

Act No. 123  
Public Acts of 1989  
Approved by the Governor  
June 28, 1989  
Filed with the Secretary of State  
June 28, 1989

**STATE OF MICHIGAN**  
**85TH LEGISLATURE**  
**REGULAR SESSION OF 1989**

Introduced by Reps. Gubow, DeMars, Scott, Stabenow, Crandall, Wartner, DeLange, Bankes, Bennett, Trim and Hertel

# **ENROLLED HOUSE BILL No. 4237**

AN ACT to amend section 750 of Act No. 258 of the Public Acts of 1974, entitled as amended "An act to modernize, add to, revise, consolidate, and codify the statutes relating to mental health; to delineate the powers and duties of the department of mental health; to establish county community mental health programs; to delineate state and county financial responsibility for public mental health services; to create certain funds; to establish procedures for the civil admission and discharge of mentally ill persons to and from mental health facilities; to establish procedures for the civil admission and discharge of mentally retarded and other developmentally disabled persons to and from facilities; to establish guardianship arrangements for mentally retarded persons; to establish certain rights of persons who receive mental health services; to establish financial liability for the receipt of public mental health services; to establish certain miscellaneous provisions relating to mental health; to establish procedures pertaining to mentally ill and mentally retarded persons who are under criminal sentence, to persons who are mentally incompetent to stand trial, and to persons who have been found not guilty by reason of insanity; and to repeal certain acts and parts of acts," as amended by Act No. 362 of the Public Acts of 1984, being section 330.1750 of the Michigan Compiled Laws; and to add section 946.

*The People of the State of Michigan enact:*

Section 1. Section 750 of Act No. 258 of the Public Acts of 1974, as amended by Act No. 362 of the Public Acts of 1984, being section 330.1750 of the Michigan Compiled Laws, is amended and section 946 is added to read as follows:

Sec. 750. (1) For the purposes of this section:

(a) "Psychiatrist" means a person licensed to practice medicine under part 170 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.17001 to 333.17088 of the Michigan Compiled Laws, or osteopathic medicine under part 175 of Act No. 368 of the Public Acts of 1978, being sections 333.17501 to 333.17556 of the Michigan Compiled Laws, or a person under the supervision of a psychiatrist, while engaged in the examination, diagnosis, or treatment of a patient for a mental condition.

(b) "Psychologist" means a person licensed to engage in the practice of psychology under part 182 of Act No. 368 of the Public Acts of 1978, being sections 333.18201 to 333.18237 of the Michigan Compiled Laws; a person with training and experience equivalent to that necessary for licensing as a psychologist; a person employed by a public agency as a psychologist; or a person under the supervision of a psychologist, while engaged in the examination, diagnosis, or treatment of a patient for a mental condition.

(c) "Privileged communication" means a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, or to another person while the other person is participating in the examination, diagnosis, or treatment.

(d) "Health care corporation" means any of the following:

(i) A nonprofit dental care corporation incorporated under Act No. 125 of the Public Acts of 1963, being sections 550.351 to 550.373 of the Michigan Compiled Laws.

(ii) A hospital service corporation, medical care corporation, or a consolidated hospital service corporation and medical care corporation incorporated or reincorporated under the nonprofit health care corporation reform act, Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws.

(iii) A health maintenance organization licensed under part 210 of Act No. 368 of the Public Acts of 1978, being sections 333.21001 to 333.21098 of the Michigan Compiled Laws.

(e) "Health care insurer" means an insurance company authorized to provide health insurance in this state or a legal entity that is self-insured and provides health care benefits to its employees.

(2) Privileged communications shall not be disclosed in civil, criminal, legislative, or administrative cases or proceedings, or in proceedings preliminary to such cases or proceedings, unless the patient has waived the privilege, except in the circumstances set forth in this section.

(3) Privileged communications shall be disclosed upon request:

(a) When the privileged communication is relevant to a physical or mental condition of the patient that the patient has introduced as an element of the patient's claim or defense in a civil or administrative case or proceeding or that, after the death of the patient, has been introduced as an element of the patient's claim or defense by a party to a civil or administrative case or proceeding.

(b) When the privileged communication is relevant to a matter under consideration in a proceeding governed by this act, but only if the patient was informed that any communications could be used in the proceeding.

(c) When the privileged communication is relevant to a matter under consideration in a proceeding to determine the legal competence of the patient or the patient's need for a guardian but only if the patient was informed that any communications made could be used in such a proceeding.

(d) In a civil or criminal action against the psychiatrist or psychologist for malpractice.

(e) When the privileged communication was made during an examination ordered by a court, prior to which the patient was informed that a communication made would not be privileged, but only with respect to the particular purpose for which the examination was ordered.

(f) When the privileged communication was made during treatment that the patient was ordered to undergo to render the patient competent to stand trial on a criminal charge, but only with respect to issues to be determined in proceedings concerned with the competence of the patient to stand trial.

(4) In a proceeding in which subsections (2) and (3) prohibit disclosure of a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, the fact that the patient has been examined or treated or undergone a diagnosis also shall not be disclosed unless that fact is relevant to a determination by a health care insurer or health care corporation of its rights and liabilities under a policy, contract, or certificate of insurance or health care benefits.

(5) Privileged communications may be disclosed pursuant to section 946 to comply with the duty set forth in that section.

Sec. 946. (1) If a patient communicates to a mental health practitioner who is treating the patient a threat of physical violence against a reasonably identifiable third person and the patient has the apparent intent and ability to carry out that threat in the foreseeable future, the mental health practitioner has a duty to take action as prescribed in subsection (2). Except as provided in this section, a mental health practitioner does not have a duty to warn a third person of a threat as described in this subsection or to protect the third person.

(2) A mental health practitioner has discharged the duty created under subsection (1) if the mental health practitioner, subsequent to the threat, does 1 or more of the following in a timely manner:

(a) Hospitalizes the patient or initiates proceedings to hospitalize the patient under chapter 4 or 4a.

(b) Makes a reasonable attempt to communicate the threat to the third person and communicates the threat to the local police department or county sheriff for the area where the third person resides or for the area where the patient resides, or the state police.

(c) If the mental health practitioner has reason to believe that the third person who is threatened is a minor or is incompetent by other than age, takes the steps set forth in subdivision (b) and communicates the threat to the department of social services in the county where the minor resides and to the third person's custodial parent, noncustodial parent, or legal guardian, whoever is appropriate in the best interests of the third person.

(3) If a patient described in subsection (1) is being treated through team treatment in a hospital, and if the individual in charge of the patient's treatment decides to discharge the duty created in subsection (1) by a means described in subsection (2)(b) or (c), the hospital shall designate an individual to communicate the threat to the necessary persons.

(4) A psychiatrist or psychologist who determines in good faith that a particular situation presents a duty under this section and who complies with the duty does not violate section 750. A psychiatrist who determines in good faith that a particular situation presents a duty under this section and who complies with the duty does not violate the physician-patient privilege established under section 2157 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.2157 of the Michigan Compiled Laws. A psychiatric social worker who determines in good faith that a particular situation presents a duty under this section and who complies with the duty does not violate section 1610 of the occupational code, Act No. 299 of the Public Acts of 1980, being section 339.1610 of the Michigan Compiled Laws.

(5) As used in this section:

(a) "Hospital" means a facility providing inpatient care and services for the observation, diagnosis, and active treatment of an individual with a medical, chronic, or rehabilitative condition requiring the daily direction or supervision of a psychiatrist.

(b) "Mental health practitioner" means a psychiatrist, psychologist, or psychiatric social worker.

(c) "Psychiatric social worker" means a certified social worker, social worker, or social work technician registered under article 16 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.1601 to 339.1610 of the Michigan Compiled Laws, who has successfully completed a psychiatric social service practicum.

(d) "Psychiatrist" means that term as defined in section 750.

(e) "Psychologist" means that term as defined in section 750.

(6) This section does not affect a duty a mental health practitioner may have under any other section of law.

Section 2. This amendatory act shall take effect September 1, 1989.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 85th Legislature are enacted into law:

(a) House Bill No. 4238.

(b) House Bill No. 4446.

This act is ordered to take immediate effect.

.....  
Clerk of the House of Representatives.

.....  
Secretary of the Senate.

Approved.....

.....  
Governor.