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BILL ANALYSIS



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Senate Bills 622 and 623 (as introduced 6-21-05)
Sponsor: Senator Tony Stamas (S.B. 622)
Senator Jud Gilbert, II (S.B. 623)
Committee: Senior Citizens and Veterans Affairs

Date Completed: 11-29-05

CONTENT

Senate Bill 622 would amend provisions of the Adult Foster Care Facility Licensing Act that disqualify a person from employment for certain convictions, and that require criminal history checks of applicants for employment, to do the following:

- Disqualify any individual, rather than a person who provides direct services to residents, from employment if the conditions were met.
- Disqualify a person for additional reasons, including involuntary commitment, legal incapacitation, a personal protection order, a finding of not guilty by reason of insanity, a finding of not guilty but mentally ill, and a diagnosis of mental illness.
- Require an applicant to consent to annual criminal history checks through the State Police.
- Require a facility to request the State Police to conduct annual criminal history checks of employees.
- Prescribe a felony penalty for a facility that failed to conduct the required checks.

Senate Bill 623 would amend the sentencing guidelines provisions of the Code of Criminal Procedure to include failure to conduct criminal history checks. The offense would be a Class F felony against the public trust with a maximum term of four years. The bill is tie-barred to Senate Bill 622.

A detailed description of Senate Bill 622 follows.

Disqualification for Employment

Under the Act, an adult foster care facility may not employ or independently contract with an individual who regularly provides direct services to residents if he or she has been convicted of one or both of the following:

- A felony or an attempt or conspiracy to commit a felony within the 15 years immediately preceding the date of application for employment or the execution of the contract.
- A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct, or involving fraud or theft against a vulnerable adult, or a substantially similar State or Federal crime, within the immediately preceding 10 years.

Under the bill, a facility could not employ or independently contract with any individual who had been convicted of an offense described above or who was the subject of an order or disposition under any of the following:

- Section 464a of the Mental Health Code (which requires a court, upon directing an individual to be involuntarily hospitalized or undergo a program of alternative treatment, to order the State Police to enter that order into the Law Enforcement Information Network (LEIN)).
- Section 5107 of the Estates and Protected Individuals Code (which requires a court, upon finding that an individual is legally incapacitated, to direct the State Police to enter that order into LEIN).
- Sections 2950 and 2950a of the Revised Judicature Act (which provide for domestic personal protection orders (PPOs) and stalking PPOs).
- Section 16b of Chapter IX of the Code of Criminal Procedure (which requires a court, upon finding that a person is not guilty by reason of insanity, to order the State Police to enter that disposition into LEIN).

In addition, a facility could not employ or independently contract with an individual who satisfied any of the following:

- Had been found not guilty but mentally ill of any crime and had offered a plea of not guilty of, or been acquitted of, any crime by reason of insanity.
- Had been subject to an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.
- Had a diagnosed mental illness at the time the application was made regardless of whether the person was receiving treatment for that illness.
- Was under a court order of legal incapacity in this State or elsewhere.

Also, in regard to the crimes that disqualify a person from employment, fraud or theft would not be limited to an offense against a vulnerable adult.

Criminal History Checks

Under the Act, an individual who applies for employment as an employee or independent contractor with a facility and has received an offer of employment or an independent contract, must give written consent at the time of application for the Michigan Department of State Police (MSP) to conduct a criminal history check. If the MSP has conducted a criminal history check within 24 months immediately before the date of application and the applicant consents to the release of information, the facility may use the results instead of requesting a new criminal history check.

Under the bill, an applicant for employment or an independent contract would have to consent to an *annual* criminal history check, and a facility could use the results of a check that had been conducted within the preceding 12 months.

Presently, if an applicant has lived in this State for three or more years before the offer of employment or an independent contract, the facility must request the MSP to conduct a criminal history check on the applicant, upon receiving the required consent. The bill would require a facility to request an annual criminal history check.

Under the Code, if an applicant has lived in this State for less than three years, the facility also must request the MSP to forward the applicant's fingerprints to the FBI for a national criminal history check. The bill would retain this requirement.

Condition of Continued Employment

The Act requires each employee or independent contractor, as a condition of continued employment, to agree to report to the facility immediately upon being arrested for or convicted of one of the offenses that disqualify a person from employment. The bill also would require an individual to consent to the performance of an annual criminal history check, as a condition of continued employment.

Penalty

Under the bill, a facility that failed to conduct the required criminal history checks would be guilty of a felony punishable by imprisonment for up to four years and/or a maximum fine of \$50,000, in addition to sanctions set forth in the Act (which include licensing sanctions and criminal penalties).

MCL 400.734a

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate fiscal impact upon State government. The Department of State Police would see higher administrative costs associated with processing an increased number of State criminal history (name) requests. These costs would be offset by fees charged for the criminal history checks. For-profit organizations are charged \$10 for State criminal history checks; nonprofit and public organizations are exempt from this fee.

The bill would have a negative fiscal impact upon local government. County infirmaries and community mental health agency-affiliated adult foster care facilities would see increased administrative and fee costs associated with processing criminal history requests for job applicants and current employees.

There are no data to indicate how many facilities would be convicted of the proposed felony for failing to conduct annual criminal history checks. Local government would incur the cost of incarceration in a local facility, which varies by county. The State would incur the cost of felony probation at an average annual cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. Additional penal fine revenue would benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.