

# HOUSE BILL No. 5506

January 31, 2018, Introduced by Reps. Rendon and Liberati.

A bill to amend 1979 PA 218, entitled "Adult foster care facility licensing act," by amending sections 24, 25, 34b, and 34c (MCL 400.724, 400.725, 400.734b, and 400.734c), section 24 as amended by 2016 PA 492, section 34b as amended by 2014 PA 73, and section 34c as added by 2006 PA 29; and to repeal acts and parts of acts.

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

1           Sec. 24. (1) A person who believes that this act or a rule  
2 promulgated under this act may have been violated may request an  
3 investigation of an adult foster care facility. The request shall  
4 be submitted to the department in writing or the department shall  
5 assist the person in reducing an oral complaint to writing within 7  
6 days after the oral request is made.

1           (2) The substance of the complaint shall be provided to the  
2 licensee not earlier than at the commencement of the on-site  
3 inspection of the adult foster care facility that takes place  
4 according to the complaint.

5           (3) The complaint, a copy of the complaint, or a record  
6 published, released, or otherwise disclosed to the adult foster  
7 care facility shall not disclose the name of the complainant or an  
8 adult resident named in the complaint unless the complainant or an  
9 adult resident consents in writing to the disclosure or the  
10 investigation results in an administrative hearing or a judicial  
11 proceeding, or unless disclosure is considered essential to the  
12 investigation by the department. If disclosure is considered  
13 essential to the investigation, the complainant shall be given the  
14 opportunity to withdraw the complaint before disclosure.

15           (4) Upon receipt of a complaint, the department shall  
16 determine, based on the allegations presented, whether this act or  
17 a rule promulgated under this act has been, is, or is in danger of  
18 being violated. The department shall investigate the complaint  
19 according to the urgency determined by the department. The  
20 initiation of a complaint investigation shall commence within 15  
21 days after receipt of the written complaint by the department.

22           (5) The department shall inform the complainant of its  
23 findings. Within 30 days after the receipt of complaint, the  
24 department shall provide the complainant a copy, if any, of the  
25 written determination or a status report indicating when these  
26 documents may be expected. The final report shall include a copy of  
27 the original complaint. The complainant may request additional

1 copies of the documents listed in this subsection and shall  
2 reimburse the department for the copies according to ~~established~~  
3 ~~policies and procedures.~~**THE FREEDOM OF INFORMATION ACT, 1976 PA**  
4 **442, MCL 15.231 TO 15.246.**

5 (6) The department shall inform the licensee of the  
6 department's findings at the same time that the department informs  
7 the complainant under subsection (5).

8 (7) A written determination concerning a complaint shall be  
9 available for public inspection, but the name of the complainant or  
10 adult resident shall not be disclosed without the complainant's or  
11 adult resident's consent.

12 (8) A complainant who is dissatisfied with the determination  
13 or investigation by the department may request ~~a hearing.~~**AN**  
14 **ADMINISTRATIVE REVIEW BY THE DEPARTMENT.** A request ~~for a hearing~~  
15 shall be submitted in writing to the director within 30 days after  
16 the mailing of the department's findings as described in subsection  
17 (5). ~~Notice of the time and place of the hearing shall be sent to~~  
18 ~~the complainant and the adult foster care facility. A complainant~~  
19 ~~who is dissatisfied with the decision of the director may appeal by~~  
20 ~~filing with the clerk of the court an affidavit setting forth the~~  
21 ~~substance of the proceedings before the department and the errors~~  
22 ~~of law upon which the person relies, and serving the director with~~  
23 ~~a copy of the affidavit. The circuit court of the county in which~~  
24 ~~the complainant resides shall have jurisdiction to hear and~~  
25 ~~determine the questions of fact or law involved in the appeal.~~**THE**  
26 **ADMINISTRATIVE REVIEW SHALL BE CONDUCTED BASED ON PERTINENT**  
27 **DOCUMENTATION OR A VERIFIABLE STATEMENT SUBMITTED IN WRITING BY THE**

1 **COMPLAINANT. THE DEPARTMENT SHALL SEND THE RESULTS OF THE**  
2 **ADMINISTRATIVE REVIEW TO THE COMPLAINANT. IF THE ADMINISTRATIVE**  
3 **REVIEW RESULTS IN RECONSIDERATION OF A COMPLAINT AGAINST THE ADULT**  
4 **FOSTER CARE FACILITY, THE DEPARTMENT SHALL REOPEN THE COMPLAINT**  
5 **INVESTIGATION.**

6 (9) Notwithstanding subsection (3) and sections 5 and 7(2) of  
7 the child protection law, 1975 PA 238, MCL 722.625 and 722.627,  
8 information or records in the possession of the department **OF**  
9 **HEALTH AND HUMAN SERVICES** or the department ~~of licensing and~~  
10 ~~regulatory affairs~~ may be shared to the extent necessary for the  
11 proper functioning of the department **OF HEALTH AND HUMAN SERVICES**  
12 or the department ~~of licensing and regulatory affairs~~ in  
13 administering adult welfare or adult foster care licensing under  
14 this act or in an investigation conducted under section 43b of the  
15 social welfare act, 1939 PA 280, MCL 400.43b. Information or  
16 records shared under this subsection shall not be released by the  
17 department **OF HEALTH AND HUMAN SERVICES** or the department ~~of~~  
18 ~~licensing and regulatory affairs~~ unless otherwise permitted under  
19 this act or other state or federal law.

20 Sec. 25. A ~~person~~ **PARTY** aggrieved by the decision of the  
21 director following a **CONTESTED CASE** hearing under section 22 ~~or 23,~~  
22 ~~within 10 days after receipt of decision, may appeal to the circuit~~  
23 ~~court for the county in which the person resides by filing with the~~  
24 ~~clerk of the court an affidavit setting forth the substance of the~~  
25 ~~proceedings before the department and the errors of law upon which~~  
26 ~~the person relies, and serving the director with a copy of the~~  
27 ~~affidavit. The circuit court shall have jurisdiction to hear and~~

1 ~~determine the questions of fact or law involved in the appeal. If~~  
2 ~~the department prevails, the circuit court shall affirm the~~  
3 ~~decision of the department; if the licensee, or applicant prevails,~~  
4 ~~the circuit court shall set aside the revocation or order the~~  
5 ~~issuance or renewal of the license.~~ **MAY SEEK JUDICIAL REVIEW IN**  
6 **ACCORDANCE WITH CHAPTER 6 OF THE ADMINISTRATIVE PROCEDURES ACT OF**  
7 **1969, 1969 PA 306, MCL 24.301 TO 24.306.**

8       Sec. 34b. (1) In addition to the restrictions prescribed in  
9 sections 13, 22, and 31, and except as otherwise provided in  
10 subsection (2), an adult foster care facility shall not employ or  
11 independently contract with an individual who regularly has direct  
12 access to or provides direct services to residents of the adult  
13 foster care facility if the individual satisfies 1 or more of the  
14 following:

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

17       (b) Has been convicted of any of the following felonies, an  
18 attempt or conspiracy to commit any of those felonies, or any other  
19 state or federal crime that is similar to the felonies described in  
20 this subdivision, other than a felony for a relevant crime  
21 described under 42 USC 1320a-7(a), unless 15 years have lapsed  
22 since the individual completed all of the terms and conditions of  
23 his or her sentencing, parole, and probation for that conviction  
24 ~~prior to~~ **BEFORE** the date of application for employment or the date  
25 of the execution of the independent contract:

26       (i) A felony that involves the intent to cause death or  
27 serious impairment of a body function, that results in death or

1 serious impairment of a body function, that involves the use of  
2 force or violence, or that involves the threat of the use of force  
3 or violence.

4 (ii) A felony involving cruelty or torture.

5 (iii) A felony under chapter XXA of the Michigan penal code,  
6 1931 PA 328, MCL 750.145m to 750.145r.

7 (iv) A felony involving criminal sexual conduct.

8 (v) A felony involving abuse or neglect.

9 (vi) A felony involving the use of a firearm or dangerous  
10 weapon.

11 (vii) A felony involving the diversion or adulteration of a  
12 prescription drug or other medications.

13 (c) Has been convicted of a felony or an attempt or conspiracy  
14 to commit a felony, other than a felony for a relevant crime  
15 described under 42 USC 1320a-7(a) or a felony described under  
16 subdivision (b), unless 10 years have lapsed since the individual  
17 completed all of the terms and conditions of his or her sentencing,  
18 parole, and probation for that conviction ~~prior to~~ **BEFORE** the date  
19 of application for employment or the date of the execution of the  
20 independent contract.

21 (d) Has been convicted of any of the following misdemeanors,  
22 other than a misdemeanor for a relevant crime described under 42  
23 USC 1320a-7(a), or a state or federal crime that is substantially  
24 similar to the misdemeanors described in this subdivision, within  
25 the 10 years immediately preceding the date of application for  
26 employment or the date of the execution of the independent  
27 contract:

1           (i) A misdemeanor involving the use of a firearm or dangerous  
2 weapon with the intent to injure, the use of a firearm or dangerous  
3 weapon that results in a personal injury, or a misdemeanor  
4 involving the use of force or violence or the threat of the use of  
5 force or violence.

6           (ii) A misdemeanor under chapter XXA of the Michigan penal  
7 code, 1931 PA 328, MCL 750.145m to 750.145r.

8           (iii) A misdemeanor involving criminal sexual conduct.

9           (iv) A misdemeanor involving cruelty or torture unless  
10 otherwise provided under subdivision (e).

11           (v) A misdemeanor involving abuse or neglect.

12           (e) Has been convicted of any of the following misdemeanors,  
13 other than a misdemeanor for a relevant crime described under 42  
14 USC 1320a-7(a), or a state or federal crime that is substantially  
15 similar to the misdemeanors described in this subdivision, within  
16 the 5 years immediately preceding the date of application for  
17 employment or the date of the execution of the independent  
18 contract:

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

21           (ii) A misdemeanor involving home invasion.

22           (iii) A misdemeanor involving embezzlement.

23           (iv) A misdemeanor involving negligent homicide or a violation  
24 of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL  
25 257.601d.

26           (v) A misdemeanor involving larceny unless otherwise provided  
27 under subdivision (g).

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

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

6           (f) 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 3 years immediately preceding the date of application for  
11 employment or the date of the execution of the independent  
12 contract:

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

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

18           (iii) A misdemeanor under part 74 of the public health code,  
19 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided  
20 under subdivision (g).

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



1           (i) A misdemeanor under part 74 of the public health code,  
2 1978 PA 368, MCL 333.7401 to 333.7461, if the individual, at the  
3 time of conviction, is under the age of 18.

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

7           (h) Is the subject of an order or disposition under section  
8 16b of chapter IX of the code of criminal procedure, 1927 PA 175,  
9 MCL 769.16b.

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

14           (2) Except as otherwise provided in this subsection or  
15 subsection (6), an adult foster care facility shall not employ or  
16 independently contract with an individual who has direct access to  
17 residents until the adult foster care facility or staffing agency  
18 has conducted a criminal history check in compliance with this  
19 section or has received criminal history record information in  
20 compliance with subsections (3) and (11). This subsection and  
21 subsection (1) do not apply to an individual who is employed by or  
22 under contract to an adult foster care facility before April 1,  
23 2006. On or before April 1, 2011, an individual who is exempt under  
24 this subsection and who has not been the subject of a criminal  
25 history check conducted in compliance with this section shall  
26 provide the department of state police a set of fingerprints and  
27 the department of state police shall input those fingerprints into

1 the automated fingerprint identification system database  
2 established under subsection (14). An individual who is exempt  
3 under this subsection is not limited to working within the adult  
4 foster care facility with which he or she is employed by or under  
5 independent contract with on April 1, 2006 but may transfer to  
6 another adult foster care facility, mental health facility, or  
7 covered health facility. If an individual who is exempt under this  
8 subsection is subsequently convicted of a crime or offense  
9 described under subsection (1) (a) to (g) or found to be the subject  
10 of a substantiated finding described under subsection (1) (i) or an  
11 order or disposition described under subsection (1) (h), or is found  
12 to have been convicted of a relevant crime described under 42 USC  
13 1320a-7(a), he or she is no longer exempt and shall be terminated  
14 from employment or denied employment.

15 (3) An individual who applies for employment either as an  
16 employee or as an independent contractor with an adult foster care  
17 facility or 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 individual has been the subject  
23 of a criminal history check conducted in compliance with this  
24 section, the individual shall give written consent at the time of  
25 application for the adult foster care facility or staffing agency  
26 to obtain the criminal history record information as prescribed in  
27 subsection (4) or (5) from the relevant licensing or regulatory

1 department and for the department of state police to conduct a  
2 criminal history check under this section if the requirements of  
3 subsection (11) are not met and a request to the ~~federal bureau of~~  
4 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to make a  
5 determination of the existence of any national criminal history  
6 pertaining to the individual is necessary, along with  
7 identification acceptable to the department of state police. Upon  
8 receipt of the written consent to obtain the criminal history  
9 record information and identification required under this  
10 subsection, the adult foster care facility or staffing agency that  
11 has made a ~~good faith~~ **GOOD-FAITH** offer of employment or an  
12 independent contract to the individual shall request the criminal  
13 history record information from the relevant licensing or  
14 regulatory department and shall make a request regarding that  
15 individual to the relevant licensing or regulatory department to  
16 conduct a check of all relevant registries in the manner required  
17 in subsection (4). If the requirements of subsection (11) are not  
18 met and a request to the ~~federal bureau of investigation~~ **FEDERAL**  
19 **BUREAU OF INVESTIGATION** to make a subsequent determination of the  
20 existence of any national criminal history pertaining to the  
21 individual is necessary, the adult foster care facility or staffing  
22 agency shall proceed in the manner required in subsection (5). A  
23 staffing agency that employs an individual who regularly has direct  
24 access to or provides direct services to residents under an  
25 independent contract with an adult foster care facility shall  
26 submit information regarding the criminal history check conducted  
27 by the staffing agency to the adult foster care facility that has

1 made a ~~good faith~~**GOOD-FAITH** offer of independent contract to that  
2 applicant.

3 (4) Upon receipt of the written consent to conduct a criminal  
4 history check and identification required under subsection (3), the  
5 adult foster care facility or staffing agency that has made a ~~good~~  
6 ~~faith~~**GOOD-FAITH** offer of employment or independent contract to the  
7 individual shall make a request to the department of state police  
8 to conduct a criminal history check on the individual and input the  
9 individual's fingerprints into the automated fingerprint  
10 identification system database, and shall make a request to the  
11 relevant licensing or regulatory department to perform a check of  
12 all relevant registries established according to federal and state  
13 law and regulations for any substantiated findings of abuse,  
14 neglect, or misappropriation of property. The request shall be made  
15 in a manner prescribed by the department of state police and the  
16 relevant licensing or regulatory department or agency. The adult  
17 foster care facility or staffing agency shall make the written  
18 consent and identification available to the department of state  
19 police and the relevant licensing or regulatory department or  
20 agency. If the department of state police or the ~~federal bureau of~~  
21 ~~investigation~~**FEDERAL BUREAU OF INVESTIGATION** charges a fee for  
22 conducting the criminal history check, the charge shall be paid by  
23 ~~or reimbursed by the department.~~**THE ADULT FOSTER CARE FACILITY OR**  
24 **STAFFING AGENCY.** The adult foster care facility or staffing agency  
25 shall not seek reimbursement for a charge imposed by the department  
26 of state police or the ~~federal bureau of investigation~~**FEDERAL**  
27 **BUREAU OF INVESTIGATION** from the individual who is the subject of

1 the criminal history check. The department of state police shall  
2 conduct a criminal history check on the individual named in the  
3 request. The department of state police shall provide the  
4 department with a written report of the criminal history check  
5 conducted under this subsection. The report shall contain any  
6 criminal history record information on the individual maintained by  
7 the department of state police.

8 (5) Upon receipt of the written consent to conduct a criminal  
9 history check and identification required under subsection (3), if  
10 the individual has applied for employment either as an employee or  
11 as an independent contractor with an adult foster care facility or  
12 staffing agency, the adult foster care facility or staffing agency  
13 that has made a ~~good faith~~ **GOOD-FAITH** offer of employment or  
14 independent contract shall comply with subsection (4) and shall  
15 make a request to the department of state police to forward the  
16 individual's fingerprints to the ~~federal bureau of investigation.~~  
17 **FEDERAL BUREAU OF INVESTIGATION**. The department of state police  
18 shall request the ~~federal bureau of investigation~~ **FEDERAL BUREAU OF**  
19 **INVESTIGATION** to make a determination of the existence of any  
20 national criminal history pertaining to the individual. An  
21 individual described in this subsection shall provide the  
22 department of state police with a set of fingerprints. The  
23 department of state police shall complete the criminal history  
24 check under subsection (4) and, except as otherwise provided in  
25 this subsection, provide the results of its determination under  
26 subsection (4) and the results of the ~~federal bureau of~~  
27 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** determination to the

1 department within 30 days after the request is made. If the  
2 requesting adult foster care facility or staffing agency is not a  
3 state department or agency and if criminal history record  
4 information is disclosed on the written report of the criminal  
5 history check or the ~~federal bureau of investigation~~ **FEDERAL BUREAU**  
6 **OF INVESTIGATION** determination that resulted in a conviction, the  
7 department shall notify the adult foster care facility or staffing  
8 agency and the individual in writing of the type of crime disclosed  
9 on the written report of the criminal history check or the ~~federal~~  
10 ~~bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION**  
11 determination without disclosing the details of the crime. The  
12 notification shall inform the adult foster care facility or  
13 staffing agency and the applicant regarding the appeal process in  
14 section 34c and shall include a statement that the individual has a  
15 right to appeal the information relied upon by the adult foster  
16 care facility or staffing agency in making its decision regarding  
17 his or her employment eligibility based on the criminal history  
18 check. Any charges imposed by the department of state police or the  
19 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** for  
20 conducting a criminal history check or making a determination under  
21 this subsection shall be paid in the manner required under  
22 subsection (4).

23 (6) If an adult foster care facility determines it necessary  
24 to employ or independently contract with an individual before  
25 receiving the results of the individual's criminal history check or  
26 criminal history record information required under this section,  
27 the adult foster care facility may conditionally employ the

1 individual if all of the following apply:

2 (a) The adult foster care facility requests the criminal  
3 history check or criminal history record information required under  
4 this section, upon conditionally employing the individual.

5 (b) The individual signs a written statement indicating all of  
6 the following:

7 (i) That he or she has not been convicted of 1 or more of the  
8 crimes that are described in subsection (1)(a) to (g) within the  
9 applicable time period prescribed by subsection (1)(a) to (g).

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

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

14 (iv) The individual agrees that, if the information in the  
15 criminal history check conducted under this section does not  
16 confirm the individual's statement under subparagraphs (i) to  
17 (iii), his or her employment will be terminated by the adult foster  
18 care facility as required under subsection (1) unless and until the  
19 individual can prove that the information is incorrect.

20 (v) That he or she understands the conditions described in  
21 subparagraphs (i) to (iv) that result in the termination of his or  
22 her employment and that those conditions are good cause for  
23 termination.

24 (c) Except as otherwise provided in this subdivision, the  
25 adult foster care facility does not permit the individual to have  
26 regular direct access to or provide direct services to residents in  
27 the adult foster care facility without supervision until the

1 criminal history check or criminal history record information is  
2 obtained and the individual is eligible for that employment. If  
3 required under this subdivision, the adult foster care facility  
4 shall provide on-site supervision of an individual in the facility  
5 on a conditional basis under this subsection by an individual who  
6 has undergone a criminal history check conducted in compliance with  
7 this section. An adult foster care facility may permit an  
8 individual in the facility on a conditional basis under this  
9 subsection to have regular direct access to or provide direct  
10 services to residents in the adult foster care facility without  
11 supervision if all of the following conditions are met:

12 (i) The adult foster care facility, at its own expense and  
13 before the individual has direct access to or provides direct  
14 services to residents of the facility, conducts a search of public  
15 records on that individual through the internet criminal history  
16 access tool maintained by the department of state police and the  
17 results of that search do not uncover any information that would  
18 indicate that the individual is not eligible to have regular direct  
19 access to or provide direct services to residents under this  
20 section.

21 (ii) Before the individual has direct access to or provides  
22 direct services to residents of the adult foster care facility, the  
23 individual signs a statement in writing that he or she has resided  
24 in this state without interruption for at least the immediately  
25 preceding 12-month period.

26 (iii) If applicable, the individual provides to the department  
27 of state police a set of fingerprints on or before the expiration



1 of 10 business days following the date the individual was  
2 conditionally employed under this subsection.

3 (7) The department shall develop and distribute the model form  
4 for the statements required under subsection (6) (b) and (c). The  
5 department shall make the model form available to adult foster care  
6 facilities upon request at no charge.

7 (8) If an individual is conditionally employed under  
8 subsection (6), and the information under subsection (3) or report  
9 under subsection (4) or (5), if applicable, does not confirm the  
10 individual's statement under subsection (6) (b) (i) to (iii), the  
11 adult foster care facility shall terminate the individual's  
12 employment as required by subsection (1).

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

19 (10) An adult foster care facility or staffing agency shall  
20 use criminal history record information obtained under subsection  
21 (3), (4), or (5) only for the purpose of evaluating an individual's  
22 qualifications for employment in the position for which he or she  
23 has applied and for the purposes of subsections (6) and (8). An  
24 adult foster care facility or staffing agency or an employee of the  
25 adult foster care facility or staffing agency shall not disclose  
26 criminal history record information obtained under this section to  
27 a person who is not directly involved in evaluating the

1 individual's qualifications for employment or independent contract.  
2 An individual who knowingly uses or disseminates the criminal  
3 history record information obtained under subsection (3), (4), or  
4 (5) in violation of this subsection is guilty of a misdemeanor  
5 punishable by imprisonment for not more than 93 days or a fine of  
6 not more than \$1,000.00, or both. Except for a knowing or  
7 intentional release of false information, an adult foster care  
8 facility or staffing agency has no liability in connection with a  
9 criminal history check conducted in compliance with this section or  
10 the release of criminal history record information under this  
11 subsection.

12 (11) Upon consent of an individual as required in subsection  
13 (3) and upon request from an adult foster care facility or staffing  
14 agency that has made a ~~good faith~~ **GOOD-FAITH** offer of employment or  
15 an independent contract to the individual, the relevant licensing  
16 or regulatory department shall review the criminal history record  
17 information, if any, and notify the requesting adult foster care  
18 facility or staffing agency of the information in the manner  
19 prescribed in subsection (4) or (5). Until the ~~federal bureau of~~  
20 ~~investigation~~ **FEDERAL BUREAU OF INVESTIGATION** implements an  
21 automatic notification system similar to the system required of the  
22 state police under subsection (14) and federal regulations allow  
23 the federal criminal record to be used for subsequent authorized  
24 uses, as determined in an order issued by the department, an adult  
25 foster care facility or staffing agency may rely on the criminal  
26 history record information provided by the relevant licensing or  
27 regulatory department under this subsection and a request to the

1 ~~federal bureau of investigation~~ **FEDERAL BUREAU OF INVESTIGATION** to  
2 make a subsequent determination of the existence of any national  
3 criminal history pertaining to the individual is not necessary if  
4 all of the following requirements are met:

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

7 (b) The individual has been continuously employed by an adult  
8 foster care facility, mental health facility, or covered health  
9 facility, or the staffing agency since the criminal history check  
10 was conducted in compliance with this section or meets the  
11 continuous employment requirement of this subdivision other than  
12 being on layoff status for less than 1 year from an adult foster  
13 care facility, mental health facility, or covered health facility.

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

18 (12) As a condition of continued employment, each employee or  
19 independent contractor shall do both of the following:

20 (a) Agree in writing to report to the adult foster care  
21 facility or staffing agency immediately upon being arraigned on 1  
22 or more of the criminal offenses listed in subsection (1)(a) to  
23 (g), upon being convicted of 1 or more of the criminal offenses  
24 listed in subsection (1)(a) to (g), upon becoming the subject of an  
25 order or disposition described under subsection (1)(h), and upon  
26 becoming the subject of a substantiated finding described under  
27 subsection (1)(i). Reporting of an arraignment under this

1 subdivision is not cause for termination or denial of employment.

2 (b) If a set of fingerprints is not already on file with the  
3 department of state police, provide the department of state police  
4 with a set of fingerprints.

5 (13) In addition to sanctions set forth in this act, a  
6 licensee, owner, administrator, or operator of an adult foster care  
7 facility or staffing agency who knowingly and willfully fails to  
8 conduct the criminal history checks as required under this section  
9 is guilty of a misdemeanor punishable by imprisonment for not more  
10 than 1 year or a fine of not more than \$5,000.00, or both.

11 (14) In collaboration with the department of state police, the  
12 department of technology, management, and budget shall establish  
13 and maintain an automated fingerprint identification system  
14 database that would allow the department of state police to store  
15 and maintain all fingerprints submitted under this section and  
16 would provide for an automatic notification at the time a  
17 subsequent criminal arrest fingerprint card submitted into the  
18 system matches a set of fingerprints previously submitted under  
19 this section. Upon ~~such~~ notification, the department of state  
20 police shall immediately notify the department and the department  
21 shall immediately contact each respective adult foster care  
22 facility or staffing agency with which that individual is  
23 associated. Information in the database established under this  
24 subsection is confidential, is not subject to disclosure under the  
25 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and  
26 shall not be disclosed to any person except for purposes of this  
27 act or for law enforcement purposes.

1           (15) If an individual independently contracts with an adult  
2 foster care facility, subsections (1) and (2) do not apply if the  
3 individual is not under the adult foster care facility's control  
4 and the contractual work performed by the individual is not  
5 directly related to the clinical, health care, or personal services  
6 delivered by the adult foster care facility or if the individual's  
7 duties are not performed on an ongoing basis with direct access to  
8 residents. This exception includes, but is not limited to, an  
9 individual who independently contracts with the adult foster care  
10 facility to provide utility, maintenance, construction, or  
11 communication services.

12           (16) The department shall maintain an electronic web-based  
13 system to assist the adult foster care facilities and staffing  
14 agencies required to check relevant registries and conduct criminal  
15 history checks of its employees and independent contractors and to  
16 provide for an automated notice to the adult foster care facilities  
17 and staffing agencies for the individuals entered in the system  
18 who, since the initial criminal history check, have been convicted  
19 of a disqualifying offense or have been the subject of a  
20 substantiated finding of abuse, neglect, or misappropriation of  
21 property. The department may charge a staffing agency a 1-time set-  
22 up fee of up to \$100.00 for access to the electronic web-based  
23 system under this section.

24 ~~—— (17) An adult foster care facility, staffing agency, or a~~  
25 ~~prospective employee covered under this section may not be charged~~  
26 ~~for the cost of a criminal history check required under this act.~~

27           **(17)** ~~(18)~~ As used in this section:

1 (a) "Convicted" means either of the following:

2 (i) For a crime that is not a relevant crime, a final  
3 conviction, the payment of a fine, a plea of guilty or nolo  
4 contendere if accepted by the court, or a finding of guilt for a  
5 criminal law violation or a juvenile adjudication or disposition by  
6 the juvenile division of probate court or family division of  
7 circuit court for a violation that if committed by an adult would  
8 be a crime.

9 (ii) For a relevant crime described under 42 USC 1320a-7(a),  
10 convicted means that term as defined in 42 USC 1320a-7.

11 (b) "Covered health facility" means a nursing home, county  
12 medical care facility, hospice, hospital that provides swing bed  
13 services, home for the aged, or home health agency licensed under  
14 article 17 of the public health code, 1978 PA 368, MCL 333.20101 to  
15 333.22260.

16 (c) "Criminal history check conducted in compliance with this  
17 section" includes a criminal history check conducted under this  
18 section, under section 134a of the mental health code, 1974 PA 258,  
19 MCL 330.1134a, or under section 20173a of the public health code,  
20 1978 PA 368, MCL 333.20173a.

21 (d) "Direct access" means access to a resident or resident's  
22 property, financial information, medical records, treatment  
23 information, or any other identifying information.

24 (e) "Home health agency" means that term as defined in section  
25 20173a of the public health code, 1978 PA 368, MCL 333.20173a.

26 (f) "Independent contract" means a contract entered into by an  
27 adult foster care facility with an individual who provides the

1 contracted services independently or a contract entered into by an  
2 adult foster care facility with a staffing agency that complies  
3 with the requirements of this section to provide the contracted  
4 services to the adult foster care facility on behalf of the  
5 staffing agency.

6 (g) "Mental health facility" means a psychiatric facility or  
7 other facility defined in 42 USC 1396d(d) as described under the  
8 mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

9 (h) "Staffing agency" means an entity that recruits candidates  
10 and provides temporary and permanent qualified staffing for adult  
11 foster care facilities, including independent contractors.

12 (i) "Title XIX" means title XIX of the social security act, 42  
13 USC 1396 to 1396w-5.

14 (j) "Under the adult foster care facility's control" means an  
15 individual employed by or under independent contract with an adult  
16 foster care facility for whom the adult foster care facility does  
17 both of the following:

18 (i) Determines whether the individual who has access to  
19 residents may provide care, treatment, or other similar support  
20 service functions to residents served by the adult foster care  
21 facility.

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

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

25 (B) The tasks performed by the individual.

26 (C) The individual's work schedule.

27 (D) The supervision or evaluation of the individual's work or

1 job performance, including imposing discipline or granting  
2 performance awards.

3 (E) The compensation the individual receives for performing  
4 his or her duties.

5 (F) The conditions under which the individual performs his or  
6 her duties.

7 Sec. 34c. (1) An individual who has been disqualified from or  
8 denied employment by an adult foster care facility based on a  
9 criminal history check conducted ~~pursuant to~~ **UNDER** section 34a or  
10 34b may appeal to the department if he or she believes that the  
11 criminal history report is inaccurate, and ~~the appeal shall be~~  
12 ~~conducted as a contested case hearing conducted pursuant to the~~  
13 ~~administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to~~  
14 ~~24.328.~~ **THE DEPARTMENT SHALL CONDUCT AN ADMINISTRATIVE REVIEW.** The  
15 individual shall file the appeal with the director of the  
16 department within 15 business days after receiving the written  
17 report of the criminal history check unless the conviction  
18 contained in the criminal history report is ~~one~~ **A CONVICTION** that  
19 may be expunged or set aside. If an individual has been  
20 disqualified or denied employment based on a conviction that may be  
21 expunged or set aside, then he or she shall file the appeal within  
22 15 business days after a court order granting or denying his or her  
23 application to expunge or set aside that conviction is granted. If  
24 the order is granted and the conviction is expunged or set aside,  
25 ~~then~~ the individual shall not be disqualified or denied employment  
26 based solely on that conviction. The director **OR THE DIRECTOR'S**  
27 **DESIGNEE** shall review the appeal, **ALONG WITH ALL PERTINENT**



1 **DOCUMENTATION**, and **SHALL** issue a written decision ~~within 30~~  
2 ~~business days after receiving the appeal.~~ **AS SOON AS PRACTICABLE.**

3 The decision of the director **OR THE DIRECTOR'S DESIGNEE** is final.

4 ~~— (2) One year after the effective date of this section and each~~  
5 ~~year thereafter for the next 3 years, the department shall provide~~  
6 ~~the legislature with a written report regarding the appeals process~~  
7 ~~implemented under this section for employees subject to criminal~~  
8 ~~history checks. The report shall include, but is not limited to,~~  
9 ~~for the immediately preceding year the number of applications for~~  
10 ~~appeal received, the number of inaccuracies found and appeals~~  
11 ~~granted with regard to the criminal history checks conducted under~~  
12 ~~section 34b, the average number of days necessary to complete the~~  
13 ~~appeals process for each appeal, and the number of appeals rejected~~  
14 ~~without a hearing and a brief explanation of the denial.~~

15 (2) ~~(3)~~—As used in this section, "business day" means a day  
16 other than a Saturday, Sunday, or any legal holiday.

17 Enacting section 1. Section 23 of adult foster care facility  
18 licensing act, 1979 PA 218, MCL 400.723, is repealed.

19 Enacting section 2. This amendatory act takes effect 90 days  
20 after the date it is enacted into law.

21 Enacting section 3. This amendatory act does not take effect  
22 unless Senate Bill No.      or House Bill No. 5505 (request no.  
23 04147'17) of the 99th Legislature is enacted into law.