



"PROTECTING THE RIGHTS OF  
PERSONS WITH DISABILITIES"

Elmer L. Cerano, *Executive Director*

**PROTECTION & ADVOCACY  
SERVICE, INC.**

**Testimony of Michigan Protection and Advocacy Service, Inc.**

**Before the Senate Health Policy Committee**

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Good afternoon. My name is Tom Masseau, I am with Michigan Protection and Advocacy Service, Inc (MPAS). MPAS is the agency designated by the governor of the State of Michigan to protect and advocate for the legal rights of individuals with disabilities. MPAS provides information and referral, direct and legal representation, as well as training to individuals with disabilities throughout the state of Michigan. In addition to the services provided above, MPAS has access to all state psychiatric facilities, large group homes, prisons, and jails or wherever individuals with disabilities reside to advocate on their behalf.

Today, I come before you in support of Senate Bills 1253 through 1255. MPAS worked and supported background checks for everyone working in facilities as defined by the bills since 2006. We continue to support the concept of background checks and the protections it provides.

I also come before you today with a request and I understand that Sen. Birkholz is looking into the issue. The request is to expand the background checks to those individuals who have had a substantiated abuse or neglect Class 1 or 2, as defined in the Administrative Rules of the Mental Health Code. What this

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amendment would do is require the Department of Human Service to adopt the language outlined in the administrative rules.

MPAS has investigated multiple incidents where staff has had substantiated abuse and neglect Class 1 and 2 claims against them, yet these employees continue to work in the field or right beside the very individuals who reported the crime. Case in point – an individual at the Walter Reuther Psychiatric Hospital was dragged down the hall and placed in restraints for an unknown amount of time. The resident sustained injury. After a lengthy investigation, 8 staff were found to have abuse and neglect class 2 violations against them. Six staff received a 5 day suspension and two staff were terminated. Those six staff continue to work in the same facility where the incident occurred. Another example of a resident who had an enhanced level of supervision – line of sight – due to suicidal threats expressed by the resident. The resident was left unsupervised and entered a laundry area, which was to be locked at all times, and committed suicide. After an investigation, Office of Recipient Rights found that four individuals had a neglect 1 violation and those four staff were disciplined. Another example of a resident in a state facility who sustained broken ribs by a worker, after an investigation, that employee was found to have abused the individual and was discharged. The employee showed up working at another state facility in Michigan.

These are just a few examples of loopholes within the background check system. I encourage this committee to work with Sen. Birkholz, the bill sponsors

and Michigan Protection and Advocacy Service to find a way to close these  
loopholes.

Thank you for your attention.

## Suggested Background Check language

Suggested amendment for PA 27 of 2006 (HB 5448) – Sec. 134a (1)

Suggested amendment for PA 28 of 2006 (SB 621) – Sec. 20173a (1)

Suggested amendment for PA 29 of 2006 (SB 622) – sec. 34b (1)

(j) Has been the subject of a substantiated finding of Abuse Class I, Abuse Class II, Neglect Class I, and Neglect Class II as defined by the administrative rules of the Michigan Departments of Community Health and Human Service. The Department of Community Health and Department of Human Service shall incorporate the following definitions into their administrative rules:

### Class 1 abuse

A non accidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to the death, or sexual abuse of, or serious physical harm to a recipient

Class 2 abuse means any of the following:

(i) a non accidental act or provocation of another to act by an employee, volunteer, or agent of a provider that caused or contributed to non serious physical harm to a recipient.

(ii) The use of unreasonable force on a recipient by an employee, volunteer, or agent of a provider with or without apparent harm.

(iii) Any action or provocation of another to act by an employee, volunteer, or agent of a provider that causes or contributes to emotional harm to a recipient

(iv) An action taken on behalf of a recipient by a provider who assumes the recipient is incompetent, despite the fact that a guardian has not been appointed, that results in substantial economic, material or emotional harm to the recipient

(v) Exploitation of a recipient by an employee, volunteer, or agency of a provider

Class 1 neglect means either of the following:

(i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standard of care or treatment required by law and/or rules, policies, guidelines, written directives, procedures, or individual plan of service and causes or contributes to the death, or sexual abuse of, or serious physical harm to a recipient

(ii) The failure to report apparent or suspected abuse Class I or neglect I of a recipient.

Class 2 neglect means either of the following:

- (i) Acts of commission or omission by an employee, volunteer, or agent of a provider that result from noncompliance with a standards of care or treatment required by law, rules, policies, guidelines, written directives, procedures, or individual plan of service and that cause or contribute to non serious physical harm or emotional harm to a recipient.
- (ii) The failure to report apparent or suspected abuse Class II or neglect II or a recipient