

# HOUSE BILL No. 5244

August 19, 2009, Introduced by Reps. Spade, Byrnes and Melton and referred to the Committee on Families and Children's Services.

A bill to amend 1939 PA 280, entitled  
"The social welfare act,"  
(MCL 400.1 to 400.119b) by adding section 74a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           SEC. 74A. (1) EXCEPT AS PROVIDED IN SUBSECTION (13), WHEN THE  
2 DEPARTMENT ENROLLS AN INDIVIDUAL AS A DAY CARE AIDE OR RELATIVE  
3 CARE PROVIDER, THE DEPARTMENT SHALL REQUEST THE DEPARTMENT OF STATE  
4 POLICE TO PERFORM BOTH OF THE FOLLOWING ON THAT INDIVIDUAL:

5           (A) CONDUCT A CRIMINAL HISTORY CHECK ON THE PERSON.

6           (B) CONDUCT A CRIMINAL RECORDS CHECK THROUGH THE FEDERAL  
7 BUREAU OF INVESTIGATION ON THE PERSON.

8           (2) EACH INDIVIDUAL ENROLLING AS A DAY CARE AIDE OR RELATIVE  
9 CARE PROVIDER SHALL GIVE WRITTEN CONSENT AT THE TIME OF ENROLLMENT  
10 FOR THE DEPARTMENT OF STATE POLICE TO CONDUCT A CRIMINAL HISTORY

1 CHECK AND A CRIMINAL RECORDS CHECK REQUIRED UNDER THIS SECTION. THE  
2 DEPARTMENT SHALL REQUIRE THE INDIVIDUAL TO SUBMIT HIS OR HER  
3 FINGERPRINTS TO THE DEPARTMENT OF STATE POLICE FOR THE CRIMINAL  
4 HISTORY CHECK AND CRIMINAL RECORDS CHECK DESCRIBED IN SUBSECTION  
5 (1).

6 (3) THE DEPARTMENT SHALL REQUEST A CRIMINAL HISTORY CHECK AND  
7 CRIMINAL RECORDS CHECK REQUIRED UNDER THIS SECTION ON A FORM AND IN  
8 THE MANNER PRESCRIBED BY THE DEPARTMENT OF STATE POLICE.

9 (4) WITHIN A REASONABLE TIME AFTER RECEIVING A COMPLETE  
10 REQUEST BY THE DEPARTMENT FOR A CRIMINAL HISTORY CHECK ON AN  
11 INDIVIDUAL UNDER THIS SECTION, THE DEPARTMENT OF STATE POLICE SHALL  
12 CONDUCT THE CRIMINAL HISTORY CHECK AND PROVIDE A REPORT OF THE  
13 RESULTS TO THE DEPARTMENT. THE REPORT SHALL CONTAIN ANY CRIMINAL  
14 HISTORY RECORD INFORMATION ON THE INDIVIDUAL MAINTAINED BY THE  
15 DEPARTMENT OF STATE POLICE.

16 (5) WITHIN A REASONABLE TIME AFTER RECEIVING A PROPER REQUEST  
17 BY THE DEPARTMENT FOR A CRIMINAL RECORDS CHECK UNDER THIS SECTION,  
18 THE DEPARTMENT OF STATE POLICE SHALL INITIATE THE CRIMINAL RECORDS  
19 CHECK. AFTER RECEIVING THE RESULTS OF THE CRIMINAL RECORDS CHECK  
20 FROM THE FEDERAL BUREAU OF INVESTIGATION, THE DEPARTMENT OF STATE  
21 POLICE SHALL PROVIDE A REPORT OF THE RESULTS TO THE DEPARTMENT.

22 (6) THE DAY CARE AIDE OR RELATIVE CARE PROVIDER SHALL PAY THE  
23 FEE FOR A CRIMINAL HISTORY CHECK OR A CRIMINAL RECORDS CHECK  
24 REQUIRED UNDER THIS SECTION THAT DOES NOT EXCEED THE ACTUAL AND  
25 REASONABLE COST OF CONDUCTING THE CHECK.

26 (7) A DAY CARE AIDE OR RELATIVE CARE PROVIDER SHALL REPORT TO  
27 THE DEPARTMENT WITHIN 3 BUSINESS DAYS AFTER HE OR SHE HAS BEEN

1 ARRAIGNED FOR 1 OR MORE OF THE FOLLOWING CRIMES:

2 (A) ANY FELONY.

3 (B) ANY OF THE FOLLOWING MISDEMEANORS:

4 (i) CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE OR AN ATTEMPT  
5 TO COMMIT CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE.

6 (ii) CHILD ABUSE IN THE THIRD OR FOURTH DEGREE OR AN ATTEMPT TO  
7 COMMIT CHILD ABUSE IN THE THIRD OR FOURTH DEGREE.

8 (iii) A MISDEMEANOR INVOLVING CRUELTY, TORTURE, OR INDECENT  
9 EXPOSURE INVOLVING A CHILD.

10 (iv) A MISDEMEANOR VIOLATION OF SECTION 7410 OF THE PUBLIC  
11 HEALTH CODE, 1978 PA 368, MCL 333.7410.

12 (v) A VIOLATION OF SECTION 115, 141A, 145A, 335A, OR 359 OF  
13 THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.115, 750.141A,  
14 750.145A, 750.335A, AND 750.359, OR A MISDEMEANOR VIOLATION OF  
15 SECTION 81, 81A, OR 145D OF THE MICHIGAN PENAL CODE, 1931 PA 328,  
16 MCL 750.81, 750.81A, AND 750.145D.

17 (vi) A MISDEMEANOR VIOLATION OF SECTION 701 OF THE MICHIGAN  
18 LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL 436.1701.

19 (vii) ANY MISDEMEANOR THAT IS A LISTED OFFENSE.

20 (C) A VIOLATION OF A SUBSTANTIALLY SIMILAR LAW OF ANOTHER  
21 STATE, OF A POLITICAL SUBDIVISION OF THIS STATE OR ANOTHER STATE,  
22 OR OF THE UNITED STATES.

23 (8) AN INDIVIDUAL WHO VIOLATES SUBSECTION (7) IS GUILTY OF A  
24 CRIME AS FOLLOWS:

25 (A) IF THE INDIVIDUAL VIOLATES SUBSECTION (7) AND THE CRIME  
26 INVOLVED IN THE VIOLATION IS A MISDEMEANOR THAT IS A LISTED OFFENSE  
27 OR IS A FELONY, THE INDIVIDUAL IS GUILTY OF A FELONY PUNISHABLE BY

1 IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN  
2 \$2,000.00, OR BOTH.

3 (B) IF THE INDIVIDUAL VIOLATES SUBSECTION (7) AND THE CRIME  
4 INVOLVED IN THE VIOLATION IS A MISDEMEANOR THAT IS NOT A LISTED  
5 OFFENSE, THE INDIVIDUAL IS GUILTY OF A MISDEMEANOR PUNISHABLE BY  
6 IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN  
7 \$1,000.00, OR BOTH.

8 (9) THE DEPARTMENT SHALL DELETE FROM THE DAY CARE AIDE'S OR  
9 RELATIVE CARE PROVIDER'S RECORDS ALL INFORMATION RELATING TO AN  
10 ARRAIGNMENT REQUIRED TO BE REPORTED UNDER THIS SECTION IF THE  
11 DEPARTMENT RECEIVES DOCUMENTATION THAT THE INDIVIDUAL ARRAIGNED FOR  
12 THE CRIME IS SUBSEQUENTLY NOT CONVICTED OF ANY CRIME AFTER THE  
13 COMPLETION OF JUDICIAL PROCEEDINGS RESULTING FROM THAT ARRAIGNMENT.

14 (10) NOT LATER THAN 12 MONTHS AFTER THE EFFECTIVE DATE OF THE  
15 AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL INFORM  
16 ALL PERSONS CURRENTLY ENROLLED AS DAY CARE AIDES OR RELATIVE CARE  
17 PROVIDERS AND ALL APPLICANTS FOR ENROLLMENT AS DAY CARE AIDES OR  
18 RELATIVE CARE PROVIDERS OF THE REQUIREMENT TO REPORT CERTAIN  
19 ARRAIGNMENTS AS REQUIRED IN THIS SECTION AND THE PENALTY FOR NOT  
20 REPORTING THOSE ARRAIGNMENTS.

21 (11) AT THE TIME THE DEPARTMENT ENROLLS AN INDIVIDUAL AS A DAY  
22 CARE AIDE OR RELATIVE CARE PROVIDER, THE DEPARTMENT SHALL NOTIFY  
23 THE INDIVIDUAL OF THE REQUIREMENT TO REPORT CERTAIN ARRAIGNMENTS AS  
24 REQUIRED IN THIS SECTION AND THE PENALTY FOR NOT REPORTING THOSE  
25 ARRAIGNMENTS.

26 (12) NOT LATER 12 MONTHS AFTER THE EFFECTIVE DATE OF THE  
27 AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL

1 CONDUCT A CRIMINAL HISTORY CHECK AND CRIMINAL RECORDS CHECK ON ALL  
2 CURRENTLY ENROLLED DAY CARE AIDES AND RELATIVE CARE PROVIDERS.

3 (13) BEGINNING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
4 ADDED THIS SECTION, IF AN INDIVIDUAL BEING ENROLLED AS A DAY CARE  
5 AIDE OR RELATIVE CARE PROVIDER HAS PREVIOUSLY UNDERGONE A CRIMINAL  
6 HISTORY CHECK AND CRIMINAL RECORDS CHECK REQUIRED UNDER THIS  
7 SECTION AND HAS BEEN CONTINUOUSLY ENROLLED AS A DAY CARE AIDE OR  
8 RELATIVE CARE PROVIDER AFTER THE CRIMINAL HISTORY CHECK AND  
9 CRIMINAL RECORDS CHECK HAVE BEEN PERFORMED, THAT INDIVIDUAL IS NOT  
10 REQUIRED TO SUBMIT TO ANOTHER CRIMINAL HISTORY CHECK OR CRIMINAL  
11 RECORDS CHECK.

12 (14) THE DEPARTMENT OF STATE POLICE SHALL USE THE AUTOMATED  
13 FINGERPRINT IDENTIFICATION SYSTEM DATABASE ESTABLISHED UNDER  
14 SECTION 5K OF 1973 PA 116, MCL 722.115K, TO PROVIDE FOR AN  
15 AUTOMATIC NOTIFICATION AT THE TIME A SUBSEQUENT CRIMINAL ARREST  
16 FINGERPRINT CARD SUBMITTED INTO THE SYSTEM MATCHES A SET OF  
17 FINGERPRINTS PREVIOUSLY SUBMITTED IN ACCORDANCE WITH THIS SECTION.  
18 UPON SUCH NOTIFICATION, THE DEPARTMENT OF STATE POLICE SHALL  
19 IMMEDIATELY NOTIFY THE DEPARTMENT AND THE DEPARTMENT SHALL  
20 IMMEDIATELY CONTACT THE RESPECTIVE DAY CARE AIDE OR RELATIVE CARE  
21 PROVIDER. INFORMATION IN THE DATABASE ESTABLISHED UNDER THIS  
22 SUBSECTION IS CONFIDENTIAL, IS NOT SUBJECT TO DISCLOSURE UNDER THE  
23 FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, AND  
24 SHALL NOT BE DISCLOSED TO ANY PERSON EXCEPT FOR PURPOSES OF THIS  
25 ACT OR FOR LAW ENFORCEMENT PURPOSES.

26 (15) AS USED IN THIS SECTION AND SECTIONS 74B AND 74C:

27 (A) "DAY CARE AIDE" MEANS AN INDIVIDUAL WHO IS AT LEAST 18

1 YEARS OF AGE OR OLDER, IS EMPLOYED BY THE PARENT OR GUARDIAN OF THE  
2 CHILD, AND IS ENROLLED BY THE DEPARTMENT TO PROVIDE CHILD CARE FOR  
3 UP TO 4 CHILDREN AT 1 TIME IN THE HOME WHERE THE CHILDREN LIVE.

4 (B) "LISTED OFFENSE" MEANS THAT TERM AS DEFINED IN SECTION 2  
5 OF THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28.722.

6 (C) "RELATIVE CARE PROVIDER" MEANS AN ADULT 18 YEARS OF AGE OR  
7 OLDER WHO PROVIDES CARE IN THE RELATIVE'S HOME, IS ENROLLED BY THE  
8 DEPARTMENT TO PROVIDE CHILD CARE FOR UP TO 4 CHILDREN AT 1 TIME,  
9 AND IS RELATED TO THE CHILD AS A GRANDPARENT, STEP-GRANDPARENT,  
10 GREAT GRANDPARENT, STEP-GREAT GRANDPARENT, AUNT, STEP-AUNT, UNCLE,  
11 STEP-UNCLE, ADULT SIBLING, OR STEP-SIBLING.