

# SENATE BILL NO. 638

November 07, 2019, Introduced by Senator WOJNO and referred to the Committee on Health Policy and Human Services.

A bill to amend 1974 PA 258, entitled  
"Mental health code,"  
by amending section 134a (MCL 330.1134a), as amended by 2014 PA 72.

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

**1**       Sec. 134a. (1) Except as otherwise provided in subsection (2),  
**2**       a psychiatric facility or other facility defined in 42 USC 1396d(d)  
**3**       shall not employ, independently contract with, or grant clinical  
**4**       privileges to an individual who regularly has direct access to or

1 provides direct services to patients or residents in the  
2 psychiatric facility or other facility defined in 42 USC 1396d(d)  
3 if the individual satisfies 1 or more of the following:

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

6 (b) Has been convicted of any of the following felonies, an  
7 attempt or conspiracy to commit any of those felonies, or any other  
8 state or federal crime that is similar to the felonies described in  
9 this subdivision, other than a felony for a relevant crime  
10 described under 42 USC 1320a-7(a), unless 15 years have lapsed  
11 since the individual completed all of the terms and conditions of  
12 his or her sentencing, parole, and probation for that conviction  
13 prior to the date of application for employment or clinical  
14 privileges or the date of the execution of the independent  
15 contract:

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

21 (ii) A felony involving cruelty or torture.

22 (iii) A felony under chapter XXA of the Michigan penal code,  
23 1931 PA 328, MCL 750.145m to 750.145r.

24 (iv) A felony involving criminal sexual conduct.

25 (v) A felony involving abuse or neglect.

26 (vi) A felony involving the use of a firearm or dangerous  
27 weapon.

28 (vii) A felony involving the diversion or adulteration of a  
29 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,  
28 other than a misdemeanor for a relevant crime described under 42  
29 USC 1320a-7(a), or a state or federal crime that is substantially

1 similar to the misdemeanors described in this subdivision, within  
2 the 5 years immediately preceding the date of application for  
3 employment or clinical privileges or the date of the execution of  
4 the independent contract:

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

7 (ii) A misdemeanor involving home invasion.

8 (iii) A misdemeanor involving embezzlement.

9 (iv) A misdemeanor involving negligent homicide or a violation  
10 of section 601d(1) of the Michigan vehicle code, ~~1940~~**1949** PA 300,  
11 MCL 257.601d.

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

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

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

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

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

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

3           (iii) A misdemeanor under part 74 of the public health code,  
4 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided  
5 under subdivision (g).

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

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

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

19           (h) Is the subject of an order or disposition under section  
20 16b of chapter IX of the code of criminal procedure, 1927 PA 175,  
21 MCL 769.16b.

22           (i) Engages in conduct that becomes the subject of a  
23 substantiated finding of neglect, abuse, or misappropriation of  
24 property by a state or federal agency according to an investigation  
25 conducted in accordance with 42 USC 1395i-3 or 1396r.

26           (2) Except as otherwise provided in this subsection or  
27 subsection (5), a psychiatric facility or other facility defined in  
28 42 USC 1396d(d) shall not employ, independently contract with, or  
29 grant privileges to an individual who regularly has direct access

1 to or provides direct services to patients or residents in the  
2 psychiatric facility or other facility defined in 42 USC 1396d(d)  
3 until the psychiatric facility or other facility defined in 42 USC  
4 1396d(d) or staffing agency has conducted a criminal history check  
5 in compliance with this section or received criminal history record  
6 information in compliance with subsection (3) or (10). This  
7 subsection and subsection (1) do not apply to ~~any of the following:~~

8 ~~(a) An individual who is employed by, under independent~~  
9 ~~contract to, or granted clinical privileges in a psychiatric~~  
10 ~~facility or other facility defined in 42 USC 1396d(d) before April~~  
11 ~~1, 2006. On or before April 1, 2011, an individual who is exempt~~  
12 ~~under this subdivision and who has not been the subject of a~~  
13 ~~criminal history check conducted in compliance with this section~~  
14 ~~shall provide the department of state police with a set of~~  
15 ~~fingerprints and the department of state police shall input those~~  
16 ~~fingerprints into the automated fingerprint identification system~~  
17 ~~database established under subsection (13). An individual who is~~  
18 ~~exempt under this subdivision is not limited to working within the~~  
19 ~~psychiatric facility or other facility defined in 42 USC 1396d(d)~~  
20 ~~with which he or she is employed by, under independent contract to,~~  
21 ~~or granted clinical privileges on April 1, 2006 but may transfer to~~  
22 ~~another psychiatric facility or other facility defined in 42 USC~~  
23 ~~1396d(d), covered health facility, or adult foster care facility.~~  
24 ~~If an individual who is exempt under this subdivision is~~  
25 ~~subsequently convicted of a crime described under subsection (1)(a)~~  
26 ~~through (g) or found to be the subject of a substantiated finding~~  
27 ~~described under subsection (1)(i) or an order or disposition~~  
28 ~~described under subsection (1)(h), or is found to have been~~  
29 ~~convicted of a relevant crime described under subsection (1)(a),~~

1 ~~then he or she is no longer exempt and shall be terminated from~~  
2 ~~employment or denied employment or clinical privileges.~~

3 ~~(b) An~~ **an** individual who is under an independent contract with  
4 a psychiatric facility or other facility defined in 42 USC 1396d(d)  
5 if he or she is not under the facility's control and the services  
6 for which he or she is contracted is not directly related to the  
7 provision of services to a patient or resident or if the services  
8 for which he or she is contracted allows for direct access to the  
9 patients or residents but is not performed on an ongoing basis.  
10 This exception includes, but is not limited to, an individual who  
11 is under an independent contract with the psychiatric facility or  
12 other facility defined in 42 USC 1396d(d) to provide utility,  
13 maintenance, construction, or communications services.

14 (3) An individual who applies for employment either as an  
15 employee or as an independent contractor or for clinical privileges  
16 with a psychiatric facility or other facility defined in 42 USC  
17 1396d(d) or a staffing agency and who has not been the subject of a  
18 criminal history check conducted in compliance with this section  
19 shall give written consent at the time of application for the  
20 department of state police to conduct a criminal history check  
21 under this section, along with identification acceptable to the  
22 department of state police. If the applicant has been the subject  
23 of a criminal history check conducted in compliance with this  
24 section, the applicant shall give written consent at the time of  
25 application for the psychiatric facility or other facility defined  
26 in 42 USC 1396d(d) or staffing agency to obtain the criminal  
27 history record information as prescribed in subsection (4) from the  
28 relevant licensing or regulatory department and for the department  
29 of state police to conduct a criminal history check under this

1 section if the requirements of subsection (10) are not met and a  
2 request to the ~~federal bureau of investigation~~ **Federal Bureau of**  
3 **Investigation** to make a determination of the existence of any  
4 national criminal history pertaining to the applicant is necessary,  
5 along with identification acceptable to the department of state  
6 police. Upon receipt of the written consent to obtain the criminal  
7 history record information and identification required under this  
8 subsection, the psychiatric facility or other facility defined in  
9 42 USC 1396d(d) or staffing agency that has made a good-faith offer  
10 of employment or an independent contract or clinical privileges to  
11 the applicant shall request the criminal history record information  
12 from the relevant licensing or regulatory department and shall make  
13 a request regarding that applicant to the relevant licensing or  
14 regulatory department to conduct a check of all relevant registries  
15 in the manner required in subsection (4). If the requirements of  
16 subsection (10) are not met and a request to the ~~federal bureau of~~  
17 ~~investigation~~ **Federal Bureau of Investigation** to make a subsequent  
18 determination of the existence of any national criminal history  
19 pertaining to the applicant is necessary, the psychiatric facility  
20 or other facility defined in 42 USC 1396d(d) or staffing agency  
21 shall proceed in the manner required in subsection (4). A staffing  
22 agency that employs an applicant who regularly has direct access to  
23 or provides direct services to patients or residents under an  
24 independent contract with a psychiatric facility or other facility  
25 defined in 42 USC 1396d(d) shall submit information regarding the  
26 criminal history check conducted by the staffing agency to the  
27 psychiatric facility or other facility defined in 42 USC 1396d(d)  
28 that has made a good-faith offer of independent contract to that  
29 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 other facility defined in 42 USC 1396d(d)  
4 or staffing agency that has made a good-faith offer of employment  
5 or an independent contract or clinical privileges to the applicant  
6 shall make a request to the department of state police to conduct a  
7 criminal history check on the applicant, to input the applicant's  
8 fingerprints into the automated fingerprint identification system  
9 database, and to forward the applicant's fingerprints to the  
10 ~~federal bureau of investigation.~~ **Federal Bureau of Investigation.**  
11 The department of state police shall request the ~~federal bureau of~~  
12 ~~investigation~~ **Federal Bureau of Investigation** to make a  
13 determination of the existence of any national criminal history  
14 pertaining to the applicant. The applicant shall provide the  
15 department of state police with a set of fingerprints. The request  
16 shall be made in a manner prescribed by the department of state  
17 police. The psychiatric facility or other facility defined in 42  
18 USC 1396d(d) or staffing agency shall make the written consent and  
19 identification available to the department of state police. The  
20 psychiatric facility or other facility defined in 42 USC 1396d(d)  
21 or staffing agency shall make a request regarding that applicant to  
22 the relevant licensing or regulatory department to conduct a check  
23 of all relevant registries established under federal and state law  
24 and regulations for any substantiated findings of abuse, neglect,  
25 or misappropriation of property. If the department of state police  
26 or the ~~federal bureau of investigation~~ **Federal Bureau of**  
27 **Investigation** charges a fee for conducting the criminal history  
28 check, the psychiatric facility or other facility defined in 42 USC  
29 1396d(d) or staffing agency shall pay the cost of the charge. The

1 psychiatric facility or other facility defined in 42 USC 1396d(d)  
2 or staffing agency shall not seek reimbursement for a charge  
3 imposed by the department of state police or the ~~federal bureau of~~  
4 ~~investigation~~ **Federal Bureau of Investigation** from the individual  
5 who is the subject of the criminal history check. A prospective  
6 employee or a prospective independent contractor covered under this  
7 section may not be charged for the cost of a criminal history check  
8 required under this section. The department of state police shall  
9 conduct a criminal history check on the applicant named in the  
10 request. The department of state police shall provide the  
11 department with a written report of the criminal history check  
12 conducted under this subsection. The report shall contain any  
13 criminal history record information on the applicant maintained by  
14 the department of state police. The department of state police  
15 shall provide the results of the ~~federal bureau of investigation~~  
16 **Federal Bureau of Investigation** determination to the department  
17 within 30 days after the request is made. If the requesting  
18 psychiatric facility or other facility defined in 42 USC 1396d(d)  
19 or staffing agency is not a state department or agency and if  
20 criminal history record information is disclosed on the written  
21 report of the criminal history check or the ~~federal bureau of~~  
22 ~~investigation~~ **Federal Bureau of Investigation** determination that  
23 resulted in a conviction, the department shall notify the  
24 psychiatric facility or other facility defined in 42 USC 1396d(d)  
25 or staffing agency and the applicant in writing of the type of  
26 crime disclosed on the written report of the criminal history check  
27 or the ~~federal bureau of investigation~~ **Federal Bureau of**  
28 **Investigation** determination without disclosing the details of the  
29 crime. Any charges imposed by the department of state police or the

1 ~~federal bureau of investigation~~ **Federal Bureau of Investigation** for  
2 conducting a criminal history check or making a determination under  
3 this subsection shall be paid in the manner required under this  
4 subsection. The notice shall include a statement that the applicant  
5 has a right to appeal the information relied upon by the  
6 psychiatric facility or other facility defined in 42 USC 1396d(d)  
7 or staffing agency regarding his or her employment eligibility  
8 based on the criminal history check. The notice shall also include  
9 information regarding where to file and describing the appellate  
10 procedures established under section 20173b of the public health  
11 code, 1978 PA 368, MCL 333.20173b.

12 (5) If a psychiatric facility or other facility defined in 42  
13 USC 1396d(d) determines it necessary to employ or grant clinical  
14 privileges to an applicant before receiving the results of the  
15 applicant's criminal history check or criminal history record  
16 information under this section, the psychiatric facility or other  
17 facility defined in 42 USC 1396d(d) may conditionally employ or  
18 grant conditional clinical privileges to the individual if all of  
19 the following apply:

20 (a) The psychiatric facility or other facility defined in 42  
21 USC 1396d(d) requests the criminal history check or criminal  
22 history record information under this section upon conditionally  
23 employing or conditionally granting clinical privileges to the  
24 individual.

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

27 (i) That he or she has not been convicted of 1 or more of the  
28 crimes that are described in subsection (1)(a) ~~through~~ **to** (g)  
29 within the applicable time period prescribed by each subdivision

1 respectively.

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

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

6 (iv) The individual agrees that, if the information in the  
7 criminal history check conducted under this section does not  
8 confirm the individual's statements under subparagraphs (i) ~~through~~  
9 ~~to~~ (iii), his or her employment or clinical privileges will be  
10 terminated by the psychiatric facility or other facility defined in  
11 42 USC 1396d(d) as required under subsection (1) unless and until  
12 the individual appeals and can prove that the information is  
13 incorrect.

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

18 (c) Except as otherwise provided in this subdivision, the  
19 psychiatric facility or other facility defined in 42 USC 1396d(d)  
20 does not permit the individual to have regular direct access to or  
21 provide direct services to patients or residents in the psychiatric  
22 facility or other facility defined in 42 USC 1396d(d) without  
23 supervision until the criminal history check or criminal history  
24 record information is obtained and the individual is eligible for  
25 that employment or clinical privileges. If required under this  
26 subdivision, the psychiatric facility or other facility defined in  
27 42 USC 1396d(d) shall provide on-site supervision of an individual  
28 in the facility on a conditional basis under this subsection by an  
29 individual who has undergone a criminal history check conducted in

1 compliance with this section. A psychiatric facility or other  
2 facility defined in 42 USC 1396d(d) may permit an individual in the  
3 facility on a conditional basis under this subsection to have  
4 regular direct access to or provide direct services to patients or  
5 residents in the psychiatric facility or other facility defined in  
6 42 USC 1396d(d) without supervision if all of the following  
7 conditions are met:

8 (i) The psychiatric facility or other facility defined in 42  
9 USC 1396d(d), at its own expense and before the individual has  
10 direct access to or provides direct services to patients or  
11 residents of the psychiatric facility or other facility defined in  
12 42 USC 1396d(d), conducts a search of public records on that  
13 individual through the internet criminal history access tool  
14 maintained by the department of state police and the results of  
15 that search do not uncover any information that ~~would indicate~~  
16 **indicates** that the individual is not eligible to have regular  
17 direct access to or provide direct services to patients or  
18 residents under this section.

19 (ii) Before the individual has direct access to or provides  
20 direct services to patients or residents of the psychiatric  
21 facility or other facility defined in 42 USC 1396d(d), the  
22 individual signs a statement in writing that he or she has resided  
23 in this state without interruption for at least the immediately  
24 preceding 12-month period.

25 (iii) If applicable, the individual provides to the department  
26 of state police a set of fingerprints on or before the expiration  
27 of 10 business days following the date the individual was  
28 conditionally employed or granted conditional clinical privileges  
29 under this subsection.

1           (6) The department shall develop and distribute a model form  
2 for the statements required under subsection (5) (b) and (c). The  
3 department shall make the model form available to psychiatric  
4 facilities or other facility defined in 42 USC 1396d(d) subject to  
5 this section upon request at no charge.

6           (7) If an individual is employed as a conditional employee or  
7 is granted conditional clinical privileges under subsection (5),  
8 and the information under subsection (3) or report under subsection  
9 (4) does not confirm the individual's statement under subsection  
10 (5) (b) (i) ~~through~~ **to** (iii), the psychiatric facility or other  
11 facility defined in 42 USC 1396d(d) shall terminate the  
12 individual's employment or clinical privileges as required by  
13 subsection (1).

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

20           (9) A psychiatric facility or other facility defined in 42 USC  
21 1396d(d) or staffing agency shall use criminal history record  
22 information obtained under subsection (3) or (4) only for the  
23 purpose of evaluating an applicant's qualifications for employment,  
24 an independent contract, or clinical privileges in the position for  
25 which he or she has applied and for the purposes of subsections (5)  
26 and (7). A psychiatric facility or other facility defined in 42 USC  
27 1396d(d) or staffing agency or an employee of the psychiatric  
28 facility or other facility defined in 42 USC 1396d(d) or staffing  
29 agency shall not disclose criminal history record information

1 obtained under subsection (3) or (4) to a person who is not  
2 directly involved in evaluating the applicant's qualifications for  
3 employment, an independent contract, or clinical privileges. An  
4 individual who knowingly uses or disseminates the criminal history  
5 record information obtained under subsection (3) or (4) in  
6 violation of this subsection is guilty of a misdemeanor punishable  
7 by imprisonment for not more than 93 days or a fine of not more  
8 than \$1,000.00, or both. Except for a knowing or intentional  
9 release of false information, a psychiatric facility or other  
10 facility defined in 42 USC 1396d(d) or staffing agency has no  
11 liability in connection with a criminal history check conducted in  
12 compliance with this section or the release of criminal history  
13 record information under this subsection.

14 (10) Upon consent of an applicant as required in subsection  
15 (3) and upon request from a psychiatric facility or other facility  
16 defined in 42 USC 1396d(d) or staffing agency that has made a good-  
17 faith offer of employment or an independent contract or clinical  
18 privileges to the applicant, the relevant licensing or regulatory  
19 department shall review the criminal history record information, if  
20 any, and notify the requesting psychiatric facility or other  
21 facility defined in 42 USC 1396d(d) or staffing agency of the  
22 information in the manner prescribed in subsection (4). Until the  
23 ~~federal bureau of investigation~~ **Federal Bureau of Investigation**  
24 implements an automatic notification system similar to the system  
25 required of the state police under subsection (13) and federal  
26 regulations allow the federal criminal record to be used for  
27 subsequent authorized uses, as determined in an order issued by the  
28 department, a covered health or staffing agency facility may rely  
29 on the criminal history record information provided by the relevant

1 licensing or regulatory department under this subsection and a  
2 request to the ~~federal bureau of investigation~~ **Federal Bureau of**  
3 **Investigation** to make a subsequent determination of the existence  
4 of any national criminal history pertaining to the applicant is not  
5 necessary if all of the following requirements are met:

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

8 (b) The applicant has been continuously employed by a  
9 psychiatric facility or other facility defined in 42 USC 1396d(d),  
10 covered health facility, or adult foster care facility or the  
11 staffing agency since the criminal history check was conducted in  
12 compliance with this section or meets the continuous employment  
13 requirement of this subdivision other than being on layoff status  
14 for less than 1 year from a psychiatric facility or other facility  
15 defined in 42 USC 1396d(d), covered health facility, or adult  
16 foster care facility.

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

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

24 (a) Agree in writing to report to the psychiatric facility or  
25 other facility defined in 42 USC 1396d(d) or staffing agency  
26 immediately upon being arraigned for 1 or more of the criminal  
27 offenses listed in subsection (1)(a) ~~through to~~ (g), upon being  
28 convicted of 1 or more of the criminal offenses listed in  
29 subsection (1)(a) ~~through to~~ (g), upon becoming the subject of an



1 order or disposition described under subsection (1)(h), and upon  
2 being the subject of a substantiated finding of neglect, abuse, or  
3 misappropriation of property as described in subsection (1)(i).  
4 Reporting of an arraignment under this subdivision is not cause for  
5 termination or denial of employment.

6 (b) If a set of fingerprints is not already on file with the  
7 department of state police, provide the department of state police  
8 with a set of fingerprints.

9 (12) In addition to sanctions set forth in this act, a  
10 licensee, owner, administrator, or operator of a psychiatric  
11 facility or other facility defined in 42 USC 1396d(d) or staffing  
12 agency who knowingly and willfully fails to conduct the criminal  
13 history checks as required under this section is guilty of a  
14 misdemeanor punishable by imprisonment for not more than 1 year or  
15 a fine of not more than \$5,000.00, or both.

16 (13) In collaboration with the department of state police, the  
17 department of technology, management, and budget shall establish  
18 and maintain an automated fingerprint identification system  
19 database that would allow the department of state police to store  
20 and maintain all fingerprints submitted under this section and  
21 would provide for an automatic notification if and when a  
22 subsequent criminal arrest fingerprint card submitted into the  
23 system matches a set of fingerprints previously submitted under  
24 this section. Upon notification, the department of state police  
25 shall immediately notify the department and the department shall  
26 immediately contact each respective psychiatric facility or other  
27 facility defined in 42 USC 1396d(d) or staffing agency with which  
28 that individual is associated. Information in the database  
29 established under this subsection is confidential, is not subject

1 to disclosure under the freedom of information act, 1976 PA 442,  
2 MCL 15.231 to 15.246, and shall not be disclosed to any person  
3 except for purposes of this act or for law enforcement purposes.

4 (14) The department shall maintain an electronic web-based  
5 system to assist psychiatric facilities or other facility defined  
6 in 42 USC 1396d(d) and staffing agencies required to check relevant  
7 registries and conduct criminal history checks of its employees and  
8 independent contractors, and individuals granted privileges and to  
9 provide for an automated notice to those psychiatric facilities or  
10 other facility defined in 42 USC 1396d(d) and staffing agencies for  
11 those individuals inputted in the system who, since the initial  
12 criminal history check, have been convicted of a disqualifying  
13 offense or have been the subject of a substantiated finding of  
14 abuse, neglect, or misappropriation of property. The department may  
15 charge a staffing agency a 1-time set-up fee of up to \$100.00 for  
16 access to the electronic web-based system under this section.

17 (15) As used in this section:

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

21 (b) "Convicted" means either of the following:

22 (i) For a crime that is not a relevant crime **described under 42**  
23 **USC 1320a-7(a)**, a final conviction, the payment of a fine, a plea  
24 of guilty or nolo contendere if accepted by the court, or a finding  
25 of guilt for a criminal law violation or a juvenile adjudication or  
26 disposition by the juvenile division of probate court or family  
27 division of circuit court for a violation that if committed by an  
28 adult would be a crime.

29 (ii) For a relevant crime described under 42 USC 1320a-7(a),

1 convicted means that term as defined in 42 USC 1320a-7.

2 (c) "Covered health facility" means a nursing home, county  
3 medical care facility, hospice, hospital that provides swing bed  
4 services, or home for the aged licensed under article 17 of the  
5 public health code, 1978 PA 368, MCL 333.20101 to 333.22260, or  
6 home health agency.

7 (d) "Criminal history check conducted in compliance with this  
8 section" includes a criminal history check conducted under this  
9 section, under section 20173a of the public health code, 1978 PA  
10 3658, MCL 333.20173a, or under section 34b of the adult foster care  
11 facility licensing act, 1979 PA 218, MCL 400.734b.

12 (e) "Direct access" means access to a patient or resident or  
13 to a patient's or resident's property, financial information,  
14 medical records, treatment information, or any other identifying  
15 information.

16 (f) "Home health agency" means ~~a person certified by medicare  
17 whose business is to provide to individuals in their places of  
18 residence other than in a hospital, nursing home, or county medical  
19 care facility 1 or more of the following services: nursing  
20 services, therapeutic services, social work services, homemaker  
21 services, home health aide services, or other related services.~~**that  
22 term as defined in section 20173a of the public health code, 1978  
23 PA 368, MCL 333.20173a.**

24 (g) "Independent contract" means a contract entered into by a  
25 health facility or agency with an individual who provides the  
26 contracted services independently or a contract entered into by a  
27 health facility or agency with a staffing agency that complies with  
28 the requirements of this section to provide the contracted services  
29 to the psychiatric facility or other facility defined in 42 USC

1 1396d(d) on behalf of the staffing agency.

2 ~~(h) "Medicare" means benefits under the federal medicare~~  
 3 ~~program established under title XVIII of the social security act,~~  
 4 ~~42 USC 1395 to 1395kkk-1.~~

5 (h) ~~(i)~~ "Staffing agency" means an entity that recruits  
 6 candidates and provides temporary and permanent qualified staffing  
 7 for psychiatric facilities or other facility defined in 42 USC  
 8 1396d(d), including independent contractors.

9 (i) ~~(j)~~ "Under the facility's control" means an individual  
 10 employed by or under independent contract with a psychiatric  
 11 facility or other facility defined in 42 USC 1396d(d) for whom the  
 12 psychiatric facility or other facility defined in 42 USC 1396d(d)  
 13 does both of the following:

14 (i) Determines whether the individual who has access to  
 15 patients or residents may provide care, treatment, or other similar  
 16 support service functions to patients or residents served by the  
 17 psychiatric facility or other facility defined in 42 USC 1396d(d).

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

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

21 (B) The tasks performed by the individual.

22 (C) The individual's work schedule.

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

26 (E) The compensation the individual receives for performing  
 27 his or her duties.

28 (F) The conditions under which the individual performs his or  
 29 her duties.