

**AFC HOMES: CRIMINAL  
BACKGROUND CHECKS**

**House Bill 5184**

**Sponsor: Rep. Gary Woronchak**

**Committee: Senior Health, Security and  
Retirement**

**Complete to 10-28-03**

**A SUMMARY OF HOUSE BILL 5184 AS INTRODUCED 10-16-03**

The bill would add a new section to the Adult Foster Care Facility Act to require background checks on new employees of adult foster care facilities. After the bill's effective date, these facilities could not employ or independently contract with an individual who would be providing direct services regularly to residents if he or she had been convicted of either a felony or an attempt or conspiracy to commit a felony within the previous 15 years, or a misdemeanor that involved abuse, neglect, assault, battery, or criminal sexual conduct or fraud or theft against a vulnerable adult (as defined under the Michigan Penal Code) within the previous ten years. Further, a facility would be prohibited from employing or contracting with an individual without first running a criminal history check on the person. However, these provisions would not apply to individuals who were employed by or under contract to a facility on the effective date of the bill.

Background checks. A person who had applied for employment or contract services in an adult foster care facility and had received a good faith offer of employment would have to give written consent, along with acceptable identification, for the Department of State Police (DSP) to conduct a criminal history check. If a criminal history check had been performed on the applicant within the previous 24 months, a copy of the criminal history check could be used in lieu of obtaining written consent and requesting a new check. However, if the person were using a prior criminal history check, the facility would have to receive a copy of the previous criminal history check directly from the previous employer.

As a condition of employment, an individual would have to sign a written statement that he or she had been a resident of Michigan for three or more years preceding the good faith offer of employment or independent contract. After receiving the signed consent form from the applicant, the facility would have to request the DSP to conduct a criminal history check on the applicant. (For individuals with three or more years of residency, the criminal check would be limited to a name check of the state Law Enforcement Information Network.) The DSP would have to provide the facility with a report containing any criminal history record information on the applicant maintained by the department. The facility would have to bear any cost of the criminal history check, and would be prohibited from seeking reimbursement from the applicant.

If the individual had resided in Michigan less than three years preceding the good faith offer of employment, the individual would have to supply the DSP with two sets of fingerprints. The facility would have to request the DSP to conduct a criminal history check of information maintained by the state and then forward the fingerprints to the Federal Bureau of Investigation (FBI) to do a national criminal history check. The DSP would have to provide the results of its criminal history check to the facility and provide the results of the FBI determination to the

Department of Consumer and Industry Services (CIS). If the requesting facility was not a governmental agency, CIS would have to notify the facility in writing of the type of crime disclosed on the FBI report without disclosing the details of the crime. The facility requesting the criminal history check would be responsible for paying any fees for the FBI check and could not pass this cost on to the applicant.

Conditional employment. An adult foster care facility could employ or contract with an applicant as a conditional employee before receiving the results of the criminal history check as long as the criminal history check had been requested and the applicant signed a statement that he or she had not been convicted of a felony or the listed misdemeanor offenses; that he or she agreed that if the criminal history check did not confirm the applicant's statements, that his or her employment would be terminated; and that providing such incorrect information was a good cause for termination. If the criminal history report did not confirm a conditionally-employed individual's signed statement, the facility would have to terminate the employment. Knowingly providing false information would constitute a misdemeanor punishable by 90 days imprisonment and a fine of up to \$500, or both. Upon the effective date of the bill, CIS would have to develop and distribute a model form for the statement of prior criminal convictions at no cost to facilities. (Note: Currently, oversight of adult foster care facilities lies with the Bureau of Family Services within the Department of Consumer and Industry Services. Executive Order 2003 – 18, scheduled to take effect December 7, 2003, will transfer the Bureau of Family Services from CIS to the Family Independence Agency and will rename CIS the Department of Labor and Economic Growth.)

Confidentiality. Information provided on a criminal history record could only be used for evaluating an applicant's qualifications, and a facility would be prohibited from disclosing information to a person who was not directly involved in evaluating the applicant's qualifications. Upon written request from a facility that was considering employing or independently contracting with an individual, a facility that has already obtained criminal history record information under this section on that individual would have to share the information with the requesting facility. A facility would have no liability in connection with a background check or the release of such information except for a knowing or intentional release of false information.

Miscellaneous provisions. As a condition of continued employment, each employee or independent contractor would have to agree in writing to report to the adult foster care facility immediately upon being arrested for or convicted of one or more of the criminal offenses listed above.

The bill would define "independent contract" as a contract that was entered into by a health facility or agency with an individual who provided the contracted services independently. It would also apply to a contract entered into by one of the above facilities with an organization or agency that employed or contracted with an individual after complying with the bill's requirement to provide the contracted services to the facility on behalf of the organization or agency. "Health facility or agency" is defined in the Public Health Code (MCL 333.20106).

MCL 400.734a

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.