

SUBSTITUTE FOR
HOUSE BILL NO. 5315

A bill to amend 1974 PA 258, entitled
"Mental health code,"
by amending section 724 (MCL 330.1724), as amended by 1995 PA 290.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 724. (1) A recipient of mental health services shall not
2 be fingerprinted, photographed, ~~audiotaped,~~ **AUDIORECORDED**, or
3 viewed through a 1-way glass except in the circumstances and under
4 the conditions set forth in this section. As used in this section,
5 photographs include still pictures, motion pictures, and ~~videotapes~~
6 **RECORDINGS**.

7 (2) Fingerprints, photographs, or ~~audiotapes~~ **AUDIORECORDINGS**
8 may be taken and used and 1-way glass may be used in order to
9 provide services, including research, to a recipient or in order to
10 determine the name of the recipient only when prior written consent

1 is obtained from 1 of the following:

2 (a) The recipient if 18 years of age or over and competent to
3 consent.

4 (b) The guardian of the recipient if the guardian is legally
5 empowered to execute such a consent.

6 (c) The parent with legal and physical custody of the
7 recipient if the recipient is less than 18 years of age.

8 (3) Fingerprints, photographs, or ~~audiotapes~~ **AUDIORECORDINGS**
9 taken in order to provide services to a recipient, and any copies
10 of them, shall be kept as part of the record of the recipient.

11 (4) Fingerprints, photographs, or ~~audiotapes~~ **AUDIORECORDINGS**
12 taken in order to determine the name of a recipient shall be kept
13 as part of the record of the recipient, except that when necessary
14 the fingerprints, photographs, or ~~audiotapes~~ **AUDIORECORDINGS** may be
15 delivered to others for assistance in determining the name of the
16 recipient. Fingerprints, photographs, or ~~audiotapes~~ **AUDIORECORDINGS**
17 so delivered shall be returned together with copies that were made.
18 An individual receiving fingerprints, photographs, or ~~audiotapes~~
19 **AUDIORECORDINGS** shall be informed of the requirement that return be
20 made. Upon return, the fingerprints, photographs, or ~~audiotapes~~,
21 **AUDIORECORDINGS**, together with copies, shall be kept as part of the
22 record of the recipient.

23 (5) Fingerprints, photographs, or ~~audiotapes~~ **AUDIORECORDINGS**
24 in the record of a recipient, and any copies of them, shall be
25 given to the recipient or destroyed when they are no longer
26 essential in order to achieve 1 of the objectives set forth in
27 subsection (2), or upon discharge of the resident, whichever occurs

1 first.

2 (6) Photographs **OF A RECIPIENT** may be taken for purely
3 personal or social purposes **AND SHALL BE MAINTAINED AS THE**
4 **RECIPIENT'S PERSONAL PROPERTY**. A photograph of a recipient shall
5 not be taken or used under this subsection if the recipient has
6 indicated his or her objection.

7 (7) Photographs or ~~audiotapes~~ **AUDIORECORDINGS** may be taken and
8 1-way glass may be used for educational or training purposes only
9 when express written consent is obtained from 1 of the following:

10 (a) The recipient if 18 years of age or over and competent to
11 consent.

12 (b) The guardian of the recipient if the guardian is legally
13 empowered to execute such a consent.

14 (c) The parent with legal and physical custody of the
15 recipient if the recipient is less than 18 years of age.

16 (8) This section does not apply to recipients of mental health
17 services referred under chapter 10.

18 (9) **VIDEO SURVEILLANCE MAY BE CONDUCTED IN A PSYCHIATRIC**
19 **HOSPITAL FOR PURPOSES OF SAFETY, SECURITY, AND QUALITY IMPROVEMENT.**
20 **VIDEO SURVEILLANCE MAY ONLY BE CONDUCTED IN COMMON AREAS SUCH AS**
21 **HALLWAYS, NURSING STATION AREAS, AND SOCIAL ACTIVITY AREAS WITHIN**
22 **THE PSYCHIATRIC UNIT. VIDEO SURVEILLANCE RECORDINGS TAKEN IN COMMON**
23 **AREAS SHALL NOT BE USED FOR TREATMENT OR THERAPEUTIC PURPOSES.**
24 **BEFORE IMPLEMENTATION OF VIDEO SURVEILLANCE, THE PSYCHIATRIC**
25 **HOSPITAL SHALL ESTABLISH WRITTEN POLICIES AND PROCEDURES THAT**
26 **ADDRESS, AT A MINIMUM, ALL OF THE FOLLOWING:**

27 (A) **IDENTIFICATION OF LOCATIONS WHERE VIDEO SURVEILLANCE**

1 IMAGES WILL BE RECORDED AND SAVED.

2 (B) MECHANISMS BY WHICH RECIPIENTS AND VISITORS WILL BE
3 ADVISED OF THE VIDEO SURVEILLANCE.

4 (C) SECURITY PROVISIONS THAT ASSURE THAT ONLY AUTHORIZED STAFF
5 MEMBERS HAVE ACCESS TO VIEW RECORDED SURVEILLANCE VIDEO. THE
6 SECURITY PROVISIONS SHALL INCLUDE ALL OF THE FOLLOWING:

7 (i) WHO MAY AUTHORIZE VIEWING OF RECORDED SURVEILLANCE VIDEO.

8 (ii) CIRCUMSTANCES UNDER WHICH RECORDED SURVEILLANCE VIDEO MAY
9 BE VIEWED.

10 (iii) WHO MAY VIEW RECORDED SURVEILLANCE VIDEO WITH PROPER
11 AUTHORIZATION.

12 (iv) SAFEGUARDS TO PREVENT AND DETECT UNAUTHORIZED VIEWING OF
13 RECORDED SURVEILLANCE VIDEO.

14 (v) CIRCUMSTANCES UNDER WHICH RECORDED SURVEILLANCE VIDEO MAY
15 BE DUPLICATED AND WHAT STEPS WILL BE TAKEN TO PREVENT UNAUTHORIZED
16 DISTRIBUTION OF THE DUPLICATE.

17 (D) DOCUMENTATION REQUIRED TO BE MAINTAINED FOR EACH INSTANCE
18 OF AUTHORIZED ACCESS, VIEWING DUPLICATION, OR DISTRIBUTION OF ANY
19 RECORDED SURVEILLANCE VIDEOS.

20 (E) PROCESS TO ASSURE RETRIEVAL OF DISTRIBUTED RECORDED
21 SURVEILLANCE VIDEO WHEN THE PURPOSE FOR WHICH THE VIDEO WAS
22 DISTRIBUTED NO LONGER EXISTS.

23 (F) ARCHIVED FOOTAGE OF VIDEO SURVEILLANCE RECORDINGS FOR UP
24 TO 30 DAYS UNLESS NOTICE IS RECEIVED THAT AN INCIDENT REQUIRES
25 INVESTIGATION BY THE DEPARTMENT'S OFFICE OF RECIPIENT RIGHTS, THE
26 LICENSING DIVISION OF THE BUREAU OF HEALTH SYSTEMS, LAW
27 ENFORCEMENT, LICENSED PSYCHIATRIC HOSPITAL OR UNIT OFFICE OF

1 RECIPIENT RIGHTS, AND THE UNITED STATES DEPARTMENT OF HEALTH AND
2 HUMAN SERVICES CENTERS FOR MEDICAID AND MEDICARE SERVICES. IN THAT
3 CASE, ARCHIVED FOOTAGE OF VIDEO SURVEILLANCE RECORDINGS MAY BE
4 RETAINED FOR THE DURATION OF THE INVESTIGATION.

5 (G) RECORDED VIDEO SURVEILLANCE IMAGES SHALL NOT BE MAINTAINED
6 AS PART OF A RECIPIENT'S CLINICAL RECORD.