

SENATE BILL No. 1580

November 5, 2008, Introduced by Senators SWITALSKI and GLEASON and referred to the Committee on Transportation.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
by amending section 134a (MCL 330.1134a), as added by 2006 PA 27.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 134a. (1) Except as otherwise provided in subsection (2),
2 a psychiatric facility or intermediate care facility for people
3 with mental retardation shall not employ, independently contract
4 with, or grant clinical privileges to an individual who regularly
5 has direct access to or provides direct services to patients or
6 residents in the psychiatric facility or intermediate care facility
7 for people with mental retardation after the effective date of this
8 section if the individual satisfies 1 or more of the following:

9 (a) Has been convicted of a relevant crime described under 42

1 USC 1320a-7.

2 (b) Has been convicted of any of the following felonies, an
3 attempt or conspiracy to commit any of those felonies, or any other
4 state or federal crime that is similar to the felonies described in
5 this subdivision, other than a felony for a relevant crime
6 described under 42 USC 1320a-7, unless 15 years have lapsed since
7 the individual completed all of the terms and conditions of his or
8 her sentencing, parole, and probation for that conviction prior to
9 the date of application for employment or clinical privileges or
10 the date of the execution of the independent contract:

11 (i) A felony that involves the intent to cause death or serious
12 impairment of a body function, that results in death or serious
13 impairment of a body function, that involves the use of force or
14 violence, or that involves the threat of the use of force or
15 violence.

16 (ii) A felony involving cruelty or torture.

17 (iii) A felony under chapter XXA of the Michigan penal code,
18 1931 PA 328, MCL 750.145m to 750.145r.

19 (iv) A felony involving criminal sexual conduct.

20 (v) A felony involving abuse or neglect.

21 (vi) A felony involving the use of a firearm or dangerous
22 weapon.

23 (vii) A felony involving the diversion or adulteration of a
24 prescription drug or other medications.

25 (c) Has been convicted of a felony or an attempt or conspiracy
26 to commit a felony, other than a felony for a relevant crime
27 described under 42 USC 1320a-7 or a felony described under

1 subdivision (b), unless 10 years have lapsed since the individual
2 completed all of the terms and conditions of his or her sentencing,
3 parole, and probation for that conviction prior to the date of
4 application for employment or clinical privileges or the date of
5 the execution of the independent contract.

6 (d) Has been convicted of any of the following misdemeanors,
7 other than a misdemeanor for a relevant crime described under 42
8 USC 1320a-7, or a state or federal crime that is substantially
9 similar to the misdemeanors described in this subdivision, within
10 the 10 years immediately preceding the date of application for
11 employment or clinical privileges or the date of the execution of
12 the independent contract:

13 (i) A misdemeanor involving the use of a firearm or dangerous
14 weapon with the intent to injure, the use of a firearm or dangerous
15 weapon that results in a personal injury, or a misdemeanor
16 involving the use of force or violence or the threat of the use of
17 force or violence.

18 (ii) A misdemeanor under chapter XXA of the Michigan penal
19 code, 1931 PA 328, MCL 750.145m to 750.145r.

20 (iii) A misdemeanor involving criminal sexual conduct.

21 (iv) A misdemeanor involving cruelty or torture unless
22 otherwise provided under subdivision (e).

23 (v) A misdemeanor involving abuse or neglect.

24 (e) Has been convicted of any of the following misdemeanors,
25 other than a misdemeanor for a relevant crime described under 42
26 USC 1320a-7, or a state or federal crime that is substantially
27 similar to the misdemeanors described in this subdivision, within

1 the 5 years immediately preceding the date of application for
2 employment or clinical privileges or the date of the execution of
3 the independent contract:

4 (i) A misdemeanor involving cruelty if committed by an
5 individual who is less than 16 years of age.

6 (ii) A misdemeanor involving home invasion.

7 (iii) A misdemeanor involving embezzlement.

8 (iv) A misdemeanor involving negligent homicide **OR A MOVING**
9 **VIOLATION CAUSING DEATH.**

10 (v) A misdemeanor involving larceny unless otherwise provided
11 under subdivision (g).

12 (vi) A misdemeanor of retail fraud in the second degree unless
13 otherwise provided under subdivision (g).

14 (vii) Any other misdemeanor involving assault, fraud, theft, or
15 the possession or delivery of a controlled substance unless
16 otherwise provided under subdivision (d), (f), or (g).

17 (f) Has been convicted of any of the following misdemeanors,
18 other than a misdemeanor for a relevant crime described under 42
19 USC 1320a-7, or a state or federal crime that is substantially
20 similar to the misdemeanors described in this subdivision, within
21 the 3 years immediately preceding the date of application for
22 employment or clinical privileges or the date of the execution of
23 the independent contract:

24 (i) A misdemeanor for assault if there was no use of a firearm
25 or dangerous weapon and no intent to commit murder or inflict great
26 bodily injury.

27 (ii) A misdemeanor of retail fraud in the third degree unless

1 otherwise provided under subdivision (g).

2 (iii) A misdemeanor under part 74 of the public health code,
3 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided
4 under subdivision (g).

5 (g) Has been convicted of any of the following misdemeanors,
6 other than a misdemeanor for a relevant crime described under 42
7 USC 1320a-7, or a state or federal crime that is substantially
8 similar to the misdemeanors described in this subdivision, within
9 the year immediately preceding the date of application for
10 employment or clinical privileges or the date of the execution of
11 the independent contract:

12 (i) A misdemeanor under part 74 of the public health code, 1978
13 PA 368, MCL 333.7401 to 333.7461, if the individual, at the time of
14 conviction, is under the age of 18.

15 (ii) A misdemeanor for larceny or retail fraud in the second or
16 third degree if the individual, at the time of conviction, is under
17 the age of 16.

18 (h) Is the subject of an order or disposition under section
19 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
20 MCL 769.16b.

21 (i) Has been the subject of a substantiated finding of
22 neglect, abuse, or misappropriation of property by a state or
23 federal agency pursuant to an investigation conducted in accordance
24 with 42 USC 1395i-3 or 1396r.

25 (2) Except as otherwise provided in subsection (5), a
26 psychiatric facility or intermediate care facility for people with
27 mental retardation shall not employ, independently contract with,

1 or grant privileges to an individual who regularly has direct
2 access to or provides direct services to patients or residents in
3 the psychiatric facility or intermediate care facility for people
4 with mental retardation after the effective date of this section
5 until the psychiatric facility or intermediate care facility for
6 people with mental retardation conducts a criminal history check in
7 compliance with subsection (4). This subsection and subsection (1)
8 do not apply to any of the following:

9 (a) An individual who is employed by, under independent
10 contract to, or granted clinical privileges in a psychiatric
11 facility or intermediate care facility for people with mental
12 retardation before the effective date of this section. Within 24
13 months after the effective date of this section, an individual who
14 is exempt under this subdivision shall provide the department of
15 state police with a set of fingerprints and the department of state
16 police shall input those fingerprints into the automated
17 fingerprint identification system database established under
18 subsection (12). An individual who is exempt under this subdivision
19 is not limited to working within the psychiatric facility or
20 intermediate care facility for people with mental retardation with
21 which he or she is employed by, under independent contract to, or
22 granted clinical privileges on the effective date of this section.
23 That individual may transfer to another psychiatric facility or
24 intermediate care facility for people with mental retardation that
25 is under the same ownership with which he or she was employed,
26 under contract, or granted privileges. If that individual wishes to
27 transfer to another psychiatric facility or intermediate care

1 facility for people with mental retardation that is not under the
2 same ownership, he or she may do so provided that a criminal
3 history check is conducted by the new psychiatric facility or
4 intermediate care facility for people with mental retardation in
5 accordance with subsection (4). If an individual who is exempt
6 under this subdivision is subsequently convicted of a crime
7 described under subsection (1)(a) through (g) or found to be the
8 subject of a substantiated finding described under subsection
9 (1)(i) or an order or disposition described under subsection
10 (1)(h), or is found to have been convicted of a relevant crime
11 described under subsection (1)(a), then he or she is no longer
12 exempt and shall be terminated from employment or denied
13 employment.

14 (b) An individual who is an independent contractor with a
15 psychiatric facility or intermediate care facility for people with
16 mental retardation if the services for which he or she is
17 contracted is not directly related to the provision of services to
18 a patient or resident or if the services for which he or she is
19 contracted allows for direct access to the patients or residents
20 but is not performed on an ongoing basis. This exception includes,
21 but is not limited to, an individual who independently contracts
22 with the psychiatric facility or intermediate care facility for
23 people with mental retardation to provide utility, maintenance,
24 construction, or communications services.

25 (3) An individual who applies for employment either as an
26 employee or as an independent contractor or for clinical privileges
27 with a psychiatric facility or intermediate care facility for

1 people with mental retardation and has received a good faith offer
2 of employment, an independent contract, or clinical privileges from
3 the psychiatric facility or intermediate care facility for people
4 with mental retardation shall give written consent at the time of
5 application for the department of state police to conduct an
6 initial criminal history check under this section, along with
7 identification acceptable to the department of state police.

8 (4) Upon receipt of the written consent and identification
9 required under subsection (3), a psychiatric facility or
10 intermediate care facility for people with mental retardation that
11 has made a good faith offer of employment or an independent
12 contract or clinical privileges to the applicant shall make a
13 request to the department of state police to conduct a criminal
14 history check on the applicant, to input the applicant's
15 fingerprints into the automated fingerprint identification system
16 database, and to forward the applicant's fingerprints to the
17 federal bureau of investigation. The department of state police
18 shall request the federal bureau of investigation to make a
19 determination of the existence of any national criminal history
20 pertaining to the applicant. The applicant shall provide the
21 department of state police with a set of fingerprints. The request
22 shall be made in a manner prescribed by the department of state
23 police. The psychiatric facility or intermediate care facility for
24 people with mental retardation shall make the written consent and
25 identification available to the department of state police. The
26 psychiatric facility or intermediate care facility for people with
27 mental retardation shall make a request to the relevant licensing

1 or regulatory department to conduct a check of all relevant
2 registries established pursuant to federal and state law and
3 regulations for any substantiated findings of abuse, neglect, or
4 misappropriation of property. If the department of state police or
5 the federal bureau of investigation charges a fee for conducting
6 the initial criminal history check, the charge shall be paid by or
7 reimbursed by the department with federal funds as provided to
8 implement a pilot program for national and state background checks
9 on direct patient access employees of long-term care facilities or
10 providers in accordance with section 307 of the medicare
11 prescription drug, improvement, and modernization act of 2003,
12 Public Law 108-173. The psychiatric facility or intermediate care
13 facility for people with mental retardation shall not seek
14 reimbursement for a charge imposed by the department of state
15 police or the federal bureau of investigation from the individual
16 who is the subject of the initial criminal history check. A
17 psychiatric facility or intermediate care facility for people with
18 mental retardation, a prospective employee, or a prospective
19 independent contractor covered under this section may not be
20 charged for the cost of an initial criminal history check required
21 under this section. The department of state police shall conduct a
22 criminal history check on the applicant named in the request. The
23 department of state police shall provide the department with a
24 written report of the criminal history check conducted under this
25 subsection if the criminal history check contains any criminal
26 history record information. The report shall contain any criminal
27 history record information on the applicant maintained by the

1 department of state police. The department of state police shall
2 provide the results of the federal bureau of investigation
3 determination to the department within 30 days after the request is
4 made. If the requesting psychiatric facility or intermediate care
5 facility for people with mental retardation is not a state
6 department or agency and if a criminal conviction is disclosed on
7 the written report of the criminal history check or the federal
8 bureau of investigation determination, the department shall notify
9 the psychiatric facility or intermediate care facility for people
10 with mental retardation and the applicant in writing of the type of
11 crime disclosed on the written report of the criminal history check
12 or the federal bureau of investigation determination without
13 disclosing the details of the crime. Any charges imposed by the
14 department of state police or the federal bureau of investigation
15 for conducting an initial criminal history check or making a
16 determination under this subsection shall be paid in the manner
17 required under this subsection. The notice shall include a
18 statement that the applicant has a right to appeal a decision made
19 by the psychiatric facility or intermediate care facility for
20 people with mental retardation regarding his or her employment
21 eligibility based on the criminal background check. The notice
22 shall also include information regarding where to file and
23 describing the appellate procedures established under section
24 20173b of the public health code, 1978 PA 368, MCL 333.20173b.

25 (5) If a psychiatric facility or intermediate care facility
26 for people with mental retardation determines it necessary to
27 employ or grant clinical privileges to an applicant before

1 receiving the results of the applicant's criminal history check
2 under this section, the psychiatric facility or intermediate care
3 facility for people with mental retardation may conditionally
4 employ or grant conditional clinical privileges to the individual
5 if all of the following apply:

6 (a) The psychiatric facility or intermediate care facility for
7 people with mental retardation requests the criminal history check
8 under this section upon conditionally employing or conditionally
9 granting clinical privileges to the individual.

10 (b) The individual signs a statement in writing that indicates
11 all of the following:

12 (i) That he or she has not been convicted of 1 or more of the
13 crimes that are described in subsection (1)(a) through (g) within
14 the applicable time period prescribed by each subdivision
15 respectively.

16 (ii) That he or she is not the subject of an order or
17 disposition described in subsection (1)(h).

18 (iii) That he or she has not been the subject of a substantiated
19 finding as described in subsection (1)(i).

20 (iv) The individual agrees that, if the information in the
21 criminal history check conducted under this section does not
22 confirm the individual's statements under subparagraphs (i) through
23 (iii), his or her employment or clinical privileges will be
24 terminated by the psychiatric facility or intermediate care
25 facility for people with mental retardation as required under
26 subsection (1) unless and until the individual appeals and can
27 prove that the information is incorrect.

1 (v) That he or she understands the conditions described in
2 subparagraphs (i) through (iv) that result in the termination of his
3 or her employment or clinical privileges and that those conditions
4 are good cause for termination.

5 (6) The department shall develop and distribute a model form
6 for the statement required under subsection (5)(b). The department
7 shall make the model form available to psychiatric facilities or
8 intermediate care facilities for people with mental retardation
9 subject to this section upon request at no charge.

10 (7) If an individual is employed as a conditional employee or
11 is granted conditional clinical privileges under subsection (5),
12 and the report described in subsection (4) does not confirm the
13 individual's statement under subsection (5)(b)(i) through (iii), the
14 psychiatric facility or intermediate care facility for people with
15 mental retardation shall terminate the individual's employment or
16 clinical privileges as required by subsection (1).

17 (8) An individual who knowingly provides false information
18 regarding his or her identity, criminal convictions, or
19 substantiated findings on a statement described in subsection
20 (5)(b)(i) through (iii) is guilty of a misdemeanor punishable by
21 imprisonment for not more than 93 days or a fine of not more than
22 \$500.00, or both.

23 (9) A psychiatric facility or intermediate care facility for
24 people with mental retardation shall use criminal history record
25 information obtained under subsection (4) only for the purpose of
26 evaluating an applicant's qualifications for employment, an
27 independent contract, or clinical privileges in the position for

1 which he or she has applied and for the purposes of subsections (5)
2 and (7). A psychiatric facility or intermediate care facility for
3 people with mental retardation or an employee of the psychiatric
4 facility or intermediate care facility for people with mental
5 retardation shall not disclose criminal history record information
6 obtained under subsection (4) to a person who is not directly
7 involved in evaluating the applicant's qualifications for
8 employment, an independent contract, or clinical privileges. An
9 individual who knowingly uses or disseminates the criminal history
10 record information obtained under subsection (4) in violation of
11 this subsection is guilty of a misdemeanor punishable by
12 imprisonment for not more than 93 days or a fine of not more than
13 \$1,000.00, or both. Upon written request from another psychiatric
14 facility or intermediate care facility for people with mental
15 retardation, health facility or agency, or adult foster care
16 facility that is considering employing, independently contracting
17 with, or granting clinical privileges to an individual, a
18 psychiatric facility or intermediate care facility for people with
19 mental retardation that has obtained criminal history record
20 information under this section on that individual shall, with the
21 consent of the applicant, share the information with the requesting
22 psychiatric facility or intermediate care facility for people with
23 mental retardation, health facility or agency, or adult foster care
24 facility. Except for a knowing or intentional release of false
25 information, a psychiatric facility or intermediate care facility
26 for people with mental retardation has no liability in connection
27 with a criminal background check conducted under this section or

1 the release of criminal history record information under this
2 subsection.

3 (10) As a condition of continued employment, each employee,
4 independent contractor, or individual granted clinical privileges
5 shall do each of the following:

6 (a) Agree in writing to report to the psychiatric facility or
7 intermediate care facility for people with mental retardation
8 immediately upon being arraigned for 1 or more of the criminal
9 offenses listed in subsection (1)(a) through (g), upon being
10 convicted of 1 or more of the criminal offenses listed in
11 subsection (1)(a) through (g), upon becoming the subject of an
12 order or disposition described under subsection (1)(h), and upon
13 being the subject of a substantiated finding of neglect, abuse, or
14 misappropriation of property as described in subsection (1)(i).
15 Reporting of an arraignment under this subdivision is not cause for
16 termination or denial of employment.

17 (b) If a set of fingerprints is not already on file with the
18 department of state police, provide the department of state police
19 with a set of fingerprints.

20 (11) In addition to sanctions set forth in this act, a
21 licensee, owner, administrator, or operator of a psychiatric
22 facility or intermediate care facility for people with mental
23 retardation who knowingly and willfully fails to conduct the
24 criminal history checks as required under this section is guilty of
25 a misdemeanor punishable by imprisonment for not more than 1 year
26 or a fine of not more than \$5,000.00, or both.

27 (12) In collaboration with the department of state police, the

1 department of information technology shall establish an automated
2 fingerprint identification system database that would allow the
3 department of state police to store and maintain all fingerprints
4 submitted under this section and would provide for an automatic
5 notification if and when a subsequent criminal arrest fingerprint
6 card submitted into the system matches a set of fingerprints
7 previously submitted in accordance with this section. Upon such
8 notification, the department of state police shall immediately
9 notify the department and the department shall immediately contact
10 the respective psychiatric facility or intermediate care facility
11 for people with mental retardation with which that individual is
12 associated. Information in the database established under this
13 subsection is confidential, is not subject to disclosure under the
14 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
15 shall not be disclosed to any person except for purposes of this
16 act or for law enforcement purposes.

17 (13) Within 1 year after the effective date of the amendatory
18 act that added this section, the department shall submit a written
19 report to the legislature regarding each of the following:

20 (a) The impact and effectiveness of this amendatory act.

21 (b) The feasibility of implementing criminal history checks on
22 volunteers who work in those psychiatric facilities or intermediate
23 care facilities for people with mental retardation and on state
24 agency employees who are involved in the licensing of those
25 psychiatric facilities or intermediate care facilities for people
26 with mental retardation and regulation of those employees.

27 (c) The amount of federal funds provided to implement a pilot

1 program for national and state background checks on direct access
2 employees of long-term care facilities or providers, the amount of
3 those funds expended to date, and the amount of those funds
4 remaining.

5 (14) Within 3 years after the effective date of this section,
6 the department shall submit a written report to the legislature
7 outlining a plan to cover the costs of the criminal history checks
8 required under this section if federal funding is no longer
9 available or is inadequate to cover those costs.

10 (15) By March 1, 2007, the department and the department of
11 state police shall develop and implement an electronic web-based
12 system to assist those psychiatric facilities or intermediate care
13 facilities for people with mental retardation required to check
14 relevant registries and conduct criminal history checks of its
15 employees and independent contractors and to provide for an
16 automated notice to those psychiatric facilities or intermediate
17 care facilities for people with mental retardation for those
18 individuals inputted in the system who, since the initial check,
19 have been convicted of a disqualifying offense or have been the
20 subject of a substantiated finding of abuse, neglect, or
21 misappropriation of property.

22 (16) As used in this section:

23 (a) "Adult foster care facility" means an adult foster care
24 facility licensed under the adult foster care facility licensing
25 act, 1979 PA 218, MCL 400.701 to 400.737.

26 (b) "Direct access" means access to a patient or resident or
27 to a patient's or resident's property, financial information,

1 medical records, treatment information, or any other identifying
2 information.

3 (c) "Health facility or agency" means a health facility or
4 agency that is a nursing home, county medical care facility,
5 hospice, hospital that provides swing bed services, home for the
6 aged, or home health agency and licensed as required under article
7 17 of the public health code, 1978 PA 368, MCL 333.20101 to
8 333.22260.

9 (d) "Home health agency" means a person certified by medicare
10 whose business is to provide to individuals in their places of
11 residence other than in a hospital, nursing home, or county medical
12 care facility 1 or more of the following services: nursing
13 services, therapeutic services, social work services, homemaker
14 services, home health aide services, or other related services.

15 (e) "Independent contract" means a contract entered into by a
16 health facility or agency with an individual who provides the
17 contracted services independently or a contract entered into by a
18 health facility or agency with an organization or agency that
19 employs or contracts with an individual after complying with the
20 requirements of this section to provide the contracted services to
21 the health facility or agency on behalf of the organization or
22 agency.

23 (f) "Medicare" means benefits under the federal medicare
24 program established under title XVIII of the social security act,
25 42 USC 1395 to 1395ggg.

26 Enacting section 1. This amendatory act takes effect October
27 31, 2010.

1 Enacting section 2. This amendatory act does not take effect
2 unless Senate Bill No. 104 of the 94th Legislature is enacted into
3 law.