$900,000 verdict against DSS [now DHS] foster care workers who failed to report a case to protective services.²¹ The foster care worker's duty was purely ministerial and not discretionary, the court said: "[T]he protective services worker has the duty to investigate reports, while foster care social

¹⁸. MCL 722.623(1)(a)

¹⁹. MCL 722.623(1)(b)

²⁰. MCL 722.633(1); Proximate cause" is a legal concept of some complexity. Black's Law Dictionary defines it as "that which, in a natural and continuing sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." There may be more than one cause and jury instructions in negligence cases require that the defendant's negligence be found to be a proximate cause and not the sole proximate cause, of the injury. *Kirby v Larson*, 400 Mich. 585 (1977)

²¹. *Williams v. Coleman*, 194 Mich.App. 606 (1992)

workers only have the duty to report."²² Similarly, in *Thomas v. St. Vincent & Sarah Fischer Center*, the federal district court in Eastern Michigan held that the liability for failure to report also extends to private agency employees.²³ Social workers from St. Vincent & Sarah Fischer Center, a private agency that contracts with the DHS to perform foster care functions, claimed that they were entitled to absolute immunity for claims of failure to report child abuse under MCL 722.633. The *Thomas* Court disagreed, reasoning that absolute immunity was created for social workers so that they could be free from the fear of harassing lawsuits and otherwise *perform their duties*. Holding social workers liable for violation of MCL 722.633 would not have the same effect.

A person required to report, who fails to do so, may be civilly liable for the damages proximately caused by the failure and may be charged with a criminal misdemeanor.²⁴ On the other hand, a person who intentionally makes a false report of child abuse or neglect is subject to criminal prosecution for a misdemeanor or a felony depending on whether the false report, if true, constituted no crime or a misdemeanor, or a felony.²⁵

1.4.3. Any Person, Including a Child, MAY Report

In addition to those mandated to report, any person, including a child, *may* report suspected child abuse or neglect to the department or law enforcement agency.²⁶

1.5. TO WHOM ARE REPORTS MADE?

A report of suspected child abuse or neglect by a mandated reporter *must* be made to the Department.²⁷ Child Protective Services is the centralized point to receive all complaints under the Child Protection Law although the law also permits citizens, including a child, to make complaints directly to law enforcement.²⁸

The statute sets forth procedures for coordination between protective services and law enforcement. (See the discussion in Chapter 2, **INVESTIGATION -- Coordination Between Protective Services and Law Enforcement**.) The Child Protection Law expressly provides that "[t]his act shall not prohibit a person who

²². *Id.*, at 619

²³. *Thomas v. St. Vincent & Sarah Fischer Center*, 2006 U.S. Dist. LEXIS 58556 (E.D. Mich. Aug. 21, 2006)

²⁴. MCL 722.633(1)&(2); *People v. Cavaiani*, 172 Mich.App. 706 (1988); See *Landeros v. Flood*, 17 Cal.3d 399, 551 P.2d 389 (1976); *Thomas v. St. Vincent & Sarah Fischer Center*, 2006 U.S. Dist. LEXIS 58556 (E.D. Mich. Aug. 21, 2006)

²⁵. MCL 722.633(5)

²⁶. MCL 722.624

²⁷. MCL 722.623(1)(a)

²⁸. MCL 722.624.

has reasonable cause to suspect child abuse or neglect from making a report to the appropriate law enforcement officials or probate court,"²⁹ (presumably intended to mean family division of circuit court at present).

In addition, the Juvenile Code provides that a person may give information to the Family Court that a child is abused or neglected and the Family Court may then make a preliminary inquiry and, if deemed necessary, order further action.³⁰ The practice in most Michigan Family Courts seems to be to refer the matter to protective services or law enforcement, unless the court believes that for some reason those agencies have not been properly responsive. The court itself may refer matters brought to its attention to protective services. Michigan Court Rules provide a list of actions possible by the court at preliminary inquiry, including referring the matter to alternative services.³¹

1.6. HOW ARE REPORTS TO BE MADE?

The Child Protection Law provides that a person making a report shall *immediately*, by telephone or otherwise, "make an oral report, or cause an oral report to be made" to the department.³² At the time of the oral report, the department is to inform the reporting person of the contents of a written report and within 72 hours of an oral report the mandated reporter shall file a written report as follows³³:

(2) The written report shall contain the name of the child and a description of the abuse or neglect. If possible, the report shall contain the names and addresses of the child's parents, the child's guardian, the persons with whom the child resides, and the child's age. The report shall contain other information available to the reporting person, which might establish the cause of the abuse or neglect, and the manner in which the abuse or neglect occurred.

The written report is to be mailed or otherwise transmitted to the county office of the Department where the child is found.³⁴

A reporter who is a member of the staff of a hospital, agency or school is required to notify the person in charge of the hospital, agency or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. A notification to the person in charge of a hospital, agency, or school does not relieve the member of the staff of the hospital, agency or school of the obligation of reporting to the department.³⁵ To

²⁹. MCL 722.632

³⁰. MCL 712A.11(1)

³¹. MCR 3.962(B)

³². MCL 722.623(1)

³³. MCL 722.623(1); MCL 722.623(2); MCL 722.623(3)

³⁴. MCL 722.623(4)

³⁵. MCL 722.623(1)(a)

avoid a multitude of reports from the same incident, one report from a hospital, agency or school is considered adequate to meet the reporting requirement.³⁶ Some teachers, medical personnel, and the like ask whether their obligation under the act is met by reporting to a principal, attending physician, or other supervisor. It is not. The duty to report is an individual professional responsibility and is not discharged by reporting to superiors in an organization but only by a report to the department. The individual has a duty to see that a report from their organization has reached the Department.

Nothing in the Child Protection Law precludes or hinders a hospital, school, or other agency from investigating reported claims of child abuse or neglect by its employees or from taking disciplinary action based upon that investigation against its employees.”³⁷

1.7. LEGAL PROTECTIONS FOR COOPERATING PERSONS

1.7.1. *Identity of Reporting Person Confidential; Penalty for Dissemination*

The identity of a person making a report under the Child Protection Law is confidential, subject to disclosure only with the consent of the individual, or by judicial process although the identity of the reporting person may be shared with a legally mandated public or private child protection agency investigating a report of suspected child abuse or neglect and with police or other law enforcement making such investigation.³⁸ The Department takes great care in preserving the identity of the reporting person. The identity of the reporting person is to be protected by an even higher degree of confidentiality than that which covers the Department's files generally.³⁹

A criminal misdemeanor penalty attaches to anyone who permits or encourages unauthorized dissemination of information in protective services reports and records.⁴⁰ A protective services worker who improperly discloses the name of the person filing a report of suspected or actual child abuse or neglect may be held criminally liable says the Michigan Attorney General.⁴¹ The information required to be confidential under the child protection law is not subject to disclosure under the Freedom of Information Act.⁴²

1.7.2. *Immunity from State Law Claims*

³⁶. MCL 722.623(1)

³⁷. MCL 722.632a

³⁸. MCL 722.625

³⁹. Op.Atty.Gen. 1978 No. 5297, p. 430

⁴⁰. MCL 722.633(3)

⁴¹. Op.Atty.Gen. 1978, No. 5815, p. 107

⁴². Op.Atty.Gen. 1978, No. 5297, p. 430

The Child Protection Law provides for immunity from civil or criminal liability for persons acting in good faith under the act⁴³:

A person acting in good faith who makes a report, cooperates in an investigation, or assists in any other requirement of this act is immune from civil or criminal liability that might otherwise be incurred by that action. A person making a report or assisting in any other requirement of this act is presumed to have acted in good faith. This immunity from civil or criminal liability extends only to acts done pursuant to this act and does not extend to a negligent act which causes personal injury or death or to the malpractice of a physician which results in personal injury or death.

1.7.3. *Immunity from Federal Law Claims*

Although the State statute can extend good faith immunity from lawsuits under State law, it cannot extend immunity from liability under federal law. CPS workers are granted absolute immunity from prosecution under federal law, however. *See* the discussion in Chapter 19, **LIABILITY**.

1.7.4. *Staff Member Protection*

A staff member at a school, hospital, or agency is not to be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.⁴⁴ The statute may provide some support for a staff member but the problems of proving that job evaluation, promotion or retention were improperly affected by employee reports of child abuse or neglect or cooperation in an investigation will be difficult. The Child Protection Law "does not preclude or hinder a hospital, school, or other agency from investigating reported claims of child abuse or neglect by its employees or from taking disciplinary action based upon that investigation against its employees."⁴⁵

1.7.5. *Response to Reporter as to Disposition of Report*

In order to satisfy the concerns of the reporting person and thus encourage reporting, the statute requires the Department or the law enforcement agency inform a mandated reporter as to the disposition of the report.⁴⁶ In the past, mandated reporters such as schools and medical personnel complained that they rarely heard about the outcome of a particular

⁴³. MCL 722.625; *See also Awkerman by Awkerman v Tri-County Orthopedic Group, P.C.*, 143 Mich.App. 722 (1985)

⁴⁴. MCL 722.623(1)

⁴⁵. MCL 722.632a

⁴⁶. MCL 722.628(14)

referral. The Department concerns about confidentiality often prevented them from giving feedback to these reporters. The statute now clearly requires the Department (or a law enforcement agency) inform the mandated reporter in writing as to the disposition of the report. The information must include whether the case was substantiated, the rationale for that decision, whether legal action was commenced and, if so, the nature of that action. The information must also indicate that the notification is confidential and shall not identify the person named in the report.⁴⁷

The statute *permits* law enforcement or the Department to inform non-mandated reporters as well.⁴⁸ The worker should exercise discretion when communicating this information to the reporter. A neighbor or family member certainly does not need to know as much information as a therapist who may have an on-going relationship with the family.

1.8. ABROGATION OF PRIVILEGED COMMUNICATION

Many cases of known or suspected child abuse or neglect would never come to light if various professional privileged communication and confidentiality duties remained intact. In nearly every State, including Michigan, communication between ministers and persons, physicians and patients,⁴⁹ husbands and wives,⁵⁰ attorney and client,⁵¹ psychologist and client,⁵² and among others, are protected as privileged and confidential. Abrogation of such privilege for purposes of reporting child abuse and neglect or giving evidence in such cases has become a standard part of child abuse reporting laws among the states. The Michigan statute provides⁵³:

Any legally recognized privileged communication except that between attorney and client or that made to a member of the clergy in his or her professional character in a confession or similarly confidential communication is abrogated and shall neither constitute grounds for excusing a report otherwise required to be made or for excluding evidence in a civil child protective proceeding resulting from a report made pursuant to this act. This section does not relieve a member of the clergy from reporting suspected child abuse or child neglect under section 3 if that member of the clergy receives information concerning suspected child abuse or child neglect while acting in any other capacity listed under section 3.

⁴⁷. *Id.*; MCL 722.628(15)

⁴⁸. MCL 722.628(13)

⁴⁹. MCL 600.2156, MCL 600.2157

⁵⁰. MCL 600.2162

⁵¹. MCL 767.5a

⁵². MCL 330.1750

⁵³. MCL 722.631

The abrogation of psychologist-patient privilege was upheld by the Michigan Court of Appeals, which held that this statute does not unconstitutionally amend by implication the statute creating the psychologist-patient privilege.⁵⁴ The physician-patient privilege is of statutory origin, and the legislature may abrogate or further amend the privilege at any time.⁵⁵ The Michigan Supreme Court has held that the physician-patient privilege is set aside in a child protection case whether or not the physician is the one who has made the report so long as the physician has information relevant to the petition for jurisdiction in a child protection proceeding.⁵⁶ In *Brock*, the physician and psychologist were allowed to testify to a mother's history of emotional difficulties. The lawyer-client privilege remains intact since confidence between attorney-clients must be protected to secure a fair trial. See full discussion of confidentiality and privilege in Chapter 15, **CONFIDENTIALITY**.

1.9. CENTRAL REGISTRY SYSTEM

1.9.1. *Definition; Entry on Registry*

The DHS is required to maintain a statewide, electronic central registry, defined by statute as⁵⁷:

*** [T]he system maintained by the department that is used to keep a record of all reports filed with the department pursuant to this act in which relevant and accurate evidence of child abuse or neglect is found to exist.

The central registry is the single, statewide longitudinal record of persons involved in substantiated referrals of child abuse and neglect. It provides the reference against which to check for previous involvement of current alleged victims and perpetrators with notification to the investigating worker, and for identification of the county of previous involvement if additional information is needed. It also provides the resource for screening certifications of day care aides and applications for licensing or registration as a foster family home, group day care home, or family day care home and for evaluation of prospective adoptive homes.⁵⁸

The Department enters cases on the registry when its investigation substantiates by a preponderance of evidence that child abuse or neglect exists and where the identified perpetrator, if there is one, has been

⁵⁴. *People v. Cavaiani*, 172 Mich.App. 706 (1988)

⁵⁵. Op.Atty.Gen. 1978, No. 5406, p. 724

⁵⁶. *In re Brock*, 442 Mich. 101 (1993); see full discussion in Chapter 15 **CONFIDENTIALITY**

⁵⁷. MCL 722.627(1); MCL 722.622(c)

⁵⁸. MDHS CPS Manual, Item 717

notified and informed of his or her rights.⁵⁹ If evidence of abuse or neglect is found to exist, the DHS must retain this information until it “receives reliable information that the individual alleged to have perpetrated the abuse or neglect is dead.”⁶⁰ See Chapter 2 **INVESTIGATION** for a fuller discussion of the department’s response following investigation according to five tiered categories.

1.9.2. *Central Registry is Confidential; Access*

The statute creating the central registry also limits access to it as follows⁶¹:

Unless made public as specified information released under section 7d, a written report, document, or photograph filed with the department pursuant to this act is a confidential record available only to 1 or more of the following⁶²:

- (a) A legally mandated public or private child protective agency investigating a report of known or suspected child abuse or neglect.
- (b) A police or other law enforcement agency investigating a report of known or suspected child abuse or neglect.
- (c) A physician who is treating a child whom the physician reasonably suspects may be abused or neglected.
- (d) A person legally authorized to place a child in protective custody when the person is confronted with a child whom the person reasonably suspects may be abused or neglected and the confidential record is necessary to determine whether to place the child in protective custody.
- (e) A person, agency, or organization, including a multidisciplinary case consultation team, authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or record under this act, or who is responsible for the child's health or welfare.
- (f) A person named in the report or record, if the identity of the reporting person is protected as provided in section 5.
- (g) A court that determines the information is necessary to decide an issue before the court.
- (h) A grand jury that determines the information is necessary in the conduct of the grand jury's official business.
- (i) A person, agency, or organization engaged in a bona fide research or evaluation project. The person, agency, or organization shall not release information identifying a

⁵⁹. *Id.*

⁶⁰. MCL 722.627(7)

⁶¹. MCL 722.627(2)

⁶². MCL 722.627(2)

person named in the report or record unless that person's written consent is obtained. The person, agency, or organization shall not conduct a personal interview with a family without the family's prior consent and shall not disclose information that would identify the child or the child's family or other identifying information. The department director may authorize the release of information to a person, agency, or organization described in this subdivision if the release contributes to the purposes of this act and the person, agency, or organization has appropriate controls to maintain the confidentiality of personally identifying information for a person named in a report or record under this act.

- (j) A lawyer-guardian ad litem or other attorney appointed as provided by section 10.
- (k) A child placing agency licensed under 1973 PA 116, MCL 722.111 to 722.128 of the Michigan Compiled Laws, for the purpose of investigating an applicant for adoption, a foster care applicant or licensee or an employee of a foster care applicant or licensee, an adult member of an applicant's or licensee's household, or other persons in a foster care or adoptive home who are directly responsible for the care and welfare of children, to determine suitability of a home for adoption or foster care. The child placing agency shall disclose the information to a foster care applicant or licensee under 1973 PA 116, MCL 722.111 to 722.128 or to an applicant for adoption.
- (l) Juvenile court staff authorized by the court to investigate foster care applicants and licensees, employees of foster care applicants and licensees, adult members of the applicant's or licensee's household, and other persons in the home who are directly responsible for the care and welfare of children, for the purpose of determining the suitability of the home for foster care. The court shall disclose this information to the applicant or licensee.
- (m) Subject to section 7a, a standing or select committee or appropriations subcommittee of either house of the legislature having jurisdiction over protective services matters.
- (n) The children's ombudsman appointed under the children's ombudsman act, 1994 PA 204, MCL 722.921 to 722.935.
- (o) A child fatality review team established under section 7b and authorized under that section to investigate and review a child death.
- (p) A county medical examiner or deputy county medical examiner appointed under 1953 PA 181, MCL 52.201 to

52.216, for the purpose of carrying out his or her duties under that act.

- (q) A citizen review panel established by the department. Access under this subdivision shall be limited to information the department determines is necessary for the panel to carry out its prescribed duties.
- (r) A child care regulatory agency.
- (s) A foster care review board for the purposes of meeting the requirements of 1984 PA 422, MCL 722.131 to 722.139a.

The Attorney General has given an opinion that the confidentiality provisions of this section apply not only to the central registry but also to the material duplicated in local files and elsewhere. Further, the above provisions govern reports, documents and other material provided by agencies and individuals other than the department as well as material generated by the department itself.⁶³ Persons receiving information covered by the act are similarly bound to make the reports, records and photographs available only to persons covered by this section.⁶⁴

1.9.3. *Release of Otherwise Confidential Information*

The DHS may release information from the central registry and reports and records made pursuant to the Child Protection Law to a select committee of the State Legislature under certain circumstances, to properly constituted child death review teams, and at the DHS Director's order.⁶⁵ The release of specified information by the Director is carefully governed by the Child Protection Law and must be based on the child's best interests or not be in conflict with the child's best interests where certain conditions are true.⁶⁶ The Director shall not deny a request for specified information based on a desire to shield the Department from criticism.⁶⁷

1.10. PERPETRATOR NOTIFICATION; EXPUNGMENT PROCESS

1.10.1. *Perpetrator Notification*

A person identified as a perpetrator after August 1, 1992 must receive, within 5 days after the substantiation, formal, documented notification from the Department⁶⁸:

- that he/she has been identified as a perpetrator,

⁶³. Op.Atty.Gen. 1978, No 5297, p. 430

⁶⁴. MCLA 722.627(3)

⁶⁵. MCL 722.627a; MCL 722.627b; MCL 722.627c to 722.627i

⁶⁶. MCL 722.627d(2)(b)

⁶⁷. MCL 722.627e(1)

⁶⁸. MDHS CPS Manual Item 717

- of the potential consequences of being listed on the perpetrator registry
- of the right to review the file,
- of the right to request amendment or expunction of the record.

Persons on the *historical registry*, *i.e.* based on cases received before August 1, 1992, will also receive notice of being listed on the central registry if: (1) an individual or organization outside of CPS that is permitted access to the central registry requests information about that individual (e.g. a foster care provider seeking information about a potential employee) or (2) a subsequent complaint of child maltreatment is substantiated.⁶⁹

1.10.2. *Amending and Expunging Central Registry*

A person who is the subject of a report or record may request an amendment of local or central registry files.⁷⁰ He may also request an expungement of central registry files if no relevant and accurate evidence of abuse or neglect is found to exist.⁷¹

If the Department refuses a request for amendment or expunction or refuses to act after 30 days of the request, the person is entitled to an administrative hearing to determine 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.⁷² 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 24.328.⁷³

1.10.2.a. *Appealing Administrative Hearing Decision Regarding Expunging Central Registry*

The Administrative Procedures Act governs any appeal resulting from an administrative hearing before a DHS administrative law examiner (ALE).

MCL 24.303 states: Sec. 103. (1) Except as provided in subsection (2), a petition for review shall be filed in the circuit court for the county where petitioner resides or has his or her

⁶⁹. *Id.*

⁷⁰. MCL 722.627(5); *See also, The Constitutionality of Employer-Accessible Child Abuse Registries: Due Process Implications of Governmental Occupational Blacklisting*, 92 MICH LAW REV 139 (1993); *See also Valmonte v. Bane*, 18 F.3d 992 (2d Circuit 1994)

⁷¹. MCL 722.627(5)

⁷². MCL 722.627(6); *See also MDHS CPS Manual Item 717*

⁷³. *Id.*

principal place of business in this state, or in the circuit court for Ingham County.

If a case is no longer before the juvenile court because a neglect petition has been dismissed, the family court does not have subject matter jurisdiction to hear a motion to expunge the central registry, even if the court had the authority to do so. The DHS Protective Services policy manual, which can be found online at <http://www.mfia.state.mi.us/olmweb/ex/cfp/cfp.pdf> details the procedure to be followed when expunction is sought.

1.10.3. *Local Files*

Local office files are separately maintained by the local departments and are not subject to expunction except as authorized by the DHS in the best interests of the child.⁷⁴ The DHS retains all CPS record information on cases which have not been entered on the Child Abuse and Neglect Central Registry (Category III, IV, and V), including intake, investigation, and services case records for 10 years from the date of the complaint or until the youngest child in the family reaches 18 years of age, whichever is later. The Department shall maintain the records on cases that have been entered on the Central Registry (Category I and II) until the Department receives reliable information that the individual alleged to have perpetrated the child abuse/neglect is dead.⁷⁵

1.11. EDUCATION AND TRAINING OBLIGATIONS OF DEPARTMENT

The DHS is also required to provide educational and training services to the general public and to professionals throughout the State.

(2) The department shall assure a continuing education program for department, probate court, and private agency personnel. The program shall include responsibilities, obligations and powers under this act and the diagnosis and treatment of child abuse and neglect when committed by persons responsible for the child's health or welfare.

(3) The department shall provide for the dissemination of information to the general public with respect to the problem of child abuse and neglect in this state and the facilities, prevention, and treatment methods available to combat child abuse and neglect when committed by persons responsible for the child's health or welfare.⁷⁶

⁷⁴. MCL 722.627(5)

⁷⁵. MCL 722.627(7); MDHS CPS Manual Item 717

⁷⁶. MCL 722.629(2) & (3)

Multidisciplinary services are to be available through the DHS to combat child abuse and neglect.

The department, in discharging its responsibilities under this act, shall provide, directly or through the purchase of services from other agencies and professions, multidisciplinary services such as those of a pediatrician, psychologist, psychiatrist, public health nurse, social worker, or attorney through the establishment of regionally based or strategically located teams. The department shall prepare a biennial report to the legislature containing information on the activities of the teams created pursuant to this subsection and including recommendations by the teams and the department regarding child abuse and neglect when committed by persons responsible for the child's health or welfare.⁷⁷

⁷⁷. MCL 722.629(1)