

SUBSTITUTE FOR  
HOUSE BILL NO. 5448

A bill to amend 1974 PA 258, entitled  
"Mental health code,"  
by amending section 147 (MCL 330.1147), as amended by 1991 PA 40,  
and by adding section 134a.

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  
3           PEOPLE WITH MENTAL RETARDATION SHALL NOT EMPLOY, INDEPENDENTLY  
4           CONTRACT WITH, OR GRANT CLINICAL PRIVILEGES TO AN INDIVIDUAL WHO  
5           REGULARLY HAS DIRECT ACCESS TO OR PROVIDES DIRECT SERVICES TO  
6           PATIENTS OR RESIDENTS IN THE PSYCHIATRIC FACILITY OR INTERMEDIATE  
7           CARE FACILITY FOR PEOPLE WITH MENTAL RETARDATION AFTER THE  
8           EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION IF

1 THE INDIVIDUAL SATISFIES 1 OR MORE OF THE FOLLOWING:

2 (A) THE INDIVIDUAL HAS BEEN CONVICTED OF A FELONY OR AN  
3 ATTEMPT OR CONSPIRACY TO COMMIT A FELONY, OTHER THAN A FELONY FOR  
4 A RELEVANT CRIME DESCRIBED UNDER 42 USC 1320A-7, UNLESS 15 YEARS  
5 HAVE LAPSED SINCE THE INDIVIDUAL COMPLETED ALL OF THE TERMS AND  
6 CONDITIONS OF HIS OR HER SENTENCING, PAROLE, AND PROBATION FOR  
7 THAT CONVICTION BEFORE THE DATE OF APPLICATION FOR EMPLOYMENT OR  
8 CLINICAL PRIVILEGES OR THE DATE OF THE EXECUTION OF THE  
9 INDEPENDENT CONTRACT.

10 (B) THE INDIVIDUAL HAS BEEN CONVICTED OF A MISDEMEANOR,  
11 OTHER THAN A MISDEMEANOR FOR A RELEVANT CRIME DESCRIBED UNDER 42  
12 USC 1320A-7, INVOLVING ABUSE, NEGLECT, ASSAULT, BATTERY, OR  
13 CRIMINAL SEXUAL CONDUCT OR INVOLVING FRAUD OR THEFT, A  
14 MISDEMEANOR UNDER PART 74 OF THE PUBLIC HEALTH CODE, 1978 PA 368,  
15 MCL 333.7401 TO 333.7461, OR A STATE OR FEDERAL CRIME THAT IS  
16 SUBSTANTIALLY SIMILAR TO A MISDEMEANOR DESCRIBED IN THIS  
17 SUBDIVISION, WITHIN THE 10 YEARS IMMEDIATELY PRECEDING THE DATE  
18 OF APPLICATION FOR EMPLOYMENT OR CLINICAL PRIVILEGES OR THE DATE  
19 OF THE EXECUTION OF THE INDEPENDENT CONTRACT.

20 (C) THE INDIVIDUAL HAS BEEN CONVICTED OF A RELEVANT CRIME  
21 DESCRIBED UNDER 42 USC 1320A-7.

22 (D) THE INDIVIDUAL HAS BEEN THE SUBJECT OF A SUBSTANTIATED  
23 FINDING OF NEGLECT, ABUSE, OR MISAPPROPRIATION OF PROPERTY BY THE  
24 DEPARTMENT PURSUANT TO AN INVESTIGATION CONDUCTED IN ACCORDANCE  
25 WITH 42 USC 1395I-3 OR 1396R.

26 (E) THE INDIVIDUAL IS THE SUBJECT OF AN ORDER OR DISPOSITION  
27 UNDER SECTION 16B OF CHAPTER IX OF THE CODE OF CRIMINAL

1 PROCEDURE, 1927 PA 175, MCL 769.16B.

2 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND  
3 SUBSECTION (5), A PSYCHIATRIC FACILITY OR INTERMEDIATE CARE  
4 FACILITY FOR PEOPLE WITH MENTAL RETARDATION SHALL NOT EMPLOY,  
5 INDEPENDENTLY CONTRACT WITH, OR GRANT PRIVILEGES TO AN INDIVIDUAL  
6 WHO REGULARLY HAS DIRECT ACCESS TO OR PROVIDES DIRECT SERVICES TO  
7 PATIENTS OR RESIDENTS IN THE PSYCHIATRIC FACILITY OR INTERMEDIATE  
8 CARE FACILITY FOR PEOPLE WITH MENTAL RETARDATION AFTER THE  
9 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION  
10 UNTIL THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR  
11 PEOPLE WITH MENTAL RETARDATION COMPLIES WITH SUBSECTION (4). THIS  
12 SUBSECTION AND SUBSECTION (1) DO NOT APPLY TO ANY OF THE  
13 FOLLOWING:

14 (A) EXCEPT AS OTHERWISE PROVIDED UNDER THIS SUBDIVISION, AN  
15 INDIVIDUAL WHO IS EMPLOYED BY, UNDER INDEPENDENT CONTRACT TO, OR  
16 GRANTED CLINICAL PRIVILEGES IN A PSYCHIATRIC FACILITY OR  
17 INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL RETARDATION  
18 BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
19 SECTION. AN INDIVIDUAL WHO IS EXEMPT UNDER THIS SUBDIVISION IS  
20 NOT LIMITED TO WORKING WITHIN THE PSYCHIATRIC FACILITY OR  
21 INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL RETARDATION  
22 WITH WHICH HE OR SHE IS EMPLOYED BY, UNDER INDEPENDENT CONTRACT  
23 TO, OR GRANTED CLINICAL PRIVILEGES ON THE EFFECTIVE DATE OF THE  
24 AMENDATORY ACT THAT ADDED THIS SECTION. THAT INDIVIDUAL MAY  
25 TRANSFER TO ANOTHER PSYCHIATRIC FACILITY OR INTERMEDIATE CARE  
26 FACILITY FOR PEOPLE WITH MENTAL RETARDATION IF A CRIMINAL HISTORY  
27 CHECK BEING CONDUCTED IN ACCORDANCE WITH SUBSECTION (1) AND THIS

1 SUBSECTION DOES NOT INDICATE A PROHIBITED OFFENSE UNDER THIS ACT  
2 SUBSEQUENT TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED  
3 THIS SECTION. IF AN INDIVIDUAL WHO IS EXEMPT UNDER THIS  
4 SUBDIVISION IS SUBSEQUENTLY CONVICTED OF A CRIME DESCRIBED UNDER  
5 SUBSECTION (1)(A) OR (B), OR FOUND TO BE THE SUBJECT OF A  
6 SUBSTANTIATED FINDING DESCRIBED UNDER SUBSECTION (1)(D) OR AN  
7 ORDER OR DISPOSITION DESCRIBED UNDER SUBSECTION (1)(E), OR IS  
8 FOUND TO HAVE BEEN CONVICTED OF A RELEVANT CRIME DESCRIBED UNDER  
9 SUBSECTION (1)(C), HE OR SHE IS SUBJECT TO THE REQUIREMENTS OF  
10 SUBSECTION (1) AND THIS SUBSECTION AND MAY BE DENIED EMPLOYMENT OR  
11 MAY BE TERMINATED FROM EMPLOYMENT.

12 (B) AN INDIVIDUAL WHO IS AN INDEPENDENT CONTRACTOR WITH A  
13 PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH  
14 MENTAL RETARDATION IF THE SERVICES FOR WHICH HE OR SHE IS  
15 CONTRACTED ARE NOT DIRECTLY RELATED TO PROVIDING SERVICES TO A  
16 PATIENT OR RESIDENT OR IF THE SERVICES FOR WHICH HE OR SHE IS  
17 INDEPENDENTLY CONTRACTED DO ALLOW FOR DIRECT ACCESS TO THE PATIENTS  
18 OR RESIDENTS BUT ARE NOT PERFORMED ON AN ONGOING BASIS. THIS  
19 EXCEPTION INCLUDES, BUT IS NOT LIMITED TO, INDEPENDENT CONTRACTORS  
20 WHO PROVIDE UTILITY, MAINTENANCE, CONSTRUCTION, OR COMMUNICATIONS  
21 SERVICES.

22 (3) AN INDIVIDUAL WHO APPLIES FOR EMPLOYMENT EITHER AS AN  
23 EMPLOYEE OR AS AN INDEPENDENT CONTRACTOR OR FOR CLINICAL  
24 PRIVILEGES WITH A PSYCHIATRIC FACILITY OR INTERMEDIATE CARE  
25 FACILITY FOR PEOPLE WITH MENTAL RETARDATION AND HAS RECEIVED A  
26 GOOD FAITH OFFER OF EMPLOYMENT, AN INDEPENDENT CONTRACT, OR  
27 CLINICAL PRIVILEGES FROM THE PSYCHIATRIC FACILITY OR INTERMEDIATE

1 CARE FACILITY FOR PEOPLE WITH MENTAL RETARDATION SHALL GIVE  
2 WRITTEN CONSENT AT THE TIME OF APPLICATION FOR THE DEPARTMENT OF  
3 STATE POLICE TO CONDUCT A CRIMINAL HISTORY CHECK UNDER SUBSECTION  
4 (4), ALONG WITH IDENTIFICATION INFORMATION ACCEPTABLE TO THE  
5 DEPARTMENT OF STATE POLICE FOR USE IN CONDUCTING THE CRIMINAL  
6 HISTORY CHECK.

7 (4) UPON RECEIPT OF THE WRITTEN CONSENT AND IDENTIFICATION  
8 REQUIRED UNDER SUBSECTION (3), A PSYCHIATRIC FACILITY OR  
9 INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL RETARDATION  
10 THAT HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR AN INDEPENDENT  
11 CONTRACT OR CLINICAL PRIVILEGES TO THE APPLICANT SHALL MAKE A  
12 REQUEST TO THE DEPARTMENT OF STATE POLICE TO CONDUCT A CRIMINAL  
13 HISTORY CHECK ON THE APPLICANT AND TO FORWARD THE APPLICANT'S  
14 FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION. THE  
15 DEPARTMENT OF STATE POLICE SHALL REQUEST THE FEDERAL BUREAU OF  
16 INVESTIGATION TO MAKE A DETERMINATION OF THE EXISTENCE OF ANY  
17 NATIONAL CRIMINAL HISTORY PERTAINING TO THE APPLICANT. THE  
18 APPLICANT SHALL PROVIDE THE DEPARTMENT OF STATE POLICE WITH A SET  
19 OF FINGERPRINTS. THE REQUEST SHALL BE MADE IN A MANNER PRESCRIBED  
20 BY THE DEPARTMENT OF STATE POLICE. THE PSYCHIATRIC FACILITY OR  
21 INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL RETARDATION  
22 SHALL MAKE THE WRITTEN CONSENT AND IDENTIFICATION INFORMATION  
23 AVAILABLE TO THE DEPARTMENT OF STATE POLICE. THE PSYCHIATRIC  
24 FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL  
25 RETARDATION SHALL MAKE A REQUEST TO THE DEPARTMENT TO CONDUCT A  
26 CHECK OF ALL RELEVANT REGISTRIES ESTABLISHED ACCORDING TO FEDERAL  
27 REGULATIONS FOR ANY SUBSTANTIATED FINDINGS OF ABUSE, NEGLECT, OR

1 MISAPPROPRIATION OF PROPERTY. IF THERE IS A CHARGE FOR CONDUCTING  
2 THE CRIMINAL HISTORY CHECK, THE CHARGE SHALL BE PAID BY OR  
3 REIMBURSED BY THE DEPARTMENT WITH MEDICAID AND MEDICARE FUNDING AS  
4 APPROPRIATE. THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE  
5 FACILITY FOR PEOPLE WITH MENTAL RETARDATION SHALL NOT SEEK  
6 REIMBURSEMENT FOR THE CHARGE FROM THE INDIVIDUAL WHO IS THE  
7 SUBJECT OF THE CRIMINAL HISTORY CHECK. THE DEPARTMENT OF STATE  
8 POLICE SHALL CONDUCT A CRIMINAL HISTORY CHECK ON THE APPLICANT  
9 NAMED IN THE REQUEST. THE DEPARTMENT OF STATE POLICE SHALL PROVIDE  
10 THE DEPARTMENT WITH A WRITTEN REPORT OF THE CRIMINAL HISTORY CHECK  
11 CONDUCTED UNDER THIS SUBSECTION IF THE REPORT CONTAINS ANY CRIMINAL  
12 HISTORY RECORD INFORMATION. THE REPORT SHALL CONTAIN ANY CRIMINAL  
13 HISTORY RECORD INFORMATION ON THE APPLICANT MAINTAINED BY THE  
14 DEPARTMENT OF STATE POLICE. THE DEPARTMENT OF STATE POLICE SHALL  
15 PROVIDE THE RESULTS OF THE FEDERAL BUREAU OF INVESTIGATION  
16 DETERMINATION TO THE DEPARTMENT WITHIN 30 DAYS AFTER THE REQUEST IS  
17 MADE. THE DEPARTMENT SHALL NOTIFY THE INDIVIDUAL WHO IS THE SUBJECT  
18 OF THE FEDERAL BUREAU OF INVESTIGATION DETERMINATION IN WRITING OF  
19 THE TYPE OF CRIMINAL CONVICTION DISCLOSED ON THE FEDERAL BUREAU OF  
20 INVESTIGATION DETERMINATION WITHOUT DISCLOSING THE DETAILS OF THE  
21 CRIMINAL CONVICTION. THE NOTICE SHALL INCLUDE A STATEMENT THAT THE  
22 INDIVIDUAL HAS A RIGHT TO APPEAL A DECISION MADE BY THE DEPARTMENT  
23 REGARDING HIS OR HER EMPLOYMENT ELIGIBILITY BASED ON THE CRIMINAL  
24 BACKGROUND CHECK. THE NOTICE SHALL INCLUDE INFORMATION REGARDING  
25 WHERE TO FILE THE APPEAL AND INFORMATION DESCRIBING THE APPELLATE  
26 PROCEDURES ESTABLISHED UNDER SECTION 20173B OF THE PUBLIC HEALTH  
27 CODE, 1978 PA 368, MCL 333.20173B.

1           (5) IF A PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY  
2 FOR PEOPLE WITH MENTAL RETARDATION FINDS IT NECESSARY TO EMPLOY,  
3 CONTRACT WITH, OR GRANT CLINICAL PRIVILEGES TO AN APPLICANT BEFORE  
4 RECEIVING THE RESULTS OF THE APPLICANT'S CRIMINAL HISTORY CHECK  
5 UNDER SUBSECTION (4), THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE  
6 FACILITY FOR PEOPLE WITH MENTAL RETARDATION MAY CONDITIONALLY  
7 EMPLOY, CONDITIONALLY CONTRACT WITH, OR CONDITIONALLY GRANT  
8 CLINICAL PRIVILEGES TO THE INDIVIDUAL IF ALL OF THE FOLLOWING  
9 APPLY:

10           (A) THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY  
11 FOR PEOPLE WITH MENTAL RETARDATION REQUESTS THE CRIMINAL HISTORY  
12 CHECK UNDER SUBSECTION (4) UPON CONDITIONALLY EMPLOYING,  
13 CONDITIONALLY CONTRACTING WITH, OR CONDITIONALLY GRANTING CLINICAL  
14 PRIVILEGES TO THE INDIVIDUAL.

15           (B) THE INDIVIDUAL SIGNS A STATEMENT IN WRITING THAT INDICATES  
16 ALL OF THE FOLLOWING:

17           (i) THAT HE OR SHE HAS NOT BEEN CONVICTED OF 1 OR MORE OF THE  
18 CRIMES THAT ARE DESCRIBED IN SUBSECTION (1)(A), (B), AND (C) WITHIN  
19 THE APPLICABLE TIME PERIOD PRESCRIBED BY SUBSECTION (1)(A) AND (B).

20           (ii) THAT HE OR SHE HAS NOT BEEN THE SUBJECT OF A SUBSTANTIATED  
21 FINDING AS DESCRIBED IN SUBSECTION (1)(D) OR AN ORDER OR  
22 DISPOSITION AS DESCRIBED UNDER SUBSECTION (1)(E).

23           (iii) THE INDIVIDUAL AGREES THAT, IF THE INFORMATION IN THE  
24 CRIMINAL HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) DOES NOT  
25 CONFIRM THE INDIVIDUAL'S STATEMENTS UNDER SUBPARAGRAPHS (i) AND (ii),  
26 HIS OR HER EMPLOYMENT OR CLINICAL PRIVILEGES WILL BE TERMINATED BY  
27 THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE

1 WITH MENTAL RETARDATION AS REQUIRED UNDER SUBSECTION (1) UNTIL THE  
2 INDIVIDUAL APPEALS AND CAN PROVE THAT THE INFORMATION IS INCORRECT.  
3 THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE  
4 WITH MENTAL RETARDATION SHALL PROVIDE A COPY OF THE RESULTS OF THE  
5 CRIMINAL HISTORY CHECK CONDUCTED UNDER SUBSECTION (4) TO THE  
6 APPLICANT.

7 (iv) THAT HE OR SHE UNDERSTANDS THE CONDITIONS DESCRIBED IN  
8 SUBPARAGRAPHS (i), (ii), AND (iii) THAT RESULT IN THE TERMINATION OF  
9 HIS OR HER EMPLOYMENT OR CLINICAL PRIVILEGES AND THAT THOSE  
10 CONDITIONS ARE GOOD CAUSE FOR TERMINATION.

11 (6) ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED  
12 THIS SECTION, THE DEPARTMENT SHALL DEVELOP AND DISTRIBUTE A  
13 MODEL FORM FOR THE STATEMENT REQUIRED UNDER SUBSECTION (5)(B).  
14 THE DEPARTMENT SHALL MAKE THE MODEL FORM AVAILABLE TO THE  
15 PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE  
16 WITH MENTAL RETARDATION SUBJECT TO THIS SECTION UPON REQUEST AT  
17 NO CHARGE.

18 (7) IF AN INDIVIDUAL IS EMPLOYED AS A CONDITIONAL EMPLOYEE  
19 OR INDEPENDENT CONTRACTOR OR IS GRANTED CONDITIONAL CLINICAL  
20 PRIVILEGES UNDER SUBSECTION (5), AND THE REPORT DESCRIBED IN  
21 SUBSECTION (4) DOES NOT CONFIRM THE INDIVIDUAL'S STATEMENT UNDER  
22 SUBSECTION (5)(B)(i) AND (ii), THE PSYCHIATRIC FACILITY OR  
23 INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL RETARDATION  
24 SHALL TERMINATE THE INDIVIDUAL'S EMPLOYMENT OR CLINICAL  
25 PRIVILEGES AS REQUIRED BY SUBSECTION (1).

26 (8) AN INDIVIDUAL WHO KNOWINGLY PROVIDES FALSE INFORMATION  
27 REGARDING CRIMINAL CONVICTIONS OR SUBSTANTIATED FINDINGS ON A



1 STATEMENT DESCRIBED IN SUBSECTION (5)(B)(i) OR (ii) IS GUILTY OF  
2 A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93  
3 DAYS OR A FINE OF NOT MORE THAN \$500.00, OR BOTH.

4 (9) A PSYCHIATRIC FACILITY OR INTERMEDIATE CARE  
5 FACILITY FOR PEOPLE WITH MENTAL RETARDATION SHALL USE  
6 CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER  
7 SUBSECTION (4) OR (5) ONLY FOR THE PURPOSE OF EVALUATING AN  
8 APPLICANT'S QUALIFICATIONS FOR EMPLOYMENT, AN INDEPENDENT  
9 CONTRACT, OR CLINICAL PRIVILEGES IN THE POSITION FOR WHICH  
10 HE OR SHE HAS APPLIED AND FOR THE PURPOSES OF SUBSECTIONS  
11 (5) AND (7). A PSYCHIATRIC FACILITY OR INTERMEDIATE CARE  
12 FACILITY FOR PEOPLE WITH MENTAL RETARDATION OR AGENCY OR AN  
13 EMPLOYEE OF THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE  
14 FACILITY FOR PEOPLE WITH MENTAL RETARDATION SHALL NOT  
15 DISCLOSE CRIMINAL HISTORY RECORD INFORMATION OBTAINED UNDER  
16 SUBSECTION (4) TO A PERSON WHO IS NOT DIRECTLY INVOLVED IN  
17 EVALUATING THE APPLICANT'S QUALIFICATIONS FOR EMPLOYMENT, AN  
18 INDEPENDENT CONTRACT, OR CLINICAL PRIVILEGES. AN INDIVIDUAL  
19 WHO KNOWINGLY USES OR DISSEMINATES THE CRIMINAL HISTORY  
20 RECORD INFORMATION OBTAINED UNDER SUBSECTION (4) IN  
21 VIOLATION OF THIS SUBSECTION IS GUILTY OF A MISDEMEANOR  
22 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A  
23 FINE OF NOT MORE THAN \$1,000.00, OR BOTH. A PERSON WHO  
24 SUFFERS INJURY AS A RESULT OF A VIOLATION OF THIS SUBSECTION  
25 MAY BRING A CIVIL CAUSE OF ACTION FOR DAMAGES AGAINST THE  
26 PERSON WHO VIOLATES THIS SUBSECTION. UPON WRITTEN REQUEST  
27 FROM ANOTHER HEALTH FACILITY OR AGENCY, PSYCHIATRIC FACILITY

1 OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL  
2 RETARDATION, OR ADULT FOSTER CARE FACILITY THAT IS  
3 CONSIDERING EMPLOYING, INDEPENDENTLY CONTRACTING WITH, OR  
4 GRANTING CLINICAL PRIVILEGES TO AN INDIVIDUAL, OR AGENCY  
5 THAT HAS OBTAINED CRIMINAL HISTORY RECORD INFORMATION UNDER  
6 THIS SECTION ON THAT INDIVIDUAL SHALL SHARE, WITH THE  
7 CONSENT OF THE APPLICANT, THE INFORMATION WITH THE  
8 REQUESTING HEALTH FACILITY OR AGENCY, PSYCHIATRIC FACILITY  
9 OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL  
10 RETARDATION, OR ADULT FOSTER CARE FACILITY. EXCEPT FOR A  
11 KNOWING OR INTENTIONAL RELEASE OF FALSE INFORMATION, A  
12 PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE  
13 WITH MENTAL RETARDATION HAS NO LIABILITY IN CONNECTION WITH  
14 THE RELEASE OF CRIMINAL HISTORY RECORD INFORMATION UNDER  
15 THIS SUBSECTION.

16 (10) AS A CONDITION OF CONTINUED EMPLOYMENT, EACH EMPLOYEE,  
17 INDEPENDENT CONTRACTOR, OR INDIVIDUAL GRANTED CLINICAL  
18 PRIVILEGES SHALL AGREE IN WRITING TO REPORT TO THE PSYCHIATRIC  
19 FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL  
20 RETARDATION IMMEDIATELY UPON EITHER OF THE FOLLOWING:

21 (A) BEING CONVICTED OF 1 OR MORE OF THE CRIMINAL OFFENSES  
22 LISTED IN SUBSECTION (1)(A), (B), AND (C).

23 (B) BEING THE SUBJECT OF A SUBSTANTIATED FINDING OF NEGLECT,  
24 ABUSE, OR MISAPPROPRIATION OF PROPERTY AS DESCRIBED IN SUBSECTION  
25 (1)(D).

26 (C) BEING THE SUBJECT OF AN ORDER OR DISPOSITION DESCRIBED  
27 UNDER SUBSECTION (1)(E).

1           (11) IN ADDITION TO SANCTIONS SET FORTH IN THIS ACT, A  
2 LICENSEE, OWNER, ADMINISTRATOR, OR OPERATOR OF A PSYCHIATRIC  
3 FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL  
4 RETARDATION WHO KNOWINGLY AND WILLFULLY FAILS TO CONDUCT THE  
5 CRIMINAL HISTORY CHECKS AS REQUIRED UNDER THIS SECTION IS GUILTY OF  
6 A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR  
7 OR A FINE OF NOT MORE THAN \$5,000.00, OR BOTH.

8           (12) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE  
9 AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL  
10 SUBMIT A WRITTEN REPORT TO THE LEGISLATURE REGARDING THE IMPACT  
11 AND EFFECTIVENESS OF THE PROVISIONS OF THE AMENDATORY ACT THAT  
12 ADDED THIS SECTION AND ON THE FEASIBILITY OF IMPLEMENTING  
13 CRIMINAL HISTORY CHECKS ON VOLUNTEERS WHO WORK IN THE PSYCHIATRIC  
14 FACILITIES OR INTERMEDIATE CARE FACILITIES FOR PEOPLE WITH MENTAL  
15 RETARDATION.

16           (13) AS USED IN THIS SECTION:

17           (A) "ADULT FOSTER CARE FACILITY" MEANS AN ADULT FOSTER CARE  
18 FACILITY LICENSED UNDER THE ADULT FOSTER CARE FACILITY LICENSING  
19 ACT, 1979 PA 218, MCL 400.701 TO 400.737.

20           (B) "DIRECT ACCESS" MEANS ACCESS TO A PATIENT OR RESIDENT OR  
21 TO A PATIENT'S OR RESIDENT'S PROPERTY, FINANCIAL INFORMATION,  
22 MEDICAL RECORDS, TREATMENT INFORMATION, OR ANY OTHER IDENTIFYING  
23 INFORMATION.

24           (C) "HOME HEALTH AGENCY" MEANS A PERSON CERTIFIED BY  
25 MEDICARE WHOSE BUSINESS IS TO PROVIDE TO INDIVIDUALS IN THEIR  
26 PLACES OF RESIDENCE OTHER THAN IN A HOSPITAL, NURSING HOME, OR  
27 COUNTY MEDICAL CARE FACILITY 1 OR MORE OF THE FOLLOWING SERVICES:

1 NURSING SERVICES, THERAPEUTIC SERVICES, SOCIAL WORK SERVICES,  
2 HOMEMAHER SERVICES, HOME HEALTH AIDE SERVICES, OR OTHER RELATED  
3 SERVICES.

4 (D) "INDEPENDENT CONTRACT" MEANS A CONTRACT ENTERED INTO BY  
5 A HEALTH FACILITY OR AGENCY WITH AN INDIVIDUAL WHO PROVIDES THE  
6 CONTRACTED SERVICES INDEPENDENTLY OR A CONTRACT ENTERED INTO BY A  
7 PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE  
8 WITH MENTAL RETARDATION WITH AN ORGANIZATION OR AGENCY THAT  
9 EMPLOYS OR CONTRACTS WITH AN INDIVIDUAL AFTER COMPLYING WITH THE  
10 REQUIREMENTS OF THIS SECTION TO PROVIDE THE CONTRACTED SERVICES  
11 TO THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR  
12 PEOPLE WITH MENTAL RETARDATION ON BEHALF OF THE ORGANIZATION OR  
13 AGENCY.

14 (E) "MEDICARE" MEANS BENEFITS UNDER THE FEDERAL MEDICARE  
15 PROGRAM ESTABLISHED UNDER TITLE XVIII OF THE SOCIAL SECURITY ACT,  
16 42 USC 1395 TO 1395GGG.

17 Sec. 147. Except as otherwise provided in ~~section 149b~~  
18 SECTIONS 134A AND 149B, psychiatric hospitals or units operated by  
19 the state or federal government are exempt from sections 134  
20 through 150.

21 Enacting section 1. Section 134a of the mental health code,  
22 1974 PA 258, MCL 330.1134a, as added by this amendatory act, takes  
23 effect 60 days after the department secures the necessary federal  
24 approval or waiver to utilize federal funds to enable the  
25 department to pay for or reimburse the costs incurred by adult  
26 foster care facilities for requesting a national criminal history  
27 check to be conducted by the federal bureau of investigation and

1 files with the secretary of state a written notice that the federal  
2 approval or waiver has been secured.

3 Enacting section 2. This amendatory act does not take effect  
4 unless House Bill No. 5168 of the 93rd Legislature is enacted into  
5 law.