

# HOUSE BILL No. 4835

May 16, 1989, Introduced by Reps. Gnodtke, Miller, Ouwinga, Bankes, London, Allen, Dolan, Pitoniak, Willis Bullard, Middaugh, DeLange and Emmons and referred to the Committee on Social Services and Youth.

A bill to amend Act No. 218 of the Public Acts of 1979, entitled

"Adult foster care facility licensing act,"

as amended, being sections 400.701 to 400.737 of the Michigan Compiled Laws, by adding sections 38, 39, 40, and 41.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 218 of the Public Acts of 1979, as  
2 amended, being sections 400.701 to 400.737 of the Michigan  
3 Compiled Laws, is amended by adding sections 38, 39, 40, and 41  
4 to read as follows:

5 SEC. 38. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (A),  
6 AS USED IN SECTIONS 39 AND 40, "ABUSE" MEANS 1 OR MORE OF THE  
7 FOLLOWING:

8 (A) AN ASSAULT THAT IS A VIOLATION OF SECTIONS 81 TO 90,  
9 INCLUDING AN ATTEMPT OR A CONSPIRACY TO COMMIT A VIOLATION OF

1 SECTIONS 81 TO 90, OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE  
2 PUBLIC ACTS OF 1931, BEING SECTIONS 750.81 TO 750.90 OF THE  
3 MICHIGAN COMPILED LAWS. ABUSE DOES NOT INCLUDE AN ASSAULT OR AN  
4 ASSAULT AND BATTERY THAT IS A VIOLATION OF SECTION 81 OF THE  
5 MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931,  
6 BEING SECTION 750.81 OF THE MICHIGAN COMPILED LAWS, AND THAT IS  
7 COMMITTED BY A RESIDENT AGAINST ANOTHER RESIDENT.

8 (B) A CRIMINAL HOMICIDE THAT IS A VIOLATION OF SECTION 316,  
9 317, OR 321, INCLUDING AN ATTEMPT OR A CONSPIRACY TO COMMIT A  
10 VIOLATION OF SECTION 316, 317, OR 321, OF THE MICHIGAN PENAL  
11 CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING SECTIONS  
12 750.316, 750.317, AND 750.321 OF THE MICHIGAN COMPILED LAWS.

13 (C) CRIMINAL SEXUAL CONDUCT THAT IS A VIOLATION OF  
14 SECTIONS 520B TO 520E, OR ASSAULT WITH INTENT TO COMMIT CRIMINAL  
15 SEXUAL CONDUCT, WHICH IS A VIOLATION OF SECTION 520G, INCLUDING  
16 AN ATTEMPT OR A CONSPIRACY TO COMMIT A VIOLATION OF SECTIONS 520B  
17 TO 520E OR SECTION 520G, OF THE MICHIGAN PENAL CODE, ACT NO. 328  
18 OF THE PUBLIC ACTS OF 1931, BEING SECTIONS 750.520B TO 750.520E  
19 AND 750.520G OF THE MICHIGAN COMPILED LAWS.

20 SEC. 39. (1) A PERSON EMPLOYED BY OR UNDER CONTRACT TO A  
21 LICENSEE WHO HAS REASONABLE CAUSE TO SUSPECT THE ABUSE OF A RESI-  
22 DENT SHALL IMMEDIATELY MAKE OR CAUSE TO BE MADE, BY TELEPHONE OR  
23 OTHERWISE, AN ORAL REPORT OF THE SUSPECTED ABUSE TO THE LAW  
24 ENFORCEMENT AGENCY FOR THE COUNTY OR CITY IN WHICH THE ABUSE IS  
25 SUSPECTED TO HAVE OCCURRED OR TO THE STATE POLICE. WITHIN 72  
26 HOURS AFTER THE ORAL REPORT, THE REPORTING PERSON SHALL FILE A  
27 WRITTEN REPORT. THE WRITTEN REPORT SHALL BE FILED WITH THE LAW

1 ENFORCEMENT AGENCY TO WHICH THE ORAL REPORT WAS MADE AND WITH THE  
2 CHIEF ADMINISTRATOR OF THE LICENSEE RESPONSIBLE FOR THE  
3 RESIDENT.

4 (2) AN EMPLOYER SHALL NOT DISMISS OR OTHERWISE PENALIZE A  
5 PERSON FOR MAKING A REPORT REQUIRED BY SUBSECTION (1).

6 (3) THE WRITTEN REPORT REQUIRED BY SUBSECTION (1) SHALL CON-  
7 TAIN THE NAME OF THE RESIDENT, A DESCRIPTION OF THE ABUSE, AND  
8 OTHER INFORMATION AVAILABLE TO THE REPORTING PERSON THAT MIGHT  
9 ESTABLISH THE CAUSE OF THE ABUSE AND THE MANNER IN WHICH THE  
10 ABUSE OCCURRED AND SHALL BE MADE ON A FORM PRESCRIBED BY THE  
11 DEPARTMENT. THE REPORT SHALL BECOME A PART OF THE RESIDENT'S  
12 RECORD AND SHALL BE CONFIDENTIAL. BEFORE THE REPORT BECOMES PART  
13 OF THE RESIDENT'S RECORD, THE NAMES OF THE REPORTING PERSON AND  
14 THE PERSON ACCUSED OF COMMITTING THE ABUSE, IF CONTAINED IN THE  
15 REPORT, SHALL BE DELETED.

16 (4) THE IDENTITY OF A PERSON WHO REPORTS AS REQUIRED BY  
17 SUBSECTION (1) SHALL BE CONFIDENTIAL AND SUBJECT TO DISCLOSURE  
18 ONLY WITH THE CONSENT OF THAT PERSON OR BY JUDICIAL PROCESS. A  
19 PERSON WHO REPORTS UNDER SUBSECTION (1) IN GOOD FAITH IS IMMUNE  
20 FROM CIVIL OR CRIMINAL LIABILITY THAT MIGHT OTHERWISE BE INCURRED  
21 AS A RESULT OF REPORTING. A PERSON REPORTING IS PRESUMED TO HAVE  
22 ACTED IN GOOD FAITH. THE IMMUNITY FROM CIVIL OR CRIMINAL LIABIL-  
23 ITY GRANTED BY THIS SUBSECTION EXTENDS ONLY TO ACTS DONE UNDER  
24 THIS SECTION AND DOES NOT EXTEND TO A NEGLIGENT ACT THAT CAUSES  
25 PERSONAL INJURY OR DEATH.

26 (5) THIS SECTION DOES NOT RELIEVE A PERSON FROM THE DUTY TO  
27 REPORT ABUSE UNDER OTHER APPLICABLE LAW.

1       (6) THIS SECTION DOES NOT REQUIRE A PERSON TO REPORT  
2 SUSPECTED ABUSE IF THE PERSON HAS KNOWLEDGE THAT THE INCIDENT OF  
3 SUSPECTED ABUSE HAS BEEN REPORTED TO THE APPROPRIATE LAW ENFORCE-  
4 MENT AGENCY PURSUANT TO THIS SECTION.

5       SEC. 40. (1) A PERSON WHO INTENTIONALLY VIOLATES SECTION 39  
6 OR WHO KNOWINGLY MAKES A FALSE REPORT PURSUANT TO SECTION 39 IS  
7 GUILTY OF A MISDEMEANOR.

8       (2) A PERSON WHO VIOLATES SECTION 39 IS CIVILLY LIABLE FOR  
9 THE DAMAGES PROXIMATELY CAUSED BY THE VIOLATION.

10       SEC. 41. THE STATE DEPARTMENT SHALL PREPARE AND DISTRIBUTE  
11 TO ALL LICENSEES A PAMPHLET SETTING FORTH IN CONCISE AND UNDER-  
12 STANDABLE LANGUAGE THE DUTIES OF EMPLOYEES UNDER SECTION 39 AND  
13 THE PENALTIES AND LIABILITIES PRESCRIBED IN SECTION 40.