



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3960

Introduced 2/26/2009, by Rep. Constance A. Howard

SYNOPSIS AS INTRODUCED:

325 ILCS 5/3

from Ch. 23, par. 2053

325 ILCS 5/7.5a new

Amends the Abused and Neglected Child Reporting Act. Provides that certain interviews of a child who is alleged to be an abused child may not be conducted unless the interview is videotaped and audiotaped by the Department of Children and Family Services. Requires that the Department preserve those videotapes and audiotapes and other materials until all judgments in legal proceedings relating to the victim-sensitive interview are final and all direct and habeas corpus appeals are exhausted or such legal proceedings are barred by law. Provides for access to copies of the preserved materials by a party to a proceeding relating to the materials. Effective immediately.

LRB096 04609 DRJ 14666 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning children.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Abused and Neglected Child Reporting Act is
5 amended by changing Section 3 and by adding Section 7.5a as
6 follows:

7 (325 ILCS 5/3) (from Ch. 23, par. 2053)

8 Sec. 3. As used in this Act unless the context otherwise
9 requires:

10 "Child" means any person under the age of 18 years, unless
11 legally emancipated by reason of marriage, ~~or~~ entry into a
12 branch of the United States armed services, or a court order
13 entered under the Emancipation of Minors Act.

14 "Department" means Department of Children and Family
15 Services.

16 "Local law enforcement agency" means the police of a city,
17 town, village or other incorporated area or the sheriff of an
18 unincorporated area or any sworn officer of the Illinois
19 Department of State Police.

20 "Abused child" means a child whose parent or immediate
21 family member, or any person responsible for the child's
22 welfare, or any individual residing in the same home as the
23 child, or a paramour of the child's parent:

1 (a) inflicts, causes to be inflicted, or allows to be
2 inflicted upon such child physical injury, by other than
3 accidental means, which causes death, disfigurement,
4 impairment of physical or emotional health, or loss or
5 impairment of any bodily function;

6 (b) creates a substantial risk of physical injury to
7 such child by other than accidental means which would be
8 likely to cause death, disfigurement, impairment of
9 physical or emotional health, or loss or impairment of any
10 bodily function;

11 (c) commits or allows to be committed any sex offense
12 against such child, as such sex offenses are defined in the
13 Criminal Code of 1961, as amended, and extending those
14 definitions of sex offenses to include children under 18
15 years of age;

16 (d) commits or allows to be committed an act or acts of
17 torture upon such child;

18 (e) inflicts excessive corporal punishment;

19 (f) commits or allows to be committed the offense of
20 female genital mutilation, as defined in Section 12-34 of
21 the Criminal Code of 1961, against the child; or

22 (g) causes to be sold, transferred, distributed, or
23 given to such child under 18 years of age, a controlled
24 substance as defined in Section 102 of the Illinois
25 Controlled Substances Act in violation of Article IV of the
26 Illinois Controlled Substances Act or in violation of the

1 Methamphetamine Control and Community Protection Act,
2 except for controlled substances that are prescribed in
3 accordance with Article III of the Illinois Controlled
4 Substances Act and are dispensed to such child in a manner
5 that substantially complies with the prescription.

6 A child shall not be considered abused for the sole reason
7 that the child has been relinquished in accordance with the
8 Abandoned Newborn Infant Protection Act.

9 "Neglected child" means any child who is not receiving the
10 proper or necessary nourishment or medically indicated
11 treatment including food or care not provided solely on the
12 basis of the present or anticipated mental or physical
13 impairment as determined by a physician acting alone or in
14 consultation with other physicians or otherwise is not
15 receiving the proper or necessary support or medical or other
16 remedial care recognized under State law as necessary for a
17 child's well-being, or other care necessary for his or her
18 well-being, including adequate food, clothing and shelter; or
19 who is abandoned by his or her parents or other person
20 responsible for the child's welfare without a proper plan of
21 care; or who has been provided with interim crisis intervention
22 services under Section 3-5 of the Juvenile Court Act of 1987
23 and whose parent, guardian, or custodian refuses to permit the
24 child to return home and no other living arrangement agreeable
25 to the parent, guardian, or custodian can be made, and the
26 parent, guardian, or custodian has not made any other

1 appropriate living arrangement for the child; or who is a
2 newborn infant whose blood, urine, or meconium contains any
3 amount of a controlled substance as defined in subsection (f)
4 of Section 102 of the Illinois Controlled Substances Act or a
5 metabolite thereof, with the exception of a controlled
6 substance or metabolite thereof whose presence in the newborn
7 infant is the result of medical treatment administered to the
8 mother or the newborn infant. A child shall not be considered
9 neglected for the sole reason that the child's parent or other
10 person responsible for his or her welfare has left the child in
11 the care of an adult relative for any period of time. A child
12 shall not be considered neglected for the sole reason that the
13 child has been relinquished in accordance with the Abandoned
14 Newborn Infant Protection Act. A child shall not be considered
15 neglected or abused for the sole reason that such child's
16 parent or other person responsible for his or her welfare
17 depends upon spiritual means through prayer alone for the
18 treatment or cure of disease or remedial care as provided under
19 Section 4 of this Act. A child shall not be considered
20 neglected or abused solely because the child is not attending
21 school in accordance with the requirements of Article 26 of The
22 School Code, as amended.

23 "Child Protective Service Unit" means certain specialized
24 State employees of the Department assigned by the Director to
25 perform the duties and responsibilities as provided under
26 Section 7.2 of this Act.

1 "Person responsible for the child's welfare" means the
2 child's parent; guardian; foster parent; relative caregiver;
3 any person responsible for the child's welfare in a public or
4 private residential agency or institution; any person
5 responsible for the child's welfare within a public or private
6 profit or not for profit child care facility; or any other
7 person responsible for the child's welfare at the time of the
8 alleged abuse or neglect, or any person who came to know the
9 child through an official capacity or position of trust,
10 including but not limited to health care professionals,
11 educational personnel, recreational supervisors, members of
12 the clergy, and volunteers or support personnel in any setting
13 where children may be subject to abuse or neglect.

14 "Temporary protective custody" means custody within a
15 hospital or other medical facility or a place previously
16 designated for such custody by the Department, subject to
17 review by the Court, including a licensed foster home, group
18 home, or other institution; but such place shall not be a jail
19 or other place for the detention of criminal or juvenile
20 offenders.

21 "An unfounded report" means any report made under this Act
22 for which it is determined after an investigation that no
23 credible evidence of abuse or neglect exists.

24 "An indicated report" means a report made under this Act if
25 an investigation determines that credible evidence of the
26 alleged abuse or neglect exists.

1 "An undetermined report" means any report made under this
2 Act in which it was not possible to initiate or complete an
3 investigation on the basis of information provided to the
4 Department.

5 "Victim-sensitive interview" means an interview of a child
6 who is alleged to be an abused child by a multidisciplinary
7 team that may include representatives from the Department, law
8 enforcement, child protection, criminal prosecution, victim
9 advocacy, and the medical and mental health fields.

10 "Subject of report" means any child reported to the central
11 register of child abuse and neglect established under Section
12 7.7 of this Act and his or her parent, guardian or other person
13 responsible who is also named in the report.

14 "Perpetrator" means a person who, as a result of
15 investigation, has been determined by the Department to have
16 caused child abuse or neglect.

17 "Member of the clergy" means a clergyman or practitioner of
18 any religious denomination accredited by the religious body to
19 which he or she belongs.

20 (Source: P.A. 94-556, eff. 9-11-05; 95-443, eff. 1-1-08.)

21 (325 ILCS 5/7.5a new)

22 Sec. 7.5a. Victim-sensitive interviews.

23 (a) A victim-sensitive interview of a child who is alleged
24 to be an abused child may not be conducted unless the interview
25 is videotaped and audiotaped by the Department. The videotaping

1 and audiotaping of the victim-sensitive interview must begin at
2 the start of the interview and continue without interruption
3 until the interview is concluded.

4 (b) The Department must preserve every videotape and
5 audiotape of a victim-sensitive interview of a child who is
6 alleged to be an abused child, together with the written notes
7 and reports of the members of the multidisciplinary team
8 participating in or observing the interview, until all
9 judgments in legal proceedings relating to the
10 victim-sensitive interview are final and all direct and habeas
11 corpus appeals are exhausted or such legal proceedings are
12 barred by law.

13 (c) Any party to a proceeding relating to a
14 victim-sensitive interview of a child who is alleged to be an
15 abused child is entitled to obtain by subpoena a copy of the
16 videotape and audiotape of the interview and copies of any
17 written notes or reports of the members of the
18 multidisciplinary team participating in or observing the
19 interview.

20 (d) Notwithstanding any other law to the contrary, the
21 inspection and copying of a videotape or audiotape of a
22 victim-sensitive interview of a child who is alleged to be an
23 abused child by any person who is not one of the following is
24 prohibited: a judge, State's Attorney, Assistant State's
25 Attorney, psychologist, psychiatrist, social worker, doctor,
26 parent, parole agent, probation officer, attorney, guardian ad

1 litem or child's representative for the child, petitioner or
2 petitioner's attorney, plaintiff or plaintiffs attorney,
3 defendant or defendant's attorney, or respondent or
4 respondent's attorney, in a criminal proceeding or an
5 investigation related a criminal proceeding, in a child abuse
6 or child neglect proceeding, in a child custody or child
7 guardianship proceeding, or in an adoption proceeding.

8 (e) A non-offending caretaker of a child who is alleged to
9 be an abused child is entitled to receive a copy of the
10 videotape and audiotape, together with copies of any written
11 notes or reports prepared by participants or observers in the
12 victim-sensitive interview, within 30 days after serving on the
13 Department a written request for those materials. The caretaker
14 must submit the written request to the Department within 30
15 days after the completion of the victim-sensitive interview or
16 notice of the finding, whichever occurs later. The Department
17 is responsible for all costs associated with preparing copies
18 of the videotapes, audiotapes, and written notes and reports.
19 The Department must provide notice of the right to request
20 copies of the materials to all parties at the time of the
21 victim-sensitive interview.

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.