

AMENDMENTS TO HOUSE BILL NO. 726

Sponsor: SENATOR MENSCH

Printer's No. 2724

1 Amend Bill, page 1, line 3, by striking out "AND"

2 Amend Bill, page 1, line 6, by inserting after "~~reports~~"

3 where it occurs the second time

4 ; further providing for disposition of founded and indicated
5 reports, for amendment or expunction of information, for
6 investigation of reports and for evidence in court proceedings

7 Amend Bill, page 22, by inserting between lines 19 and 20

8 Section 3. Section 6338(a) of Title 23 is amended to read:
9 § 6338. Disposition of founded and indicated reports.

10 (a) General rule.--When a report of suspected child abuse or
11 a report under Subchapter C.1 (relating to students in public
12 and private schools) is determined by the appropriate county
13 agency to be a founded report or an indicated report, the
14 information concerning that report of suspected child abuse
15 shall be expunged immediately from the pending complaint file,
16 and an appropriate entry shall be made in the Statewide central
17 register. [Notice of the determination must be given to the
18 subjects of the report, other than the abused child, and to the
19 parent or guardian of the affected child or student along with
20 an explanation of the implications of the determination. Notice
21 given to perpetrators of child abuse and to school employees who
22 are subjects of indicated reports for school employees or
23 founded reports for school employees shall include notice that
24 their ability to obtain employment in a child-care facility or
25 program or a public or private school may be adversely affected
26 by entry of the report in the Statewide central register. The
27 notice shall also inform the recipient of his right, within 45
28 days after being notified of the status of the report, to appeal
29 an indicated report, and his right to a hearing if the request
30 is denied.] Notice of the determination that a report is a
31 founded, indicated or unfounded report shall be made as provided
32 in section 6368(f) (relating to investigation of reports).

33 * * *

34 Section 4. Section 6341(a), (b) and (c) of Title 23 are
35 amended and the section is amended by adding a subsection to

1 read:

2 § 6341. Amendment or expunction of information.

3 (a) General rule.--[At any time:] Notwithstanding section
4 6338.1 (relating to expunction of information of perpetrator who
5 was under 18 years of age when child abuse was committed):

6 (1) [The] At any time, the secretary may amend or
7 expunge any record in the Statewide database under this
8 chapter upon good cause shown and notice to the appropriate
9 subjects of the report. The request shall be in writing in a
10 manner prescribed by the department. For purposes of this
11 paragraph, good cause shall include, but is not limited to,
12 the following:

13 (i) Newly discovered evidence that an indicated
14 report of child abuse is inaccurate or is being
15 maintained in a manner inconsistent with this chapter.

16 (ii) A determination that the perpetrator in an
17 indicated report of abuse no longer represents a risk of
18 child abuse and that no significant public purpose would
19 be served by the continued listing of the person as a
20 perpetrator in the Statewide database.

21 (2) Any person named as a perpetrator, and any school
22 employee named, in an indicated report of child abuse may,
23 within [45] 90 days of being notified of the status of the
24 report, request an administrative review by, or appeal and
25 request a hearing before, the secretary to amend or expunge
26 an indicated report on the grounds that it is inaccurate or
27 it is being maintained in a manner inconsistent with this
28 chapter. The request shall be in writing in a manner
29 prescribed by the department.

30 (3) Within 60 days of a request under paragraph (1) or a
31 request for administrative review under paragraph (2), the
32 department shall send notice of the secretary's decision.

33 (b) Review of grant of request.--If the secretary grants the
34 request under subsection (a) (2), the Statewide [central
35 register] database, appropriate county agency, appropriate law
36 enforcement officials and all subjects shall be so advised of
37 the decision. The county agency and any subject have [45] 90
38 days in which to file an administrative appeal with the
39 secretary. If an administrative appeal is received, the
40 secretary or his designated agent shall schedule a hearing
41 pursuant to Article IV of the act of June 13, 1967 (P.L.31,
42 No.21), known as the Public Welfare Code, [and] attending
43 departmental regulations. If no administrative appeal is
44 received within the designated time period, the Statewide
45 [central register] database shall comply with the decision of
46 the secretary and advise the county agency to amend or expunge
47 the information in their records so that the records are
48 consistent at both the State and local levels.

49 (c) Review of refusal of request.--[If the secretary refuses
50 the request under subsection (a) (2) or does not act within a
51 reasonable time, but in no event later than 30 days after

1 receipt of the request, the perpetrator or school employee shall
2 have the right to a hearing before the secretary or a designated
3 agent of the secretary to determine whether the summary of the
4 indicated report in the Statewide central register should be
5 amended or expunged on the grounds that it is inaccurate or that
6 it is being maintained in a manner inconsistent with this
7 chapter. The perpetrator or school employee shall have 45 days
8 from the date of the letter giving notice of the decision to
9 deny the request in which to request a hearing.] Subject to
10 subsection (c.1), if the secretary refuses a request under
11 subsection (a)(1) or a request for administrative review under
12 subsection (a)(2), or does not act within the prescribed time,
13 the perpetrator or school employee shall have the right to
14 appeal and request a hearing before the secretary to amend or
15 expunge an indicated report on the grounds that it is inaccurate
16 or it is being maintained in a manner inconsistent with this
17 chapter. The request for hearing must be made within 90 days of
18 notice of the results of the investigation. The appropriate
19 county agency and appropriate law enforcement officials shall be
20 given notice of the hearing. The burden of proof in the hearing
21 shall be on the appropriate county agency. The department shall
22 assist the county agency as necessary.

23 (c.1) Founded reports.--A person named as a perpetrator in a
24 founded report of child abuse must provide to the department a
25 court order indicating that the underlying adjudication that
26 formed the basis of the founded report has been reversed or
27 vacated.

28 * * *

29 Section 5. Section 6368 of Title 23 is amended by adding
30 subsections to read:

31 § 6368. Investigation of reports.

32 * * *

33 (e) Review of indicated reports.--A final determination that
34 a report of suspected child abuse is indicated shall be
35 approved by:

36 (1) the county agency administrator or a designee and
37 reviewed by a county agency solicitor, when the county agency
38 is investigating; or

39 (2) the secretary or a designee and reviewed by legal
40 counsel for the department, when the department is
41 investigating.

42 (f) Final determination.--Immediately upon conclusion of the
43 child abuse investigation, the county agency shall provide the
44 results of its investigation to the department, in a manner
45 prescribed by the department. Within three business days of
46 receipt of the results of the investigation from the county
47 agency, the department shall send notice of the final
48 determination to the subjects of the report, other than the
49 abused child. The determination shall include the following
50 information:

51 (1) The status of the report.

1 (2) The perpetrator's right to request the secretary to
2 amend or expunge the report.

3 (3) The right of the subjects of the report to services
4 from the county agency.

5 (4) The effect of the report upon future employment
6 opportunities involving children.

7 (5) The fact that the name of the perpetrator, the
8 nature of the abuse and the final status of a founded or
9 indicated report will be entered in the Statewide database,
10 if the perpetrator's Social Security number or date of birth
11 are known.

12 (6) The perpetrator's right to file an appeal of an
13 indicated finding of abuse pursuant to section 6341 (relating
14 to amendment or expunction of information) within 90 days of
15 the date of notice.

16 (7) The perpetrator's right to a fair hearing on the
17 merits on an appeal of an indicated report filed pursuant to
18 section 6341.

19 (8) The burden on the investigative agency to prove its
20 case by substantial evidence in an appeal of an indicated
21 report.

22 (g) Notice.--Notice under subsection (f) shall constitute
23 mailing of the final determination to the recipient's last known
24 address. The determination is presumed received when not
25 returned by the postal authorities as undeliverable. If the
26 determination is returned as undeliverable, the entry in the
27 Statewide database shall include information that the department
28 was unable to provide notice. No further efforts to provide
29 notice shall be required, except that the department shall
30 resume reasonable efforts to provide notice if new information
31 is received regarding the whereabouts of an individual who is
32 entitled to receive notice under subsection (f).

33 (h) Notice to mandated reporter.--If a report was made by a
34 mandated reporter under section 6313 (relating to reporting
35 procedure), the department shall notify the mandated reporter
36 who made the report of suspected child abuse of all of the
37 following within three business days of the department's receipt
38 of the results of the investigation:

39 (1) Whether the child abuse report is founded, indicated
40 or unfounded.

41 (2) Any services provided, arranged for or to be
42 provided by the county agency to protect the child.

43 Section 6. Section 6381 of Title 23 is amended by adding a
44 subsection to read:

45 § 6381. Evidence in court proceedings.

46 * * *

47 (e) Child victims and witnesses.--In addition to the
48 provisions of this section, any consideration afforded to a
49 child victim or witness pursuant to 42 Pa.C.S. Ch. 59, Subch. D
50 (relating to child victims and witnesses) in any prosecution or
51 adjudication shall be afforded to a child in child abuse

1 proceedings in court or in any department administrative hearing
2 pursuant to section 6341 (relating to amendment or expunction of
3 information).

4 Amend Bill, page 22, line 20, by striking out "3" and
5 inserting

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