



**House  
Legislative  
Analysis  
Section**

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**CHILD PROTECTION RECORDS: NO  
CONFIDENTIALITY UPON DEATH**

**House Bill 4586 (Substitute H-1)  
First Analysis (6-4-03)**

**Sponsor: Rep. Barb Vander Veen  
Committee: Family and Children  
Services**

***THE APPARENT PROBLEM:***

In recent years, there have been a number of stories in the news regarding suspected incidents of child abuse and neglect that resulted in the death of the child involved, notwithstanding the efforts of the Family Independence Agency to protect the harmed child. Indeed, a series of articles have appeared over the last month about indictments of two FIA-contracted foster care caseworkers at the St. Vincent and Sarah Fisher Center for Children in Farmington Hills and charges against two doctors at Children’s Hospital of Michigan for failing to report suspected abuse of a child in foster care who was beaten to death. The foster care workers were also charged with second-degree child abuse, a charge which carries a maximum of four years in prison. While these cases are certainly extreme, they highlight what many believe to be a fundamental problem with the state’s complex child welfare system. It is believed that greater public accountability, achieved, in part, through greater public disclosure of child abuse records, may serve to improve the state’s child welfare system.

***THE CONTENT OF THE BILL:***

The bill would amend the Child Protection Law by adding to the list of persons eligible to obtain otherwise confidential child abuse records and increasing the disclosure of certain “specified information”. Specifically, the bill would require the director of the Family Independence Agency to release specified information in a child abuse or neglect case in which a child who was part of the case has died.

There are several provisions in that act currently that govern the disclosure of “specified information” for child protective services records (see Background Information).

Under the act, “specified information” is defined to mean, with certain exceptions, information in a

central registry case record that is specifically related to any referrals or reports of child abuse or neglect. The bill would amend the definition so that specified information would be any information in a children’s protective services case record that is related to the Family Independence Agency’s actions in response to a complaint of child abuse or neglect. The bill would specifically exclude any information that is not related to the department’s actions in response to a report of child abuse or neglect.

The act also lists several individuals and organizations that may obtain a written report, document of photograph filed with the FIA that is otherwise confidential, including law enforcement agencies, physicians, a court, a grand jury, and the alleged perpetrator, among others. The bill would add that the confidential information may also be disclosed to a foster care review board for the purpose of meeting the requirements of Public Act 422 of 1984.

Finally, the bill would delete a provision that states that in releasing information to a child placing agency, child care center, or child caring institution, or to a person seeking employment with such an organization, a case that is investigated before July 1, 1999 and entered in the central registry is considered a central registry case if the case is one in which abuse or neglect is the suspected cause of a child’s death; the child is the victim of suspected sexual abuse or sexual exploitation; or abuse or neglect results in severe physical injury to the child requires and requires medical treatment or hospitalization.

***BACKGROUND INFORMATION:***

Sections 7c through 7i of the Child Protection Law set the ground rules by which the director may release “specified information” from a child protective services record. The release of specified information in accordance with these provisions does

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not subject a report or record that is confidential under the act to disclosure under the Freedom of Information Act. In general, the director may release specified information, upon receiving a proper request, if the release of any specified information is in the best interest of the child to whom the information relates; or the release of information does not conflict with the child's best interest and is in the best interest of a family member or other person who resides with the child and one of the following is true: it clarifies actions taken by the department; the record concerns a child who has died or a member of that child's family; all or part of the report containing specified information is publicly disclosed pursuant to a judicial proceeding; a complaint or investigation of child abuse or neglect to which the record containing specified information has been part of the subject matter of a published broadcast media story; or the record containing specified information concerns a substantiated report of sexual abuse, serious injury, or life threatening harm involving the child or a sibling identified in the request. (MCL 722.627c and 722.627d)

The director of the FIA is prohibited from releasing any specified information if the request for release does not include sufficient information in order to properly identify the specific case subject to the request; an investigation of the report of child abuse or neglect is in progress and the report has not been substantiated nor unsubstantiated; there is an ongoing criminal investigation and the release of any specified information would interfere with that investigation; the individual requesting the release of the specified information is incarcerated in a state, county, or federal correctional facility; or the child to whom the record relates is 18 years of age or older. In addition, the director of the FIA is specifically prohibited from denying a request based on a desire to shield a lack of, or an inappropriate, performance by the department. (MCL 722.627e)

If the specified information is released, the department is required to notify each individual named in the report as a perpetrator or alleged perpetrator of child abuse or neglect; each parent or legal guardian of the child; each attorney representing the child, a parent or legal guardian, or actual or alleged perpetrator; and the child's guardian ad litem. A person that is required to be notified is permitted to appeal the decision of the director to release the specified information. (MCL 722.627g and 722.627h)

### **FISCAL IMPLICATIONS:**

According to the House Fiscal Agency the bill would have no significant measurable fiscal impact. (HFA analysis dated 5-29-03)

### **ARGUMENTS:**

#### ***For:***

In December 2000, the *Detroit Free Press* ran a series of articles that chronicled the murder of a 2-year-old at the hands of her abusive parents, as well as the actions taken and not taken by the Family Independence Agency. In response to this awful series of events, a legislative subcommittee on child protective services was formed in order to better ascertain the extent of child maltreatment in the state, the processes and players involved in protecting at-risk children, and the accountability mechanism set in place to ensure that the child welfare system is properly achieving its goals. As the subcommittee report notes, the *Free Press* series, "highlighted what appeared to be a series of bureaucratic miscues by the state's child protection machinery, composed of the Family Independence Agency and the courts."

One of the main topics of the subcommittee report was accountability. The subcommittee report notes, "[p]resently, the public and their elected policymakers are left with few options to make judgments and decisions about the state's care for children at-risk for abuse and neglect." To bring about greater public accountability, the subcommittee recommended the passage of legislation that would open up child protection records when a child dies.

Providing for the disclosure of child protection records when a child dies while in the custody of the state, a contracted agency, or a foster care parent, serves as just one mechanism to bring about greater accountability in the child welfare system. Opening the records, which would occur in the most egregious of cases, simply provides for public oversight of the child welfare system by making those records open to public scrutiny and examination. This permits the records to be viewed by child advocacy organizations and other parties and organizations with a vested interest in the protection of children, and helps guard against any unprincipled or substandard behavior on the part of the courts, the children's ombudsman, and the FIA and its contracted private agencies.

**For:**

Currently under the act, the director *may* release a record or report containing specified information that concerns a child who has died (see the process described above in the (Background Information)) The release of such information is very limited in terms of what may be released and to whom it may be released. In addition, the release of such information also is a rather time consuming process and requires notification of certain individuals. Apparently, it has been rather difficult to obtain any information from the department when a child dies. The bill, by requiring the director to release specified information, forgoes the entire process and limitations set forth in the act.

**Against:**

The bill, by requiring the director to release specified information, overrides an entire process designed to limit the dissemination of sensitive information so that only those who have a legitimate interest and stake in the release of such information are provided access. This bill, essentially, provides the public with free and unfettered access to every morsel of information contained in a child protective services record, even when such a disclosure could subject the family (including siblings) to irreparable harm.

**For:**

The bill greatly broadens the scope of “specified information”. Currently, “specified information” is defined to mean information in a central registry case record. However, under the bill, “specified information” would be expanded to include any information in a child protective services record. When a complaint of child abuse or neglect is investigated, it is classified according to the existing evidence, risk level and the safety assessment. The five dispositions for CPS investigations are:

- Category V – No evidence. Further intervention by CPS is not warranted.
- Category IV - CPS finds that there is not a preponderance of evidence of child abuse and/or neglect. CPS may assist the family in accessing community-based services.
- Category III – CPS finds that there is a preponderance of evidence of child abuse or neglect, and the SDM risk level is low or moderate. CPS must assist the family in receiving community-based services commensurate with the risk to the child.

- Category II – CPS finds a preponderance of evidence of child abuse and/or neglect and the SDM risk level is high or intensive. CPS must open a protective services case and provide services.

- Category I - CPS finds a preponderance of evidence of child abuse and/or neglect and the Child Protection Law or policy requires a petition for court action.

Central registry cases, generally, are those cases classified as category I or II. As such, the release of specified information is limited to information pertaining to those classifications. By expanding the definition of specified information, the bill allows for the release of information pertaining to classifications III, IV, and V, thereby providing for the release of more information, and increasing public accountability of the state’s child welfare system.

**POSITIONS:**

There are no positions at present.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.