

**SUBSTITUTE FOR
SENATE BILL NO. 1255**

A bill to amend 1974 PA 258, entitled
"Mental health code,"
by amending section 134a (MCL 330.1134a), as amended by 2008 PA
446.

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 April 1, 2006~~ if the
8 individual satisfies 1 or more of the following:

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

3 (b) Has been convicted of any of the following felonies, an
4 attempt or conspiracy to commit any of those felonies, or any other
5 state or federal crime that is similar to the felonies described in
6 this subdivision, other than a felony for a relevant crime
7 described under 42 USC ~~1320a-7~~-1320A-7 (A) , unless 15 years have
8 lapsed since the individual completed all of the terms and
9 conditions of his or her sentencing, parole, and probation for that
10 conviction prior to the date of application for employment or
11 clinical privileges or the date of the execution of the independent
12 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-7-1320A-7(A)~~ or a felony described
3 under subdivision (b), unless 10 years have lapsed since the
4 individual completed all of the terms and conditions of his or her
5 sentencing, parole, and probation for that conviction prior to the
6 date of application for employment or clinical privileges or the
7 date of 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-7-1320A-7(A)~~, or a state or federal crime that is
11 substantially similar to the misdemeanors described in this
12 subdivision, within the 10 years immediately preceding the date of
13 application for employment or clinical privileges or the date of
14 the execution of 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~~**1320A-7(A)**, or a state or federal crime that is
 2 substantially similar to the misdemeanors described in this
 3 subdivision, within the 5 years immediately preceding the date of
 4 application for employment or clinical privileges or the date of
 5 the execution of 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 or a ~~moving~~
 11 ~~violation causing death~~**VIOLATION OF SECTION 601D(1) OF THE**
 12 **MICHIGAN VEHICLE CODE, 1940 PA 300, MCL 257.601D.**

13 (v) A misdemeanor involving larceny unless otherwise provided
 14 under subdivision (g).

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

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

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

27 (i) A misdemeanor for assault if there was no use of a firearm

1 or dangerous weapon and no intent to commit murder or inflict great
2 bodily injury.

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

5 (iii) A misdemeanor under part 74 of the public health code,
6 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided
7 under subdivision (g).

8 (g) 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~~ **1320A-7(A)**, or a state or federal crime that is
11 substantially similar to the misdemeanors described in this
12 subdivision, within the year immediately preceding the date of
13 application for employment or clinical privileges or the date of
14 the execution of the independent contract:

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

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

21 (h) Is the subject of an order or disposition under section
22 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
23 MCL 769.16b.

24 (i) ~~Has been~~ **ENGAGES IN CONDUCT THAT BECOMES** the subject of a
25 substantiated finding of neglect, abuse, or misappropriation of
26 property by a state or federal agency according to an investigation
27 conducted in accordance with 42 USC 1395i-3 or 1396r.

1 (2) Except as otherwise provided in **THIS SUBSECTION OR**
2 subsection (5), a psychiatric facility or intermediate care
3 facility for people with mental retardation shall not employ,
4 independently contract with, or grant privileges to an individual
5 who 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 April 1,~~
8 ~~2006~~ until the psychiatric facility or intermediate care facility
9 for people with mental retardation ~~conducts~~ **OR STAFFING AGENCY HAS**
10 **CONDUCTED** a criminal history check in compliance with ~~subsection~~
11 ~~(4)~~ **THIS SECTION OR RECEIVED CRIMINAL HISTORY RECORD INFORMATION IN**
12 **COMPLIANCE WITH SUBSECTION (3) OR (10)**. This subsection and
13 subsection (1) do not apply to any of the following:

14 (a) An individual who is employed by, under independent
15 contract to, or granted clinical privileges in a psychiatric
16 facility or intermediate care facility for people with mental
17 retardation before April 1, 2006. ~~By~~ **ON OR BEFORE** April 1, 2011, an
18 individual who is exempt under this subdivision **AND WHO HAS NOT**
19 **BEEN THE SUBJECT OF A CRIMINAL HISTORY CHECK CONDUCTED IN**
20 **COMPLIANCE WITH THIS SECTION** shall provide the department of state
21 police with a set of fingerprints and the department of state
22 police shall input those fingerprints into the automated
23 fingerprint identification system database established under
24 subsection ~~(12)~~ **(13)**. An individual who is exempt under this
25 subdivision is not limited to working within the psychiatric
26 facility or intermediate care facility for people with mental
27 retardation with which he or she is employed by, under independent

1 contract to, or granted clinical privileges on April 1, 2006 ~~That~~
2 ~~individual~~ **BUT** may transfer to another psychiatric facility or
3 intermediate care facility for people with mental retardation, ~~that~~
4 ~~is under the same ownership with which he or she was employed,~~
5 ~~under contract, or granted privileges. If that individual wishes to~~
6 ~~transfer to another psychiatric facility or intermediate care~~
7 ~~facility for people with mental retardation that is not under the~~
8 ~~same ownership, he or she may do so provided that a criminal~~
9 ~~history check is conducted by the new psychiatric facility or~~
10 ~~intermediate care facility for people with mental retardation in~~
11 ~~accordance with subsection (4) **COVERED HEALTH FACILITY, OR ADULT**~~
12 **FOSTER CARE FACILITY.** If an individual who is exempt under this
13 subdivision is subsequently convicted of a crime described under
14 subsection (1)(a) through (g) or found to be the subject of a
15 substantiated finding described under subsection (1)(i) or an order
16 or disposition described under subsection (1)(h), or is found to
17 have been convicted of a relevant crime described under subsection
18 (1)(a), then he or she is no longer exempt and shall be terminated
19 from employment or denied employment **OR CLINICAL PRIVILEGES.**

20 (b) An individual who is **UNDER** an independent ~~contractor~~
21 **CONTRACT** with a psychiatric facility or intermediate care facility
22 for people with mental retardation if **HE OR SHE IS NOT UNDER THE**
23 **FACILITY'S CONTROL AND** the services for which he or she is
24 contracted is not directly related to the provision of services to
25 a patient or resident or if the services for which he or she is
26 contracted allows for direct access to the patients or residents
27 but is not performed on an ongoing basis. This exception includes,

1 but is not limited to, an individual who ~~independently contracts~~ **IS**
2 **UNDER AN INDEPENDENT CONTRACT** with the psychiatric facility or
3 intermediate care facility for people with mental retardation to
4 provide utility, maintenance, construction, or communications
5 services.

6 (3) An individual who applies for employment either as an
7 employee or as an independent contractor or for clinical privileges
8 with a psychiatric facility or intermediate care facility for
9 people with mental retardation **OR A STAFFING AGENCY** and **WHO** has
10 ~~received a good faith offer of employment, an independent contract,~~
11 ~~or clinical privileges from the psychiatric facility or~~
12 ~~intermediate care facility for people with mental retardation~~ **NOT**
13 **BEEN THE SUBJECT OF A CRIMINAL HISTORY CHECK CONDUCTED IN**
14 **COMPLIANCE WITH THIS SECTION** shall give written consent at the time
15 of application for the department of state police to conduct ~~an~~
16 ~~initial~~ **A** criminal history check under this section, along with
17 identification acceptable to the department of state police. **IF THE**
18 **APPLICANT HAS BEEN THE SUBJECT OF A CRIMINAL HISTORY CHECK**
19 **CONDUCTED IN COMPLIANCE WITH THIS SECTION, THE APPLICANT SHALL GIVE**
20 **WRITTEN CONSENT AT THE TIME OF APPLICATION FOR THE PSYCHIATRIC**
21 **FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL**
22 **RETARDATION OR STAFFING AGENCY TO OBTAIN THE CRIMINAL HISTORY**
23 **RECORD INFORMATION AS PRESCRIBED IN SUBSECTION (4) FROM THE**
24 **RELEVANT LICENSING OR REGULATORY DEPARTMENT AND FOR THE DEPARTMENT**
25 **OF STATE POLICE TO CONDUCT A CRIMINAL HISTORY CHECK UNDER THIS**
26 **SECTION IF THE REQUIREMENTS OF SUBSECTION (10) ARE NOT MET AND A**
27 **REQUEST TO THE FEDERAL BUREAU OF INVESTIGATION TO MAKE A**

1 DETERMINATION OF THE EXISTENCE OF ANY NATIONAL CRIMINAL HISTORY
2 PERTAINING TO THE APPLICANT IS NECESSARY, ALONG WITH IDENTIFICATION
3 ACCEPTABLE TO THE DEPARTMENT OF STATE POLICE. UPON RECEIPT OF THE
4 WRITTEN CONSENT TO OBTAIN THE CRIMINAL HISTORY RECORD INFORMATION
5 AND IDENTIFICATION REQUIRED UNDER THIS SUBSECTION, THE PSYCHIATRIC
6 FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL
7 RETARDATION OR STAFFING AGENCY THAT HAS MADE A GOOD-FAITH OFFER OF
8 EMPLOYMENT OR AN INDEPENDENT CONTRACT OR CLINICAL PRIVILEGES TO THE
9 APPLICANT SHALL REQUEST THE CRIMINAL HISTORY RECORD INFORMATION
10 FROM THE RELEVANT LICENSING OR REGULATORY DEPARTMENT AND SHALL MAKE
11 A REQUEST REGARDING THAT APPLICANT TO THE RELEVANT LICENSING OR
12 REGULATORY DEPARTMENT TO CONDUCT A CHECK OF ALL RELEVANT REGISTRIES
13 IN THE MANNER REQUIRED IN SUBSECTION (4). IF THE REQUIREMENTS OF
14 SUBSECTION (10) ARE NOT MET AND A REQUEST TO THE FEDERAL BUREAU OF
15 INVESTIGATION TO MAKE A SUBSEQUENT DETERMINATION OF THE EXISTENCE
16 OF ANY NATIONAL CRIMINAL HISTORY PERTAINING TO THE APPLICANT IS
17 NECESSARY, THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY
18 FOR PEOPLE WITH MENTAL RETARDATION OR STAFFING AGENCY SHALL PROCEED
19 IN THE MANNER REQUIRED IN SUBSECTION (4). A STAFFING AGENCY THAT
20 EMPLOYS AN APPLICANT WHO REGULARLY HAS DIRECT ACCESS TO OR PROVIDES
21 DIRECT SERVICES TO PATIENTS OR RESIDENTS UNDER AN INDEPENDENT
22 CONTRACT WITH A PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY
23 FOR PEOPLE WITH MENTAL RETARDATION SHALL SUBMIT INFORMATION
24 REGARDING THE CRIMINAL HISTORY CHECK CONDUCTED BY THE STAFFING
25 AGENCY TO THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY
26 FOR PEOPLE WITH MENTAL RETARDATION THAT HAS MADE A GOOD-FAITH OFFER
27 OF INDEPENDENT CONTRACT TO THAT APPLICANT.

1 (4) Upon receipt of the written consent **TO CONDUCT A CRIMINAL**
2 **HISTORY CHECK** and identification required under subsection (3), a
3 psychiatric facility or intermediate care facility for people with
4 mental retardation **OR STAFFING AGENCY** that has made a good-faith
5 offer of employment or an independent contract or clinical
6 privileges to the applicant shall make a request to the department
7 of state police to conduct a criminal history check on the
8 applicant, to input the applicant's fingerprints into the automated
9 fingerprint identification system database, and to forward the
10 applicant's fingerprints to the federal bureau of investigation.
11 The department of state police shall request the federal bureau of
12 investigation to make a determination of the existence of any
13 national criminal history pertaining to the applicant. The
14 applicant shall provide the department of state police with a set
15 of fingerprints. The request shall be made in a manner prescribed
16 by the department of state police. The psychiatric facility or
17 intermediate care facility for people with mental retardation **OR**
18 **STAFFING AGENCY** shall make the written consent and identification
19 available to the department of state police. The psychiatric
20 facility or intermediate care facility for people with mental
21 retardation **OR STAFFING AGENCY** shall make a request **REGARDING THAT**
22 **APPLICANT** to the relevant licensing or regulatory department to
23 conduct a check of all relevant registries established under
24 federal and state law and regulations for any substantiated
25 findings of abuse, neglect, or misappropriation of property. If the
26 department of state police or the federal bureau of investigation
27 charges a fee for conducting the ~~initial~~-criminal history check,

1 the psychiatric facility or intermediate care facility for people
2 with mental retardation **OR STAFFING AGENCY** shall pay the cost of
3 the charge. The psychiatric facility or intermediate care facility
4 for people with mental retardation **OR STAFFING AGENCY** shall not
5 seek reimbursement for a charge imposed by the department of state
6 police or the federal bureau of investigation from the individual
7 who is the subject of the ~~initial~~ criminal history check. A
8 prospective employee or a prospective independent contractor
9 covered under this section may not be charged for the cost of ~~an~~
10 ~~initial~~ **A** criminal history check required under this section. The
11 department of state police shall conduct a criminal history check
12 on the applicant named in the request. The department of state
13 police shall provide the department with a written report of the
14 criminal history check conducted under this subsection. ~~if the~~
15 ~~criminal history check contains any criminal history record~~
16 ~~information.~~ The report shall contain any criminal history record
17 information on the applicant maintained by the department of state
18 police. The department of state police shall provide the results of
19 the federal bureau of investigation determination to the department
20 within 30 days after the request is made. If the requesting
21 psychiatric facility or intermediate care facility for people with
22 mental retardation **OR STAFFING AGENCY** is not a state department or
23 agency and if a criminal ~~conviction~~ **HISTORY RECORD INFORMATION** is
24 disclosed on the written report of the criminal history check or
25 the federal bureau of investigation determination **THAT RESULTED IN**
26 **A CONVICTION**, the department shall notify the psychiatric facility
27 or intermediate care facility for people with mental retardation **OR**

1 **STAFFING AGENCY** and the applicant in writing of the type of crime
2 disclosed on the written report of the criminal history check or
3 the federal bureau of investigation determination without
4 disclosing the details of the crime. Any charges imposed by the
5 department of state police or the federal bureau of investigation
6 for conducting ~~an initial~~ **A** criminal history check or making a
7 determination under this subsection shall be paid in the manner
8 required under this subsection. The notice shall include a
9 statement that the applicant has a right to appeal a ~~decision made~~
10 **THE INFORMATION RELIED UPON** by the psychiatric facility or
11 intermediate care facility for people with mental retardation **OR**
12 **STAFFING AGENCY** regarding his or her employment eligibility based
13 on the criminal ~~background~~ **HISTORY** check. The notice shall also
14 include information regarding where to file and describing the
15 appellate procedures established under section 20173b of the public
16 health code, 1978 PA 368, MCL 333.20173b.

17 (5) If a psychiatric facility or intermediate care facility
18 for people with mental retardation determines it necessary to
19 employ or grant clinical privileges to an applicant before
20 receiving the results of the applicant's criminal history check **OR**
21 **CRIMINAL HISTORY RECORD INFORMATION** under this section, the
22 psychiatric facility or intermediate care facility for people with
23 mental retardation may conditionally employ or grant conditional
24 clinical privileges to the individual if all of the following
25 apply:

26 (a) The psychiatric facility or intermediate care facility for
27 people with mental retardation requests the criminal history check

1 **OR CRIMINAL HISTORY RECORD INFORMATION** under this section upon
2 conditionally employing or conditionally granting clinical
3 privileges to the individual.

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

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

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

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

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

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

26 **(C) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, THE**
27 **PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH**

1 MENTAL RETARDATION DOES NOT PERMIT THE INDIVIDUAL TO HAVE REGULAR
2 DIRECT ACCESS TO OR PROVIDE DIRECT SERVICES TO PATIENTS OR
3 RESIDENTS IN THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY
4 FOR PEOPLE WITH MENTAL RETARDATION WITHOUT SUPERVISION UNTIL THE
5 CRIMINAL HISTORY CHECK OR CRIMINAL HISTORY RECORD INFORMATION IS
6 OBTAINED AND THE INDIVIDUAL IS ELIGIBLE FOR THAT EMPLOYMENT OR
7 CLINICAL PRIVILEGES. IF REQUIRED UNDER THIS SUBDIVISION, THE
8 PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH
9 MENTAL RETARDATION SHALL PROVIDE ON-SITE SUPERVISION OF AN
10 INDIVIDUAL IN THE FACILITY ON A CONDITIONAL BASIS UNDER THIS
11 SUBSECTION BY AN INDIVIDUAL WHO HAS UNDERGONE A CRIMINAL HISTORY
12 CHECK CONDUCTED IN COMPLIANCE WITH THIS SECTION. A PSYCHIATRIC
13 FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL
14 RETARDATION MAY PERMIT AN INDIVIDUAL IN THE FACILITY ON A
15 CONDITIONAL BASIS UNDER THIS SUBSECTION TO HAVE REGULAR DIRECT
16 ACCESS TO OR PROVIDE DIRECT SERVICES TO PATIENTS OR RESIDENTS IN
17 THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE
18 WITH MENTAL RETARDATION WITHOUT SUPERVISION IF ALL OF THE FOLLOWING
19 CONDITIONS ARE MET:

20 (i) THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR
21 PEOPLE WITH MENTAL RETARDATION, AT ITS OWN EXPENSE AND BEFORE THE
22 INDIVIDUAL HAS DIRECT ACCESS TO OR PROVIDES DIRECT SERVICES TO
23 PATIENTS OR RESIDENTS OF THE PSYCHIATRIC FACILITY OR INTERMEDIATE
24 CARE FACILITY FOR PEOPLE WITH MENTAL RETARDATION, CONDUCTS A SEARCH
25 OF PUBLIC RECORDS ON THAT INDIVIDUAL THROUGH THE INTERNET CRIMINAL
26 HISTORY ACCESS TOOL MAINTAINED BY THE DEPARTMENT OF STATE POLICE
27 AND THE RESULTS OF THAT SEARCH DO NOT UNCOVER ANY INFORMATION THAT

1 WOULD INDICATE THAT THE INDIVIDUAL IS NOT ELIGIBLE TO HAVE REGULAR
2 DIRECT ACCESS TO OR PROVIDE DIRECT SERVICES TO PATIENTS OR
3 RESIDENTS UNDER THIS SECTION.

4 (ii) BEFORE THE INDIVIDUAL HAS DIRECT ACCESS TO OR PROVIDES
5 DIRECT SERVICES TO PATIENTS OR RESIDENTS OF THE PSYCHIATRIC
6 FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL
7 RETARDATION, THE INDIVIDUAL SIGNS A STATEMENT IN WRITING THAT HE OR
8 SHE HAS RESIDED IN THIS STATE WITHOUT INTERRUPTION FOR AT LEAST THE
9 IMMEDIATELY PRECEDING 12-MONTH PERIOD.

10 (iii) IF APPLICABLE, THE INDIVIDUAL PROVIDES TO THE DEPARTMENT
11 OF STATE POLICE A SET OF FINGERPRINTS ON OR BEFORE THE EXPIRATION
12 OF 10 BUSINESS DAYS FOLLOWING THE DATE THE INDIVIDUAL WAS
13 CONDITIONALLY EMPLOYED OR GRANTED CONDITIONAL CLINICAL PRIVILEGES
14 UNDER THIS SUBSECTION.

15 (6) The department shall develop and distribute a model form
16 for the ~~statement~~ **STATEMENTS** required under subsection (5) (b) **AND**
17 (c). The department shall make the model form available to
18 psychiatric facilities or intermediate care facilities for people
19 with mental retardation subject to this section upon request at no
20 charge.

21 (7) If an individual is employed as a conditional employee or
22 is granted conditional clinical privileges under subsection (5),
23 and the **INFORMATION UNDER SUBSECTION (3) OR** report ~~described in~~
24 **UNDER** subsection (4) does not confirm the individual's statement
25 under subsection (5) (b) (i) through (iii), the psychiatric facility or
26 intermediate care facility for people with mental retardation shall
27 terminate the individual's employment or clinical privileges as

1 required by subsection (1).

2 (8) An individual who knowingly provides false information
3 regarding his or her identity, criminal convictions, or
4 substantiated findings on a statement described in subsection
5 (5)(b)(i) through (iii) is guilty of a misdemeanor punishable by
6 imprisonment for not more than 93 days or a fine of not more than
7 \$500.00, or both.

8 (9) A psychiatric facility or intermediate care facility for
9 people with mental retardation **OR STAFFING AGENCY** shall use
10 criminal history record information obtained under subsection (3)
11 **OR** (4) only for the purpose of evaluating an applicant's
12 qualifications for employment, an independent contract, or clinical
13 privileges in the position for which he or she has applied and for
14 the purposes of subsections (5) and (7). A psychiatric facility or
15 intermediate care facility for people with mental retardation **OR**
16 **STAFFING AGENCY** or an employee of the psychiatric facility or
17 intermediate care facility for people with mental retardation **OR**
18 **STAFFING AGENCY** shall not disclose criminal history record
19 information obtained under subsection (3) **OR** (4) to a person who is
20 not directly involved in evaluating the applicant's qualifications
21 for employment, an independent contract, or clinical privileges. An
22 individual who knowingly uses or disseminates the criminal history
23 record information obtained under subsection (3) **OR** (4) in
24 violation of this subsection is guilty of a misdemeanor punishable
25 by imprisonment for not more than 93 days or a fine of not more
26 than \$1,000.00, or both. ~~Upon written request from another~~
27 ~~psychiatric facility or intermediate care facility for people with~~

1 ~~mental retardation, health facility or agency, or adult foster care~~
2 ~~facility that is considering employing, independently contracting~~
3 ~~with, or granting clinical privileges to an individual, a~~
4 ~~psychiatric facility or intermediate care facility for people with~~
5 ~~mental retardation that has obtained criminal history record~~
6 ~~information under this section on that individual shall, with the~~
7 ~~consent of the applicant, share the information with the requesting~~
8 ~~psychiatric facility or intermediate care facility for people with~~
9 ~~mental retardation, health facility or agency, or adult foster care~~
10 ~~facility.~~ Except for a knowing or intentional release of false
11 information, a psychiatric facility or intermediate care facility
12 for people with mental retardation **OR STAFFING AGENCY** has no
13 liability in connection with a criminal ~~background~~ **HISTORY** check
14 conducted ~~under~~ **IN COMPLIANCE WITH** this section or the release of
15 criminal history record information under this subsection.

16 (10) **UPON CONSENT OF AN APPLICANT AS REQUIRED IN SUBSECTION**
17 **(3) AND UPON REQUEST FROM A PSYCHIATRIC FACILITY OR INTERMEDIATE**
18 **CARE FACILITY FOR PEOPLE WITH MENTAL RETARDATION OR STAFFING AGENCY**
19 **THAT HAS MADE A GOOD-FAITH OFFER OF EMPLOYMENT OR AN INDEPENDENT**
20 **CONTRACT OR CLINICAL PRIVILEGES TO THE APPLICANT, THE RELEVANT**
21 **LICENSING OR REGULATORY DEPARTMENT SHALL REVIEW THE CRIMINAL**
22 **HISTORY RECORD INFORMATION, IF ANY, AND NOTIFY THE REQUESTING**
23 **PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH**
24 **MENTAL RETARDATION OR STAFFING AGENCY OF THE INFORMATION IN THE**
25 **MANNER PRESCRIBED IN SUBSECTION (4). UNTIL THE FEDERAL BUREAU OF**
26 **INVESTIGATION IMPLEMENTS AN AUTOMATIC NOTIFICATION SYSTEM SIMILAR**
27 **TO THE SYSTEM REQUIRED OF THE STATE POLICE UNDER SUBSECTION (13)**

1 AND FEDERAL REGULATIONS ALLOW THE FEDERAL CRIMINAL RECORD TO BE
2 USED FOR SUBSEQUENT AUTHORIZED USES, AS DETERMINED IN AN ORDER
3 ISSUED BY THE DEPARTMENT, A COVERED HEALTH OR STAFFING AGENCY
4 FACILITY MAY RELY ON THE CRIMINAL HISTORY RECORD INFORMATION
5 PROVIDED BY THE RELEVANT LICENSING OR REGULATORY DEPARTMENT UNDER
6 THIS SUBSECTION AND A REQUEST TO THE FEDERAL BUREAU OF
7 INVESTIGATION TO MAKE A SUBSEQUENT DETERMINATION OF THE EXISTENCE
8 OF ANY NATIONAL CRIMINAL HISTORY PERTAINING TO THE APPLICANT IS NOT
9 NECESSARY IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

10 (A) THE CRIMINAL HISTORY CHECK WAS CONDUCTED DURING THE
11 IMMEDIATELY PRECEDING 12-MONTH PERIOD.

12 (B) THE APPLICANT HAS BEEN CONTINUOUSLY EMPLOYED BY A
13 PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH
14 MENTAL RETARDATION, COVERED HEALTH FACILITY, OR ADULT FOSTER CARE
15 FACILITY OR THE STAFFING AGENCY SINCE THE CRIMINAL HISTORY CHECK
16 WAS CONDUCTED IN COMPLIANCE WITH THIS SECTION OR MEETS THE
17 CONTINUOUS EMPLOYMENT REQUIREMENT OF THIS SUBDIVISION OTHER THAN
18 BEING ON LAYOFF STATUS FOR LESS THAN 1 YEAR FROM A PSYCHIATRIC
19 FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL
20 RETARDATION, COVERED HEALTH FACILITY, OR ADULT FOSTER CARE
21 FACILITY.

22 (C) THE APPLICANT CAN PROVIDE EVIDENCE ACCEPTABLE TO THE
23 RELEVANT LICENSING OR REGULATORY DEPARTMENT THAT HE OR SHE HAS BEEN
24 A RESIDENT OF THIS STATE FOR THE IMMEDIATELY PRECEDING 12-MONTH
25 PERIOD.

26 (11) ~~(10)~~ As a condition of continued employment, each
27 employee, independent contractor, or individual granted clinical

1 privileges shall do each of the following:

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

13 (b) If a set of fingerprints is not already on file with the
14 department of state police, provide the department of state police
15 with a set of fingerprints.

16 **(12)** ~~(11)~~—In addition to sanctions set forth in this act, a
17 licensee, owner, administrator, or operator of a psychiatric
18 facility or intermediate care facility for people with mental
19 retardation **OR STAFFING AGENCY** who knowingly and willfully fails to
20 conduct the criminal history checks as required under this section
21 is guilty of a misdemeanor punishable by imprisonment for not more
22 than 1 year or a fine of not more than \$5,000.00, or both.

23 **(13)** ~~(12)~~—In collaboration with the department of state
24 police, the department of ~~information~~ technology, **MANAGEMENT, AND**
25 **BUDGET** shall establish **AND MAINTAIN** an automated fingerprint
26 identification system database that would allow the department of
27 state police to store and maintain all fingerprints submitted under

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

14 ~~—— (13) April 1, 2009, the department shall submit a written~~
15 ~~report to the legislature outlining a plan to cover the costs of~~
16 ~~the criminal history checks required under this section if federal~~
17 ~~funding is no longer available or is inadequate to cover those~~
18 ~~costs.~~

19 (14) The department ~~and the department of state police~~ shall
20 maintain an electronic web-based system to assist ~~those~~ psychiatric
21 facilities or intermediate care facilities for people with mental
22 retardation **AND STAFFING AGENCIES** required to check relevant
23 registries and conduct criminal history checks of its employees and
24 independent contractors, ~~and~~ **AND INDIVIDUALS GRANTED PRIVILEGES AND**
25 to provide for an automated notice to those psychiatric facilities
26 or intermediate care facilities for people with mental retardation
27 **AND STAFFING AGENCIES** for those individuals inputted in the system

1 who, since the initial **CRIMINAL HISTORY** check, have been convicted
2 of a disqualifying offense or have been the subject of a
3 substantiated finding of abuse, neglect, or misappropriation of
4 property. **THE DEPARTMENT MAY CHARGE A STAFFING AGENCY A 1-TIME SET-**
5 **UP FEE OF UP TO \$100.00 FOR ACCESS TO THE ELECTRONIC WEB-BASED**
6 **SYSTEM UNDER THIS SECTION.**

7 (15) As used in this section:

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

11 (b) "CONVICTED" MEANS EITHER OF THE FOLLOWING:

12 (i) FOR A CRIME THAT IS NOT A RELEVANT CRIME, A FINAL
13 CONVICTION, THE PAYMENT OF A FINE, A PLEA OF GUILTY OR NOLO
14 CONTENDERE IF ACCEPTED BY THE COURT, OR A FINDING OF GUILT FOR A
15 CRIMINAL LAW VIOLATION OR A JUVENILE ADJUDICATION OR DISPOSITION BY
16 THE JUVENILE DIVISION OF PROBATE COURT OR FAMILY DIVISION OF
17 CIRCUIT COURT FOR A VIOLATION THAT IF COMMITTED BY AN ADULT WOULD
18 BE A CRIME.

19 (ii) FOR A RELEVANT CRIME DESCRIBED UNDER 42 USC 1320A-7(A),
20 CONVICTED MEANS THAT TERM AS DEFINED IN 42 USC 1320A-7.

21 (c) "COVERED HEALTH FACILITY" MEANS A NURSING HOME, COUNTY
22 MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
23 SERVICES, OR HOME FOR THE AGED LICENSED UNDER ARTICLE 17 OF THE
24 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20101 TO 333.22260, OR
25 HOME HEALTH AGENCY.

26 (d) "CRIMINAL HISTORY CHECK CONDUCTED IN COMPLIANCE WITH THIS
27 SECTION" INCLUDES A CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS

1 SECTION, UNDER SECTION 20173A OF THE PUBLIC HEALTH CODE, 1978 PA
2 3658, MCL 333.20173A, OR UNDER SECTION 34B OF THE ADULT FOSTER CARE
3 FACILITY LICENSING ACT, 1979 PA 218, MCL 400.734B.

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

8 ~~——(c) "Health facility or agency" means a health facility or~~
9 ~~agency that is a nursing home, county medical care facility,~~
10 ~~hospice, hospital that provides swing bed services, home for the~~
11 ~~aged, or home health agency and licensed as required under article~~
12 ~~17 of the public health code, 1978 PA 368, MCL 333.20101 to~~
13 ~~333.22260.~~

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

21 (G) ~~(e)~~—"Independent contract" means a contract entered into
22 by a health facility or agency with an individual who provides the
23 contracted services independently or a contract entered into by a
24 health facility or agency with an ~~organization or agency that~~
25 ~~employs or contracts with an individual after complying~~ **A STAFFING**
26 **AGENCY THAT COMPLIES** with the requirements of this section to
27 provide the contracted services to the ~~health facility or agency~~

1 PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH
 2 MENTAL RETARDATION on behalf of the ~~organization or~~ STAFFING
 3 agency.

4 (H) ~~(f)~~—"Medicare" means benefits under the federal medicare
 5 program established under title XVIII of the social security act,
 6 42 USC 1395 to ~~1395hhh~~ 1395III.

7 (I) "STAFFING AGENCY" MEANS AN ENTITY THAT RECRUITS CANDIDATES
 8 AND PROVIDES TEMPORARY AND PERMANENT QUALIFIED STAFFING FOR
 9 PSYCHIATRIC FACILITIES OR INTERMEDIATE CARE FACILITIES FOR PEOPLE
 10 WITH MENTAL RETARDATION, INCLUDING INDEPENDENT CONTRACTORS.

11 (J) "UNDER THE FACILITY'S CONTROL" MEANS AN INDIVIDUAL
 12 EMPLOYED BY OR UNDER INDEPENDENT CONTRACT WITH A PSYCHIATRIC
 13 FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL
 14 RETARDATION FOR WHOM THE PSYCHIATRIC FACILITY OR INTERMEDIATE CARE
 15 FACILITY FOR PEOPLE WITH MENTAL RETARDATION DOES BOTH OF THE
 16 FOLLOWING:

17 (i) DETERMINES WHETHER THE INDIVIDUAL WHO HAS ACCESS TO
 18 PATIENTS OR RESIDENTS MAY PROVIDE CARE, TREATMENT, OR OTHER SIMILAR
 19 SUPPORT SERVICE FUNCTIONS TO PATIENTS OR RESIDENTS SERVED BY THE
 20 PSYCHIATRIC FACILITY OR INTERMEDIATE CARE FACILITY FOR PEOPLE WITH
 21 MENTAL RETARDATION.

22 (ii) DIRECTS OR OVERSEES 1 OR MORE OF THE FOLLOWING:

23 (A) THE POLICY OR PROCEDURES THE INDIVIDUAL MUST FOLLOW IN
 24 PERFORMING HIS OR HER DUTIES.

25 (B) THE TASKS PERFORMED BY THE INDIVIDUAL.

26 (C) THE INDIVIDUAL'S WORK SCHEDULE.

27 (D) THE SUPERVISION OR EVALUATION OF THE INDIVIDUAL'S WORK OR

1 JOB PERFORMANCE, INCLUDING IMPOSING DISCIPLINE OR GRANTING
2 PERFORMANCE AWARDS.

3 (E) THE COMPENSATION THE INDIVIDUAL RECEIVES FOR PERFORMING
4 HIS OR HER DUTIES.

5 (F) THE CONDITIONS UNDER WHICH THE INDIVIDUAL PERFORMS HIS OR
6 HER DUTIES.

7 Enacting section 1. This amendatory act does not take effect
8 unless all of the following bills of the 95th Legislature are
9 enacted into law:

10 (a) Senate Bill No. 1253.

11 (b) Senate Bill No. 1254.