

Legislative Analysis



CRIMINAL HISTORY CHECKS FOR EMPLOYEES AND VOLUNTEERS AT LOCAL AREA AGENCIES ON AGING

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House Bill 4325 (H-1) as reported from committee

Sponsor: Rep. Matt Hall

Committee: Families, Children and Seniors

Complete to 3-16-21

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 28 of 2021)

SUMMARY:

House Bill 4325 would amend the Older Michiganians Act to require each area agency on aging to have a criminal background check and a central registry criminal background check for each new employee, employee, subcontractor, subcontractor employee, and volunteer who has specified kinds of client contact or access to client information..

Criminal background checks

Beginning October 1, 2020, each area agency on aging would have to conduct or have conducted a criminal background check that reveals information substantially similar to that found on an internet criminal history access tool (ICHAT) check and a national and state sex offender registry check for each new employee, employee, subcontractor, subcontractor employee, or volunteer who has in-person client contact, in-home client contact, access to a client's personal property, or access to confidential client information.

A criminal background check for a new hire or new volunteer would have to be completed before the individual begins working directly with a client or has access to a client's personal property or confidential information. Each agency would have to update the background checks every three years.

An employee hired or volunteer who started before October 1, 2020, would have to be screened within 90 days after the effective date of the bill unless the agency conducted a background check on the individual on or after October 1, 2020, that meets the requirements of the bill. After that, a criminal background check would have to be completed by 30 days after every third anniversary from the date of the employee's or volunteer's last background check.

An updated criminal background check for each employee who was hired, or volunteer who started, on or after October 1, 2020, would have to be completed by 30 days after every third anniversary of the employee's date of hire or volunteer's start date.

Use and maintenance of information

Information obtained from a criminal background check could be used only to determine suitability for employment or volunteer opportunities.

Each area agency on aging would have to maintain a copy of the results of each criminal background check for paid and volunteer staff in a confidential and controlled access file. The information could not be used in violation of applicable federal or state equal employment opportunity law or regulations.

Each agency would have to maintain documentation of all criminal background checks, including a list of all paid and volunteer staff who are subject to the bill's requirements, the date of the most recently completed criminal background check, and the source of the criminal background check.

Results of the background check

An employee or volunteer could not be allowed to work directly with a client or have access to a client's personal property or confidential information if the results of the criminal background check showed that he or she had one or more of the following:

- A federal or state felony conviction related to one or more of the following crimes:
 - A crime against a vulnerable adult as set forth in chapter 10A of the Michigan Penal Code.
 - A violent crime such as murder, manslaughter, kidnapping, arson, assault, battery, or domestic violence.
 - A financial crime such as fraud, forgery, counterfeiting, embezzlement, or tax evasion.
 - A sex crime such as rape, sexual abuse, criminal sexual conduct, or prostitution.
 - Cruelty or torture.
 - Abuse or neglect.
 - A felony involving the use of a firearm or dangerous weapon.
- A federal or state felony conviction within the preceding 10 years, including any of the following:
 - A crime involving a state, federal, or local government assistance program.
 - A theft crime such as larceny, burglary, robbery, extortion, false pretenses, false representation, or conversion.
 - A drug crime such as possession, delivery, or manufacturing.
- A federal or state misdemeanor conviction within the preceding five years, including any of the following:
 - A crime involving a state, federal, or local government assistance program.
 - A crime against a vulnerable adult as set forth in chapter 10A of the Michigan Penal Code.
 - A financial crime such as fraud, forgery, counterfeiting, embezzlement, or tax evasion.
 - A sex crime such as rape, sexual abuse, criminal sexual conduct, or prostitution.
 - A drug crime such as possession, delivery, or manufacturing.
 - Cruelty or torture.
 - Abuse or neglect.
 - Home invasion.
 - Assault or battery.
 - A misdemeanor involving using a firearm or dangerous weapon with intent to injure, using a firearm or dangerous weapon that results in a personal injury, or using force or violence or the threat of force or violence.

An individual would be considered to have been convicted of a criminal offense if any of the following apply:

- A judgment of conviction has been entered against the individual by a federal, state, tribal, or local court, regardless of whether there is an appeal pending.

- There has been a finding of guilt against the individual by a federal, state, tribal, or local court.
- A plea of guilty or nolo contendere by the individual has been accepted by a federal, state, tribal, or local court.

An arrest record alone would not disqualify an individual from employment with or volunteering at an area agency on aging.

The bill provides that it is intended to be retroactive and would apply retroactively beginning October 1, 2020.

MCL 400.581 et seq.

FISCAL IMPACT:

House Bill 4325 would reinforce the fiscal impact on the state Aging and Adult Services Agency in the Department of Health and Human Services (DHHS) and local area agencies on aging (AAAs) statewide of stricter uniform operating standards for criminal background checks for AAAs, which went into effect on October 1, 2020. The bill would codify stricter standards approved in August 2020 by the State Commission on Services to the Aging, which were prompted by an October 2019 state audit. The result of the commission's action is that DHHS and some AAAs may have increased costs, while other AAAs may not experience any change in costs.

State costs include field staff assessments of AAAs, and local costs include background checks, documentation and records, review, and monitoring. A fingerprint-based criminal history background check currently costs \$43.25 (\$30 for the Michigan State Police state-level check and \$13.25 for the Federal Bureau of Investigation federal-level check). Non-fingerprint background checks can be conducted without charge through the publicly accessible ICHAT and other registries.

The state's 16 AAAs are funded from state, federal, local, and other funds. In Fiscal Year 2018-19, \$436.7 million of expenditures were made by AAAs for direct and contractual and/or subcontractual services to seniors and administration.

POSITIONS:

A representative of the Aging and Adult Services Agency in the Department of Health and Human Services testified in support of the bill. (3-2-21)

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