

OLDER MICHIGANIANS ACT (EXCERPT)
Act 180 of 1981

400.586/ Criminal background check; employees, subcontractors, and volunteers; use of information; maintenance of documents; retroactive applicability.

Sec. 6l. (1) Beginning October 1, 2020, each area agency on aging must conduct or cause to be conducted a criminal background check that reveals information similar or substantially similar to information 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.

(2) A criminal background check for a new hire or new volunteer must be completed before the individual begins working directly with a client or has access to a client's personal property or confidential client information.

(3) Each area agency on aging must update criminal background checks for all employees and volunteers every 3 years to identify a conviction in the event a conviction occurs while an individual is employed or providing volunteer service.

(4) An employee hired before or a volunteer who started volunteering before October 1, 2020 must be screened within 90 days after the effective date of the amendatory act that added this section, unless the area agency on aging has conducted a criminal background check on the employee or volunteer that meets the requirements of a criminal background check described in this section on or after October 1, 2020. After that, a criminal background check for each employee and volunteer must be completed no later than 30 days after every third anniversary from the date of his or her last background check.

(5) An updated criminal background check for each employee hired on or after or volunteer who started volunteering on or after October 1, 2020 must be completed no later than 30 days after every third anniversary of the employee's date of hire or volunteer's start date.

(6) Information obtained from a criminal background check shall only be used to determine suitability for employment or volunteer opportunities. Each area agency on aging is required 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 must not be used in violation of applicable federal or state equal employment opportunity law or regulation.

(7) An employee or volunteer must not be permitted to work directly with a client or have access to a client's personal property or confidential client information if 1 or more of the following apply:

(a) The results of the criminal background check show that the individual has a federal or state felony conviction related to 1 or more of the following crimes:

(i) A crime against a vulnerable adult as set forth in chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(ii) A violent crime including, but not limited to, murder, manslaughter, kidnapping, arson, assault, battery, or domestic violence.

(iii) A financial crime including, but not limited to, fraud, forgery, counterfeiting, embezzlement, or tax evasion.

(iv) A sex crime including, but not limited to, rape, sexual abuse, criminal sexual conduct, or prostitution.

(v) Cruelty or torture.

(vi) Abuse or neglect.

(vii) Felony involving the use of a firearm or dangerous weapon.

(b) The results of the criminal background check show that the individual has a federal or state felony conviction within the preceding 10 years from the date of the criminal background check, including, but not limited to, 1 or more of the following:

(i) A crime involving a state, federal, or local government assistance program.

(ii) A theft crime including, but not limited to, larceny, burglary, robbery, extortion, false pretenses, false representation, or conversion.

(iii) A drug crime including, but not limited to, possession, delivery, or manufacturing.

(c) The results of the criminal background check show that the individual has a federal or state misdemeanor conviction within the preceding 5 years from the date of the criminal background check, including, but not limited to, 1 or more of the following:

(i) A crime involving a state, federal, or local government assistance program.

(ii) A crime against a vulnerable adult as set forth in chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(iii) A financial crime including, but not limited to, fraud, forgery, counterfeiting, embezzlement, or tax evasion.

(iv) A theft crime including, but not limited to, larceny, burglary, robbery, extortion, false pretenses, false representation, or conversion.

(v) A sex crime including, but not limited to, rape, sexual abuse, criminal sexual conduct, or prostitution.

(vi) A drug crime including, but not limited to, possession, delivery, or manufacturing.

(vii) Cruelty or torture.

(viii) Abuse or neglect.

(ix) Home invasion.

(x) Assault or battery.

(xi) 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 using force or violence.

(8) For the purposes of the excluded offenses identified in subsection (7), an individual is considered to have been convicted of a criminal offense if 1 of the following occurs:

(a) 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.

(b) There has been a finding of guilt against the individual by a federal, state, tribal, or local court.

(c) A plea of guilty or nolo contendere by the individual has been accepted by a federal, state, tribal, or local court.

(9) An arrest record alone does not disqualify an individual from employment with or volunteering at an area agency on aging.

(10) Each area agency on aging is required to maintain documentation of all criminal background checks, including a list of all paid and volunteer staff that are subject to this section, the date of the most recently completed criminal background check, and the source of the criminal background check. An employee hired before October 1, 2020 is not exempt from the requirements of this section.

History: Add. 2021, Act 28, Eff. Mar. 30, 2022.

Compiler's note: Enacting section 1 of Act 28 of 2021 provides:

"Enacting section 1. This amendatory act is intended to be retroactive and applies retroactively beginning October 1, 2020."

For transfer of commission on services to the aging and powers and duties of the office of services to the aging from the aging and adult services agency to the department of health and human services, and abolishment of the aging and adult services agency, see E.R.O. No. 2021-2, compiled at MCL 400.562.