

SUBSTITUTE FOR
SENATE BILL NO. 1254

A bill to amend 1979 PA 218, entitled
"Adult foster care facility licensing act,"
by amending section 34b (MCL 400.734b), as amended by 2008 PA 442.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 34b. (1) In addition to the restrictions prescribed in
2 sections 13, 22, and 31, and except as otherwise provided in
3 subsection (2), an adult foster care facility shall not employ or
4 independently contract with an individual who regularly has direct
5 access to or provides direct services to residents of the adult
6 foster care facility ~~after April 1, 2006~~ if the individual
7 satisfies 1 or more of the following:

8 (a) Has been convicted of a relevant crime described under 42
9 USC ~~1320a-7~~ **1320A-7(A)**.

1 (b) Has been convicted of any of the following felonies, an
2 attempt or conspiracy to commit any of those felonies, or any other
3 state or federal crime that is similar to the felonies described in
4 this subdivision, other than a felony for a relevant crime
5 described under 42 USC ~~1320a-7~~**1320A-7 (A)**, unless 15 years have
6 lapsed since the individual completed all of the terms and
7 conditions of his or her sentencing, parole, and probation for that
8 conviction prior to the date of application for employment or the
9 date of the execution of the independent contract:

10 (i) A felony that involves the intent to cause death or serious
11 impairment of a body function, that results in death or serious
12 impairment of a body function, that involves the use of force or
13 violence, or that involves the threat of the use of force or
14 violence.

15 (ii) A felony involving cruelty or torture.

16 (iii) A felony under chapter XXA of the Michigan penal code,
17 1931 PA 328, MCL 750.145m to 750.145r.

18 (iv) A felony involving criminal sexual conduct.

19 (v) A felony involving abuse or neglect.

20 (vi) A felony involving the use of a firearm or dangerous
21 weapon.

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

24 (c) Has been convicted of a felony or an attempt or conspiracy
25 to commit a felony, other than a felony for a relevant crime
26 described under 42 USC ~~1320a-7~~**1320A-7 (A)** or a felony described
27 under subdivision (b), unless 10 years have lapsed since the

1 individual completed all of the terms and conditions of his or her
2 sentencing, parole, and probation for that conviction prior to the
3 date of application for employment or the date of the execution of
4 the independent contract.

5 (d) Has been convicted of any of the following misdemeanors,
6 other than a misdemeanor for a relevant crime described under 42
7 USC ~~1320a-7~~**1320A-7 (A)**, or a state or federal crime that is
8 substantially similar to the misdemeanors described in this
9 subdivision, within the 10 years immediately preceding the date of
10 application for employment or the date of the execution of the
11 independent contract:

12 (i) A misdemeanor involving the use of a firearm or dangerous
13 weapon with the intent to injure, the use of a firearm or dangerous
14 weapon that results in a personal injury, or a misdemeanor
15 involving the use of force or violence or the threat of the use of
16 force or violence.

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

19 (iii) A misdemeanor involving criminal sexual conduct.

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

22 (v) A misdemeanor involving abuse or neglect.

23 (e) Has been convicted of any of the following misdemeanors,
24 other than a misdemeanor for a relevant crime described under 42
25 USC ~~1320a-7~~**1320A-7 (A)**, or a state or federal crime that is
26 substantially similar to the misdemeanors described in this
27 subdivision, within the 5 years immediately preceding the date of

1 application for employment or the date of the execution of the
2 independent contract:

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

5 (ii) A misdemeanor involving home invasion.

6 (iii) A misdemeanor involving embezzlement.

7 (iv) A misdemeanor involving negligent homicide or a ~~moving~~
8 ~~violation causing death~~ **VIOLATION OF SECTION 601D(1) OF THE**
9 **MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.601D.**

10 (v) A misdemeanor involving larceny unless otherwise provided
11 under subdivision (g).

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

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

17 (f) Has been convicted of any of the following misdemeanors,
18 other than a misdemeanor for a relevant crime described under 42
19 USC ~~1320a-7~~ **1320A-7 (A)**, or a state or federal crime that is
20 substantially similar to the misdemeanors described in this
21 subdivision, within the 3 years immediately preceding the date of
22 application for employment or the date of the execution of the
23 independent contract:

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

27 (ii) A misdemeanor of retail fraud in the third degree unless

1 otherwise provided under subdivision (g).

2 (iii) A misdemeanor under part 74 of the public health code,
3 1978 PA 368, MCL 333.7401 to 333.7461, unless otherwise provided
4 under subdivision (g).

5 (g) Has been convicted of any of the following misdemeanors,
6 other than a misdemeanor for a relevant crime described under 42
7 USC ~~1320a-7~~**1320A-7(A)**, or a state or federal crime that is
8 substantially similar to the misdemeanors described in this
9 subdivision, within the year immediately preceding the date of
10 application for employment or the date of the execution of the
11 independent contract:

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

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

18 (h) Is the subject of an order or disposition under section
19 16b of chapter IX of the code of criminal procedure, 1927 PA 175,
20 MCL 769.16b.

21 (i) ~~Has been~~**ENGAGES IN CONDUCT THAT BECOMES** the subject of a
22 substantiated finding of neglect, abuse, or misappropriation of
23 property by a state or federal agency according to an investigation
24 conducted in accordance with 42 USC 1395i-3 or 1396r.

25 (2) Except as otherwise provided in **THIS SUBSECTION OR**
26 subsection (6), an adult foster care facility shall not employ or
27 independently contract with an individual who has direct access to

1 residents after April 1, 2006 until the adult foster care facility
2 ~~conducts~~ **OR STAFFING AGENCY HAS CONDUCTED** a criminal history check
3 in compliance with ~~subsections (4) and (5)~~ **THIS SECTION OR HAS**
4 **RECEIVED CRIMINAL HISTORY RECORD INFORMATION IN COMPLIANCE WITH**
5 **SUBSECTIONS (3) AND (11)**. This subsection and subsection (1) do not
6 apply to an individual who is employed by or under contract to an
7 adult foster care facility before April 1, 2006. ~~Beginning~~ **ON OR**
8 **BEFORE** April 1, ~~2009-2011~~, an individual who is exempt under this
9 subsection **AND WHO HAS NOT BEEN THE SUBJECT OF A CRIMINAL HISTORY**
10 **CHECK CONDUCTED IN COMPLIANCE WITH THIS SECTION** shall provide the
11 department of state police a set of fingerprints and the department
12 of state police shall input those fingerprints into the automated
13 fingerprint identification system database established under
14 subsection ~~(12)~~ **(14)**. An individual who is exempt under this
15 subsection is not limited to working within the adult foster care
16 facility with which he or she is employed by or under independent
17 contract with on April 1, 2006. ~~That individual~~ **BUT** may transfer
18 to another adult foster care facility, **MENTAL HEALTH FACILITY, OR**
19 **COVERED HEALTH FACILITY**. ~~that is under the same ownership with~~
20 ~~which he or she was employed or under contract. If that individual~~
21 ~~wishes to transfer to an adult foster care facility that is not~~
22 ~~under the same ownership, he or she may do so provided that a~~
23 ~~criminal history check is conducted by the new facility in~~
24 ~~accordance with subsection (4).~~ If an individual who is exempt
25 under this subsection is subsequently convicted of a crime or
26 offense described under subsection (1)(a) to (g) or found to be the
27 subject of a substantiated finding described under subsection

1 (1) (i) or an order or disposition described under subsection
2 (1) (h), or is found to have been convicted of a relevant crime
3 described under ~~subsection (1) (a)~~ **42 USC 1320A-7 (A)**, he or she is
4 no longer exempt and shall be terminated from employment or denied
5 employment.

6 (3) An individual who applies for employment either as an
7 employee or as an independent contractor with an adult foster care
8 facility **OR STAFFING AGENCY** and **WHO** has ~~received a good faith offer~~
9 ~~of employment or independent contract from the adult foster care~~
10 ~~facility~~ **NOT BEEN THE SUBJECT OF A CRIMINAL HISTORY CHECK CONDUCTED**
11 **IN COMPLIANCE WITH THIS SECTION** shall give written consent at the
12 time of application for the department of state police to conduct
13 ~~an initial~~ **A** criminal history check under this section, **ALONG WITH**
14 **IDENTIFICATION ACCEPTABLE TO THE DEPARTMENT OF STATE POLICE.** ~~The~~
15 ~~individual, at the time of initial application, shall provide~~
16 ~~identification acceptable to the department of state police.~~ **IF THE**
17 **INDIVIDUAL HAS BEEN THE SUBJECT OF A CRIMINAL HISTORY CHECK**
18 **CONDUCTED IN COMPLIANCE WITH THIS SECTION, THE INDIVIDUAL SHALL**
19 **GIVE WRITTEN CONSENT AT THE TIME OF APPLICATION FOR THE ADULT**
20 **FOSTER CARE FACILITY OR STAFFING AGENCY TO OBTAIN THE CRIMINAL**
21 **HISTORY RECORD INFORMATION AS PRESCRIBED IN SUBSECTION (4) OR (5)**
22 **FROM THE RELEVANT LICENSING OR REGULATORY DEPARTMENT AND FOR THE**
23 **DEPARTMENT OF STATE POLICE TO CONDUCT A CRIMINAL HISTORY CHECK**
24 **UNDER THIS SECTION IF THE REQUIREMENTS OF SUBSECTION (11) ARE NOT**
25 **MET AND A REQUEST TO THE FEDERAL BUREAU OF INVESTIGATION TO MAKE A**
26 **DETERMINATION OF THE EXISTENCE OF ANY NATIONAL CRIMINAL HISTORY**
27 **PERTAINING TO THE INDIVIDUAL IS NECESSARY, ALONG WITH**

1 IDENTIFICATION ACCEPTABLE TO THE DEPARTMENT OF STATE POLICE. UPON
2 RECEIPT OF THE WRITTEN CONSENT TO OBTAIN THE CRIMINAL HISTORY
3 RECORD INFORMATION AND IDENTIFICATION REQUIRED UNDER THIS
4 SUBSECTION, THE ADULT FOSTER CARE FACILITY OR STAFFING AGENCY THAT
5 HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR AN INDEPENDENT
6 CONTRACT TO THE INDIVIDUAL SHALL REQUEST THE CRIMINAL HISTORY
7 RECORD INFORMATION FROM THE RELEVANT LICENSING OR REGULATORY
8 DEPARTMENT AND SHALL MAKE A REQUEST REGARDING THAT INDIVIDUAL TO
9 THE RELEVANT LICENSING OR REGULATORY DEPARTMENT TO CONDUCT A CHECK
10 OF ALL RELEVANT REGISTRIES IN THE MANNER REQUIRED IN SUBSECTION
11 (4). IF THE REQUIREMENTS OF SUBSECTION (11) ARE NOT MET AND A
12 REQUEST TO THE FEDERAL BUREAU OF INVESTIGATION TO MAKE A SUBSEQUENT
13 DETERMINATION OF THE EXISTENCE OF ANY NATIONAL CRIMINAL HISTORY
14 PERTAINING TO THE INDIVIDUAL IS NECESSARY, THE ADULT FOSTER CARE
15 FACILITY OR STAFFING AGENCY SHALL PROCEED IN THE MANNER REQUIRED IN
16 SUBSECTION (5). A STAFFING AGENCY THAT EMPLOYS AN INDIVIDUAL WHO
17 REGULARLY HAS DIRECT ACCESS TO OR PROVIDES DIRECT SERVICES TO
18 RESIDENTS UNDER AN INDEPENDENT CONTRACT WITH AN ADULT FOSTER CARE
19 FACILITY SHALL SUBMIT INFORMATION REGARDING THE CRIMINAL HISTORY
20 CHECK CONDUCTED BY THE STAFFING AGENCY TO THE ADULT FOSTER CARE
21 FACILITY THAT HAS MADE A GOOD FAITH OFFER OF INDEPENDENT CONTRACT
22 TO THAT APPLICANT.

23 (4) Upon receipt of the written consent TO CONDUCT A CRIMINAL
24 HISTORY CHECK and identification required under subsection (3), the
25 adult foster care facility OR STAFFING AGENCY that has made a good
26 faith offer of employment or independent contract TO THE INDIVIDUAL
27 shall make a request to the department of state police to conduct a

1 criminal history check on the individual and input the individual's
2 fingerprints into the automated fingerprint identification system
3 database, and shall make a request to the relevant licensing or
4 regulatory department to perform a check of all relevant registries
5 established according to federal and state law and regulations for
6 any substantiated findings of abuse, neglect, or misappropriation
7 of property. The request shall be made in a manner prescribed by
8 the department of state police and the relevant licensing or
9 regulatory department or agency. The adult foster care facility **OR**
10 **STAFFING AGENCY** shall make the written consent and identification
11 available to the department of state police and the relevant
12 licensing or regulatory department or agency. If the department of
13 state police or the federal bureau of investigation charges a fee
14 for conducting the ~~initial~~ criminal history check, the charge shall
15 be paid by or reimbursed by the department. The adult foster care
16 facility **OR STAFFING AGENCY** shall not seek reimbursement for a
17 charge imposed by the department of state police or the federal
18 bureau of investigation from the individual who is the subject of
19 the ~~initial~~ criminal history check. The department of state police
20 shall conduct ~~an initial~~ **A** criminal history check on the individual
21 named in the request. The department of state police shall provide
22 the department with a written report of the criminal history check
23 conducted under this subsection. ~~that contains a criminal record.~~
24 The report shall contain any criminal history record information on
25 the individual maintained by the department of state police.

26 (5) Upon receipt of the written consent **TO CONDUCT A CRIMINAL**
27 **HISTORY CHECK** and identification required under subsection (3), if

1 the individual has applied for employment either as an employee or
2 as an independent contractor with an adult foster care facility **OR**
3 **STAFFING AGENCY**, the adult foster care facility **OR STAFFING AGENCY**
4 that has made a good faith offer of employment or independent
5 contract shall comply with subsection (4) and shall make a request
6 to the department of state police to forward the individual's
7 fingerprints to the federal bureau of investigation. The department
8 of state police shall request the federal bureau of investigation
9 to make a determination of the existence of any national criminal
10 history pertaining to the individual. An individual described in
11 this subsection shall provide the department of state police with a
12 set of fingerprints. The department of state police shall complete
13 the criminal history check under subsection (4) and, except as
14 otherwise provided in this subsection, provide the results of its
15 determination under subsection (4) and the results of the federal
16 bureau of investigation determination to the department within 30
17 days after the request is made. If the requesting adult foster care
18 facility **OR STAFFING AGENCY** is not a state department or agency and
19 if a ~~criminal conviction~~ **HISTORY RECORD INFORMATION** is disclosed on
20 the written report of the criminal history check ~~obtained under~~
21 ~~subsection (4)~~ or the federal bureau of investigation determination
22 **THAT RESULTED IN A CONVICTION**, the department shall notify the
23 adult foster care facility **OR STAFFING AGENCY** and the individual in
24 writing of the type of crime disclosed on the written report of the
25 criminal history check ~~obtained under subsection (4)~~ or the federal
26 bureau of investigation determination without disclosing the
27 details of the crime. The notification shall inform the **ADULT**

1 **FOSTER CARE** facility or **STAFFING** agency and the applicant regarding
2 the appeal process in section 34c **AND SHALL INCLUDE A STATEMENT**
3 **THAT THE INDIVIDUAL HAS A RIGHT TO APPEAL THE INFORMATION RELIED**
4 **UPON BY THE ADULT FOSTER CARE FACILITY OR STAFFING AGENCY IN MAKING**
5 **ITS DECISION REGARDING HIS OR HER EMPLOYMENT ELIGIBILITY BASED ON**
6 **THE CRIMINAL HISTORY CHECK.** Any charges imposed by the department
7 of state police or the federal bureau of investigation for
8 conducting ~~an initial~~ **A** criminal history check or making a
9 determination under this subsection shall be paid in the manner
10 required under subsection (4).

11 (6) If an adult foster care facility determines it necessary
12 to employ or independently contract with an individual before
13 receiving the results of the individual's criminal history check **OR**
14 **CRIMINAL HISTORY RECORD INFORMATION** required under this section,
15 the adult foster care facility may conditionally employ the
16 individual if both of the following apply:

17 (a) The adult foster care facility requests the criminal
18 history check **OR CRIMINAL HISTORY RECORD INFORMATION** required under
19 this section, upon conditionally employing the individual.

20 (b) The individual signs a written statement indicating all of
21 the following:

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

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

27 (iii) That he or she has not been the subject of a substantiated

1 finding as described in subsection (1)(i).

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

8 (v) That he or she understands the conditions described in
9 subparagraphs (i) to (iv) that result in the termination of his or
10 her employment and that those conditions are good cause for
11 termination.

12 (C) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, THE
13 ADULT FOSTER CARE FACILITY DOES NOT PERMIT THE INDIVIDUAL TO HAVE
14 REGULAR DIRECT ACCESS TO OR PROVIDE DIRECT SERVICES TO RESIDENTS IN
15 THE ADULT FOSTER CARE FACILITY WITHOUT SUPERVISION UNTIL THE
16 CRIMINAL HISTORY CHECK OR CRIMINAL HISTORY RECORD INFORMATION IS
17 OBTAINED AND THE INDIVIDUAL IS ELIGIBLE FOR THAT EMPLOYMENT. IF
18 REQUIRED UNDER THIS SUBDIVISION, THE ADULT FOSTER CARE FACILITY
19 SHALL PROVIDE ON-SITE SUPERVISION OF AN INDIVIDUAL IN THE FACILITY
20 ON A CONDITIONAL BASIS UNDER THIS SUBSECTION BY AN INDIVIDUAL WHO
21 HAS UNDERGONE A CRIMINAL HISTORY CHECK CONDUCTED IN COMPLIANCE WITH
22 THIS SECTION. AN ADULT FOSTER CARE FACILITY MAY PERMIT AN
23 INDIVIDUAL IN THE FACILITY ON A CONDITIONAL BASIS UNDER THIS
24 SUBSECTION TO HAVE REGULAR DIRECT ACCESS TO OR PROVIDE DIRECT
25 SERVICES TO RESIDENTS IN THE ADULT FOSTER CARE FACILITY WITHOUT
26 SUPERVISION IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

27 (i) THE ADULT FOSTER CARE FACILITY, AT ITS OWN EXPENSE AND

1 BEFORE THE INDIVIDUAL HAS DIRECT ACCESS TO OR PROVIDES DIRECT
2 SERVICES TO RESIDENTS OF THE FACILITY, CONDUCTS A SEARCH OF PUBLIC
3 RECORDS ON THAT INDIVIDUAL THROUGH THE INTERNET CRIMINAL HISTORY
4 ACCESS TOOL MAINTAINED BY THE DEPARTMENT OF STATE POLICE AND THE
5 RESULTS OF THAT SEARCH DO NOT UNCOVER ANY INFORMATION THAT WOULD
6 INDICATE THAT THE INDIVIDUAL IS NOT ELIGIBLE TO HAVE REGULAR DIRECT
7 ACCESS TO OR PROVIDE DIRECT SERVICES TO RESIDENTS UNDER THIS
8 SECTION.

9 (ii) BEFORE THE INDIVIDUAL HAS DIRECT ACCESS TO OR PROVIDES
10 DIRECT SERVICES TO RESIDENTS OF THE ADULT FOSTER CARE FACILITY, THE
11 INDIVIDUAL SIGNS A STATEMENT IN WRITING THAT HE OR SHE HAS RESIDED
12 IN THIS STATE WITHOUT INTERRUPTION FOR AT LEAST THE IMMEDIATELY
13 PRECEDING 12-MONTH PERIOD.

14 (iii) IF APPLICABLE, THE INDIVIDUAL PROVIDES TO THE DEPARTMENT
15 OF STATE POLICE A SET OF FINGERPRINTS ON OR BEFORE THE EXPIRATION
16 OF 10 BUSINESS DAYS FOLLOWING THE DATE THE INDIVIDUAL WAS
17 CONDITIONALLY EMPLOYED UNDER THIS SUBSECTION.

18 (7) The department shall develop and distribute the model form
19 for the ~~statement~~ **STATEMENTS** required under subsection (6) (b) **AND**
20 (C). The department shall make the model form available to adult
21 foster care facilities upon request at no charge.

22 (8) If an individual is conditionally employed under
23 subsection (6), and the **INFORMATION UNDER SUBSECTION (3) OR** report
24 ~~described in~~ **UNDER** subsection (4) or (5), if applicable, does not
25 confirm the individual's statement under subsection (6) (b) (i) to
26 (iii), the adult foster care facility shall terminate the
27 individual's employment as required by subsection (1).

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

7 (10) An adult foster care facility **OR STAFFING AGENCY** shall
8 use criminal history record information obtained under subsection
9 (3), (4), or (5) only for the purpose of evaluating an individual's
10 qualifications for employment in the position for which he or she
11 has applied and for the purposes of subsections (6) and (8). An
12 adult foster care facility **OR STAFFING AGENCY** or an employee of the
13 adult foster care facility **OR STAFFING AGENCY** shall not disclose
14 criminal history record information obtained under this section to
15 a person who is not directly involved in evaluating the
16 individual's qualifications for employment or independent contract.
17 An individual who knowingly uses or disseminates the criminal
18 history record information obtained under subsection (3), (4), or
19 (5) in violation of this subsection is guilty of a misdemeanor
20 punishable by imprisonment for not more than 93 days or a fine of
21 not more than \$1,000.00, or both. ~~Upon written request from another~~
22 ~~adult foster care facility, psychiatric facility or intermediate~~
23 ~~care facility for people with mental retardation, or health~~
24 ~~facility or agency that is considering employing or independently~~
25 ~~contracting with an individual, an adult foster care facility that~~
26 ~~has obtained criminal history record information under this section~~
27 ~~on that individual shall, with the consent of the applicant, share~~

1 ~~the information with the requesting adult foster care facility,~~
2 ~~psychiatric facility or intermediate care facility for people with~~
3 ~~mental retardation, or health facility or agency.~~ Except for a
4 knowing or intentional release of false information, an adult
5 foster care facility **OR STAFFING AGENCY** has no liability in
6 connection with a ~~background~~ **CRIMINAL HISTORY** check conducted ~~under~~
7 **IN COMPLIANCE WITH** this section or the release of criminal history
8 record information under this subsection.

9 (11) UPON CONSENT OF AN INDIVIDUAL AS REQUIRED IN SUBSECTION
10 (3) AND UPON REQUEST FROM AN ADULT FOSTER CARE FACILITY OR STAFFING
11 AGENCY THAT HAS MADE A GOOD FAITH OFFER OF EMPLOYMENT OR AN
12 INDEPENDENT CONTRACT TO THE INDIVIDUAL, THE RELEVANT LICENSING OR
13 REGULATORY DEPARTMENT SHALL REVIEW THE CRIMINAL HISTORY RECORD
14 INFORMATION, IF ANY, AND NOTIFY THE REQUESTING ADULT FOSTER CARE
15 FACILITY OR STAFFING AGENCY OF THE INFORMATION IN THE MANNER
16 PRESCRIBED IN SUBSECTION (4) OR (5). UNTIL THE FEDERAL BUREAU OF
17 INVESTIGATION IMPLEMENTS AN AUTOMATIC NOTIFICATION SYSTEM SIMILAR
18 TO THE SYSTEM REQUIRED OF THE STATE POLICE UNDER SUBSECTION (14)
19 AND FEDERAL REGULATIONS ALLOW THE FEDERAL CRIMINAL RECORD TO BE
20 USED FOR SUBSEQUENT AUTHORIZED USES, AS DETERMINED IN AN ORDER
21 ISSUED BY THE DEPARTMENT, AN ADULT FOSTER CARE FACILITY OR STAFFING
22 AGENCY MAY RELY ON THE CRIMINAL HISTORY RECORD INFORMATION PROVIDED
23 BY THE RELEVANT LICENSING OR REGULATORY DEPARTMENT UNDER THIS
24 SUBSECTION AND A REQUEST TO THE FEDERAL BUREAU OF INVESTIGATION TO
25 MAKE A SUBSEQUENT DETERMINATION OF THE EXISTENCE OF ANY NATIONAL
26 CRIMINAL HISTORY PERTAINING TO THE INDIVIDUAL IS NOT NECESSARY IF
27 ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

1 (A) THE CRIMINAL HISTORY CHECK WAS CONDUCTED DURING THE
2 IMMEDIATELY PRECEDING 12-MONTH PERIOD.

3 (B) THE INDIVIDUAL HAS BEEN CONTINUOUSLY EMPLOYED BY AN ADULT
4 FOSTER CARE FACILITY, MENTAL HEALTH FACILITY, OR COVERED HEALTH
5 FACILITY, OR THE STAFFING AGENCY SINCE THE CRIMINAL HISTORY CHECK
6 WAS CONDUCTED IN COMPLIANCE WITH THIS SECTION OR MEETS THE
7 CONTINUOUS EMPLOYMENT REQUIREMENT OF THIS SUBDIVISION OTHER THAN
8 BEING ON LAYOFF STATUS FOR LESS THAN 1 YEAR FROM AN ADULT FOSTER
9 CARE FACILITY, MENTAL HEALTH FACILITY, OR COVERED HEALTH FACILITY.

10 (C) THE INDIVIDUAL CAN PROVIDE EVIDENCE ACCEPTABLE TO THE
11 RELEVANT LICENSING OR REGULATORY DEPARTMENT THAT HE OR SHE HAS BEEN
12 A RESIDENT OF THIS STATE FOR THE IMMEDIATELY PRECEDING 12-MONTH
13 PERIOD.

14 (12) ~~(11)~~—As a condition of continued employment, each
15 employee or independent contractor shall do both of the following:

16 (a) Agree in writing to report to the adult foster care
17 facility **OR STAFFING AGENCY** immediately upon being arraigned on 1
18 or more of the criminal offenses listed in subsection (1)(a) to
19 (g), upon being convicted of 1 or more of the criminal offenses
20 listed in subsection (1)(a) to (g), upon becoming the subject of an
21 order or disposition described under subsection (1)(h), and upon
22 becoming the subject of a substantiated finding described under
23 subsection (1)(i). Reporting of an arraignment under this
24 subdivision is not cause for termination or denial of employment.

25 (b) If a set of fingerprints is not already on file with the
26 department of state police, provide the department of state police
27 with a set of fingerprints.

1 (13) ~~(12)~~—In addition to sanctions set forth in this act, a
2 licensee, owner, administrator, or operator of an adult foster care
3 facility **OR STAFFING AGENCY** who knowingly and willfully fails to
4 conduct the criminal history checks as required under this section
5 is guilty of a misdemeanor punishable by imprisonment for not more
6 than 1 year or a fine of not more than \$5,000.00, or both.

7 (14) ~~(13)~~—In collaboration with the department of state
8 police, the department of ~~information~~ technology, **MANAGEMENT, AND**
9 **BUDGET** shall establish **AND MAINTAIN** an automated fingerprint
10 identification system database that would allow the department of
11 state police to store and maintain all fingerprints submitted under
12 this section and would provide for an automatic notification at the
13 time a subsequent criminal arrest fingerprint card submitted into
14 the system matches a set of fingerprints previously submitted ~~in~~
15 ~~accordance with~~ **UNDER** this section. Upon such notification, the
16 department of state police shall immediately notify the department
17 and the department shall immediately contact ~~the~~ **EACH** respective
18 adult foster care facility **OR STAFFING AGENCY** with which that
19 individual is associated. Information in the database established
20 under this subsection is confidential, is not subject to disclosure
21 under the freedom of information act, 1976 PA 442, MCL 15.231 to
22 15.246, and shall not be disclosed to any person except for
23 purposes of this act or for law enforcement purposes.

24 (15) ~~(14)~~—If an individual independently contracts with an
25 adult foster care facility, subsections (1) and (2) do not apply if
26 **THE INDIVIDUAL IS NOT UNDER THE ADULT FOSTER CARE FACILITY'S**
27 **CONTROL AND** the contractual work performed by the individual is not

1 directly related to the clinical, health care, or personal services
2 delivered by the adult foster care facility or if the individual's
3 duties are not performed on an ongoing basis with direct access to
4 residents. This exception includes, but is not limited to, an
5 individual who independently contracts with the adult foster care
6 facility to provide utility, maintenance, construction, or
7 communication services.

8 (16) ~~(15) The department and the department of state police~~
9 shall maintain an electronic web-based system to assist the adult
10 foster care facilities **AND STAFFING AGENCIES** required to check
11 relevant registries and conduct criminal history checks of its
12 employees and independent contractors and to provide for an
13 automated notice to the adult foster care facilities **AND STAFFING**
14 **AGENCIES** for the individuals entered in the system who, since the
15 initial **CRIMINAL HISTORY** check, have been convicted of a
16 disqualifying offense or have been the subject of a substantiated
17 finding of abuse, neglect, or misappropriation of property. **THE**
18 **DEPARTMENT MAY CHARGE A STAFFING AGENCY A 1-TIME SET-UP FEE OF UP**
19 **TO \$100.00 FOR ACCESS TO THE ELECTRONIC WEB-BASED SYSTEM UNDER THIS**
20 **SECTION.**

21 ~~— (16) The department shall submit to the legislature not later~~
22 ~~than April 1, 2009 a written report regarding the department's plan~~
23 ~~to continue performing criminal history checks if adequate federal~~
24 ~~funding is not available to continue performing future criminal~~
25 ~~history checks.~~

26 (17) An adult foster care facility, **STAFFING AGENCY**, or a
27 prospective employee covered under this section may not be charged

1 for the cost of ~~an initial~~ A criminal history check required under
2 this act.

3 (18) As used in this section:

4 (A) "CONVICTED" MEANS EITHER OF THE FOLLOWING:

5 (i) FOR A CRIME THAT IS NOT A RELEVANT CRIME, A FINAL
6 CONVICTION, THE PAYMENT OF A FINE, A PLEA OF GUILTY OR NOLO
7 CONTENDERE IF ACCEPTED BY THE COURT, OR A FINDING OF GUILT FOR A
8 CRIMINAL LAW VIOLATION OR A JUVENILE ADJUDICATION OR DISPOSITION BY
9 THE JUVENILE DIVISION OF PROBATE COURT OR FAMILY DIVISION OF
10 CIRCUIT COURT FOR A VIOLATION THAT IF COMMITTED BY AN ADULT WOULD
11 BE A CRIME.

12 (ii) FOR A RELEVANT CRIME DESCRIBED UNDER 42 USC 1320A-7(A),
13 CONVICTED MEANS THAT TERM AS DEFINED IN 42 USC 1320A-7.

14 (B) "COVERED HEALTH FACILITY" MEANS A NURSING HOME, COUNTY
15 MEDICAL CARE FACILITY, HOSPICE, HOSPITAL THAT PROVIDES SWING BED
16 SERVICES, HOME FOR THE AGED, OR HOME HEALTH AGENCY LICENSED UNDER
17 ARTICLE 17 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20101 TO
18 333.22260.

19 (C) "CRIMINAL HISTORY CHECK CONDUCTED IN COMPLIANCE WITH THIS
20 SECTION" INCLUDES A CRIMINAL HISTORY CHECK CONDUCTED UNDER THIS
21 SECTION, UNDER SECTION 134A OF THE MENTAL HEALTH CODE, 1974 PA 258,
22 MCL 330.1134A, OR UNDER SECTION 20173A OF THE PUBLIC HEALTH CODE,
23 1978 PA 368, MCL 333.20173A.

24 (D) ~~(a)~~—"Direct access" means access to a resident or
25 resident's property, financial information, medical records,
26 treatment information, or any other identifying information.

27 ~~(b) "Health facility or agency" means a health facility or~~

1 ~~agency as defined in section 20106 of the public health code, 1978~~
2 ~~PA 368, MCL 333.20106.~~

3 (E) "HOME HEALTH AGENCY" MEANS THAT TERM AS DEFINED IN SECTION
4 20173A OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20173A.

5 (F) ~~(e)~~-"Independent contract" means a contract entered into
6 by an adult foster care facility with an individual who provides
7 the contracted services independently or a contract entered into by
8 an adult foster care facility with ~~an organization or~~ A STAFFING
9 agency that ~~employs or contracts with an individual after complying~~
10 COMPLIES with the requirements of this section to provide the
11 contracted services to the adult foster care facility on behalf of
12 the ~~organization or~~ STAFFING agency.

13 (G) "MENTAL HEALTH FACILITY" MEANS A PSYCHIATRIC FACILITY OR
14 INTERMEDIATE CARE FACILITY FOR PEOPLE WITH MENTAL RETARDATION UNDER
15 THE MENTAL HEALTH CODE, 1974 PA 258, MCL 330.1001 TO 330.2106.

16 (H) "STAFFING AGENCY" MEANS AN ENTITY THAT RECRUITS CANDIDATES
17 AND PROVIDES TEMPORARY AND PERMANENT QUALIFIED STAFFING FOR ADULT
18 FOSTER CARE FACILITIES, INCLUDING INDEPENDENT CONTRACTORS.

19 (I) ~~(d)~~-"Title XIX" means title XIX of the social security
20 act, 42 USC 1396 to ~~1396v~~-1396W-5.

21 (J) "UNDER THE ADULT FOSTER CARE FACILITY'S CONTROL" MEANS AN
22 INDIVIDUAL EMPLOYED BY OR UNDER INDEPENDENT CONTRACT WITH AN ADULT
23 FOSTER CARE FACILITY FOR WHOM THE ADULT FOSTER CARE FACILITY DOES
24 BOTH OF THE FOLLOWING:

25 (i) DETERMINES WHETHER THE INDIVIDUAL WHO HAS ACCESS TO
26 RESIDENTS MAY PROVIDE CARE, TREATMENT, OR OTHER SIMILAR SUPPORT
27 SERVICE FUNCTIONS TO RESIDENTS SERVED BY THE ADULT FOSTER CARE

1 FACILITY.

2 (ii) DIRECTS OR OVERSEES 1 OR MORE OF THE FOLLOWING:

3 (A) THE POLICY OR PROCEDURES THE INDIVIDUAL MUST FOLLOW IN
4 PERFORMING HIS OR HER DUTIES.

5 (B) THE TASKS PERFORMED BY THE INDIVIDUAL.

6 (C) THE INDIVIDUAL'S WORK SCHEDULE.

7 (D) THE SUPERVISION OR EVALUATION OF THE INDIVIDUAL'S WORK OR
8 JOB PERFORMANCE, INCLUDING IMPOSING DISCIPLINE OR GRANTING
9 PERFORMANCE AWARDS.

10 (E) THE COMPENSATION THE INDIVIDUAL RECEIVES FOR PERFORMING
11 HIS OR HER DUTIES.

12 (F) THE CONDITIONS UNDER WHICH THE INDIVIDUAL PERFORMS HIS OR
13 HER DUTIES.

14 Enacting section 1. This amendatory act does not take effect
15 unless all of the following bills of the 95th Legislature are
16 enacted into law:

17 (a) Senate Bill No. 1253.

18 (b) Senate Bill No. 1255.