



# SENATE BILL No. 1073

March 23, 1994, Introduced by Senators BERRYMAN, DINGELL, MILLER, KOIVISTO, FAUST, KELLY, VAUGHN and HART and referred to the Committee on Family Law, Mental Health, and Corrections

A bill to amend sections 700 and 748 of Act No 258 of the Public Acts of 1974 entitled as amended

"Mental health code "

section 748 as amended by Act No 167 of the Public Acts of 1990 being sections 330 1700 and 330 1748 of the Michigan Compiled Laws and to add sections 117 and 247

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 700 and 748 of Act No 258 of the  
2 Public Acts of 1974 section 748 as amended by Act No 167 of the  
3 Public Acts of 1990, being sections 330 1700 and 330 1748 of the  
4 Michigan Compiled Laws are amended and sections 117 and 247 are  
5 added to read as follows

6 SEC 117 THE DEPARTMENT SHALL PROVIDE A QUARTERLY REPORT  
7 TO THE LEGISLATURE SUMMARIZING ALL DEATHS OF MENTAL HEALTH CARE  
8 RECIPIENTS THAT HAVE BEEN REPORTED TO THE DEPARTMENT UNDER

1 SECTION 247 AND ALL DEATHS THAT HAVE OCCURRED IN FACILITIES OWNED  
2 OR OPERATED BY THE DEPARTMENT THE REPORT SHALL INCLUDE THE  
3 DEPARTMENT'S FINDINGS ON THE CAUSES OF DEATH AND THE APPROPRIATE-  
4 NESS OF CARE RECEIVED BY THE RECIPIENT PRIOR TO HIS OR HER DEATH

5 SEC 247 (1) A COUNTY COMMUNITY MENTAL HEALTH PROGRAM  
6 SHALL NOTIFY THE DEPARTMENT IF AN INDIVIDUAL RECEIVING MENTAL  
7 HEALTH SERVICES FROM EITHER THAT PROGRAM OR FROM A HOSPITAL OR  
8 AGENCY UNDER CONTRACT WITH THE COUNTY PROGRAM, DIES THE NOTIFI-  
9 CATION SHALL BE GIVEN TO THE DEPARTMENT WITHIN 5 BUSINESS DAYS  
10 AFTER THE COUNTY PROGRAM LEARNS OF THE INDIVIDUAL'S DEATH

11 (2) THE DEPARTMENT SHALL INITIATE AND CONDUCT A FORMAL  
12 INVESTIGATION OF THE CAUSES AND CIRCUMSTANCES OF THE RECIPIENT'S  
13 DEATH, INCLUDING THE APPROPRIATENESS OF CARE RECEIVED BY THE  
14 RECIPIENT PRIOR TO DEATH UPON REQUEST THE DEPARTMENT SHALL  
15 MAKE A COPY OF ITS FINDINGS AVAILABLE TO THE SURVIVING SPOUSE OF  
16 THE RECIPIENT OR, IF THERE IS NO SURVIVING SPOUSE, TO THE INDI-  
17 VIDUAL OR INDIVIDUALS MOST CLOSELY RELATED TO THE DECEASED RECIP-  
18 IENT WITHIN THE THIRD DEGREE OF CONSANGUINITY AS DEFINED IN CIVIL  
19 LAW OR TO THE RECIPIENT'S PLENARY GUARDIAN WITHIN 6 WEEKS OF  
20 THE RECIPIENT'S DEATH, 1 OF THE NAMED INDIVIDUALS SHALL BE NOTI-  
21 FIED BY THE DEPARTMENT OF ITS INVESTIGATION AND OF THE RIGHT TO  
22 REQUEST AND RECEIVE A COPY OF ITS REPORT

23 Sec 700 As used in this chapter unless the context  
24 requires otherwise

25 (a) "Department" means the department of mental health

1 (b) "County community mental health program" means a program  
2 operated by or under contract with a county community mental  
3 health board

4 (c) "Facility" means a residential facility which provides  
5 mental health services and which is licensed by the state or is  
6 operated by or under contract with a public agency

7 (d) "Resident" means a person who resides in a facility

8 (e) "Recipient" means a person who receives mental health  
9 services from a facility or a person who receives mental health  
10 services from an entity other than a facility which is operated  
11 by or under contract with the department or a county community  
12 mental health program

13 (f) "Governing body" means the director of the department  
14 for facilities and other entities operated by the department the  
15 county director for facilities and other entities operated by a  
16 county community mental health program or the agency, organiza-  
17 tion, or person having the primary legal authority over other  
18 facilities

19 (g) "Consent" means an agreement in writing executed by the  
20 recipient, his OR HER guardian if empowered to execute a consent  
21 or his OR HER parent if he OR SHE is a minor

22 (h) "MINOR" MEANS A PERSON WHO IS LESS THAN 18 YEARS OF  
23 AGE

24 (i) "PLENARY GUARDIAN" MEANS A GUARDIAN WHO POSSESSES THE  
25 LEGAL RIGHTS AND POWERS OF A FULL GUARDIAN OF THE PERSON, OR OF  
26 THE ESTATE OR BOTH

1       Sec 748   (1) Information in the record of a recipient and  
2 other information acquired in the course of providing mental  
3 health services to a recipient, shall be kept confidential and  
4 shall not be open to public inspection. The information may be  
5 disclosed outside the department, county community mental health  
6 program or licensed private facility whichever is the holder of  
7 the record only in the circumstances and under the conditions  
8 set forth in this section.

9       (2) When information made confidential by this section is  
10 disclosed, the identity of the individual to whom it pertains  
11 shall be protected and shall not be disclosed unless it is ger-  
12 mane to the authorized purpose for which disclosure was sought  
13 and, when practicable, no other information shall be disclosed  
14 unless it is germane to the authorized purpose for which disclo-  
15 sure was sought.

16       (3) ~~Any~~ A person receiving information made confidential  
17 by this section shall disclose the information to others only to  
18 the extent consistent with the authorized purpose for which the  
19 information was obtained.

20       (4) Except as provided ~~otherwise~~ in subsection (8), when  
21 requested, information made confidential by this section shall be  
22 disclosed only under 1 or more of the following circumstances:

23       (a) Pursuant to orders or subpoenas of a court of record, or  
24 subpoenas of the legislature unless the information is made  
25 privileged by law.

1 (b) To a prosecuting attorney as necessary for the  
2 prosecuting attorney to participate in a proceeding governed by  
3 this act

4 (c) To an attorney for the recipient with the ~~recipient's~~  
5 consent OF THE RECIPIENT THE RECIPIENT'S SPOUSE THE RECIPIENT'S  
6 PLENARY GUARDIAN, OR THE PARENTS OF A MINOR RECIPIENT

7 (d) When necessary in order to comply with another provision  
8 of law

9 (e) To the department when the information is necessary in  
10 order for the department to discharge a responsibility placed  
11 upon it by law

12 (f) To the office of the auditor general when the informa-  
13 tion is necessary for that office to discharge its constitutional  
14 responsibility

15 (g) To ~~a~~ THE surviving spouse of the recipient ~~for pur-~~  
16 ~~poses of applying for and receiving benefits~~ or, if there is no  
17 surviving spouse to the ~~person~~ INDIVIDUAL or ~~persons~~  
18 INDIVIDUALS most closely related to the deceased recipient within  
19 the third degree of consanguinity as defined in civil law

20 (H) TO A STANDING COMMITTEE OR APPROPRIATIONS SUBCOMMITTEE  
21 OF EITHER HOUSE OF THE LEGISLATURE HAVING JURISDICTION OVER  
22 MENTAL HEALTH MATTERS DURING A MEETING OF THAT STANDING COMMITTEE  
23 OR SUBCOMMITTEE HELD IN CLOSED SESSION, PURSUANT TO THE OPEN  
24 MEETINGS ACT ACT NO 267 OF THE PUBLIC ACTS OF 1976, BEING SEC-  
25 TIONS 15 261 TO 15 275 OF THE MICHIGAN COMPILED LAWS

26 (I) TO THE PARENT OF A MINOR RECIPIENT

(J) TO THE PLENARY GUARDIAN OF A RECIPIENT

(K) TO THE RECIPIENT UPON HIS OR HER WRITTEN REQUEST OR TO ANY OTHER PERSON OR AGENCY TO WHICH THE RECIPIENT, THE RECIPIENT'S PLENARY GUARDIAN, OR THE PARENT OF A MINOR RECIPIENT REQUESTS IN WRITING THAT THE INFORMATION BE SENT

(5) Information made confidential by this section may be disclosed TO PROVIDERS OF MENTAL HEALTH SERVICES TO THE RECIPIENT if the holder of the record and the recipient, the parents of the recipient if the recipient is less than 18 years of age, or the recipient's ~~legally appointed~~ PLENARY guardian consent ~~to~~

~~(a) To providers of mental health services to the recipient~~

~~(b) To the recipient or any other person or agency, provided that in the judgment of the holder the disclosure would not be detrimental to the recipient or others~~

(6) Information may be disclosed in the discretion of the holder of the record

(a) As necessary in order for the recipient to apply for or receive benefits

(b) As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation, provided that the person who is the subject of the information can be identified from the disclosed information only when ~~such~~ THAT identification is essential in order to achieve the purpose for which the information is sought or when preventing ~~such~~ THAT identification would clearly be impractical, but in no event when the

1 subject of the information is likely to be harmed by ~~such~~  
2 identification

3 (c) To providers of mental or other health services or a  
4 public agency, when there is a compelling need for disclosure  
5 based upon a substantial probability of harm to the recipient or  
6 other persons

7 (7) The department or a county community mental health pro-  
8 gram or licensed private facility shall grant a representative of  
9 the protection and advocacy system designated by the governor in  
10 compliance with section 931 access to the records of a person  
11 with developmental disabilities who resides in a facility for  
12 persons with developmental disabilities or a mentally ill person  
13 who resides in a facility for mentally ill persons if both of the  
14 following apply

15 (a) A complaint has been received by the protection and  
16 advocacy system from or on behalf of the resident

17 (b) The resident does not have a legal guardian, or the  
18 state or the designee of the state is the legal guardian of the  
19 resident

20 (8) The records data, and knowledge collected for or by  
21 individuals or committees assigned a review function under  
22 section 143a(1) are confidential ~~—~~ AND shall be used only for  
23 the purposes of review ~~—~~ THE ITEMS DESCRIBED IN THIS  
24 SUBSECTION are not public records ~~—~~ and are not subject to  
25 court subpoena This subsection does not prevent disclosure of  
26 individual case records pursuant to this section