

HOUSE BILL No. 6057

May 6, 2008, Introduced by Rep. Jackson and referred to the Committee on Appropriations.

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~~ **APRIL 1, 2006** if the individual satisfies 1 or more of the

1 following:

2 (a) Has been convicted of a relevant crime described under 42
3 USC 1320a-7.

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

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

18 (ii) A felony involving cruelty or torture.

19 (iii) A felony under chapter XXA of the Michigan penal code,
20 1931 PA 328, MCL 750.145m to 750.145r.

21 (iv) A felony involving criminal sexual conduct.

22 (v) A felony involving abuse or neglect.

23 (vi) A felony involving the use of a firearm or dangerous
24 weapon.

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

27 (c) Has been convicted of a felony or an attempt or conspiracy

1 to commit a felony, other than a felony for a relevant crime
2 described under 42 USC 1320a-7 or a felony described under
3 subdivision (b), unless 10 years have lapsed since the individual
4 completed all of the terms and conditions of his or her sentencing,
5 parole, and probation for that conviction prior to the date of
6 application for employment or clinical privileges or the date of
7 the execution of the independent contract.

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

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

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

22 (iii) A misdemeanor involving criminal sexual conduct.

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

25 (v) A misdemeanor involving abuse or neglect.

26 (e) Has been convicted of any of the following misdemeanors,
27 other than a misdemeanor for a relevant crime described under 42

1 USC 1320a-7, or a state or federal crime that is substantially
2 similar to the misdemeanors described in this subdivision, within
3 the 5 years immediately preceding the date of application for
4 employment or clinical privileges or the date of the execution of
5 the independent contract:

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

8 (ii) A misdemeanor involving home invasion.

9 (iii) A misdemeanor involving embezzlement.

10 (iv) A misdemeanor involving negligent homicide.

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

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

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

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

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

1 (ii) A misdemeanor of retail fraud in the third degree unless
2 otherwise provided under subdivision (g).

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

6 (g) 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 year 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 under part 74 of the public health code, 1978
14 PA 368, MCL 333.7401 to 333.7461, if the individual, at the time of
15 conviction, is under the age of 18.

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

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

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

26 (2) Except as otherwise provided in subsection (5), a
27 psychiatric facility or intermediate care facility for people with

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1 mental retardation shall not employ, independently contract with,
2 or grant privileges to an individual who regularly has direct
3 access to or provides direct services to patients or residents in
4 the psychiatric facility or intermediate care facility for people
5 with mental retardation after ~~the effective date of this section~~
6 **APRIL 1, 2006** until the psychiatric facility or intermediate care
7 facility for people with mental retardation conducts a criminal
8 history check in compliance with subsection (4). This subsection
9 and subsection (1) do not apply to any of the following:

10 (a) An individual who is employed by, under independent
11 contract to, or granted clinical privileges in a psychiatric
12 facility or intermediate care facility for people with mental
13 retardation before ~~the effective date of this section~~ **APRIL 1,**
14 **2006.** ~~Within 24 months after the effective date of this section~~ **BY**
15 **APRIL 1, <<2011>>**, an individual who is exempt under this subdivision
16 shall provide the department of state police with a set of
17 fingerprints and the department of state police shall input those
18 fingerprints into the automated fingerprint identification system
19 database established under subsection (12). An individual who is
20 exempt under this subdivision is not limited to working within the
21 psychiatric facility or intermediate care facility for people with
22 mental retardation with which he or she is employed by, under
23 independent contract to, or granted clinical privileges on ~~the~~
24 ~~effective date of this section~~ **APRIL 1, 2006.** That individual may
25 transfer to another psychiatric facility or intermediate care
26 facility for people with mental retardation that is under the same
27 ownership with which he or she was employed, under contract, or

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

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

26 (3) An individual who applies for employment either as an
27 employee or as an independent contractor or for clinical privileges

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

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

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

1 criminal history check contains any criminal history record
2 information. The report shall contain any criminal history record
3 information on the applicant maintained by the department of state
4 police. The department of state police shall provide the results of
5 the federal bureau of investigation determination to the department
6 within 30 days after the request is made. If the requesting
7 psychiatric facility or intermediate care facility for people with
8 mental retardation is not a state department or agency and if a
9 criminal conviction is disclosed on the written report of the
10 criminal history check or the federal bureau of investigation
11 determination, the department shall notify the psychiatric facility
12 or intermediate care facility for people with mental retardation
13 and the applicant in writing of the type of crime disclosed on the
14 written report of the criminal history check or the federal bureau
15 of investigation determination without disclosing the details of
16 the crime. Any charges imposed by the department of state police or
17 the federal bureau of investigation for conducting an initial
18 criminal history check or making a determination under this
19 subsection shall be paid in the manner required under this
20 subsection. The notice shall include a statement that the applicant
21 has a right to appeal a decision made by the psychiatric facility
22 or intermediate care facility for people with mental retardation
23 regarding his or her employment eligibility based on the criminal
24 background check. The notice shall also include information
25 regarding where to file and describing the appellate procedures
26 established under section 20173b of the public health code, 1978 PA
27 368, MCL 333.20173b.

1 (5) If a psychiatric facility or intermediate care facility
2 for people with mental retardation determines it necessary to
3 employ or grant clinical privileges to an applicant before
4 receiving the results of the applicant's criminal history check
5 under this section, the psychiatric facility or intermediate care
6 facility for people with mental retardation may conditionally
7 employ or grant conditional clinical privileges to the individual
8 if all of the following apply:

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

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

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

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

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

23 (iv) The individual agrees that, if the information in the
24 criminal history check conducted under this section does not
25 confirm the individual's statements under subparagraphs (i) through
26 (iii), his or her employment or clinical privileges will be
27 terminated by the psychiatric facility or intermediate care

1 facility for people with mental retardation as required under
2 subsection (1) unless and until the individual appeals and can
3 prove that the information is incorrect.

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

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

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

20 (8) An individual who knowingly provides false information
21 regarding his or her identity, criminal convictions, or
22 substantiated findings on a statement described in subsection
23 (5)(b)(i) through (iii) is guilty of a misdemeanor punishable by
24 imprisonment for not more than 93 days or a fine of not more than
25 \$500.00, or both.

26 (9) A psychiatric facility or intermediate care facility for
27 people with mental retardation shall use criminal history record

1 information obtained under subsection (4) only for the purpose of
2 evaluating an applicant's qualifications for employment, an
3 independent contract, or clinical privileges in the position for
4 which he or she has applied and for the purposes of subsections (5)
5 and (7). A psychiatric facility or intermediate care facility for
6 people with mental retardation or an employee of the psychiatric
7 facility or intermediate care facility for people with mental
8 retardation shall not disclose criminal history record information
9 obtained under subsection (4) to a person who is not directly
10 involved in evaluating the applicant's qualifications for
11 employment, an independent contract, or clinical privileges. An
12 individual who knowingly uses or disseminates the criminal history
13 record information obtained under subsection (4) in violation of
14 this subsection is guilty of a misdemeanor punishable by
15 imprisonment for not more than 93 days or a fine of not more than
16 \$1,000.00, or both. Upon written request from another psychiatric
17 facility or intermediate care facility for people with mental
18 retardation, health facility or agency, or adult foster care
19 facility that is considering employing, independently contracting
20 with, or granting clinical privileges to an individual, a
21 psychiatric facility or intermediate care facility for people with
22 mental retardation that has obtained criminal history record
23 information under this section on that individual shall, with the
24 consent of the applicant, share the information with the requesting
25 psychiatric facility or intermediate care facility for people with
26 mental retardation, health facility or agency, or adult foster care
27 facility. Except for a knowing or intentional release of false

1 information, a psychiatric facility or intermediate care facility
2 for people with mental retardation has no liability in connection
3 with a criminal background check conducted under this section or
4 the release of criminal history record information under this
5 subsection.

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

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

20 (b) If a set of fingerprints is not already on file with the
21 department of state police, provide the department of state police
22 with a set of fingerprints.

23 (11) In addition to sanctions set forth in this act, a
24 licensee, owner, administrator, or operator of a psychiatric
25 facility or intermediate care facility for people with mental
26 retardation who knowingly and willfully fails to conduct the
27 criminal history checks as required under this section is guilty of

1 a misdemeanor punishable by imprisonment for not more than 1 year
2 or a fine of not more than \$5,000.00, or both.

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

20 ~~———— (13) Within 1 year after the effective date of the amendatory~~
21 ~~act that added this section, the department shall submit a written~~
22 ~~report to the legislature regarding each of the following:~~

23 ~~———— (a) The impact and effectiveness of this amendatory act.~~

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

1 ~~psychiatric facilities or intermediate care facilities for people~~
2 ~~with mental retardation and regulation of those employees.~~

3 ~~— (c) The amount of federal funds provided to implement a pilot~~
4 ~~program for national and state background checks on direct access~~
5 ~~employees of long term care facilities or providers, the amount of~~
6 ~~those funds expended to date, and the amount of those funds~~
7 ~~remaining.~~

8 (13) ~~(14) Within 3 years after the effective date of this~~
9 ~~section~~ **APRIL 1, 2009**, the department shall submit a written report
10 to the legislature outlining a plan to cover the costs of the
11 criminal history checks required under this section if federal
12 funding is no longer available or is inadequate to cover those
13 costs.

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

26 (15) ~~(16)~~ As used in this section:

27 (a) "Adult foster care facility" means an adult foster care

1 facility licensed under the adult foster care facility licensing
2 act, 1979 PA 218, MCL 400.701 to 400.737.

3 (b) "Direct access" means access to a patient or resident or
4 to a patient's or resident's property, financial information,
5 medical records, treatment information, or any other identifying
6 information.

7 (c) "Health facility or agency" means a health facility or
8 agency that is a nursing home, county medical care facility,
9 hospice, hospital that provides swing bed services, home for the
10 aged, or home health agency and licensed as required under article
11 17 of the public health code, 1978 PA 368, MCL 333.20101 to
12 333.22260.

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

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

27 (f) "Medicare" means benefits under the federal medicare

1 program established under title XVIII of the social security act,
2 42 USC 1395 to ~~1395ggg~~**1395HHH**.