CRIMINAL BACKGROUND CHECK PROVISIONS

Public Health Code (HB 5168 and SB 621), Adult Foster Care Licensing Act (HB 5166 and SB 622), and Mental Health Code (HB 5448)

Sections	Issue	HBs 5168, 5166, and 5448	SBs 621 and 622	Comments
333.20173A 400.734B 330.134A	Disqualifying Crimes and Conditions	Felony or attempt or conspiracy to commit a felony unless, before the date of application for employment or clinical privileges or execution of an independent contract, 15 years have passed since the individual has completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction. Misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft or a misdemeanor under Part 74 of the Public Health Code (drug violations) within the 10 years immediately preceding the date of application for employment or clinical privileges or execution of an independent contract. An offense listed under R 400.1152 of the Michigan Administrative Code. (Applies to AFC facilities only.) A relevant crime described under 42 USC 1320A-7. The individual has been the subject of a substantiated finding of neglect, abuse, or misappropriation of property by the Department of Human Services under an investigation conducted in accordance with 42 USC 1395I-3 or 1396R. The individual is the subject of an order or disposition under section 16b of Chapter IX of the Code of Criminal Procedure [found not guilty by reason of insanity.	Felony or attempt or conspiracy to commit a felony unless, before the date of application for employment or clinical privileges or execution of an independent contract, 15 years have passed since the individual has completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction. Misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft or a misdemeanor under Part 74 of the Public Health Code (drug violations) within the 10 years immediately preceding the date of application for employment or clinical privileges or execution of an independent contract. An offense listed under R 400.1152 of the Michigan Administrative Code. (Applies to AFC facilities only.) A relevant crime described under 42 USC 1320A-7. The individual has been the subject of a substantiated finding of neglect, abuse, or misappropriation of property by the Department of Human Services under an investigation conducted in accordance with 42 USC 1395I-3 or 1396R. The individual is the subject of an order or disposition under section 16b of Chapter IX of the Code of Criminal Procedure [found not guilty by reason of insanity.	The disqualifying crimes in the House and Senate bills are the same. The substitutes tiers the disqualifying crimes in order to recognize rehabilitation (versus the House version which allowed on a case-by-case basis to an appeal board and the Senate version which did not recognize it). Under the substitutes the disqualifying crimes are as follows: A relevant crime described under 42 USC 1320A-7. The following felonies for 15 years after all terms of sentencing, parole, and probation are completed: - A felony involving the intent to cause death or serious impairment of body function, that results in death or serious impairment of body function, that involves the use of force or violence, or that involves the threat of the use of force or violence. - A felony involving cruelty or torture. - A felony against a

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				vulnerable adult. - A felony involving criminal sexual conduct. - A felony involving abuse or neglect. - A felony involving the use of a firearm or dangerous weapon. - A felony involving the diversion or adulteration of a prescription drug or other medications. A felony or an attempt or conspiracy to commit a felony other than those already identified for a period of 10 years following the completion of all terms of sentencing, parole, and probation. One of the following misdemeanors for a 10-year look-back from the date of application for employment: - A misdemeanor involving the use of a firearm or dangerous weapon with the intent to injure, that results in a personal injury, or that involves the use of force or violence or the threat of force or violence. - A misdemeanor involving a crime against a vulnerable adult. - A misdemeanor

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				involving cruelty or torture. - A misdemeanor involving abuse or neglect. One of the following misdemeanors for a 5-year look-back period: - A misdemeanor involving cruelty if committed before age 16. - A misdemeanor involving home invasion. - A misdemeanor involving embezzlement. - A misdemeanor involving negligent homicide. -A misdemeanor involving larceny. - A misdemeanor involving retail fraud in the 2nd degree. - A misdemeanor that is not otherwise identified involving assault, fraud, or theft, or possession or distribution of a controlled substance. One of the following misdemeanors for a 3 year look-back period: - A misdemeanor for assault if there is no firearm or dangerous weapon and no intent to murder or inflict great bodily injury. - A misdemeanor of retail

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				fraud in the 3rd degree. - A misdemeanor under Part 74. One of the following misdemeanors for a 1 year look-back period: - A misdemeanor under Part 74 if committed by a person under age 18. - A misdemeanor for larceny or retail fraud in the 2nd or 3rd degree if committed by a person under the age of 16. The individual is the subject of an order or disposition under section 16b of Chapter IX of the Code of Criminal Procedure [found not guilty by reason of insanity. The individual has been the subject of a substantiated finding of neglect, abuse, or misappropriation of property by the Department of Human Services under an investigation conducted in accordance with 42 USC 1395I-3 or 1396R.
333.20173A 330.134A	Hiring Limitations	Prohibits a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged,	Prohibits a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged,	Same

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		home health agency, psychiatric facility, or intermediate care facility for people with mental retardation from hiring, contracting with, or granting privileges to an individual who regularly has direct access to or provides direct care to patients or residents if the individual has been convicted of one of the above disqualifying crimes or conditions.	home health agency, psychiatric facility, or intermediate care facility for people with mental retardation from hiring, contracting with, or granting privileges to an individual who regularly has direct access to or provides direct care to patients or residents if the individual has been convicted of one of the above disqualifying crimes or conditions.	
400.734B		Prohibits an adult foster care facility from employing or independently contracting with an individual who regularly has direct access to or provides direct care to a resident if the individual has been convicted of one of the above disqualifying crimes or conditions.	Prohibits an adult foster care facility from employing or independently contracting with an individual who regularly provides direct care to a resident if the individual has been convicted of one of the above disqualifying crimes or conditions.	Will include "has direct access to" in SB 622 in order to make consistent with the other bills.
333.20173A 400.734B 330.134A	Background Check Requirement	Facilities are required to request that the State Police conduct a criminal history check on any potential employees to whom they have made a good faith offer of employment or independent contract before they can employ or contract with such employees.	Facilities are required to request that the State Police conduct a criminal history check on any potential employees to whom they have made a good faith offer of employment or independent contract before they can employ or contract with such employees.	Conceptually the same, but there are some technical language differences. Will use language in SB 621 and make sure other bills conform to that language.
		Facilities are required to request that the Department run a check of all relevant registries established pursuant to federal regulations for any substantiated findings of abuse, neglect, or misappropriation of property.	Facilities are required to request that the Department run a check of all relevant registries established pursuant to federal and state law and regulations.	Use Senate language that includes federal "laws" and state laws and regulations. Include House reference to "substantiated findings of abuse, neglect, or misappropriation of property."
333.20173A 400.734B 330.134A	Grandfather Provision	Grandfathers employees employed or under contract before the act's effective date; however, if a current employee commits one of the crimes that would prohibit him or her from working in a facility, he or she is subject to the requirements of the act and	Grandfathers employees employed or under contract before the act's effective date; however, if a current employee commits one of the crimes that would prohibit him or her from working in a facility, he or she is subject to the requirements of the act and	Same, with some technical language differences. Will use language in SB 621 and make sure other bills conform to that language. Will also clarify that

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		can be denied employment. Additionally, a criminal history check will be done if an employee transfers to another facility; however, he or she is still grandfathered unless it is found that he or she committed a prohibited offense subsequent to the act's effective date. If it is discovered that he or she was convicted of a relevant crime under 42 USC 1320A-7 or was the subject of a substantiated finding of neglect, abuse, or misappropriation of property, he or she loses his or her grandfathering and cannot be employed.	can be denied employment. Additionally, a criminal history check will be done if an employee transfers to another facility; however, he or she is still grandfathered unless it is found that he or she committed a prohibited offense subsequent to the act's effective date. If it is discovered that he or she was convicted of a relevant crime under 42 USC 1320A-7 or was the subject of a substantiated finding of neglect, abuse, or misappropriation of property, he or she loses his or her grandfathering and cannot be employed. Employees employed before the act's effective date have 24 months to submit their fingerprints to the State Police for the State Police to input into the automated fingerprint identification system database.	employees transferring within facilities under the same ownership only have to submit fingerprints. Employees leaving and going to a new facility, not under the same ownership, will have to undergo the full background check. In both situations, the employees retain their exempt status unless they have subsequently committed a disqualifying crime or have committed a relevant crime. Retain Senate wrap-back provision.
333.20173A 400.734B 330.134A	Exempt Persons	Criminal history check provisions do not apply to an individual who is an independent contractor with an afore-mentioned facility if the services for which he or she is contracted are not directly related to the provision of services to a patient or resident or do allow for direct access to patients or residents but are not performed on an ongoing basis.	Criminal history check provisions do not apply to an individual who is an independent contractor with an afore-mentioned facility if the work for which he or she is contracted is not directly related to the provision of services to a patient or resident or does allow for direct access to patients or residents but is not performed on an ongoing basis.	Same (use "services" instead of "work")
333.20173A 400.734B 330.134A	Requirements of Individuals receiving Good Faith Offers of Employment	Requires an individual who has received a good faith offer of employment or independent contract to provide written consent for a criminal history check, as well as providing appropriate identification.	Requires an individual who has received a good faith offer of employment or independent contract to provide written consent for a criminal history check, as well as providing appropriate identification.	Same

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333.20173A 400.734B 330.134A	State Police Requirements	Requires the State Police to forward the individual's finger prints to the Federal Bureau of Investigation (FBI) for a national criminal history check and to provide the Department with a written report of the check.	Requires the State Police to forward the individual's finger prints to the Federal Bureau of Investigation (FBI) for a national criminal history check and to provide the Department with a written report of the check.	Same
333.20173A 400.734B 330.134A	Department Requirements	Department is to notify the requesting facility or agency and applicant of the type of crime disclosed on the FBI determination without disclosing the details of the crime. The Department's notification must also include a statement that the applicant has a right to appeal a decision made based on the criminal background check.	Department is to notify the requesting facility or agency and applicant of the type of crime disclosed on the FBI determination without disclosing the details of the crime. The Department's notification must also include a statement that the applicant has a right to appeal a decision made based on the criminal background check.	Same
333.20173A 400.734B 330.134A	Cost	Provides that the charge to run the check shall be paid by or reimbursed by the Department with Medicaid and Medicare funding as appropriate and prohibits the facility from seeking reimbursement from the individual who is the subject of the check.	Provides that if a fee is charged, the charge is to be paid by or reimbursed by the Department with federal funds that are provided to implement the pilot program. Prohibits the facility from seeking reimbursement from the individual who is the subject of the check. Prohibits a facility, prospective employee, or prospective independent contractor from being charge for the cost of an initial required check.	Use Senate language.
333.20173A 400.734B 330.134A	Conditional Employment	Allows for conditional employment while awaiting the results of the background check if certain conditions are met such as the individual stating in writing that he or she has not been convicted of a crime that would prohibit him or her from being employed.	Allows for conditional employment while awaiting the results of the background check if certain conditions are met such as the individual stating in writing that he or she has not been convicted of a crime that would prohibit him or her from being employed.	Same
333.20173A 400.734B 330.134A	Penalties for Potential Hires	A conditionally employed individual who knowingly provides false information is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine on not more than $500.00, or both.	A conditionally employed individual who knowingly provides false information is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine on not more than $500.00, or both.	Senate also includes "false information concerning his or her identity." Use Senate language.

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333.20173A 400.734B 330.134A	Penalties for Employers	Includes provisions that regulate how the background check information may or may not be used by the adult foster care facility and provides for a misdemeanor penalty if an individual violates the act regarding the use or dissemination of that information and allows the injured party to bring a civil cause of action against that individual. Provides that a facility that knowingly and willfully fails to conduct a background check is guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than $5,000.00, or both.	Includes provisions that regulate how the background check information may or may not be used by the adult foster care facility. Provides that a facility that knowingly and willfully fails to conduct a background check is guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than $5,000.00, or both, and can be subject to civil liability for personal injury or death of another resident caused by someone who would not have been employed if a check had been conducted.	Senate does not include the penalty provision for unlawful release of information. Also, in the provision that allows for a facility to release information to another facility, the Senate does not require the consent of the applicant. Senate includes civil liability language. Use House language regarding penalty and consent. Delete civil cause of action language in House Bill. Delete Senate civil liability language.
333.20173A 400.734B 330.134A	Self-Reporting Requirements	Requires an employee or independent contractor to self-report if they are convicted of a crime or are the subject of a substantiated finding of neglect, abuse, or misappropriation of property that would prohibit them from being employed.	Requires an employee or independent contractor to self-report if they are arraigned for or convicted of a crime or are the subject of a substantiated finding of neglect, abuse, or misappropriation of property that would prohibit them from being employed. Also, they must agree to provide State Police with a set of fingerprints.	Senate language includes arraignment and fingerprints. Use Senate language.
333.20173A 400.734B 330.134A	Automated Fingerprint Database		Requires the establishment of an automated fingerprint identification system database to enable the State Police to store and maintain all fingerprints submitted for the purpose of the required background checks and to provide for automatic notification if a subsequent criminal arrest fingerprint card matches one already in the database. If a match is made, the State Police must notify the Department and the Department must contact the health facility with which the individual is associated.	Retain Senate language. Include language to clarify that the information in the database is not subject to FOIA.

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333.20173A 400.734B 330.134A	Written Report/Plan	Requires a written report to the Legislature within one year after the bill's effective date. Requires the Department, within three years, to submit to the Legislature their plan for continuing the background checks if federal funding is not adequate to continue the checks.	Requires a written report to the Legislature within one year after the bill's effective date. Requires the Department, within three years, to submit to the Legislature their plan for continuing the background checks if federal funding is not adequate to continue the checks.	Same Same Add language to require a report on the appeals process.
333.20173A 400.734B 330.134A	Definitions	Defines "direct access" to mean "access to a resident or resident's property, financial information, medical records, treatment information, or any other identifying information."	Defines "direct access" to mean "access to a resident or resident's property, financial information, medical records, treatment information, or any other identifying information."	Same
333.20173B 400.734C	Appeals	Requires the Department of Community Health to establish an employment eligibility appeal board, specifies membership and duties of the board, and requires the Department to promulgate rules.	Allows for appeal to the Department if the individual believes the criminal history report is inaccurate or if the individual's conviction will be expunged or set aside. Appeal is to the Director of the Department with regulatory authority over the facility in which the applicant is seeking employment.	Major item of difference between the two Chambers. The House language sets up a new appeal board, while the Senate requires the appeal go to the Department Director. Both bills allow individual's to appeal if there is a dispute regarding the accuracy of the criminal background information. However, the House language allows some individuals to appeal, prove that they have been rehabilitated, and be given the opportunity to work even though they committed a disqualifying crime. The Senate language also allows an individual to appeal if his or her conviction is

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				expunged or set aside. The substitutes will have an appeal process that goes to the Director, is conducted pursuant to the Administrative Procedures Act, and is limited to considering the accuracy of the criminal background check information and whether the person's conviction is expunged or set aside. The issue of rehabilitation is addressed in Sec. 20173A (1) by tiering the list of qualifying crimes and establishing limits on the number of years that prevent a person from being employed in these facilities based on the such factors as the seriousness of the crime, age the crime was committed, etc. According to the CMS contact, this approach is an allowable method of incorporating rehabilitation into our statute.
Enacting Section 1	Repeal Language	Repeals current law effective 60 days after the Department secures the necessary waiver and files a written notice with the Secretary of State.	Repeals current law effective 60 days after the Department secures the necessary waiver and files a written notice with the Secretary of State.	Same

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Enacting Section 1	Effective Dates	Provides that the criminal background check provisions take effect 60 days after the Department secures the necessary waiver(s) to utilize federal funds to reimburse facilities for the costs incurred for the FBI background check and files a written notice with the Secretary of State that federal approval has been secured. Provides that the appeal board/appeal process provisions of the bill take effect immediately.	Provides that the criminal background check provisions take effect 60 days after the Department secures the necessary waiver(s) to utilize federal funds to reimburse facilities for the costs incurred for the FBI background check and files a written notice with the Secretary of State that federal approval has been secured. Provides that the appeal board/appeal process provisions of the bill take effect immediately.	Same Same
Enacting Section 1	Tie Bars		House Bills 5168 and 5448 and Senate Bills 621 and 622 are tie-barred.	House bills do not include tie-bars. Tie-bars are included in the substitutes.