

# HOUSE BILL No. 4598

May 3, 2011, Introduced by Reps. Heise, Lane, Liss, Bauer, Kurtz, Rendon, Wayne Schmidt, Jenkins, Farrington, Zorn, Damrow, Haines, Kowall, Callton, O'Brien, Haveman, Forlini, Lyons, Townsend, Darany, Stapleton, Slavens and Brown and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1974 PA 258, entitled  
"Mental health code,"  
by amending section 134a (MCL 330.1134a), as amended by 2010 PA  
293.

## 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 if the individual satisfies 1 or

1 more of the following:

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

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(a), unless 15 years have lapsed  
9 since the individual completed all of the terms and conditions of  
10 his or her sentencing, parole, and probation for that conviction  
11 prior to the date of application for employment or clinical  
12 privileges or the date of the execution of the independent  
13 contract:

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

19 (ii) A felony involving cruelty or torture.

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

22 (iv) A felony involving criminal sexual conduct.

23 (v) A felony involving abuse or neglect.

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

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

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

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

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

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

23 (iii) A misdemeanor involving criminal sexual conduct.

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

26 (v) A misdemeanor involving abuse or neglect.

27 (e) Has been convicted of any of the following misdemeanors,

1 other than a misdemeanor for a relevant crime described under 42  
2 USC 1320a-7(a), or a state or federal crime that is substantially  
3 similar to the misdemeanors described in this subdivision, within  
4 the 5 years immediately preceding the date of application for  
5 employment or clinical privileges or the date of the execution of  
6 the independent contract:

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

9 (ii) A misdemeanor involving home invasion.

10 (iii) A misdemeanor involving embezzlement.

11 (iv) A misdemeanor involving negligent homicide or a violation  
12 of section 601d(1) of the Michigan vehicle code, 1940 PA 300, MCL  
13 257.601d.

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

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

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

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

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

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

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

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

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

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

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

25           (i) Engages in conduct that becomes the subject of a  
26 substantiated finding of neglect, abuse, or misappropriation of  
27 property by a state or federal agency according to an investigation

1 conducted ~~in accordance with~~ **UNDER** 42 USC 1395i-3 or 1396r, **OR THE**  
2 **SUBJECT OF A SUBSTANTIATED FINDING OF ABUSE CLASS I, ABUSE CLASS**  
3 **II, NEGLECT CLASS I, OR NEGLECT CLASS II BY A STATE AGENCY**  
4 **ACCORDING TO AN INVESTIGATION CONDUCTED UNDER STATE LAW.**

5 (2) Except as otherwise provided in this subsection or  
6 subsection (5), a psychiatric facility or intermediate care  
7 facility for people with mental retardation shall not employ,  
8 independently contract with, or grant privileges to an individual  
9 who regularly has direct access to or provides direct services to  
10 patients or residents in the psychiatric facility or intermediate  
11 care facility for people with mental retardation until the  
12 psychiatric facility or intermediate care facility for people with  
13 mental retardation or staffing agency has conducted a criminal  
14 history check in compliance with this section or received criminal  
15 history record information in compliance with subsection (3) ~~or~~ **AND**  
16 (10). This subsection and subsection (1) do not apply to any of the  
17 following:

18 (a) An individual who is employed by, under independent  
19 contract to, or granted clinical privileges in a psychiatric  
20 facility or intermediate care facility for people with mental  
21 retardation before April 1, 2006. On or before April 1, 2011, an  
22 individual who is exempt under this subdivision and who has not  
23 been the subject of a criminal history check conducted in  
24 compliance with this section shall provide the department of state  
25 police with a set of fingerprints and the department of state  
26 police shall input those fingerprints into the automated  
27 fingerprint identification system database established under

1 subsection (13). An individual who is exempt under this subdivision  
2 is not limited to working within the psychiatric facility or  
3 intermediate care facility for people with mental retardation with  
4 which he or she is employed by, under independent contract to, or  
5 granted clinical privileges on April 1, 2006 but may transfer to  
6 another psychiatric facility or intermediate care facility for  
7 people with mental retardation, covered health facility, or adult  
8 foster care facility. If an individual who is exempt under this  
9 subdivision is subsequently convicted of a crime described under  
10 subsection (1)(a) through (g) or found to be the subject of a  
11 substantiated finding described under subsection (1)(i) or an order  
12 or disposition described under subsection (1)(h), or is found to  
13 have been convicted of a relevant crime described under subsection  
14 (1)(a), then he or she is no longer exempt and shall be terminated  
15 from employment or denied employment or clinical privileges.

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

1           (3) An individual who applies for employment either as an  
2 employee or as an independent contractor or for clinical privileges  
3 with a psychiatric facility or intermediate care facility for  
4 people with mental retardation or a staffing agency and who has not  
5 been the subject of a criminal history check conducted in  
6 compliance with this section shall give written consent at the time  
7 of application for the department of state police to conduct a  
8 criminal history check under this section, along with  
9 identification acceptable to the department of state police. If the  
10 applicant has been the subject of a criminal history check  
11 conducted in compliance with this section, the applicant shall give  
12 written consent at the time of application for the psychiatric  
13 facility or intermediate care facility for people with mental  
14 retardation or staffing agency to obtain the criminal history  
15 record information as prescribed in subsection (4) from the  
16 relevant licensing or regulatory department and for the department  
17 of state police to conduct a criminal history check under this  
18 section if the requirements of subsection (10) are not met and a  
19 request to the federal bureau of investigation to make a  
20 determination of the existence of any national criminal history  
21 pertaining to the applicant is necessary, along with identification  
22 acceptable to the department of state police. Upon receipt of the  
23 written consent to obtain the criminal history record information  
24 and identification required under this subsection, the psychiatric  
25 facility or intermediate care facility for people with mental  
26 retardation or staffing agency that has made a good-faith offer of  
27 employment or an independent contract or clinical privileges to the

1 applicant shall request the criminal history record information  
2 from the relevant licensing or regulatory department and shall make  
3 a request regarding that applicant to the relevant licensing or  
4 regulatory department to conduct a check of all relevant registries  
5 in the manner required in subsection (4). If the requirements of  
6 subsection (10) are not met 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  
9 necessary, the psychiatric facility or intermediate care facility  
10 for people with mental retardation or staffing agency shall proceed  
11 in the manner required in subsection (4). A staffing agency that  
12 employs an applicant who regularly has direct access to or provides  
13 direct services to patients or residents under an independent  
14 contract with a psychiatric facility or intermediate care facility  
15 for people with mental retardation shall submit information  
16 regarding the criminal history check conducted by the staffing  
17 agency to the psychiatric facility or intermediate care facility  
18 for people with mental retardation that has made a good-faith offer  
19 of independent contract to that applicant.

20 (4) Upon receipt of the written consent to conduct a criminal  
21 history check and identification required under subsection (3), a  
22 psychiatric facility or intermediate care facility for people with  
23 mental retardation or staffing agency that has made a good-faith  
24 offer of employment or an independent contract or clinical  
25 privileges to the applicant shall make a request to the department  
26 of state police to conduct a criminal history check on the  
27 applicant, to input the applicant's fingerprints into the automated

1 fingerprint identification system database, and to forward the  
2 applicant's fingerprints to the federal bureau of investigation.  
3 The department of state police shall request the federal bureau of  
4 investigation to make a determination of the existence of any  
5 national criminal history pertaining to the applicant. The  
6 applicant shall provide the department of state police with a set  
7 of fingerprints. The request shall be made in a manner prescribed  
8 by the department of state police. The psychiatric facility or  
9 intermediate care facility for people with mental retardation or  
10 staffing agency shall make the written consent and identification  
11 available to the department of state police. The psychiatric  
12 facility or intermediate care facility for people with mental  
13 retardation or staffing agency shall make a request regarding that  
14 applicant to the relevant licensing or regulatory department to  
15 conduct a check of all relevant registries established under  
16 federal and state law and regulations for any substantiated  
17 findings of abuse, neglect, or misappropriation of property. If the  
18 department of state police or the federal bureau of investigation  
19 charges a fee for conducting the criminal history check, the  
20 psychiatric facility or intermediate care facility for people with  
21 mental retardation or staffing agency shall pay the cost of the  
22 charge. The psychiatric facility or intermediate care facility for  
23 people with mental retardation or staffing agency shall not seek  
24 reimbursement for a charge imposed by the department of state  
25 police or the federal bureau of investigation from the individual  
26 who is the subject of the criminal history check. A prospective  
27 employee or a prospective independent contractor covered under this

1 section may not be charged for the cost of a criminal history check  
2 required under this section. The department of state police shall  
3 conduct a criminal history check on the applicant named in the  
4 request. The department of state police shall provide the  
5 department with a written report of the criminal history check  
6 conducted under this subsection. The report shall contain any  
7 criminal history record information on the applicant maintained by  
8 the department of state police. The department of state police  
9 shall provide the results of the federal bureau of investigation  
10 determination to the department within 30 days after the request is  
11 made. If the requesting psychiatric facility or intermediate care  
12 facility for people with mental retardation or staffing agency is  
13 not a state department or agency and if criminal history record  
14 information is disclosed on the written report of the criminal  
15 history check or the federal bureau of investigation determination  
16 that resulted in a conviction, the department shall notify the  
17 psychiatric facility or intermediate care facility for people with  
18 mental retardation or staffing agency and the applicant in writing  
19 of the type of crime disclosed on the written report of the  
20 criminal history check or the federal bureau of investigation  
21 determination without disclosing the details of the crime. Any  
22 charges imposed by the department of state police or the federal  
23 bureau of investigation for conducting a criminal history check or  
24 making a determination under this subsection shall be paid in the  
25 manner required under this subsection. The notice shall include a  
26 statement that the applicant has a right to appeal the information  
27 relied upon by the psychiatric facility or intermediate care

1 facility for people with mental retardation or staffing agency  
2 regarding his or her employment eligibility based on the criminal  
3 history check. The notice shall also include information regarding  
4 where to file and describing the appellate procedures established  
5 under section 20173b of the public health code, 1978 PA 368, MCL  
6 333.20173b.

7 (5) If a psychiatric facility or intermediate care facility  
8 for people with mental retardation determines it necessary to  
9 employ or grant clinical privileges to an applicant before  
10 receiving the results of the applicant's criminal history check or  
11 criminal history record information under this section, the  
12 psychiatric facility or intermediate care facility for people with  
13 mental retardation may conditionally employ or grant conditional  
14 clinical privileges to the individual if all of the following  
15 apply:

16 (a) The psychiatric facility or intermediate care facility for  
17 people with mental retardation requests the criminal history check  
18 or criminal history record information under this section upon  
19 conditionally employing or conditionally granting clinical  
20 privileges to the individual.

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

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

27 (ii) That he or she is not the subject of an order or

1 disposition described in subsection (1)(h).

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

4 (iv) The individual agrees that, if the information in the  
5 criminal history check conducted under this section does not  
6 confirm the individual's statements under subparagraphs (i) through  
7 (iii), his or her employment or clinical privileges will be  
8 terminated by the psychiatric facility or intermediate care  
9 facility for people with mental retardation as required under  
10 subsection (1) unless and until the individual appeals and can  
11 prove that the information is incorrect.

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

16 (c) Except as otherwise provided in this subdivision, the  
17 psychiatric facility or intermediate care facility for people with  
18 mental retardation does not permit the individual to have regular  
19 direct access to or provide direct services to patients or  
20 residents in the psychiatric facility or intermediate care facility  
21 for people with mental retardation without supervision until the  
22 criminal history check or criminal history record information is  
23 obtained and the individual is eligible for that employment or  
24 clinical privileges. If required under this subdivision, the  
25 psychiatric facility or intermediate care facility for people with  
26 mental retardation shall provide on-site supervision of an  
27 individual in the facility on a conditional basis under this

1 subsection by an individual who has undergone a criminal history  
2 check conducted in compliance with this section. A psychiatric  
3 facility or intermediate care facility for people with mental  
4 retardation may permit an individual in the facility on a  
5 conditional basis under this subsection to have regular direct  
6 access to or provide direct services to patients or residents in  
7 the psychiatric facility or intermediate care facility for people  
8 with mental retardation without supervision if all of the following  
9 conditions are met:

10 (i) The psychiatric facility or intermediate care facility for  
11 people with mental retardation, at its own expense and before the  
12 individual has direct access to or provides direct services to  
13 patients or residents of the psychiatric facility or intermediate  
14 care facility for people with mental retardation, conducts a search  
15 of public records on that individual through the internet criminal  
16 history access tool maintained by the department of state police  
17 and the results of that search do not uncover any information that  
18 would indicate that the individual is not eligible to have regular  
19 direct access to or provide direct services to patients or  
20 residents under this section.

21 (ii) Before the individual has direct access to or provides  
22 direct services to patients or residents of the psychiatric  
23 facility or intermediate care facility for people with mental  
24 retardation, the individual signs a statement in writing that he or  
25 she has resided in this state without interruption for at least the  
26 immediately preceding 12-month period.

27 (iii) If applicable, the individual provides to the department

1 of state police a set of fingerprints on or before the expiration  
2 of 10 business days following the date the individual was  
3 conditionally employed or granted conditional clinical privileges  
4 under this subsection.

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

10 (7) If an individual is employed as a conditional employee or  
11 is granted conditional clinical privileges under subsection (5),  
12 and the information under subsection (3) or report under subsection  
13 (4) does not confirm the individual's statement under subsection  
14 (5)(b)(i) through (iii), the psychiatric facility or intermediate  
15 care facility for people with mental retardation shall terminate  
16 the individual's employment or clinical privileges as required by  
17 subsection (1).

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

24 (9) A psychiatric facility or intermediate care facility for  
25 people with mental retardation or staffing agency shall use  
26 criminal history record information obtained under subsection (3)  
27 or (4) only for the purpose of evaluating an applicant's

1 qualifications for employment, an independent contract, or clinical  
2 privileges in the position for which he or she has applied and for  
3 the purposes of subsections (5) and (7). A psychiatric facility or  
4 intermediate care facility for people with mental retardation or  
5 staffing agency or an employee of the psychiatric facility or  
6 intermediate care facility for people with mental retardation or  
7 staffing agency shall not disclose criminal history record  
8 information obtained under subsection (3) or (4) to a person who is  
9 not directly involved in evaluating the applicant's qualifications  
10 for employment, an independent contract, or clinical privileges. An  
11 individual who knowingly uses or disseminates the criminal history  
12 record information obtained under subsection (3) or (4) in  
13 violation of this subsection is guilty of a misdemeanor punishable  
14 by imprisonment for not more than 93 days or a fine of not more  
15 than \$1,000.00, or both. Except for a knowing or intentional  
16 release of false information, a psychiatric facility or  
17 intermediate care facility for people with mental retardation or  
18 staffing agency has no liability in connection with a criminal  
19 history check conducted in compliance with this section or the  
20 release of criminal history record information under this  
21 subsection.

22 (10) Upon consent of an applicant as required in subsection  
23 (3) and upon request from a psychiatric facility or intermediate  
24 care facility for people with mental retardation or staffing agency  
25 that has made a good-faith offer of employment or an independent  
26 contract or clinical privileges to the applicant, the relevant  
27 licensing or regulatory department shall review the criminal

1 history record information, if any, and notify the requesting  
2 psychiatric facility or intermediate care facility for people with  
3 mental retardation or staffing agency of the information in the  
4 manner prescribed in subsection (4). Until the federal bureau of  
5 investigation implements an automatic notification system similar  
6 to the system required of the state police under subsection (13)  
7 and federal regulations allow the federal criminal record to be  
8 used for subsequent authorized uses, as determined in an order  
9 issued by the department, a covered health **FACILITY** or staffing  
10 agency ~~facility~~ may rely on the criminal history record information  
11 provided by the relevant licensing or regulatory department under  
12 this subsection and a request to the federal bureau of  
13 investigation to make a subsequent determination of the existence  
14 of any national criminal history pertaining to the applicant is not  
15 necessary if all of the following requirements are met:

16 (a) The criminal history check was conducted during the  
17 immediately preceding 12-month period.

18 (b) The applicant has been continuously employed by a  
19 psychiatric facility or intermediate care facility for people with  
20 mental retardation, covered health facility, or adult foster care  
21 facility or the staffing agency since the criminal history check  
22 was conducted in compliance with this section or meets the  
23 continuous employment requirement of this subdivision other than  
24 being on layoff status for less than 1 year from a psychiatric  
25 facility or intermediate care facility for people with mental  
26 retardation, covered health facility, or adult foster care  
27 facility.

1 (c) The applicant can provide evidence acceptable to the  
2 relevant licensing or regulatory department that he or she has been  
3 a resident of this state for the immediately preceding 12-month  
4 period.

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

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

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

22 (12) In addition to sanctions set forth in this act, a  
23 licensee, owner, administrator, or operator of a psychiatric  
24 facility or intermediate care facility for people with mental  
25 retardation or staffing agency who knowingly and willfully fails to  
26 conduct the criminal history checks as required under this section  
27 is guilty of a misdemeanor punishable by imprisonment for not more

1 than 1 year or a fine of not more than \$5,000.00, or both.

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

20 (14) The department shall maintain an electronic web-based  
21 system to assist psychiatric facilities or intermediate care  
22 facilities for people with mental retardation and staffing agencies  
23 required to check relevant registries and conduct criminal history  
24 checks of its employees, ~~and~~ independent contractors, and  
25 individuals granted privileges and to provide for an automated  
26 notice to those psychiatric facilities or intermediate care  
27 facilities for people with mental retardation and staffing agencies

1 for those individuals inputted in the system who, since the initial  
2 criminal history check, have been convicted of a disqualifying  
3 offense or have been the subject of a substantiated finding of  
4 abuse, neglect, or misappropriation of property. The department may  
5 charge a staffing agency a 1-time set-up fee of up to \$100.00 for  
6 access to the electronic web-based system under this section.

7 (15) As used in this section:

8 (A) "ABUSE CLASS I", "ABUSE CLASS II", "NEGLECT CLASS I", AND  
9 "NEGLECT CLASS II", MEAN THOSE TERMS AS DEFINED IN R 330.7001 OF  
10 THE MICHIGAN ADMINISTRATIVE CODE.

11 (B) ~~(a)~~—"Adult foster care facility" means an adult foster  
12 care facility licensed under the adult foster care facility  
13 licensing act, 1979 PA 218, MCL 400.701 to 400.737.

14 (C) ~~(b)~~—"Convicted" means either of the following:

15 (i) For a crime that is not a relevant crime, a final  
16 conviction, the payment of a fine, a plea of guilty or nolo  
17 contendere if accepted by the court, or a finding of guilt for a  
18 criminal law violation or a juvenile adjudication or disposition by  
19 the juvenile division of probate court or family division of  
20 circuit court for a violation that if committed by an adult would  
21 be a crime.

22 (ii) For a relevant crime described under 42 USC 1320a-7(a),  
23 convicted means that term as defined in 42 USC 1320a-7.

24 (D) ~~(e)~~—"Covered health facility" means a nursing home, county  
25 medical care facility, hospice, hospital that provides swing bed  
26 services, or home for the aged licensed under article 17 of the  
27 public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or

1 home health agency.

2 (E) ~~(d)~~—"Criminal history check conducted in compliance with  
3 this section" includes a criminal history check conducted under  
4 this section, under section 20173a of the public health code, 1978  
5 PA 3658, MCL 333.20173a, or under section 34b of the adult foster  
6 care facility licensing act, 1979 PA 218, MCL 400.734b.

7 (F) ~~(e)~~—"Direct access" means access to a patient or resident  
8 or to a patient's or resident's property, financial information,  
9 medical records, treatment information, or any other identifying  
10 information.

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

18 (H) ~~(g)~~—"Independent contract" means a contract entered into  
19 by a health facility or agency with an individual who provides the  
20 contracted services independently or a contract entered into by a  
21 health facility or agency with a staffing agency that complies with  
22 the requirements of this section to provide the contracted services  
23 to the psychiatric facility or intermediate care facility for  
24 people with mental retardation on behalf of the staffing agency.

25 (I) ~~(h)~~—"Medicare" means benefits under the federal medicare  
26 program established under title XVIII of the social security act,  
27 42 USC 1395 to ~~1395iii~~ **1395KKK**.

1           (J) ~~(i)~~—"Staffing agency" means an entity that recruits  
2 candidates and provides temporary and permanent qualified staffing  
3 for psychiatric facilities or intermediate care facilities for  
4 people with mental retardation, including independent contractors.

5           (K) ~~(j)~~—"Under the facility's control" means an individual  
6 employed by or under independent contract with a psychiatric  
7 facility or intermediate care facility for people with mental  
8 retardation for whom the psychiatric facility or intermediate care  
9 facility for people with mental retardation does both of the  
10 following:

11           (i) Determines whether the individual who has access to  
12 patients or residents may provide care, treatment, or other similar  
13 support service functions to patients or residents served by the  
14 psychiatric facility or intermediate care facility for people with  
15 mental retardation.

16           (ii) Directs or oversees 1 or more of the following:

17           (A) The policy or procedures the individual must follow in  
18 performing his or her duties.

19           (B) The tasks performed by the individual.

20           (C) The individual's work schedule.

21           (D) The supervision or evaluation of the individual's work or  
22 job performance, including imposing discipline or granting  
23 performance awards.

24           (E) The compensation the individual receives for performing  
25 his or her duties.

26           (F) The conditions under which the individual performs his or  
27 her duties.

1           Enacting section 1. This amendatory act does not take effect  
2 unless all of the following bills of the 96th Legislature are  
3 enacted into law:

4           (a) Senate Bill No.\_\_\_\_ or House Bill No. 4599(request no.  
5 01252'11).

6           (b) Senate Bill No.\_\_\_\_ or House Bill No. 4597(request no.  
7 01253'11).