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EVALUATING THE EFFECTIVENESS AND BENEFIT-COST OF MICHIGAN BACKGROUND CHECK PROGRAM USING CRIME OPPORTUNITY THEORY

by

Judith Brown Clarke

A Dissertation
Submitted to the
Faculty of The Graduate College
in partial fulfillment of the
requirements for the
Degree of Doctor of Philosophy
School of Public Affairs and Administration
Dr. Robert Peters, Advisor

Western Michigan University
Kalamazoo, Michigan
December 2007

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EVALUATING THE EFFECTIVENESS AND BENEFIT-COST
OF THE MICHIGAN BACKGROUND CHECK PROGRAM
USING CRIME OPPORTUNITY THEORY

Judith Brown Clarke, Ph.D.

Western Michigan University, 2007

Elderly persons in long-term care settings are exceptionally vulnerable to abuse, neglect, and exploitation necessitating special protective measures by criminal justice, social services, and health care agencies. In 2006, 28.6% of Michigan households with a family member in long-term care reported that person having experienced one or more forms of abuse including physical, caretaking, verbal, emotional, neglect, sexual, and exploitation (Post, 2006). Criminal justice agencies were scrambling to identify programs aimed at reducing elder abuse in long-term care. Michigan was selected as one of seven states designated as a federal pilot test site. As a result, the Michigan Background Check Program (MBCP), a comprehensive background checks system built on neo-nascent technology (informatics and networked data collection systems and repositories), promised to reduce crime by eliminating the *opportunity* for individuals with criminal and abusive histories.

Felson and Clarke (1998) argue that no crime can occur without the physical opportunity to carry it out. Thus, reducing crime opportunities will produce a positive change in criminal outcomes. The MBCP is an excellent example of an *opportunity-*

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reduction program that eliminates the capacity and access of inappropriate individuals to vulnerable individuals in long-term care settings.

To date, no research efforts have focused on the Crime Opportunity Theory and the benefit-cost savings gained from the reduction of those *opportunities* to protect vulnerable populations. The MBCP was effective in preventing *crime opportunities* and provided a positive benefits-cost savings of $204,271,800, which exceeded the total program costs of $3,689,908. This research shows how a modest reduction in crime can generate substantial economic benefits.

Findings from this research will assist in aiding federal and state policymakers in the development of better background investigation techniques for hiring practices in long-term care settings, as well as any settings that provide direct access to vulnerable populations. This research adds a foundation for continued research into patient safety and background check techniques.

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As with any study undertaken at this point in one's educational career, the input of others is often times more instrumental to the realization of the final product than one's own effort. This endeavor was no exception.

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Judith Brown Clarke

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TABLE OF CONTENTS

ACKNOWLEDGMENTS ii

LIST OF TABLES vii

LIST OF FIGURES viii

CHAPTER

I. INTRODUCTION 1

Background 1

Statement of the Problem 4

Crime Opportunity Theory 6

Michigan Program for Background Checks 7

Resulting New Michigan Legislation 9

Michigan Background Check Web-based System 10

Prior Criminal Records and Recidivism 11

Benefit-Cost Analysis 12

Purpose of the Study 13

Research Questions 14

Significance of the Study 14

Organization of the Dissertation 15

II. LITERATURE REVIEW 16

Essay 1: Maltreatment in Long-Term Care Settings and Public Policy Responses 17

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Table of Contents—Continued

CHAPTER

Defining Abuse, Neglect, and Exploitation 17

Abuse, Neglect, and Exploitation Theories 18

Defining Long-Term Care 22

Opportunity for Crime Theories 23

History of Policies and Funding for the Protection of Vulnerable Adults 28

Michigan Program for Background Checks 38

Implications for Public Policy and Practice 46

Essay 2: Recidivism Issues 47

Past Criminal History as a Predictor of Future Recidivism 48

The Costs of Crime and the Implications 51

Implications for Policy and Practice 57

III. METHODOLOGY 58

Overview of the Methods 58

Crime Literature and Data Sets 58

Theoretical Background on the Cost of Crime 59

Empirical Model for Estimating Costs of Crime 62

Hypotheses 64

H1 – Implementation of the MBCP Increases the Number of Applicants Eliminated With Disqualifying Criminal Backgrounds 64

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Table of Contents—Continued

CHAPTER

H2 – Implementation of the MBCP Reduces Opportunities for Abuse, Neglect, and Exploitation of Individuals Receiving Long-Term Care Services 65

H3 – There Are Cost-Savings Gained From the Reduction of Crime Opportunities 65

IV. RESULTS AND FINDINGS 66

Data Analysis 67

Assessing the Cost of Crime 70

Cost-Savings From Conditional Hires 71

Rates of Recidivism 72

Cost-Savings From the Reduction of Crime Opportunity 74

Undercount Data 74

Operational Cost of the MBCP 77

Summary 78

V. SUMMARY AND CONCLUSIONS 80

Discussion of Findings 80

H1 – Implementation of the MBCP Increases the Number of Applicants Eliminated With Disqualifying Criminal Backgrounds 80

H2 – Implementation of the MBCP Reduces Opportunities for Crime 81

H3 – There Are Cost-Savings Gained From the Reduction of Crime Opportunities 82

Outcome of Research Questions 83

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Table of Contents—Continued

CHAPTER

Strengths of the Research 83

Assumptions 84

Limitations of the Research 84

Implications for Future Research 85

REFERENCES 86

APPENDIX 92

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LIST OF TABLES

1. Numbers of Applicants Disqualified by Type of Disqualifying Crimes............ 69

2. Total Cost of Crime 70

3. Number of Individuals Excluded × Costs of Crime... 71

4. Conditional Hires Subsequently Disqualified and Replaced 72

5. Projected Michigan Recidivism Rates by Re-arrest Charge and Prior Charge 74

6. Cost of Recidivism by Felony Categories.. 75

7. Projecting Savings from Recidivism Crimes Prevented by the MBCP 76

8. Three-Year Program Costs for the MBCP 79

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LIST OF FIGURES

1. Flow Chart of the MBCP's Process and Results 68

2. Number of Applicants Withdrawing Application Prior to MBCP..................... 76

3. Number of Applicants Withdrawing Applications Prior to FBI Check............. 77

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CHAPTER I

INTRODUCTION

Background

Since the mid-1970s, there have been 36 cases of serial murder by nurses and other healthcare workers documented in the United States. Research shows that the healthcare industry has provided "victims" to more serial killers than all other professions combined; additionally the field attracts a disproportionately high number of people with pathological interest in life and death (Pyrek, 2003).

In 1987, Donald Harvey confessed to killing more than 80 people when he was working various jobs as a nursing assistant, housekeeper and autopsy assistant in various hospitals throughout Ohio and Kentucky. Each time that Harvey quit or was fired, he was able to immediately secure a new job in a different hospital without that employer conducting a background and/or reference check. Ultimately, he was convicted of 37 murders, and sentenced to four consecutive life sentences (Crime Library, 2007). If the subsequent hospitals had followed up with his previous places of employment, they would have learned that he was fired for patient abuse, maltreatment and/or neglect; or had quit before suspicion arose of his involvement in patient deaths.

In 1989, Richard Angelo, referred to as Long Island's *Angel of Death,* was an emergency medical technician and charge nurse; he continuously put himself into situations in which he could be a hero. For example, he would deliberately withhold life-

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saving medications causing the patient to become symptomatic; as a result, he would successfully reintroduce the medication and both the patient and their families would consider him to be a hero. Unfortunately for the patients, he was not very successful at reversing his actions nor was he interested in their recovery; rather, he was only interested in the positive attention he was receiving being the "hero" In the end, a jury convicted Angelo of two counts of second-degree murder, one count of second-degree manslaughter, one count of criminally negligent homicide, and six counts of assault. He was eventually determined guilty and sentenced to 61 years-to-life in prison (Kobilinsky, 2003).

In 2003, Charles Cullen confessed to police that he had killed between 30 to 40 people; and in a court of law, he pled guilty to 16 homicides. Over a 16-year period, Cullen worked in ten different healthcare facilities and was fired from half. At one point, he was fired and under active investigation for a suspicious death yet was able to immediately secure employment at a new facility because no background or reference checks were performed. Consequently, he continued to abuse and murder patients in this new facility (Arts and Entertainment Special Report, 2004).

In each of these examples, the perpetrators were able to move seamlessly from job to job without any coordinated background or reference checks process. This brought into question the effectiveness of the health care industry's hiring practices, specifically regarding safety in long-term care facilities. Following the Cullen case, Senators Kohl (D-Wis), Reid (D-Nev), and Grassley (R-Iowa) introduced the following bipartisan federal legislation, *Section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (PL 108-173)*, which directs the Secretary of Health

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and Human Services (DHHS) to spend $25 million to select up to 10 states to participate in a three-year pilot program to help identify efficient, effective, and economical procedures to conduct background checks on prospective employees of long-term care facilities with direct patient access (see Appendix).

The Centers for Medicare and Medicaid Services (CMS) in consultation with the Department of Justice had fiduciary responsibilities for the *Request for Proposal* (RFP) process. In July 2004, the CMS posted a RFP inviting up to ten states for consideration in the background check program's pilot project. The RFP encouraged state agencies to work collaboratively to develop one submission per state.

In response, the Michigan Department of Community Health (DCH), the Michigan Department of Human Services (DHS), and the Michigan State Police (MSP) partnered with Michigan State University to collaborate in the proposal submission. In October 2005, Michigan was one of seven states selected by CMS to participate in the pilot program and was awarded $5 million dollars for a three-year funding period (2005-2007) to develop and implement a comprehensive fingerprint-based background check system with supporting state legislation.

The original estimate of implementing a national background check program for all direct patient care, long-term care facilities exceeded $1 billion per year. The pilot design allows for the cost estimates of developing a comprehensive system and a benefit-cost analysis encompassing the costs saving from the prevention of abuse, neglect, and exploitation.

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Statement of the Problem

There is limited literature on abuse and neglect in long-term care settings related to prevalence, risk factors, and successful prevention measures; consequently, the majority of the baseline research available is from dated studies (Post, Heraux, & Weatherill, 2006). For the purposes of this research, only recent research relating to background checks processes form its foundation.

According to findings from the 2005 *Michigan Household Survey*, 26.8% of family members in long-term, direct patient care settings were victims of abuse during the last year including *Physical*—hitting, slapping, burning, or choking (4.7%); *Caretaking*—excessive use of restraints or medications (12.6%); *Verbal*—yelling, threatening, swearing, insults, or intimidation (12%); *Emotional*—isolating the elder or treating them like a child (13.6%); *Neglect*—failure to provide adequate food, water, or other care (16.2%); *Sexual*—inappropriate or unwanted touching or forced sex (.9%); and *Material Abuse (Exploitation)*—stealing or misuse of funds (9.2%) (Post et al., 2006). While these rates are at an alarming level, it is anticipated that they will increase in correlation with the growing elderly population, progressive medicine, and decreases in the qualified work force.

Examining strategies for reducing maltreatment is vital for the protection of patients, especially our most vulnerable populations that are under the constant care of others. They often have physical, cognitive, and functional impairments that make it difficult for them to defend themselves or report incidences. While maltreatment occurs in a variety of long-term care settings, the quality of care in nursing homes is of particular

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concern because past reports have demonstrated higher incident rates (Pillemer & Bachman-Prehn, 1991).

In 2001, the House Committee on Government Reform released a report that revealed high rates of abuse occurring in nursing homes. Over a two-year audit period, nearly one-third of all certified nursing facilities were cited for some type of abuse violation that had the potential to cause harm or had actually caused harm to a nursing home resident. Ten percent of the nursing homes were cited for abuse violations that caused actual harm to residents (Special Investigations Division, Committee on Government Reform, 2001). In 2002, a General Accounting Office (GAO) study estimated that almost 30% of the nation's 17,000 nursing homes were cited for incidents involving actual harm to residents or placing them at risk of death or serious injury (U.S. General Accounting Office, 2002).

In researching elder mistreatment, Pillemer and Finkelhor (1989) identified dependency and stress as one of the most significant causes of abuse and neglect. Additionally, a relationship was established between nursing home abuse and stressful workplace environments; including caregiver stress, total hours worked per patient, and staff-to-patient ratio. Michigan currently has a shortage of workers in nursing homes, which could result in an increase in incidences of abuse and neglect.

Over the next 25 years, the median age of the Michigan population will increase by 5 years and the numbers of dependent elders will double (Post, 2006). These findings, coupled with current labor shortages, indicate increases in the numbers of individuals receiving long-term care and therefore more individuals *at-risk* for abuse and/or neglect in long-term care settings (Post, 2006). The current rate of abuse, neglect, and

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exploitation in long-term care settings is significant and likely to increase over the next two decades without intervention.

To exacerbate the problem, Michigan's aging population and the shortage of health care workers creates increased pressure on long-term care facilities and providers to lower their standards when hiring new employees.

Crime Opportunity Theory

Felson and Clarke (1998) argue that *opportunity* is the root cause of crime, and that crime can be prevented (or at least minimized) by reducing the opportunity for it to occur. The theory of crime philosophy rests on the single principle that easy or tempting opportunities entice people (with criminal dispositions) into criminal actions. There are three subtheories in Crime Opportunity Theory:

1. *Routine Activity Theory* – A convergence in time and space of three minimal elements (a likely offender, a suitable target, and the absence of a capable guardian against the crime);
2. *Crime Pattern Theory* – Offenders search for crime targets around personal activity areas and the paths among them; and,
3. *Rational Choice Theory* – Offenders make crime choices driven by a particular motive with a specific setting, taking into account the benefits and risks of committing the offense.

Reducing the opportunity for crime (abuse, neglect, and exploitation) against vulnerable populations in long-term care settings is imperative. A comprehensive

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background check system is one of the means for preventing crime by reducing criminal access to vulnerable individuals that are easy targets.

Michigan Program for Background Checks

Prior to April 2006, Michigan law did not require all employees in long-term care settings with direct patient access, to undergo a criminal background check. Additionally, for those employees who were subject to background checks, there was no systematic process across multiple health and human service agencies to conduct the checks, disseminate the findings, or to follow through on the results. The complexity of the issue created voids and liabilities, which potentially put Michigan's most vulnerable population at risk (Post et al., 2006).

The previous criminal background check process was name-based only, with the exception of job applicants who reported not having lived in Michigan for the least three years (Office of Child and Adult Licensing, 2007). For most long-term care employees, or employees in general, background checks were conducted using the job applicant's name and other vital statistics through the Michigan Law Enforcement Information Network (LEIN) computerized informational database. The Michigan State Police (MSP) provides the Internet Criminal History Access Tool (ICHAT), which allows facilities with Internet capabilities instantaneous access to criminal history records of individuals convicted of a crime in Michigan. For each entry, the subject's full name, sex, race, and date of birth are required. The response provides all personal descriptors on-file, a list of crimes for which the subject has been convicted and all recorded data related to that conviction. This search

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only includes convictions recorded in Michigan, and does not include driving records, or convictions received in other states (MSP, 2006).

Previous to April 2006, fingerprint-based FBI criminal record checks were only required for new direct care employees, persons with clinical privileges, or independent contractors who had not lived in Michigan for at least three years prior to employment. For adult foster-care facilities licensed for six or fewer residents, a newly hired employee who had not lived in Michigan for at least three years, the facility must obtain a criminal background check from each state where the individual has lived over the last five years (OCAL, 2007). Legislation created an unfunded budget line for "grandfathering in" existing employees through the background check process; unfortunately, most agencies are unable to afford that suggestion.

In addition to long-term care facilities, Michigan law did not require all employees with direct access to our most vulnerable populations—terminal care patients, persons with disabilities, and those requiring long-term care services—to undergo a background check. Moreover, for those persons who were subject to a background check, there was no systematic process across the multiple health and human service agencies to conduct the checks, to disseminate findings, or to follow through on results.

Background checks from the Michigan State Police database (necessary only if a person lived in Michigan less than three years) were conducted on a name, not fingerprint, basis. After completion of the check, the MSP disseminates the "no-hit" result to the requesting facilities so that they may make their hiring determination for employment. If the MSP identified a disqualifying criminal record the findings were sent to the governing state agency (Michigan Department of Human Services or Michigan

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Department of Community Health) to make a determination of eligibility and to report the information to the requesting agency. The process could take up to 90 days and agencies were incredibly vulnerable awaiting the completion of the background checks, while their provisional hires had temporary employment and unrestricted access to patients. The training costs for provisional hires range from $1,000 to $3,000, which would double if applicants were dismissed for having a disqualifying criminal background and a replacement needed.

Prior to April 2006, the complexity of the issue, as well as dated mandates, created inconsistencies and potentially put one of the most vulnerable populations at risk. To exacerbate the problem, Michigan's aging population and shortage of health care workers creates an increased pressure on care providers to lower their standards when hiring new employees. An improved standardized system of background checks will help prevent unfit persons from caring for our most vulnerable people.

Resulting New Michigan Legislation

The Department of Health and Human Services' grant provided Michigan with the incentive and means to implement a comprehensive statewide background check procedure via the following steps. First, the scope of Michigan laws were expanded to include institutions excluded in prior acts (psychiatric hospitals, hospices, long-term care hospitals, and Intensive Care Facilities for the Mentally Retarded [ICF/MRs]) as they are agencies that work regularly with the elderly and disabled.

Secondly, the passing of bipartisan legislation which called for a comprehensive background check system that includes prohibited offenses, substantiated findings of

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abuse and neglect, full registry checks and fingerprints of all long-term care employment applicants. Finally, a due process section on was added to the laws that allow denied applicants an ability to appeal their denial. Currently, applicants are limited to appeal only on the basis of incorrect record or expungement of their records, not unfairness or rehabilitation.

Michigan Background Check Web-based System

The MPBC web-based background check system assists long-term care facilities to comply with the new state laws. The online system integrates existing criminal registries into a user-friendly interface that employers of health professionals working in long-term care facilities can utilize for conducting background checks on prospective employees. The system provides an electronic dashboard in which employers and state licensing agencies can monitor and track background checks electronically.

The web-based program simplifies and enables employers to conduct name-based registry checks in real time, generates fingerprint request forms, and also provides the ability to make appointments for fingerprinting. Applicants have their fingerprints scanned, which are then transmitted to the Michigan State Police to be run against the Automated Fingerprint Identification System (AFIS), and then forwarded to the FBI for an International Automated Fingerprint Identification System (IAFIS) check. If a criminal record is identified, the information is sent to the appropriate licensing agency for the submitting facility (Michigan Department of Community Health or Michigan Department of Human Services) and a departmental analyst will determine if the individual is to be excluded from long-term care employment in a licensed facility.

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Prior Criminal Records and Recidivism

Kurlychek (2004) examined whether after a given period of time, the risk of recidivism for an individual who has been arrested in the distant past is ever distinguishable from that of a population of individuals with no prior arrests. The investigation was predicated on two well-documented pieces of empirical evidence: (1) individuals who have offended in the past are relatively more likely to offend in the future, but (2) the risk of recidivism declines as the time since the last criminal act increases (Kurlychek, 2004).

Using hazard rates and posterior distribution analysis, Kurlychek found that immediately following an arrest, the knowledge (and risk) of this prior record does significantly differentiate this population from a population of non-offenders. However, these differences weaken dramatically and quickly over time so that an individual who offended six or seven years in the past looks very similar, in regards to risk of new offenses, to a person who has never offended (Kurlychek, 2004).

Individuals labeled "convicts" or "felons" assume a life-long stigma. They encounter a number of barriers when trying to obtain employment, acquire housing, meet licensing requirements, vote in elections; and have restricted access to public housing and other government aid programs (Kurlychek, 2004). Accepting Kurlychek's research, there will be individuals disqualified through the comprehensive background check system that are actually appropriate through rehabilitation and good behavior. As stated earlier, applicants are limited to appealing their employment disqualification on the basis of incorrect record or expungement of their records only, not on the fairness or the fact that

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they are rehabilitated. So, how does an individual move towards redemption when they cannot *earn* a fresh start?

A broad-based collaborative committee—including the Michigan Department of Community Health, Michigan Department of Human Services, the Michigan State Police, health-care industry member organizations, health-care worker unions, advocacy groups, legal aid, academic researchers, and others—was assembled to investigate, among other things, fairness. A fair appeal process was created that included quick administrative decisions, a formal board appeal, and a chance for an applicant to prove rehabilitation was a major priority.

Additionally, a consensus-based process was used to determine rules and priorities—(1) use Medicaid/Medicare funding so as to prevent an undue burden on small and low-income facilities, or on low paid job positions; (2) achieve a quick turn around of criminal background checks; (3) make fingerprinting services readily available, and (4) achieve full federal compliance with grant requirements.

Benefit-Cost Analysis

Benefit-cost analysis is one way of considering the impact of abuse, neglect, and exploitation (cost of crime) on individuals in long-term care settings. It is a difficult endeavor, largely because the level of knowledge and research in this area lags significantly behind other areas such as domestic violence, child abuse, or other types of social problems (Spencer, 1999). However, a description of the direct and indirect costs can help demonstrate the profound effects that maltreatment has not only on the victim

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but also the widespread implications for government, institutions, and the community as a whole.

Personnel selection has become a critical financial management issue in the healthcare industry. Careful personnel selection can eliminate or reduce the negative financial impacts of legal considerations, liability problems, hiring costs, patient safety, and crime. Inability to screen-out inappropriate employees can lead to the loss of reputation and trust, which would ultimately cause a reduction in an agency's market share and utilization in the community.

Benefit-cost analysis can also help guide public policy and aid in social understand. Putting a dollar value on crime can give us another dimension for understanding the impacts of complex social problem (Miller, Cohen, & Wiersema, 1996). A benefit-cost analysis presents an opportunity to assess the effects of policy decisions, to understand ways that society is responding to crime (abuse, neglect and exploitation), and to calculate what is currently being expended (or not expended) on the issue. This will give policymakers a better perspective and means of determining whether current direction should be continued, or whether a different approach is needed in the future (Spencer, 1999).

Purpose of the Study

The goal of the MBCP is to provide a comprehensive background check process that ensures applicants for direct-patient care access positions in long-term care settings are screened through a five-point registry process. The first purpose of this study is to determine whether the MBCP is effective in preventing crime opportunities that may lead

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to maltreatment (abuse, neglect, and/or exploitation). Secondly, this study will quantify the economic efficiency of the program by examining the benefit-cost savings gained from the prevention. Thirdly, the MBCP will be examined to determine if it is more effective in eliminated applicants with disqualifying backgrounds and reducing crime opportunities that the prior system. Finally, the study will determine if the MBCP is economically efficient, this is when the benefits exceed the cost of the program

Research Questions

The study addresses the following research questions in order to accomplish the purpose of the study:

RQ 1 – Is the Michigan Background Checks Program effective in preventing crime opportunities?

RQ 2 – Is there a benefit-cost associated with the prevention of these crime opportunities?

Significance of the Study

This dissertation provides specific insights for state and federal policymakers regarding the effectiveness and benefit-cost of the Michigan Background Check Program. The research examines the program's implementation and provides an outcome analysis that measures whether the program achieved the intended outcomes. Through participation in the federal pilot study, Michigan is in the position to influence national policy regarding a national background check system.

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Organization of the Dissertation

The dissertation is divided into five major chapters. Chapter I contains an overview of the issues, statement of the problem, and the purpose/significance of the study. Chapter II provides the following two essays on (1) maltreatment in long-term care settings and public policy responses, and (2) recidivism issues. Chapter III describes the methodology, procedures, and data analysis employed. Chapter IV contains an analysis of the data and literature collected in the study. Finally, Chapter V provides a summary of the conclusions and implications, as well as, recommendations for practices and directions for future research.

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CHAPTER II

LITERATURE REVIEW

Elder maltreatment is an issue faced by older adults across the United States. In Michigan, over 73,000 older adults are estimated victims of elder abuse. Whether it is physical abuse, financial exploitation, emotional abuse, neglect, or self-neglect, the symptoms and treatment of elder abuse are complex. Maltreatment is often characterized by life-threatening actions inflicted upon vulnerable adults, or the theft of resources that leads to the financial and emotional devastation of persons who have no ability to recoup their losses (The Governor's Taskforce on Elder Abuse, 2006).

Unfortunately, what we know about elder abuse is just the tip of the iceberg. It remains a mostly unrecognized and unreported social problem. There is a lack of a comprehensive system to collect data about elder abuse cases. There is no centralized and coordinated depository of elder abuse educational resources. The general public does not have a central place to report suspected abuse; and, justice for the victims is often difficult to achieve. As increases in the population of people age 60 years and older, and more people reaching age 85 years and beyond, the problem of elder abuse will only continue to spread (The Governor's Taskforce on Elder Abuse, 2006).

In an effort to address issues represented in the research questions, the literature review focuses on two issues: (1) Maltreatment in Long-Term Care Settings and Public Policy Responses, and (2) Recidivism Issues.

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Essay 1: Maltreatment in Long-Term Care Settings and Public Policy Responses

For decades, policymakers have been plagued with reports suggesting widespread allegations of abuse, neglect, and exploitation of residents in nursing homes. These findings were major factors in the passage of the nursing home reforms contained within the Omnibus Budget Reconciliation Act of 1987 (National Institute on Aging, 2006). The Act specifies that nursing home residents have the right to be free from verbal, sexual, mental, and physical abuse (including corporal punishment and involuntary seclusion), and limits the use of physical restraints and inappropriate use of psychotropic medications (National Institute on Aging, 2006). This reform is one of the most influential legislative changes addressing the way nursing homes provide resident care and quality of life.

Defining Abuse, Neglect, and Exploitation

Defining abuse is not difficult in situations where there has been extreme violence, but it becomes perilously complex when the abuse is subtle or when the line between victim and abuser is blurred. Problems also arise when there is no immediate impact on the victim's quality of life. For example, in a financial exploitation case, the senior's accumulated assets (savings accounts) was depleted without their knowledge or an immediate effect on their daily living activities.

The definitional debate was resolved during the early 1980s when consensus emerged about the different categories of abuse (physical, sexual, emotional, and financial). By the early 1990s, researchers used relatively consistent definitions, although disagreement still continues around controversial categories such as *emotional abuse*.

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Physical abuse was distinguished from sexual abuse, and both were distinguished from emotional abuse (sometimes referred to as *psychological abuse*) (Hudson & Carlson, 1998).

Researchers have discovered that of all the forms of abuse, exploitation (formerly referred to as financial abuse) is the most prevalent. Additionally, researchers have claimed that physical and emotional abuse often occurs in conjunction with, and many times the goal of, exploitation (Spencer, 1999).

Abuse, Neglect, and Exploitation Theories

Research into the causes of abuse and neglect began to emerge in the late 1970s. Centered primarily on abuse and neglect within the family contexts, the research began to isolate and explore various factors associated with abuse. The rate, frequency, and prevalence of abuse and neglect was examined specifically to identify characteristics of the abused, the abusers, and the risk factors (Ansello, 1996; Quinn & Tomita, 1997). This research resulted in the development of the following four hypotheses.

The Stressed Caregiver Hypothesis

The stressed caregiver hypothesis draws parallels between the characteristics of *child abuse* and elder abuse and focuses specifically on physical—and emotional—abuse, and neglect. Conceptually, the elder was perceived in the same type of *dependent* relationship as a child; which mirrored the prevailing view that caregiver stress caused abusive behavior (Kosberg, 1998). However, further research suggested that the link between child abuse and abuse of elders was deficient because of the underlying

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assumption that an elder, like a child, was in need of someone to make decisions on their behalf.

Later researchers argued that the characteristics of elder abuse relationships were more similar to those found in spousal abuse (Kosberg, 1998). This perspective depicts the victim as an active participant, rather than passive, in affecting the outcome. Unfortunately this perspective had its' shortcomings in that it focused on female victims and revealed high rates of physical abuse; and as a consequence, other forms of abuse, neglect, and exploitation were underrepresented, including scenarios with male victims (Kosberg, 1998).

Pillemer and Wolf's (1986) research was a precursor to the *caregiver stress* hypothesis, which is the notion that physical and emotional abuse is a consequence of overworked and under-appreciated family caregivers, usually women, who have the responsibility for the care of an elderly relative. This hypothesis linked the burden of caring for an elder, without adequate assistance from other family members or community support, with subsequent abuse by the caregiver. This was the first time a "social disease" model was used to understand the phenomenon of abuse (Kosberg, 1998).

The Learned Violence Hypothesis

The Learned Violence Hypothesis focuses on the importance of *learned violence* and the intergenerational transmission of violence within families (Ansello, 1996; Quinn & Tomita, 1997). This hypothesis was an outgrowth of Quinn and Tomita's (1997) work on family violence. It was discovered that some abuse scenarios may have originated as spousal violence situations, where the individuals have grown old together and the onset

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of old age and other associated factors increased contacts with the health care and social service systems, which resulted in the violence coming to light for the first time.

There are other abusive situations where there is reverse violence, that is, the shift in power that accompanies the aging process, where adult children become the caregivers of their aged parents, which provides the formerly abused victim with an opportunity to exact revenge by either abusing and/or neglecting their formerly abusive parent (Ansello, 1996).

The Psychopathology Hypothesis

Researchers have found evidence that various psychopathologies such as illness, alcoholism, or substance dependency, were significant features in the abuse of the elderly (Bradshaw & Spencer, 1999; Kosberg & Nahmiash, 1996). For example, the decrease in the ability of the caregiver to tolerate frustration and to control behavior because of alcohol dependency linked to the person's violent and abusive actions. Additionally, exploitation was an outcome of a substance dependency, e.g., an abuser may take money from an elderly relative to support their habit (Kosberg & Nahmiash, 1996).

The Dependency Hypothesis

As result of testing other hypotheses, researchers have examined the issue of dependency from both perspectives of victim and caregiver dependency (Quinn & Tomita, 1997). In the case of victim dependency, research has concentrated on the extent to which mental and physical incapability leads to vulnerability and the resulting dependence upon a caregiver, who may then abuse the senior caregiver. The interest in

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caregiver dependency arose from the observation that able-bodied elders (who were not impaired) were also being abused; therefore, additional factors beyond vulnerability need examination.

Researchers pursuing this particular line of inquiry embrace some of the aspects of *exchange theory*, such as the idea that humans act to maximize rewards and minimize or avoid punishment (costs), and that one person's power to act is equivalent to another person's dependency (Ansello, 1996). In the specific context of abuse and neglect involving seniors, it was suggested that caregiver anger rises and abuse occurs if they perceive themselves as deserving rewards because of their support of an elderly person, but are denied such rewards (Ansello, 1996).

This theory enjoyed a brief period of popularity until researchers discovered that seniors who reward their caregivers are just as likely to be abused as those who don't. In fact, abusers often depend upon their elderly victims for such things as financial support and accommodation, both of which could be interpreted as significant *rewards* (Pillemer & Finkelhor, 1985; Pillemer & Wolf, 1986).

These historical hypotheses proved to be useful starting points, although none addresses the situation facing individuals in long-term care facilities. Seniors living in long-term care settings are not only at risk of physical abuse and neglect by staff, but are particularly vulnerable to financial abuse. Family members usually have some form of authority to obtain access to the senior's assets and control their financial affairs (e.g., durable power of attorney), and in the absence of effective monitoring or a "guardian" may *borrow* money from the senior (Gordon, 1992). They may also hold the erroneous view that because the senior is in a nursing home and no longer has any use for their

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assets, an early distribution of the person's estate to themselves and other relatives is both morally acceptable and legally permissible.

Defining Long-Term Care

Long-term care covers a diverse array of services to individuals with chronic conditions and functional limitations. The range of patient needs can vary from minimal assistance to total assistance with the basic activities of everyday life. These needs are met in a variety of care settings such as nursing homes, residential care facilities, or private adult foster homes. Elderly individuals using long-term care settings are more likely to be women, to be cognitively impaired, and to have a greater number of limitations in activities of daily living (IOM, 2003).

The aging U.S. population and the projected growth of the oldest age bracket (85 years and older) will have a major effect on the supply and demand of long-term care services, and on the adequate resources needed to provide those services. The implication of this trend is enormous, as evidenced by the increase in public and policy focuses on the elderly population (Wunderlich & Kohler, 2001).

Although the typical vision of long-term care recipients conjures the image of an elderly individual in a nursing home, it is not limited to the needs of seniors or even care provided in nursing homes. The number of children and adolescents with severe long-term health conditions, although small in comparison to the elderly, has grown substantially over the past two decades and will continue to do so. Advances in medicine and surgical technologies allow many children who would have died in previous eras to survive to adulthood, although often with complicated psychological and physical

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impairments. Additional populations include young adults with physical and developmental disabilities, as well as compromised accident victims (Wunderlich & Kohler, 2001).

Opportunity for Crime Theories

Criminological theory traditionally attributes the causes of crime to baseline factors, such as child-rearing practices, genetic makeup, and psychological or social processes. These factors are extremely complicated for those who want to understand crime, much less do something about it. This section will examine the concept "opportunity makes the thief" as much more than just an old saying; it has important crime policy and practice implications (Felson & Clarke, 1998).

Traditionally, individual behavior is described as the product of interactions between the person and the setting. Most criminological theories pay attention only to the person, focusing on why certain people might be more criminally inclined or less so. This neglects the environmental aspects; specifically examining the important features of each "crime" setting that stimulates criminal inclinations into action (Felson & Clarke, 1998). The focus on criminal inclination has produced a limited view on the causes of crime; however, research by environmental criminologists show how much more impact that "attractive" settings have on crime opportunities.

Many opponents downplay opportunities or temptations as true causes of crime (Felson & Clarke, 1998). Felson and Clarke's research is based on the theory that no crime (whatever one's criminal inclinations) can occur without the physical opportunities

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(requirements) to carry it out. Based on this theory, crime opportunities are necessary conditions for crime to occur, which makes them causes in a strong sense of the word.

It is important to note that many people from dysfunctional homes have never committed crimes, and many people from functional families have become active offenders. No theory about individuals can claim that it has found the necessary conditions for a person to commit crime. There is no *single* cause of crime sufficient enough to guarantee its occurrence; however, the variable *opportunity* is necessary and therefore could be considered a "root cause."

To offer an example of the theory, financial exploitation not only varies across individuals but also among long-term care settings. Settings that make stealing easy cause more crimes to occur in two ways: (1) by encouraging more people to participate in the crime, and (2) by helping each criminal to be more efficient as a thief. Contrary to this, long-term care settings using background checks eliminate individuals with disqualifying felony theft backgrounds thereby reducing opportunities for thieves and reducing the efficiency of offenders (Felson & Clarke, 1998).

The theory of crime settings rests on the single principle that easy or tempting opportunities entice people (with criminal dispositions) into criminal action. This principle is found in each of the new opportunity theories of crime, including the routine activity approach, crime pattern theory and the rational choice perspective. Even though they differ in orientation and purpose, they have many common assumptions. Each of these theories will be examined to show the inescapable conclusion that opportunity is a precursor to crime. Also shown is that opportunities are at least as important as individual factors and are far more tangible and immediately relevant to everyday life. This is why

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such theories are readily understandable, as well as helpful, for formulating practical crime control policies.

The Routine Activity Theory

The routine activity approach started as an explanation of predatory crimes. It assumed that for such crimes to occur there must be a convergence in time and space of three minimal elements—a likely offender, a suitable target, and the absence of a capable guardian against crime. A guardian is anybody whose presence or proximity would discourage a crime from happening. Therefore, a nurse, an aide, or fellow patient would tend to serve as guardian simply by being present. Guardianship is often an unplanned and inadvertent witness, yet still has a powerful impact against crime. Most important, when guardians are absent, a target is especially vulnerable to the risk of criminal attack.

For a predatory crime to occur, a likely offender must find a suitable target in the absence of a capable guardian. This means that crime can increase without more offenders if there are more targets, or if offenders have access to targets with no guardians present (Felson & Clarke, 1998). Within the daily job routines of long-term care staffers, an undetected criminal has countless opportunities to victimize vulnerable patients.

Crime Pattern Theory

Crime patterns tell us a lot about how people interact with their physical environment. Crime pattern theory, a central component of environmental criminology, considers how people and things involved in crime move about in space and time. Each offender searches for crime targets around personal activity areas and the paths among

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them. In addition, the paths that people take in their everyday activities are closely related to where they fall victim to crime. This is why crime pattern theory pays so much attention to the geographical distribution of crime and the daily rhythm of activity. Since many individuals in long-term care are not ambulatory the notion of activity may seem moot; however, some patients are ambulatory with some level of independence and may leave the premises for regular appointments or other activities, which leaves their personal belongs unattended. Another example, a patient may have personal savings that would be very attractive to exploit.

Crime pattern theorists and other environmental criminologists have shown that the management of a patient's routines can produce major shifts in crime rates. For example, a patient's physical therapy appointments should rotate the days and times so that the routine is not easily read.

The Rational Choice Theory

The rational choice perspective focuses upon the offender's decision-making process. Its main assumption is that an offender has purposeful and deceitful behavior, designed to directly benefit the offender. Offenders have specific goals when they commit crimes, even if the goals are short-sighted and reap only a few benefits at a time. These constraints on thinking compromise an offender's rationality, which in turn impacts the quality of the information available to them and the amount of time and effort given to the decision (Felson & Clarke, 1998).

Rational choice theory in criminology is trying to view the world from the offender's perspective. It seeks to understand how the offender makes crime choices

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driven by a particular motive within a specific setting, which offers the opportunities to satisfy that motive. Rational choice theory portrays the offender as one who thinks before acting, even if only for a moment, taking into account the benefits and risks of committing the offense (Felson & Clarke, 1998).

Rational choice theory aligns closely with situational crime prevention, designed explicitly to reduce crime opportunities. If reducing opportunities causes crime to go down; conversely, providing opportunities causes crime to go up.

Summary

The three above-stated theories of crime opportunity have many similar assumptions. Each theory perceives crime opportunity as facilitating crime and each pays close attention to what offenders actually do in the course of a crime. The three theories of crime opportunity can be put in order according to where they give most attention, ranging from the larger society (routine activities), to the local area (crime pattern theory), to the individual (rational choice) (Felson & Clarke, 1998).

Altering the capacity of *crime opportunities* at any level will produce a change in criminal outcomes. Instituting a comprehensive background check program provides an effective method for *reducing opportunities for crime* and is based upon the theoretical point that there is a direct relationship between opportunity and crime. The Michigan Background Check Program is an opportunity-reduction program, intended as a deterrent to screen out criminals from having direct access to vulnerable populations in long-term care settings. The overall goal of the program, and associated legislation, is to reduce the opportunity (and therefore incidences) of crime.

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In summary, accepting that *opportunity* is a cause of crime is equal in importance to the personal and social variables that are usually identified as causes. This progressive thinking makes the criminological body of knowledge not only more complete, but is also more relevant to policy and practice. It means that much of the prevention work undertaken by public policy in reducing crime will deal fully and directly with the basic causes of crime.

History of Policies and Funding for the Protection of Vulnerable Adults

For the past 25 years, Congress has heard from advocates and stakeholders about the need for a coordinated effort to address adult abuse, neglect, and exploitation. Even today, most experts agree that federal (and state) efforts targeting adult abuse, neglect, and exploitation lag more than 30-plus years behind efforts to combat child abuse and domestic violence (U.S. Senate Special Committee on Aging, 2002).

Although elder abuse first appeared on the national policy scene in the late 1970s, formal efforts to help vulnerable elders began at least two decades prior when public welfare officials faced an increasing number of older individuals in the 1950s, who were unable to manage on their own. As a result of this influx, Congress passed legislation and provided funding to states as part of the Social Security Act. The funds, with a match requirement of three-to-one, were used for setting up protective service units that provided social services, legal assistance, and guardianship (CNSTAT, 2002).

On July 14, 1965, President Lyndon B. Johnson signed the Older Americans Act into law. In addition to creating the Administration on Aging, it authorized grants to States for community planning and services programs, as well as research and

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demonstration and training projects in the field of aging (National Center on Elder Abuse, 2006). Under the Older Americans Act, all states received funds to establish long-term care ombudsman programs and to develop prevention programs for elder abuse, neglect, and exploitation. States were required to establish mechanisms to identify, investigate, and resolve complaints of alleged abuse involving the elderly in long-term care facilities (National Center on Elder Abuse, 2006).

Later amendments to the Act added grants to Area Agencies on Aging (AAoA) for the identification, planning, and funding of services for local needs, including nutrition programs for the homebound, programs which serve Native American elders, services targeted at low-income minority elders, health promotion and disease prevention activities, in-home services for frail elders, and those services which protect the rights of older persons such as the long-term care ombudsman program (National Center on Elder Abuse, 2006).

In 1974, advocates for the system worked with Congress in amending the Social Security Act to mandate protective service units for adults over the age of 18 in all states. The target populations were people with mental and physical impairments, who were unable to manage on their own and had been (or were being) exploited and/or neglected. There was a lot of criticism of these programs, partly because they were so costly and also because they seemed to infringe on the rights of the elders (CNSTAT, 2002).

In the middle to late 1970s, numerous witnesses testified in congressional hearings about the phenomenon of "granny battering" and ignited a renewed interest in elder abuse (Tatara, 1990). The topic particularly interested Congressman Claude Pepper of Florida. He and his *Special Subcommittee on Aging* sponsored investigations, hearings,

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and two research projects, which were submitted to the Administration on Aging for a discretionary grant that confirmed the existence of these cases (Tatara, 1990).

Reviewing the history of domestic abuse in the United States, the Senate Subcommittee found that federal legislation in the area of child abuse had been extremely effective in encouraging the states to enact necessary legislative reforms. With the enactment of the Child Abuse Prevention and Treatment Act of 1974, the states were quick to enact statutes in accordance with the Act and gained eligibility for funding to designated agencies for the purpose of identifying, assisting, and preventing child abuse. The federal government argued that it could play a comparable role in the area of elder abuse by using the Child Abuse Prevention and Treatment Act of 1974 as a legislative model (U.S. Senate Special Committee of Aging, 2002).

Therefore, in an effort to improve the statutes protecting vulnerable adults and elderly, the Senate Subcommittee recommended the passage of legislation identical to the Child Abuse Prevention and Treatment Act of 1974. Unfortunately, the United States Congress did not pass this elder abuse legislation (H.R.7551). Without federal legislation specifically addressing elder abuse, states were left with the responsibility of developing their own systems to deal with the problem. As the result of not having a focused federal initiative or coordinated knowledge base, the states adopted laws, definitions, and reporting procedures that were extremely diverse (U.S. Senate Special Committee of Aging, 2002).

Among the first national forums to examine elder abuse and to formulate effective policy responses was the House Select Committee on Aging (1978). The Senate Subcommittee on Health and Long-Term Care conducted hearings from 1978 through

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1984. During the 1978 congressional hearings, the House Select Committee on Aging, under joint session of the House and Senate Committees, proposed a series of policy options (CNSTAT, 2002).

This congressional interest in elder abuse served to revive strong interest in adult protective services. When members of Congress reexamined the issue of abused and neglected adults, they concluded that it wasn't necessary to establish a new system. Instead, they decided to continue trying to raise awareness of the problem. In 1981, Congress proposed legislation to establish a national center on elder abuse, but the bill never reached the floor of Congress (CNSTAT, 2002).

In 1989, Claude Pepper re-introduced the 1981 legislation as an amendment to the Older Americans Act. This time the legislation was successful and in 1990, officially funded the National Center for the Protection of Vulnerable Adults. This was the first time that that the issue of elder abuse was recognized in federal legislation (CNSTAT, 2002). This earmarked the federal government's first commitment to this area, albeit with very small amounts of money

Elder abuse prevention was the focus of two significant pieces of legislation, under two separate bills, enacted by the 98th Congress. The Child Abuse Amendments of 1984 (P.L.98-457) authorized demonstration grants to establish, maintain and expand programs for the prevention of family violence, including elder abuse. In 1985, the Select Committee on Aging (House of Representatives) published a report entitled, *Elder Abuse: A National Disgrace*. Included with the report of the 98th Congress was a restatement of the 1981 report's conclusions that the federal government should assist the states in their efforts to deal with the pervasive problem of elder abuse. This report identified the

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establishment of a national center on elder abuse and prevention as the most effective means to accomplish the goal of elder abuse prevention.

In fiscal years, 1986 and 1987, federal grants became available to state-designated agencies that dealt with family violence; unfortunately, this piece of legislation had minimal impact on services to the elderly since the majority of the funds used by the states focused on the maintenance of domestic shelters (Quinn & Tomita, 1986).

Representative Claude Pepper (D-FL) introduced a new strategy that was instrumental in passing an amendment to the 1987 reauthorization of the Older Americans Act. The amendment required each state to establish a program for the prevention of elder abuse; provide public education, outreach services, information and referral services; receive reports of abuse and neglect; and refer complaints to law enforcement agencies and other appropriate local and state entities for possible punitive action. In fiscal year 1991, a five million dollar budget line was appropriated as Title III funds and channeled through approximately 640 local Area Agencies on Aging (AAoA) (CNSTAT, 2002).

In 1990, the Select Committee on Aging (House of Representatives) published a second report entitled, *Elder Abuse: A Decade of Shame and Inaction.* The report of the 101st Congress was a restatement of the 1985 report's conclusions—maintaining that the federal government should assist the states in their efforts to deal with the pervasive problem of elder abuse via the establishment of a national clearinghouse. The Older Americans Act Amendment of 1987 (P.L. 98-459) required Area Agencies on Aging to assess the need for elder abuse prevention services and the extent to which the need was being met within each service and planning area. The law further required the

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Commissioner on Aging to submit a report to Congress on the extent of need for elder abuse prevention activities in 1996 (National Center on Elder Abuse, 2006).

In November 2000, the Older Americans Act Amendments of 2000 was signed into law as Public Law 106-501. The reauthorized Act contains an important new program, the National Family Caregiver Support Program, which will help hundreds of thousands of family members who are struggling to care for their older loved ones who are ill or who have disabilities. Family caregivers have always been the mainstay underpinning long-term care (LTC) for older persons in this country. Among non-institutionalized persons needing assistance with activities of daily living (ADLs), two-thirds depend solely on family and friends and another one-fourth supplement family care with services from paid providers. Only a little more than 5% rely exclusively on paid services (National Center on Elder Abuse, 2006).

Current Policies and Legislation for the Protection of Vulnerable Adults

Protected under Health Care Financing Administration (HCFA) regulations, residents of nursing homes and other long-term care facilities have the right to reside in a safe and secure environment and be free from abuse and neglect (OIG, 2005). Title 42, Code of Federal Regulations 483.156 requires that states establish and maintain a registry of nurse aides that includes information on "any finding by the State survey agency of abuse, neglect, or misappropriation of property by the individual" involving the elderly (OIG, 2005). The Code (483.13) also requires that the long-term care setting must not employ individuals who have been found guilty by a court of law, or have had a finding

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entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property (OIG, 2005).

The regulations also require that nursing facilities report any knowledge of actions taken by a court of law against an employee, which would indicate *unfitness* for service as a nurse aide or other facility staff, to the nurse aide registry or licensing authorities. Unfortunately, the HCFA does not require registries for other health care providers, such as registered nurses (RN), licensed practical nurses (LPN), or medical practitioners (OIG, 2005).

The National Child Protection Act, as amended by the Violent Crime Control and Law Enforcement Act of 1994, encourages states to conduct national background checks on all job applicants (HHS, 2005). However, there is no federal requirement to conduct criminal background checks of current or prospective employees of federally assisted long-term care facilities or to maintain a registry for staff other than certified nursing assistants who work in these facilities (HHS, 2005). The Federal Bureau of Investigation (FBI) criminal history record system is accessible by states, under Public Law 92-544, only if authorized by state statute. This national system, which contains records of serious crimes, is dependent on the voluntary reporting of crime data by state and federal courts, prosecutors, and arresting authorities (HHS, 2005).

There is a federal requirement that states provide criminal information to the Department of Health and Human Services (HHS), Office of Inspector General's (OIG) national database, which includes individuals convicted of abuse and/or neglect by the states' Attorney General (AG) offices (HHS, 2005). Using this information, the OIG publishes a monthly *Exclusion List*, which is available on the Internet. Disqualified

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individuals are excluded from participation in any Medicare, Medicaid, Maternal and Child Health Services Block Grants, and Block Grants to States for Social Services Programs. These exclusions are mandated by section 1128(a)(2) of the Act (42 U.S.C. 1320-a-7(a)(2)), and are in addition to any sanction an individual state may impose under the authority of state's law (HHS, 2005).

Additionally, the Health Insurance Portability and Accountability Act (HIPAA) of 1996 authorized the OIG to develop the Healthcare Integrity Protection Data Bank (HIPDB). The HIPDB provides a repository database for public information on the disposition of health care sanctions. It includes information about health care-related criminal, civil, and administrative final adverse actions taken against health care providers, suppliers, and practitioners (DDH, 2005).

The challenge that most long-term care settings face is having the funds to conduct a more costly comprehensive background check. The federal and state policies are in place, but there is no federal mandate to enforce consistency. Therefore, states are inconsistent in the thoroughness of the checks and criminals have been able to secure direct-patient care jobs and perpetrate on vulnerable adults.

Overview of Michigan's Adult Protective Services

Adult protective services is mandated through the Michigan Public Act 519 of 1982. This Act requires the Michigan Department of Human Services to assign program staff to investigate allegations of abuse, neglect or exploitation and provide protection to vulnerable adults, age 18 years or older (DHS, 2006). The policy requires that an investigation begin within 24 hours after a receipt of a complaint. Based on legal

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protocol, referrals are assigned to an investigator if there is sufficient justification to warrant assignment. Justification exists if

> The alleged victim is an adult at risk of harm from abuse, neglect or exploitation; and there is reasonable belief that the alleged victim is vulnerable and in need of protective services. Vulnerability is defined as a condition in which an adult is unable to protect himself or herself from abuse, neglect or exploitation because of a mental or physical impairment or because of advanced age. (DHS, 2006)

The Michigan Department of Human Services' Adult Protective Services (APS) intervenes and provides protection to a growing number of abuse, neglect, and exploitation cases. More than 9,390 APS investigations were conducted in fiscal year 2001. The APS statewide average monthly caseload nearly doubled from 1993 to 2002, and increased by 10% from FY 2004 to FY 2005 (DHS, 2006).

DHS (2006) reports that 69% of adult mistreatment victims are over the age of 60 years; 60% of overall adult mistreatment victims are women; a remarkable 70% of case determinations were neglect, 15% were abuse, and 15% were exploitation. Neglect is more frequent among females, and self-neglect is more frequent among males. When the perpetrator is a spouse, abuse is the most frequent form of mistreatment. When the perpetrator is an adult child, neglect is the most likely form of mistreatment.

For decades, nursing homes have been plagued with reports suggesting widespread and serious maltreatment of residents, including abuse, neglect, and theft of personal property (National Institute on Aging, 2006). Additionally, through case studies, participant-observation studies, interviews with nursing home staff, and interviews with residents and ombudsmen provided substantial evidence of abuse (Center for Elder Abuse, 2005).

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Such conditions were major factors in the passage of the nursing home reforms contained in the Omnibus Budget Reconciliation Act of 1987 (The Omnibus Budget Reconciliation Act of 1987 ~ PL 100-203). The OBRA 1987 reforms, the most sweeping set of legislative changes to the regulation of nursing homes since the passage of Medicaid and Medicare, addressed multiple areas of resident care and quality of life. They also specified that residents had the right to be free from verbal, sexual, physical, and mental abuse, including corporal punishment and involuntary seclusion, and limited the use of physical restraints and inappropriate use of psychotropic medications (National Institute on Aging, 2006).

Medicare Prescription Drug, Improvement, and Modernization Act

The Medicare Prescription Drug, Improvement and Modernization Act of 2003, as stated in Chapter One, was in direct response to the Cullen "Angel of Death" case and other homicide cases in health care facilities. Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act (MMA) of 2003 (PL 108-173) directs the Secretary of Health and Human Services (DHHS) to spend a maximum of $25 million to fund up to 10 states to participate in a three-year pilot program to help identify efficient, effective, and economical procedures to conduct background checks on prospective employees who would have direct access to vulnerable adults (or their records) in long-term care settings.

The Centers for Medicare and Medicaid Services (CMS) in consultation with the Department of Justice had fiduciary responsibilities for the *Request for Proposal* (RFP) process. In July 2004, the CMS posted a RFP inviting up to ten states for consideration in

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the Background Check pilot project. The RFP encouraged state agencies to work collaboratively to develop one submission per state.

In response, the Michigan Department of Community Health (DCH), the Michigan Department of Human Services (DHS), the Michigan State Police (MSP), the Michigan Office for Services to the Aging (OSA), long-term care member organizations, advocacy groups and others partnered with Michigan State University to collaborate in drafting and submitting a proposal. In December 2004, Michigan was one of seven states selected to participate in the pilot program and was awarded $5 million for a three-year funding period (2005-2007) to develop and implement a comprehensive fingerprint-based criminal background check program.

The original cost estimate of implementing a national background check program for long-term care employment applicants was projected to exceed $1 billion per year. The design of the pilot projects allowed for cost estimates of developing the system and a benefit-cost analysis encompassing cost savings to individuals and governments by preventing maltreatment (abuses, neglect, and exploitation).

Michigan Program for Background Checks

Prior to April 2006, Michigan law did not require all long-term care employees with direct access to our most vulnerable populations—terminal care patients, persons with disabilities, and others requiring long term care services—to undergo a criminal background check. Additionally, there was no systematic process across multiple health and human service agencies to conduct the checks, disseminate the findings, or to follow through on the results.

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Background checks were required for individuals who applied for clinical privileges or employment with nursing homes, county medical care facilities, homes for the aged, or adult foster care homes, *only* if that individual was to provide direct services to patients or residents in the facility. The types of facility employees covered by these regulations included physicians, nurses, direct care staff and others who provide direct services to facility residents (Office of Child and Adult Licensing, 2007).

Long-term care employers would only conduct name-based checks on job applicants unless they reported they had not lived in Michigan for the last three years. Then fingerprinting was required (OCAL, 2007). Adult foster-care facilities licensed for six or fewer residents, wanting to hire an employee who had not lived in Michigan for at least three years, would have to obtain a criminal background check from each state where the individual has lived over the last five years (OCAL, 2007).

To exacerbate the problem, Michigan's aging population and shortage of health care workers creates an increased pressure on care providers to lower their standards when hiring new employees. The complexity of the issue created voids and liabilities, which potentially put Michigan's most vulnerable population at risk (Post et al., 2006).

The Department of Health and Human Services' grant provided Michigan with the incentive and means to implement a comprehensive statewide background check procedure via the following steps. First, the scope of Michigan laws expanded via passage and enactment of Public Acts 26, 27, 28, and 29 of 2006 (see Appendix). The scope of the new laws included institutions that were excluded in prior acts (psychiatric hospitals, hospices, long-term care hospitals, and Intensive Care Facilities for the Mentally Retarded (ICF/MRs)). Second, the legislation calls for a comprehensive system that

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checks applicants' records for prohibited offenses and substantiated findings of abuse and neglect. This is accomplished by conducting online checks of five registries and fingerprinting all long-term care employment applicants that have no findings on the registry checks. The five registries include:

- *United States Health and Human Services Medicare/Medicaid Office of Inspector General Exclusion List (OIG)*

  CMS created the Medicare Exclusion Database (MED) that matches this database against files of providers billing Medicare and Medicaid and against databases with employment information to ensure that excluded individuals and entities do not violate the terms of their exclusion. This database needs to be checked only for newly hired caregivers who can bill Medicare or Medicaid for their services.

- *Michigan Nurse Aid Registry (NAR)*

  The Michigan Nurse Aid Registry shows the name of every nurse aide eligible to work in Michigan, which has completed training, competency evaluations, and registry services by the State of Michigan. Information such as complete name, date of birth, gender can be used to verify or distinguish the applicant

- *Michigan Public Sex Offender Registry (PSOR)*

  The registration requirements of the Sex Offender Registration Act are intended to provide the people of Michigan with an appropriate, comprehensive, and effective means to monitor those persons who pose a potential danger to the health, safety, morals, and welfare of the people of the

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state of Michigan. Information available on the PSOR includes an offender's name, address, offense information, and a photograph.

- *Michigan Offender Tracking Internet System (OTIS)*

  A search of OTIS will provide information about offenders previously or currently under the jurisdiction or supervision of the Michigan Department of Corrections (MDOC). A search result will provide information about any offender who is, or was, in a Michigan prison, on parole or probation under the supervision of the MDOC, has transferred in or out of Michigan under the Michigan Interstate Compact, or who has escaped or absconded from their sentence.

- *Michigan State Police Internet Criminal History Access Tool (ICHAT)*

  It provides instantaneous access to criminal history records of individuals convicted of a crime in Michigan. This search only includes arrests, arraignments and convictions recorded in Michigan, and does not include driving records, or convictions received in other states (MSP, 2006).

In addition to supplying the functionality of checking registries, the web-based system makes it possible to set fingerprint appointments and print appropriate paperwork. It also tracks application activity and facilities' compliance with the law. The final step of the background check process is due process for applicants disqualified and refused employment due to their criminal records. Applicants may appeal on the basis of incorrect records or if they have had their record expunged. They may not appeal on the basis of unfairness or rehabilitation.

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MSP disseminates the "no-hit" results of background checks to the requesting facilities so that they may make determinations of eligibility for employment. For situations where a criminal record is identified, MSP sends the response to the governing state agency that then summarizes the information given in the report and forwards that summary to the requesting facility to make a determination of eligibility.

Federal Authority for the Background Check Program

Criminal background checks provide a tool for screening potential long-term care employees. Two federal statutes enable health care providers to perform criminal background checks on prospective employees (Department of Health and Human Services, Office of the Inspector General, 2005). Public Law 105-277, Section 124 enables nursing facilities and home health care agencies to request fingerprint based national criminal history checks by the FBI for employees or job applicants seeking positions involving direct patient care.

In addition, Public Law 103-322 § 320928 enables federal criminal background checks to be performed on individuals employed in long-term care settings other than nursing facilities and home health agencies. This law allows for checks to be conducted on individuals who work for, own, or operate a business that provides care to the elderly or individuals with disabilities (Department of Health and Human Services, Office of the Inspector General, 2005).

Despite these two laws, an earlier law passed by Congress in 1972, Public Law 92-544, created a barrier for states attempting to conduct background checks. This law stipulated that in order for background checks to occur, states first had to pass a law

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authorizing health care employers to request such background checks from state and local government officials, and then seek approval of the law from the U.S. Attorney General (Department of Health and Human Services, Office of the Inspector General, 2005). Public Law 105-251 § 222, passed in 1998, remedied some of these barriers by enabling state designated businesses or organizations involved in the licensure or certification of individuals providing care to children, the elderly, or individuals with disabilities to request federal criminal background checks of potential employees even in the absence of a state statute authorizing criminal background checks (Department of Health and Human Services, Office of the Inspector General, 2005).

State Authority for the Background Check Program

In order for Michigan to comply with the federal statute and the requirements of Section 307 of the MMA, the following legislative changes needed to occur:

- Expand current background checks to include long-term care hospitals, *intermediate care facilities for people with mental retardation* (ICF/MR), psychiatric hospitals, hospices, home health agencies, personal care agencies and individual personal care providers;
- Establish legislative authority for *Home and Community-based Service* (HBCS) group living, HBCS group homes or personal care agencies under the State Medicaid Plan (such as adult foster care homes);
- Create an *Employment Eligibility Appeal Board,* which would review individual exceptions for applicants whose demonstrated experience and rehabilitation warrant reconsideration;

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- Establish a background checks funding mechanism that would offset background check costs;
- Require FBI fingerprint checks for all background checks and preclude federally identified, prohibited offenses and substantiated findings of abuse;
- Require criminal background checks for initial licensing of all health professionals.

Working with the following three collaborating state agencies (Department of Human Services, Department of Community Health, and the Michigan State Police Department) bipartisan legislation was introduced to address the above-stated concerns and aligned Michigan's statutes with other states.

In December 2005, House Bill 5166 (sponsored by Republican state representative Gary A. Newell), House Bill 5167 (sponsored by Democratic state representative Michael C. Murphy), House Bill 5168 (sponsored by Democratic state representative Paula K. Zelenko) and House Bill 5448 (sponsored by Republican state representative Barb Vander Veen) were introduced and subsequently were passed in January 2006 (see Act in Appendix).

These bills expanded the requirements for criminal background checks for new employees at health facilities and agencies, adult foster care facilities, psychiatric facilities or intermediate care facilities, and for applicants for initial licensure or registration in health occupations. In each case, the employer initiates a request to MSP to conduct a criminal history and to forward fingerprints to the Federal Bureau of Investigations (FBI). The MSP then requests the FBI to make a determination of any

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national criminal history pertaining to the applicant for employment, licensure, or registration.

Under the bills, health care facilities and agencies, adult foster care facilities and psychiatric or immediate care facilities, could not employ, independently contract with, or grant clinical privileges to an individual who regularly has direct access to or provides direct services to patients or residents after the bill's effective date if

1. he/she had been convicted of either a felony or an attempted or conspiracy to commit a felony, unless 15 years had lapsed since the individual completed all of the terms and conditions of sentencing, parole, or probation prior to application;
2. he/she had been convicted of a misdemeanor that involved abuse, neglect, assault, battery, or criminal sexual conduct or fraud or theft;
3. he/she had been convicted of a relevant federal crime; or had been the subject of a substantiated finding of neglect, abuse or misappropriation of property by the department.

Outside critics challenged that current law makes it difficult for many people to enter the health care field if there is any prior criminal background. For example, those convicted and imprisoned for check or welfare fraud were treated the same way as someone convicted of rape or aggravated assault (Legislative Analysis, 2005). The opportunity to appeal is an important aspect of the bill, as it will allow a redress of an error that could have a negative impact on an individual for his/her lifetime. Although it is important to ensure the safety of all individuals in long-term care settings, it must be

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equally important to ensure fairness in employment options for non-violent, ex-offenders to ensure they can be contributing members of society.

Implications for Public Policy and Practice

The pilot programs operating in seven states under the Medicare Modernization Act of 2003 (MMA), and the Centers for Medicare and Medicaid Services were to implement efficient, equitable systems that cost-effectively screen out certain applicants for employment in long-term care facilities. The preliminary results of the pilots were so positive that in June 2007, three months before the pilot projects ended and the final results were available, a bill called *Patient Safety and Abuse Prevention Act of 2007* was introduced in the Senate. It would prevent individuals with certain criminal histories from working within long-term care settings by establishing a mandatory nationwide system of background checks.

U.S. Sen. Herb Kohl (D-WI), Chairman of the Senate Special Committee on Aging, and Sen. Pete Domenici (R-NM) were joined by the original cosponsors Senators Claire McCaskill (D-MO), Debbie Stabenow (D-MI), Blanche Lincoln (D-AR), Carl Levin (D-MI), and Hillary Clinton (D-NY) in introducing the Patient Safety and Abuse Prevention Act of 2007. The new federal system would coordinate local registries with state law enforcement registries, and add federal components by cross-referencing potential employees with the FBI's national database of criminal history records.

This bill was derived from the positive preliminary outcomes of the participating states in the HHS pilot program. Michigan boasts the only coordinated statewide system and also the most thorough database in terms of the system's results among the seven

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pilot states. In the first year of operation, Michigan excluded more than 3,000 people with records of abuse or a disqualifying criminal history. As of September 30, 2007, 927 applicants were excluded through a comprehensive fingerprint check. Twenty-five percent of these exclusions were identified through an FBI check only, a fact that state officials believe indicates that these individuals committed crimes in other states, or have been avoiding prosecution within the state. This statistic reinforces the need for the Patient Safety and Abuse Prevention Act of 2007, which includes the compulsory FBI check.

A system of national criminal background checks is especially critical, given the mobility of today's workers, the turnover in the long-term care workforce, and the fact that it is not unusual for individuals to work in multiple states. By expanding Michigan's model nationwide, the resulting system would greatly enhance the probability of identifying individuals with criminal backgrounds who can now easily escape detection.

The HHS pilot program and associated funding ended on September 2007. If the proposed bill passes, it will become an unfunded mandate that many states must implement using federal, state, local, and/or private dollars. It is hoped that federal and state budgets will appropriate the necessary funds to support the boilerplate language.

Essay 2: Recidivism Issues

The Michigan Program for Background Checks, in response to concern for the safety of patients in long-term care settings, has created a comprehensive system that checks the criminal histories of prospective and currently employed staff. In doing so, a

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disturbingly high number of workers have been identified as having disqualifying criminal backgrounds, some as serious as homicide.

There is a growing apprehension that many employers, under the pressures of the current shortage of direct patient care workers and an increasing senior population, may hire people who have disqualifying criminal histories. In doing so, they will be making predictions about the threat these employees pose to vulnerable individuals, weighing such mediating circumstances as the nature of the crimes, the length of time since they were committed, and offenders' demonstrated rehabilitation. Few employers have the skills to make these decisions, a fact that has many worrying, particularly in light of the fact that most caregivers spend extended, unsupervised time alone with vulnerable individuals.

Past Criminal History as a Predictor of Future Recidivism

The concept that past behavior is one of the best predictors of future behavior is accepted in a variety of fields. For example, in the field of education, entrance to college depends on past academic performance in high school and on standardized tests to predict future success. In personal finance matters, creditors rely on an individual's past reliability in paying bills on-time and meeting financial obligations to assign a credit score. This score determines future lending opportunities (Kurlychek, Brame, & Bushway, 2006). This essay explores prior criminal records and their ability to predict future offending.

The field of criminal justice also relies heavily on the concept that past behavior is a strong predictor of future behavior. For example, studies show that about 30% to 60%

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of juvenile delinquents will have at least one adult offense (Brame, Bushway, & Paternoster, 2003). Analysis of recidivism data in several cohorts reported by Blumstein (1985) reveals that the majority of individuals with multiple past official records of offending accumulate new official records of offending in the future. Therefore, knowledge of an offender's prior record is used as a general indicator of dangerousness and propensity to re-offend at all key decision-making points in the criminal justice process. These decision-making points include the police decision to arrest, the prosecutor's decision to charge, and the final sentence handed down by the criminal court judge (Kurlychek et al., 2006).

An important contradiction to "past behavior predicting future behavior" is that only about 5% to 10% of young offenders actually become "chronic" criminals. This indicates that the majority of people with a criminal justice contact at some point early in life pose little or no risk of active, long-term criminal careers. The challenge then, becomes how to distinguish between the "one-timer" or "temporary" offender from his/her persistently criminal counterpart (Hannon, 2005).

Another consideration is the risk of recidivism for a person arrested in the distant past versus the risk of a population of persons with no prior arrests. Two well-documented empirical facts guide this question: (1) individuals who have offended in the past are relatively more likely to offend in the future, and (2) the risk of recidivism declines as the time since the last criminal act increases. Using hazard rates and posterior distribution analysis, Kurlychek et al. (2006) found that immediately following an arrest, the knowledge of this prior record does significantly differentiate this population (those who are criminally active) from a population of non-offenders. However, these

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differences weaken dramatically and quickly over time so that a person who offended six or seven years in the past looks very similar in regard to risk of new offending to a person who never offended at all.

Additional research suggests that the time lapse between criminal events might be a key distinguishing factor between these two populations. Raskin (1987) conducted a study and found the "risk" rate for re-offending decreased steadily with time since the last incident. The "risk" rate for subsequent police contact was the greatest during the first six months following a previous contact, after which time it continually decreased. In fact, during the last month of the five-year study, Raskin found that none of the prior offenders who had "survived" to this point were rearrested. These findings lead Raskin to conclude that "the longer an individual is able to survive without committing his next offense, the better his chances of desisting from crime" (p. 63).

There is considerable discussion regarding why individuals who have refrained from offending for an extended period of time tend to recidivate at lower rates than individuals who offended recently. One possibility is that the actual experience of offending abstinence has a causal effect on risk of re-offending. In other words, the more a life is lived crime-free, the more one comes to see the benefits of desistance (Kurlychek et al., 2006). Another possibility is that individuals with a high risk of recidivism tend to recidivate quickly while others who sincerely try to avoid new offenses tend to dominate the population of lower-risk individuals. Regardless of the reason, it is clear that individuals who have offended in the distant past appear less likely to recidivate than individuals who have offended in the recent past.

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This leads to a clear basis for a useful policy implication—individuals who have official records of past offending are relatively more likely to offend in the future but individuals who have managed to refrain from offending for a long period of time, even though they too offended in the past, consistently exhibit much lower risk of future offending than individuals who have offended in the recent past (Kurlychek et al., 2006).

Therefore, the length of time that has passed since the last record of offending should accompany information about prior offending records. This analysis begs the logical question of such practices and suggests that after a given period of remaining crime-free, it may be prudent to expunge the status of "offender" and create legitimate opportunities for this population (Kurlychek et al., 2006).

The Costs of Crime and the Implications

There are a number of questions that arise when considering the costs of preventing crime versus the social/economic costs of crime. Some of the important questions that face policymakers in the health care industry today are: What are the cost savings from preventing abuse, neglect, and exploitation of individuals in long-term care? Who benefits from these savings? Do the benefits from preventing crime or criminal behavior exceed the resources spent on preventing or controlling crime? Is it more cost-effective to invest in a preventative, background check program to reduce criminal offending in long-term care settings? It is important to provide answers in order to ensure that the dollars allocated to the prevention of maltreatment and patient safety are spent as efficiently as possible.

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A benefit-cost analysis is a tool that allows choices between alternative uses of resources or alternative distribution of services (Knapp, 1997). The economic costs and benefits of crime prevention and patient safety programs and policies are very important topics at local, state, and federal levels; but remain relatively under addressed as areas of academic research.

In recent years, there has been a growing interest on the part of government and other stakeholders in identifying the monetary value of crime prevention actions through the use of economic evaluation techniques, such as benefit-cost analysis (Welsh, Farrington, & Sherman, 2001). Michigan has begun to reorient patient safety/crime policies around an evidence- and efficiency-based model, in an effort to provide programs with demonstrated effectiveness and cost savings.

This has occurred for many reasons, including rising litigation and prison costs, evidence of the magnitude of the financial costs of crime and victimization to society, governmental fiscal constraints, a movement toward general efficiency practices in government, and growing evidence of the effectiveness of alternative, non-criminal justice approaches to preventing crime (Welsh & Farrington, 2001). Arguments such as "for every prevention dollar spent, seven dollars are saved" (Caldwell, 1996) have proven very powerful.

Monetizing Tangible and Intangible Crime Costs

One of the most significant (and controversial) precepts of a criminal justice policy is the costs of criminal victimization—in particular, the valuation of intangible losses such as pain, suffering, and loss of quality of life (Cohen, 2001). This section will

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review the methodologies employed by economists in estimating the cost of crime against long-term care patients/residents and provide a basic understanding of the values and challenges of placing monetary assessment on crime (i.e., abuse, neglect, and exploitation).

Economics involves the allocation of scarce resources in society. Criminal justice policy decisions always involve choices between two or more alternatives, each having their own costs and benefits. Assigning cost values and benefits allows the various alternatives to be competitively evaluated using comparable variables that help policymakers make informed decisions that enhance society's well-being (Cohen, 2001).

Some researchers argue that there is not an adequate empirical basis for placing dollar values on intangible factors such as pain, suffering, and loss of quality of life. Cohen (2001) argues that these intangibles factors are measurable, and considers the following three policy-relevant purposes compelling for measuring the benefits and costs:

1. Comparison of the relative harm caused by type of crime;
2. Aggregate harm from crime to other social ills; and,
3. Benefit-cost analysis of alternative crime control policies.

Relative Harm by Type of Crime

Many policymakers are interested in comparing the harm caused by different types of crime. For example, most advocates of sentencing guidelines rely on victim harm as one component of their sentencing structure. Those who subscribe to "an eye for an eye" philosophy combine harm with culpability, whereas those who advocate a utilitarian approach combine harm with detectability and deterability (Cohen, 2001). Though one is

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able to tally various harms associated with each type of crime (e.g., exploitation [value of property stolen], abuse [frequency of injuries by type of injury], neglect [mental health-related injuries]), without a common metric such as dollars, it is difficult to objectively compare these harms (Cohen, 2001).

Maltz (1975) has identified some non-monetary metrics for comparing harms such as the number of days for a victim to recoup from the financial loss or the number of years of potential life lost. These were primarily designed to overcome the perceived unfairness of valuing harms according to the wealth of the individual being harmed This is particularly important when talking about individuals not in the workforce that are receiving Social Security Income (SSI), retirement benefits, or have modest personal savings.

Aggregate Costs and Benefits

Another justification for estimating the costs of crime is to tally the aggregate costs to society. The caveat is that even if properly measured, one cannot simply compare aggregate cost estimates of crime with estimates of the cost of other social ills to arrive at policy recommendations for future public spending priorities. Suppose, for example, that the estimated cost of crime in Michigan was to exceed the cost of elementary/secondary education. This does not necessarily mean that society should increase expenditures on crime prevention at the expense of school success programming. If the current expenditures on "preventing" crimes and school success are factored into the equation, it might be found that society is already spending too much on crime and not enough on the latter. The more relevant question is how much additional reduction in crimes (or school

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failures) would be observed if we spent more on prevention? We can only answer this if we know such things as the deterrent and incapacitative effects of various sanctions, after school activities, etc. Based on the proceeding caveat, comparing cost estimates of crime with other social ills can provide a basis of comparison on a common metric (Kurlychek et al., 2006).

Cohen (2001) reminds us of a second problem with tallying the costs of crime, which is that the true cost of crime is more than the sum total of its parts. Removing felons and reducing the "opportunity of crime" by itself will not eliminate the incidences of crime against individuals in long-term care. Massive changes in social structure come about only with equally impressive changes in social behaviors. Therefore, any aggregate estimates of the cost of crime would need to account for these contributing factors.

Benefit-Cost Analysis of Crime Control Policies

One of the most important uses for estimating the monetary costs of crime is to contrast it with the benefits and costs of alternative crime control policies. Since society invests dollars into crime prevention, it is logical to use dollars as a common metric for analyzing criminal justice policy. Society's ability to control criminal behavior and reduce the incidence of victimization is limited by its ability to pay for police, courts, corrections, and prevention programs (Cohen, 2001).

As new policies are tested and policy options are considered, it is important to employ objective evaluation techniques (Sherman et al., 1997). If two options have identical crime control effects but differing costs, the choice is simple; unfortunately, it is rarely that simple or clear cut. More realistically there are cases in which a new policy

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reduces crime at some additional expense (or increases cost at a savings), one key question is whether that reduction (or increase) in crime is worth the cost. Only by assessing value to the victimization can one begin to answer the question (Cohen, 2001).

One of the most compelling reasons to monetize the costs and benefits of crime control programs is the consequence of not doing it. Whenever a program is either implemented or not implemented, society is implicitly conducting such an analysis and placing dollar values on crimes. For example, if the MPBC program costs $1 million to implement and ultimately will prevent 100 criminals from victimizing long-term care patients, then there is an assumption by policymakers supporting the program that it is worth spending at least $10,000 per criminal to increase patient safety in the health-care industry (i.e., $1 million divided by 100 criminals).

In a contrasting scenario, if a million dollar program would have been funded that prevented 50 assaults, then policymakers are implicitly determining that each assault is worth less than $20,000 (i.e., $1 million divided by 50). Policymakers are placing a dollar value on crime and implicitly making a value judgment about the value of crime (Cohen, 2001).

Economic Analysis of the Michigan Background Checks Program

Intense competition for limited Medicaid funding, combined with the increased scrutiny of program costs and outcomes, has created a need for a better understanding of the relationship between costs and outcomes in government-funded programs. At an increasing rate, federally funded programs are required to prove that their outcomes are

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good investments of public and private funds. Therefore, program costs must be justified relative to program outcomes (and vice versa) (Yates, 1999).

Costs studies are an effective way of considering the impact of abuse, neglect, and exploitation on individuals in long-term care settings. It is a difficult endeavor, largely because the level of knowledge and research in this particular area lags significantly behind others areas of domestic violence or other types of social problems (Spencer, 1999). However, a description of the costs of abuse, neglect, and exploitation can help demonstrate the profound effect that violence and other harms have, not only on the vulnerable individuals, but also the widespread implications for government, institutions, and businesses.

Implications for Policy and Practice

The primary implications for policy and practice will be in establishing a fair and inclusive protocol and a program that ensures compliance with the Department of Health and Human Services' impending national background check requirement. Secondary implications relate to potential improvements in the structure and implementation of the program. For example, if research revealed that people with certain criminal histories were more likely to prey upon vulnerable adults, then policies could be amended to exclude workers with those types of criminal records. Thus, an effective and efficient program can continue to be improved. It is most likely that implementation of such changes would require additional legislation: the need for such legislation would be a policy implication of the research.

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CHAPTER III

METHODOLOGY

Overview of the Methods

To date, no research efforts have focused on crime opportunity theory and the benefit-cost savings gained from the reduction of those *opportunities*. The purpose of this research is to fill this void by gaining an understanding of the Michigan Background Check Program as an *opportunity-reduction* program. The overall research goal is to determine the effectiveness of the program through the following two inquiries:

Research Question #1 – Is the Michigan Background Checks Program effective in preventing crime opportunities? and,

Research Question #2 – Is there a benefit-cost associated with the prevention of these crime opportunities?

The analysis examines issues and costs relating to crime *opportunities,* in an effort to assist policymakers in identifying resources, *best practices*, and legislation that assist in the prevention of crime (abuse, neglect, and exploitation) against individuals in long-term care settings.

Crime Literature and Data Sets

The economic model of crime was developed conceptually (Block & Heineke, 1975; Ehrlich, 1973) and tested empirically (Cornwell & Trumbull, 1994; Meyers, 1983;

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Witte, 1983). No studies, however, have estimated the economic model of crime with a focus on the reduction of crime opportunity. There has been an alternative line of research in which economists have developed models to estimate the tangible and intangible costs of individual criminal acts (Cohen, 1988, 1998; Miller et al., 1993, 1996; Rajkumar & French, 1997). These estimates can be used to estimate the economic benefit of a *crime opportunity* reduction program.

This research uses current data from MBCP records of registry checks, conducted by long-term care providers throughout Michigan, to estimate the incremental cost of crime associated with crime opportunities. The methods and findings are a meaningful contribution to the health care and criminology literature for several reasons. First, the data are unique and current. No other state in the U.S. has collected comprehensive data from every licensed long-term care facility. Second, there is detailed information on the number of individuals, by job type, excluded by specific crime, as opposed to general measures of criminal activity or arrest. Third, recent statistical methods are used to estimate the total (tangible and intangible) cost of crime, including models for both dichotomous and continuous dependent variables, data transformations for outliers, regression diagnostics, and smearing factors for statistical inferences. And finally, the cost estimates have health and criminal justice policy implications regarding potential preventative measures.

Theoretical Background on the Cost of Crime

Crime imposes costs on society in a number of ways, all of which must be properly quantified to accurately measure the full societal cost (Rajkumar & French,

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1997). The costs elements can be divided into four categorical costs (Harwood et al., 1998; Rajkumar & French, 1997; Rice et al., 1990).

Crime Victim Costs

These elements include the medical costs, lost wages, reduced productivity, and property damage suffered by the victim as well as the pain and suffering endured as a result of crime; this also includes the personal loss of life suffered by a homicide victim. In the case of stolen property, unless it is damaged or destroyed, it is not typically counted as a social loss because it is transferred to another member of society, namely, the criminal (French et al., 2004).

Criminal Justice Costs

Also referred to as the *Costs of Crime Protection and Law Enforcement*, these include police protection costs, costs of running the criminal justice system, private legal costs, and correctional costs (including incarceration).

Crime Career/Productivity Losses Costs

This category refers to the values of lost productivity of law-abiding citizens who turn to crime rather than pursue a lawful career that could directly benefit society.

External Victims Costs

The effects of crime touch many segments of society (Anderson, 1999). As crime escalates across a community, residents who were not personally victimized are besieged

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by fear and psychological distress about the possibilities of becoming the next victim. In additional to this emotional toll, individuals may participate in more overt activities, such as purchasing locks, weapons, security alarms, and other devices (Clotfelter & Seeley, 1979). These safety devices are important indicators of avoidance behavior in the overall cost of crime.

Many of the items listed above are observable and directly measurable. For example, short-term medical expenses, property damage, and police and protection costs can all be estimated through victimization surveys and criminal justice records (Jones & Vischi, 1979; McPheters, 1979). These costs are labeled “direct costs” by some (Harwood et al., 1998; Rice et al., 1990), but Rajkumar and French (1997) use the term *tangible costs.*

The intangible costs to victims of crime are difficult to measure because individual well-being or utility is a theoretical concept that does not easily translate to income or monetary equivalents (French, 2000). Losses in utility are indirectly translated into monetary values by using the concept of either victim compensation or victim willingness to pay (Rajkumar & French, 1997; Zarkin, 2000).

In the victim-compensation approach, the cost of crime is measured by how much money would be necessary to compensate the crime victim. This award should ideally cover all losses incurred by the victim, including his/her pain and suffering. The alternative approach is to measure the dollar amount a potential victim is willing to pay to reduce the risk of a particular crime occurring in the future (French et al., 2004). By measuring the risk reduction and dollar payment, one can calculate the cost of crime to the potential victim. A variation of this approach is to link a particular crime to the injury

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or death that results and ask how much an individual is willing to pay to reduce the risk of death. Most methods for estimating the victim costs of crime are based on either the victim-compensation or the willingness-to-pay concepts (Lankford, 1988; Mishan, 1959).

Rajkumar and French (1997) advocate using the cost-of-illness approach to estimate the tangible costs of crime and the jury compensation method to estimate intangible costs (Cohen, 1988, 1998; Miller et al., 1993, 1996). Rajkumar and French derived full cost estimates for the following crimes—aggravated assault, robbery, burglary, theft, auto theft, forgery and embezzlement, fencing, gambling, pimping and prostitution, and drug law violation. Costs were estimated for each individual type of crime and were divided into three categories: crime victim costs, criminal justice services costs, and crime career costs.

Empirical Model for Estimating Costs of Crime

To estimate the cost of crime for long-term care settings, the analysis followed a sequential series of steps, which involved simplifying assumptions, data transformations, and statistical estimation. Much of the analysis extended earlier studies and already-established techniques (e.g., Chitwood et al., 1999; French, McGeary, et al., 2000b; French, Roebuck et al., 2000; Rajkumar & French, 1997). Listed below are the sequential steps in the estimation process along with a brief description of each phase.

Data from the Health Services Research Center's questionnaire (a subset of FBI index crimes) include information on four different types of crime (Chitwood et al., 1999; French, McGeary, et al., 2000a). Since the analysis is concerned with multiple crimes, each of which involves a different societal cost, these crimes must be converted to a

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normalizing factor (dollars) so that each measure can be aggregated and compared. As noted earlier, Rajkumar and French (1997) and Miller et al. (1996) report unit cost estimates for a variety of different crimes. For the purposes of this research, cost estimates for the following crimes were converted to 2007 dollars using the inflation calculator from the U.S. Department of Labor's Bureau of Labor Statistics (www.bls.gov) to calculate the respective costs of crime.

- Cost of Homicide – $1,431,699.87

  Viscusi and Aldy (2003) estimated the cost of "Homicide" as $1,260,830 in 2003 dollars. This value was inflated to 2007 dollars using the BLS inflation calculator (www.bls.gov).

- Cost of Rape/Sexual Assault – $125,795.38

  Miller et al. (1996) estimated the cost of "Rape and Sexual Assault" as $87,000 in 1993 dollars. This value was inflated to 2007 dollars using the BLS inflation calculator (www.bls.gov).

- Cost of Assault and Battery – $13,591.68

  Miller et al., (1996) estimated the cost of "Other Assault or Attempt" as $9,400 in 1993 dollars. This value was inflated to 2007 dollars using the BLS inflation calculator (www.bls.gov).

- Cost of Larceny/Theft – $32,598.78

  Rajkumar and French (1997) estimated the cost of "Robbery" at $21,890 in 1992 dollars. This value was inflated to 2007 dollars using the BLS inflation calculator (www.bls.gov).

- Cost of Fraud – $3,037.00

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McCollister (2004) estimated the cost of "Fraud" at $2,745.77 in 2004 dollars. This value was inflated to 2007 dollars using the BLS inflation calculator (www.bls.gov).

The unit cost estimates above were then multiplied by the corresponding number of crimes committed by each individual in the sample, and the results were summed across all crime types to create a "total annualized cost of crime" variable.

Hypotheses

The following hypotheses provide evidence that supports the overall research goal of the program, which is to reduce the opportunity for (and therefore incidences of) crime.

H1 – Implementation of the MBCP Increases the Number of Applicants Eliminated With Disqualifying Criminal Backgrounds

The analysis examines the number of long-term care facilities conducting background checks, the number of applicants checked, and the number of applicants screened out by job type and disqualifying crime, using the MBCP five-point registry. The MBCP's comprehensive system is compared to the pre-MBCP process to determine which is more effective in eliminating inappropriate applicants. Calculation of cost-savings gained from the elimination of *conditional hires'* cost, and their associated training costs, are estimated.

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H2 – Implementation of the MBCP Reduces Opportunities for Abuse, Neglect, and Exploitation of Individuals Receiving Long-Term Care Services

The MBCP eliminates individuals with disqualifying criminal backgrounds, thereby reducing the opportunity, access, and efficiency of criminals to perpetrate against vulnerable individuals in long-term care settings.

H3 – There Are Cost-Savings Gained From the Reduction of Crime Opportunities

To quantify the economic benefits of crime reduction, the analysis will aggregate the projected numbers of crimes prevented using the MBCP and multiple by the respective (tangible and intangible) costs of crimes. Ultimately, assess if the MBCP's benefits exceeded the cost of the program, which would determine the program as economically efficient.

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CHAPTER IV

RESULTS AND FINDINGS

Through Michigan's participation in the pilot program, comprehensive procedures for the background checks were developed. Facilities and providers notify potential employees of the requirement to conduct a background check if the person is to be hired. The applicant then provides authorization to conduct the check, a statement disclosing any disqualifying information, and personal information needed to conduct the checks. The employers then must conduct online checks of five registries: Office of Inspector General Healthcare Integrity Practitioner Data Bank (OIG), Michigan Nurse Aid Registry (NAR), Public Sex Offender Registry (PSOR), Offender Tracking Information System (OTIS), and the Internet Criminal History Access Tool (ICHAT). If no disqualifying information is found via the required registry checks, the employer arranges for the applicant to provide a set of scanned fingerprints to be checked against state (MSP-AFIS) records and federal (FBI-IAFIS) records.

Disqualifying information is described as a conviction for a relevant crime or a finding of abuse, neglect or misappropriation of resident or patient property. A conviction for a relevant crime includes crimes that would be reported to the OIG databank (i.e., health care fraud, felony relating to controlled substances), and other offenses as defined by the State of Michigan. If disqualifying information was identified at any point of the background check, the process would stop and the employee would be immediately

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disqualified. Licensing policies mandate that long-term care facilities or providers may not knowingly employ individuals with direct-patient care access that have disqualifying information.

Prior to the implementation of the background check program there was a wide variation in the thoroughness of the checks. Some agencies conducted single-source check, whereas other agencies utilized multiple checks from two to five sources. Most agencies used the Nurses Aid Registry (NAR) and Internet Criminal History Access Tool (ICHAT), which limited their inquiry to state-only offenses and dismissals. Implementation of the background checks program has resulted in all long-term care settings utilizing the same multi-step process for screening job applicants. The efficiency of the process has effectively enabled the system to consistently identify and eliminate individuals with disqualifying criminal backgrounds.

Data Analysis

After the implementation of the Michigan Background Check Program, 202,450 applicants were checked through the electronic registries systems, resulting in 3% or 13,000+ exclusions. The following data provide a breakdown of the 3% exclusions revealed in the registry checks: ICHAT—64%, OIG—8%, NAR—6%, PSOR—6%, and OTIS—16%. Individuals that were cleared through the electronic registry check were then given a fingerprint check. Out of the 157,900 individuals given fingerprint checks, 6% or 929 were excluded (see Figure 1).

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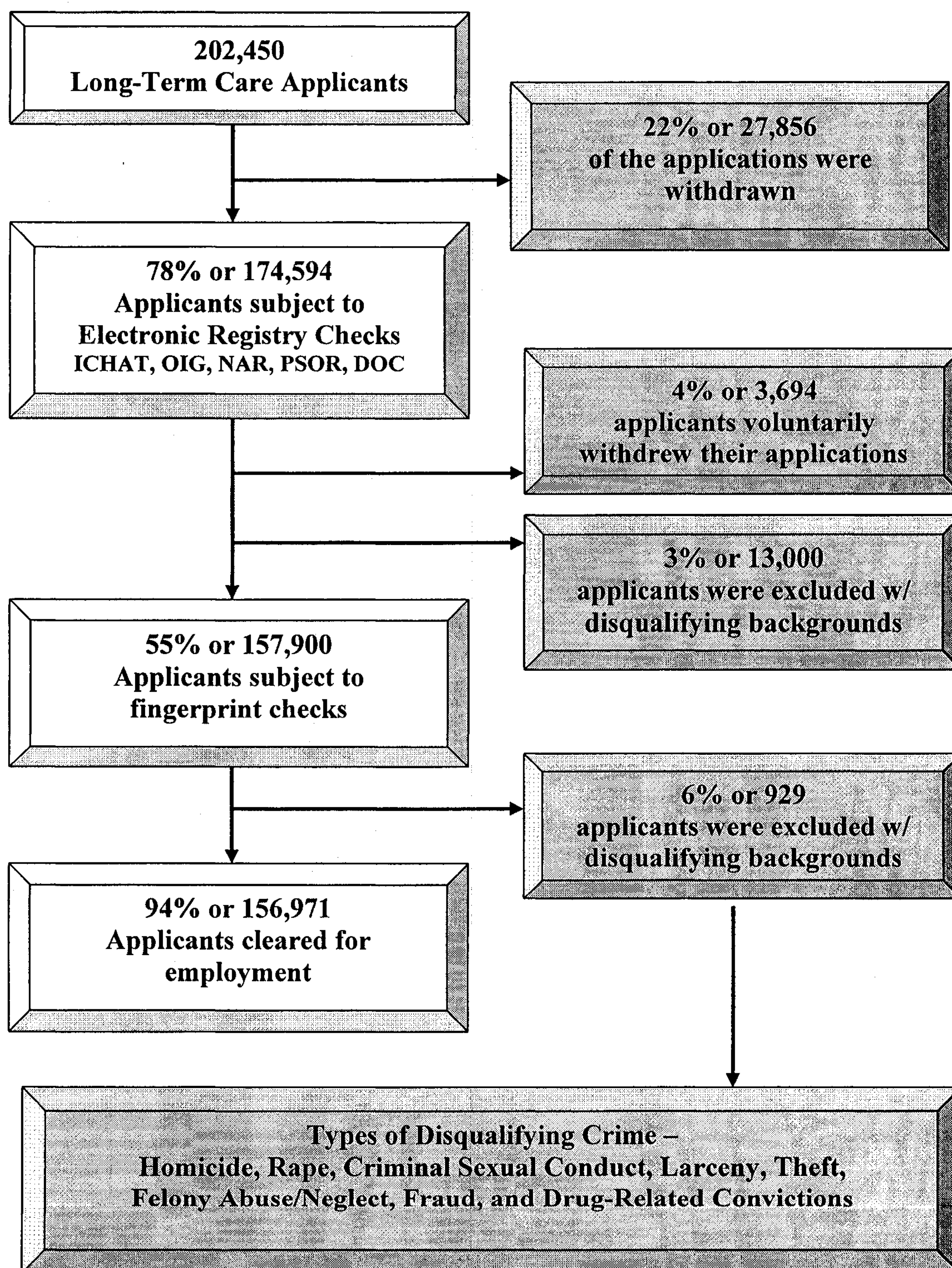

Figure 1. Flow Chart of the MBCP's Process and Results

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Table 1 shows the disqualifying crimes by types and number of applicants.

Table 1

Numbers of Applicants Disqualified by Type of Disqualifying Crimes

Crime	Number Disqualified
Homicide	16
Rape/Criminal Sexual Conduct	27
Assault/Weapons	181
Larceny/Theft	188
Felony Abuse and Neglect	313
Fraud	140
Drug-related	64
Total	**929**

Source: Compiled from Michigan Background Check Pilot Program.

From July 1, 2006 through September 30, 2007, the applicants for jobs in Michigan's long-term care facilities included 16 people with homicide convictions. These applicants cleared the employment interviews and the name-based background check processes, but were identified and disqualified after the FBI fingerprint check revealed their prior convictions. In other words, the MBCP prevented 16 applicants with homicide convictions from working in the long-term care industry.

Similarly, 27 applicants had rape or criminal sexual assault convictions and were denied employment based on their FBI fingerprint check, 181 applicants were disqualified on the basis of an assault/weapons convictions, 188 applicants had

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larceny/theft convictions, 140 had fraud convictions, 64 had drug-related convictions, and 313 had been convicted of other disqualifying felony crimes.

Assessing the Cost of Crime

Assessing the cost of criminal offenses is important for the economic evaluation of crime prevention programs, such as the MBCP. Economic analysis allows us to estimate the crime costs of abuse, neglect, and exploitation (see Table 2). An analytical description of the costs can demonstrate the profound effects that maltreatment and other harms have on vulnerable individuals, and the widespread implication for government, institutions, and businesses. Further, economic analysis assesses the effects of policy decisions and provides guidance to policy makers regarding choices between alternative uses of resources and alternative distribution of services (Bartley, 2000).

Table 2

Total Cost of Crime

Type of Crime	Cost Per Incident
Homicide	$1,431,700
Rape	$125,795
Assault	$13,592
Larceny	$32,599
Fraud	$3,037

Adapted from McCollister, 2004; Viscusi & Aldy, 2003; Miller et al., 1996; Rajkumar & French, 1997.

Once an individual is identified with a disqualifying criminal background, the information is flagged and entered into a centralized databank. All subsequent employers

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may tap into this database when hiring, which would eliminate the need for multiple background checks conducted on the same disqualified individuals. Table 1 reflects the cost savings of eliminating these individuals, but it does not capture the cost savings of dissuading these individuals from reapplying for employment at other sites and the subsequent expenses of additional background checks. Table 3 illustrates the number of applicants rejected by the Michigan Background Check Pilot Program, categorized by type and cost of crime.

Table 3

Number of Individuals Excluded × Costs of Crime

Crime Category	Exclusion Count*	Crime Costs	Total Savings
Homicide	16	$1,431,700	$ 22,907,200
Rape/CSC	27	$ 125,795	$ 3,396,465
Assault/Weapons	181	$ 13,592	$ 2,460,152
Larceny/Theft	188	$ 32,599	$ 6,128,612
Fraud	140	$ 3,037	$ 425,180
Total	**553**		**$ 35,317,609**

*Less than 4% of the excluded individuals are duplicated counts.
Source: Compiled from Michigan Background Check Pilot Program.

Cost-Savings From Conditional Hires

There is also a substantial cost savings gained from eliminating “conditional hires.” A conditional hire is an individual hired and working up to 90 days before background check results are available. During this time period, an individual would

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undergo costly professional training and have unrestricted access to vulnerable patients (and could easily perpetrate a crime if they were so inclined).

The cost of training a lower-skilled employee is approximately $1,000, and the cost of training a professional-level employee is approximately $3,000. Table 4 shows the breakdown of disqualified applicants and the respective positions for which they applied. The cost savings of eliminating applicants with disqualifying backgrounds, before the investment in trainings, saved Michigan $5,410,000.

Table 4

Conditional Hires Subsequently Disqualified and Replaced

Job Groups	Count	Costs	Total
Executive, Admin, Managerial	89	$3,000	$ 267,000
Professional/Licensed Health Care	628	$3,000	$ 1,884,000
Technical, Unlicensed Health Care	2070	$1,000	$ 2,070,000
Laboratory and Radiology Services	4	$3,000	$ 12,000
Food Services	325	$1,000	$ 325,000
Housekeeping Services	201	$1,000	$ 201,000
Other (barber, manicurist, beautician)	651	$1,000	$ 651,000
Total	**3968**		**$ 5,410,000**

Source: Compiled from Michigan Background Check Pilot Program.

Rates of Recidivism

Disqualified applicants have the potential to commit additional crimes. If these disqualified applicants were hired in long-term care facilities, there is some likelihood that they would have perpetrated additional offenses on vulnerable residents. This section

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projects the probability that an individual with a disqualifying prior offense would have perpetrated additional offenses. Comparing this probability to that of a clean employee, and scaling up by the number of disqualified applicants, yields an estimate of the number of crimes against the elderly and infirm that will be prevented by implementing the MBCP.

In June 2002, the Bureau of Justice Statistics published a thorough analysis of recidivism in 272,111 prisoners released in 1994, representing two-thirds of all prisoners released in the United Sates that year. This study quantified the re-arrest rate for new crimes by most severe type of prior offense and by type of new offense, and by length of time since release from incarceration. For example, an individual who was previously convicted of a drug offense has a 4.9% probability of being re-arrested for robbery, and a 41.2% probability of being re-arrested for another drug offense, within three years (some individuals may be arrested for both; this possibility is reflected in the data). An individual who was previously convicted of homicide has a 1.2% chance of being re-arrested on a homicide charge within three years of release.

Not all crimes are likely to be committed in a long-term care setting. For example, an unscrupulous employee who wants to take money from an elderly victim may not rob or burglarize the victim if the employee has direct access to the victim's property. Taking such property under these circumstances puts the act in the category of larceny or theft. The distinction between robbery, burglary and larceny is important from both societal and economic perspectives, since robbery and burglary inflict greater trauma on the victim and hence generate larger economic damages as well. Consequently, repeat crimes are

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lumped together into five categories: homicide, rape/criminal sexual conduct, assault, larceny/theft, and fraud (see Tables 5 and 6).

Table 5

Projected Michigan Recidivism Rates by Re-arrest Charge and Prior Charge

Preliminary Set of Variables for Adjustment								
A) Recidivism rate of prisoners released in 1994 (Bureau of Justice Statistics, 2002)			**B) Primary discount rate**		**C) Total crime cost (2007 dollars)**		**D) Per capita income (2004)**	
	Original	Converted (36 mos rate = 1)	(FRB, effective from 6/29/06) = 6.25%					
			multiplier		Homicide	$1,431,700	MI	$31,730
6 mos	29.9	0.443	6 mos	1.0328	Rape	$ 125,795		
12 mos	44.1	0.653	12 mos	1.0667	Assault	$ 13,592		
24 mos	59.2	0.877	24 mos	1.1378	Larceny/Theft	$ 32,599		
36 mos	67.5	1	36 mos	1.2136	Fraud	$ 3,037		

Source: Compiled from Michigan Background Check Pilot Program.

Cost-Savings From the Reduction of Crime Opportunity

Table 7 shows the total cost savings gained by eliminating the opportunity to re-offend (crime opportunity) for individuals with disqualifying criminal backgrounds.

Undercount Data

Figure 2 shows 27,856 (or 22%) application were withdrawn from the MBCP process. This includes applicants' withdrawals, as well as administrative errors where the agency withdrew the application.

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Table 6

Cost of Recidivism by Felony Categories

Categorical Cost of Recidivism										
Most serious offense at time of release:	**Periodic recidivism rates adjusted with recidivism rate after release A)**					**Costs of recidivism by each crime type C), discounted by B) (dollar)**				
Rearrest Charge	**Homicide**	**Rape**	**Assault**	**Larceny**	**Fraud**	**Homicide**	**Rape**	**Assault**	**Larceny**	**Fraud**
Homicide										
6 months	0.53	0.31	0.71	0.27	0.22	21188.66	12360.05	28251.55	10594.33	8828.61
12 months	0.78	0.46	1.04	0.39	0.33	10373.97	6051.49	13831.97	5186.99	4322.49
24 months	1.05	0.61	1.40	0.53	0.44	11803.14	6885.16	15737.52	5901.57	4917.97
36 months	1.20	0.70	1.60	0.60	0.50	6912.96	4032.56	9217.28	3456.48	2880.40
Rape										
6 months	0.00	1.11	0.44	0.22	0.13	0.00	1335.01	534.00	267.00	160.20
12 months	0.00	1.63	0.65	0.33	0.20	0.00	653.62	261.45	130.72	78.43
24 months	0.00	2.19	0.88	0.44	0.26	0.00	743.66	297.47	148.73	89.24
36 months	0.00	2.50	1.00	0.50	0.30	0.00	435.56	174.22	87.11	52.27
Assault										
6 months	5.27	3.85	9.75	6.38	3.99	1377.32	1006.95	2546.31	1666.68	1041.67
12 months	7.77	5.68	14.37	9.40	5.88	674.34	493.00	1246.68	816.01	510.00
24 months	10.44	7.63	19.29	12.63	7.89	767.24	560.92	1418.42	928.42	580.26
36 months	11.90	8.70	22.00	14.40	9.00	449.36	328.53	830.75	543.77	339.85
Larceny/Theft										
6 months	1.82	2.75	4.70	15.02	10.37	65.88	99.62	170.33	544.72	376.00
12 months	2.68	4.05	6.92	22.14	15.28	32.26	48.78	83.39	266.70	184.09
24 months	3.60	5.44	9.30	29.73	20.52	36.70	55.50	94.88	303.44	209.45
36 months	4.10	6.20	10.60	33.90	23.40	21.49	32.50	55.57	177.72	122.67
Fraud										
6 months	0.93	0.80	1.42	3.01	8.42	29.18	25.01	44.46	94.49	264.01
12 months	1.37	1.18	2.09	4.44	12.41	14.29	12.25	21.77	46.26	129.26
24 months	1.84	1.58	2.81	5.96	16.66	16.25	13.93	24.77	52.63	147.07
36 months	2.10	1.80	3.20	6.80	19.00	9.52	8.16	14.51	30.83	86.13
Adjustment multiplier by state per capita income D)						0.96	0.96	0.96	0.96	0.96

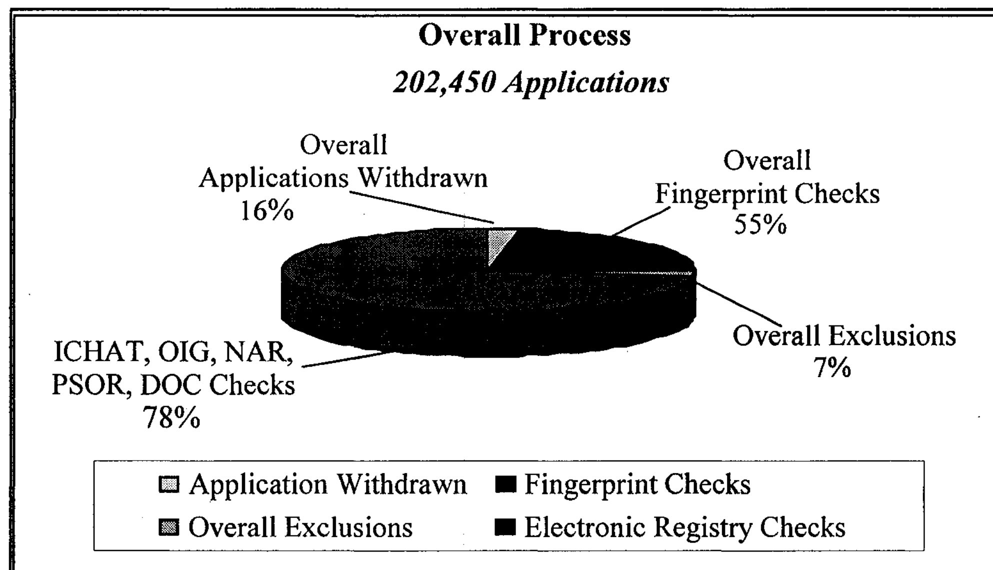
Source: Compiled from Michigan Background Check Pilot Program.

Table 7

Projecting Savings from Recidivism Crimes Prevented by the MBCP

Crime Category	Exclusion Count	Rate of Recidivism	Potential Re-offenders	Savings from Prevention	Additional Savings
Homicide	16	40.7%	7	$51,563.44	$ 360,944.08
Rape	27	46.0%	12	$33,737.19	$ 404,846.28
Assault	181	61.7%	112	$71,781.58	$ 8,039,536.90
Larceny	189	78.8%	149	$29,961.36	$ 4,464,242.60
Fraud	140	70.2%	98	$24,280.36	$ 2,379,475.20
Total	**553**		**378**		**$ 15,649,045.06**

Source: Compiled from Michigan Background Check Pilot Program.



Source: Compiled from Michigan Background Check Pilot Program.

Figure 2. Number of Applicants Withdrawing Application Prior to MBCP.

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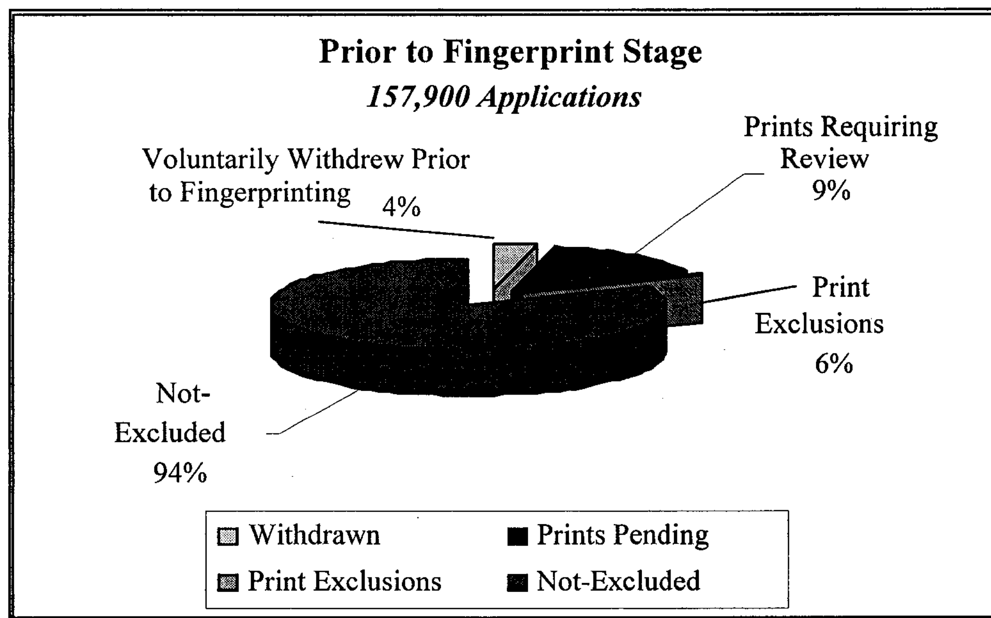
Figure 3 shows an additional 3,694 or 4% withdrew their application prior to the fingerprint check process.



Source: Compiled from Michigan Background Check Pilot Program.

Figure 3. Number of Applicants Withdrawing Applications Prior to FBI Check.

It is unknown if these individuals had disqualifying criminal backgrounds; however if that was the case, then the projected cost-saving for potential crimes and recidivism crimes would further increase cost savings exponentially.

Operational Cost of the MBCP

Table 8 shows the overall program across the three-year funding cycles. This includes salaries/fringes, direct costs, consultants, travel, supplies, miscellaneous and sub-contractor costs. Additionally, you can see how the enabling legislation was initially not

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coordinated with the implementation of the MBCP. This caused major challenges in that the grant's language mandated a program start date of October 1, 2004, yet the legislative boilerplate language that mandated compliance was not rolled out until January 2005. Though the issues related to coordination are outside the scope of this research, it is important to acknowledge the challenges.

Summary

Based on the findings of this chapter, it is evident that the MBCP has had a positive effect on the reduction of crime opportunities in long-term care settings. Chapter V will discuss the summaries and conclusions determined by the analysis. Findings for the research goals and research questions are examined.

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Table 8

Three-Year Program Costs for the MBCP

Michigan Background Check Program – Boilerplate Legislation/Budget Timeline											
Jan-05	Apr-05	Sep-05	Oct-05	Apr-06	Sep-06	Oct-06	Apr-07	Sep-07	Oct-07	Dec-07	Ongoing
		Phase 1									
	Programmatic Legislation										
					Phase II						
		Systems Development									
						Phase III					
					MSU Sustained System						
										Phase IV - A	
										Legislation Re-examination	
										Phase IV - B	
										State Sustained System	

FY 05 Budget - $900,000 (1/05-9/05)		FY 06 Budget - $1,425,957 (10/05-9/06)		FY 07 Budget - $1,363,951 (10/06-9/07)		FY 08 Budget - $314,879 (10/07-9/08)	
Salaries/Fringes	$238,406	Salaries/Fringes	$ 335,062	Salaries/Fringes	$ 538,268	Salaries/Fringes	$203,108
Other Direct	$219,766	Other Direct Costs	$ 75,000	Other Direct Costs	$ 73,709	Other Direct Costs	$ –
Consultants	$ 4,000	Consultants	$ 1,500	Consultants	$ 1,500	Consultants	$ 1,500
Travel	$ 11,000	Travel	$ 1,300	Travel	$ 16,600	Travel	$ 5,000
Supplies	$ 19,351	Supplies	$ 15,117	Supplies	$ 8,000	Supplies	$ 3,000
Other Costs	$ 34,127	Other Costs	$ 325,069	Other Costs	$ 359,410	Other Costs	$ 66,821
Subcontracts	$373,350	Subcontracts	$ 662,909	Subcontracts	$ 366,464	Subcontracts	$ 35,450
Total Budget	$900,000	Total Budget	$1,425,957	Total Budget	$1,363,951	Total Budget	$314,879

Source: Compiled from Michigan Background Check Pilot Program.

CHAPTER V

SUMMARY AND CONCLUSIONS

In this chapter, the analysis and interpretation of the findings outlined in Chapter IV are presented based on the goals and objectives identified in the Introduction. The overall intent of this dissertation was to determine the effectiveness and benefit-cost of the Michigan Background Check Program in protecting vulnerable individuals from criminal maltreatment in long-term care settings. To date, no research efforts have focused on the Crime Opportunity Theory and the benefit-cost savings gained from the reduction of those *opportunities* to protect vulnerable populations. The aim of this chapter is to summarize the findings shown in Chapter IV and offer assessments and recommendations.

Discussion of Findings

H1 – Implementation of the MBCP Increases the Number of Applicants Eliminated With Disqualifying Criminal Backgrounds

Previous to April 2006, fingerprint-based FBI criminal record checks were required only for new direct-care employees, persons with clinical privileges, or independent contractors who had *not* lived in Michigan for at least three years prior to employment. The MBCP screened 202,450 applicants for direct-patient care positions in long-term care settings. Prior to the implementation of the background check program there was great variation in the thoroughness of the checks. Some agencies conducted

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single-source check, whereas other agencies utilized multiple checks from two to five sources. Most agencies used the NAR and ICHAT, which limited their inquiry to state-only offenses and dismissals. After implementation of the MBCP, all long-term care settings utilize the same multi-step process that include local, state and federal (FBI) checks through the five-point registries (OIG, NAR, PSOR, OTIS, and ICHAT).

Based on the level of inconsistency, we can assume that majority of the 13,000 applicants that were excluded at the five-point registries level would not have been screened out, and therefore would be hired. Since the pre-MBCP process did not mandate federal registry checks (ICHAT), we know that the 929 applicants that MBCP disqualified would not have been screened out.

Increases in efficiency have effectively enabled the system to identify individuals with disqualifying criminal backgrounds consistently. This outcome is taken as evidence of supporting the hypothesis; therefore, the conclusion is that implementation of the MPBC increases the number of applicants eliminated with disqualifying criminal backgrounds.

H2 – Implementation of the MBCP Reduces Opportunities for Crime

Crime Opportunity Theory rests on the single principle that easy or tempting opportunities entice people (with criminal dispositions) into criminal action. Altering the capacity of *crime opportunities* at any level will produce a change in criminal outcomes. Instituting a comprehensive background check program provides an effective method for *reducing opportunities for crime* and demonstrates the theoretical point that there is a direct relationship between opportunity and crime.

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The Michigan Background Check Program is an *opportunity-reduction* program, intended as a deterrent to screen out criminals from having direct access to vulnerable populations in long-term care settings. The overall goal of the program, and associated legislation, is to reduce the opportunity (and therefore incidences) of crime.

The MBCP eliminates individuals with disqualifying felony backgrounds, thereby reducing the opportunities, access, and efficiency of offenders. This outcome is taken as evidence of falsification of the hypothesis; therefore, the MPBC is effective in increasing the number of unsuitable individuals excluded from working with individuals in long-term-care facilities.

H3 – There Are Cost-Savings Gained From the Reduction of Crime Opportunities

A costing methodology was created to provide a comprehensive perspective on the impacts of crime to the victim, their family and society. Tangible and intangible cost estimates allowed for the crime costs of abuse, neglect, and exploitation to be assessed.

In an effort to reflect the cost savings from eliminating individuals with disqualifying criminal backgrounds, the total per-offense cost was multiplied by the number of individuals excluded by crime category. This provided an overall savings of $43,640,383. In other words, if these individuals were hired using the pre-MBCP process, they would *not* have been disqualified which could have resulted in a $43 unintended consequence.

The Pre-MBCP process allowed for *conditional hires* of applicants, which means an individual could work up to 90 days before the background checks results were available. During this 90-day period, the applicant would have received professional

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training ranging from $1,000 to $3,000. If the results revealed a disqualifying criminal background, the applicant would then be released.

The MBCP process identified 3,968 individuals that were disqualified. If each of these individuals were checked using the pre-MBCP process, they would not have been identified until after the professional training. The *conditional hire* cost of replacing these individuals is $5,410,000. The projected cost savings gained by eliminating the opportunity for crime, was determined using recidivism data. Applying a recidivism formula, based on crime categories, projected an additional savings of $155,221,417.

There were 48,233 (or 22%) individuals that voluntarily withdrew their application prior to or during the MBCP process. It is unknown if these individuals had disqualifying criminal backgrounds; however, one can only speculate the impact of their (crime cost) information on the above-stated findings.

Outcome of Research Questions

In summary, the MBCP was effective in preventing crime opportunities, and provided a positive benefits-cost savings of $204,271,800 (which exceeded the program costs of $3,689,908) associated with the prevention of those crimes. This research shows how a modest reduction in certain types of crime can generate substantial economic benefits.

Strengths of the Research

This research contains many strength components. Prior to the DHHS pilot program, research of this nature has never been conducted before in Michigan or the

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nation. As a result, this research will serve as a means of policy evaluation for the Michigan legislature, as well as DHHS in their quest to establish nation policy on patient safety and background checks.

The findings will also provide long-term care settings a means of comparison, self-evaluation or introspection, and recommendations in order to increase the efficiency and effectiveness of the background check screening process. As a result, long-term care administrators are able to improve the administration of direct-patient care; legislators are able to proposed effective public policies with associated budgets; and patients in long-term care settings are safe.

Assumptions

The researcher understood the scope of the study, was competent in self-reporting information, and responded objectively and honestly. Interpretation of the data collected accurately reflected the intent of the researcher. The methodology proposed and described here offered a logical and appropriate design for this particular research project.

Limitations of the Research

The study was limited to Medicaid-funded long-term care settings, include nursing homes, home health agencies, hospice, long-term care hospitals, intermediate facilities for the mentally retarded (ICFs/MR) and other entities that provide long-term care services. This study did not include home help care or kinship care settings. Additionally, this study was limited to information acquired from the literature review

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and the level of detail contained in internal policies and procedures of Michigan long-term care settings.

This research only concentrated on the state of Michigan. As a consequence, generalizations to other states may be inappropriate, as licensing laws related to security may be different. Likewise, various states may possess varying degrees of legislation that affect the healthcare industry in the context of hiring and background investigations.

Implications for Future Research

Study limitations should be considered within the context of the research and policy implications. The magnitude, significance, and consistency of the estimated results suggest that any shortcomings in the estimation procedures may impact the precision of the estimates; but the qualitative findings are unlikely to change. Nevertheless, the following limitations should be noted. The research results apply to the state of Michigan, but the national implications are certain. Secondly, the MBCP targeted a specific population of direct-patient care workers; information on the other workers (doctors, custodians, etc.) with direct patient access was unknown. Thirdly, there was a broad group of crimes that were categorized into the five crime categories; different categorization could render different results.

Findings from this research will assist in aiding federal and state policymakers in the development of better background investigation techniques for hiring practices in long-term care settings, as well as any settings that provide direct access to vulnerable populations. This research adds a foundation for continued research into patient safety and background check techniques.

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Appendix

Public Acts 26, 27, 28, and 29 of 2006

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Act No. 26

Public Acts of 2006

Approved by the Governor

February 16, 2006

Filed with the Secretary of State
February 17, 2006

EFFECTIVE DATE: February 17, 2006

STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006

Introduced by Reps. Zelenko, Byrum, Murphy, Kathleen Law, Anderson, Vagnozzi, Bieda, Newell, Vander Veen, Shaffer, Leland, Lipsey, Stahl, Meisner, Gonzales, Plakas, Gleason, Clack, Stewart, Kolb, Whitmer, Kooiman, Williams, Brown, Farrah, Pastor, Hopgood, Brandenburg, Accavitti, Nofs, Ward, Sak, Huizenga, Palsrok, Gillard, Ball, Byrnes, Caul, Cushingberry, Espinoza, Hildenbrand, Jones, David Law, Lemmons, III, Lemmons, Jr., Mayes, Mortimer, Polidori, Proos and Sheltrown

ENROLLED HOUSE BILL No. 5168

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and

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prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending sections 16146, 16174, and 16245 (MCL 333.16146, 333.16174, and 333.16245), section 16146 as amended by 1988 PA 462, section 16174 as amended by 2002 PA 643, and section 16245 as amended by 1998 PA 109.

The People of the State of Michigan enact:

Sec. 16146

(1) A board shall grant a license or registration to an applicant meeting the requirements for the license or registration as prescribed in this article and the rules promulgated under this article.

(2) A board which grants licenses may:

(a) Certify licensees in those health profession specialty fields within its scope of practice which are established in this article.

(b) Reclassify licenses on the basis of a determination that the addition or removal of conditions or restrictions is appropriate.

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(c) Upon good cause, request that a licensee or registrant have a criminal history check conducted in accordance with section 16174(3).

Sec. 16174

(1) An individual who is licensed or registered under this article shall meet all of the following requirements:

(a) Be 18 or more years of age.

(b) Be of good moral character.

(c) Have a specific education or experience in the health profession or in a health profession subfield or health profession specialty field of the health profession, or training equivalent, or both, as prescribed by this article or rules of a board necessary to promote safe and competent practice and informed consumer choice.

(d) Have a working knowledge of the English language as determined in accordance with minimum standards established for that purpose by the department.

(e) Pay the appropriate fees as prescribed in this article.

(2) In addition to the requirements of subsection (1), an applicant for licensure, registration, specialty certification, or a health profession specialty subfield license under this article shall meet all of the following requirements:

(a) Establish that disciplinary proceedings before a similar licensure, registration, or specialty licensure or specialty certification board of this or any other state, of the United States military, of the federal government, or of another country are not pending against the applicant.

(b) Establish that if sanctions have been imposed against the applicant by a similar licensure, registration, or specialty licensure or specialty certification board of this or any other state, of the United States military, of the federal government, or of another country based upon grounds that are substantially similar to those set forth in this article or article 7 or the rules promulgated under

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this article or article 7, as determined by the board or task force to which the applicant applies, the sanctions are not in force at the time of application.

(c) File with the board or task force a written, signed consent to the release of information regarding a disciplinary investigation involving the applicant conducted by a similar licensure, registration, or specialty licensure or specialty certification board of this or any other state, of the United States military, of the federal government, or of another country.

(3) Beginning May 1, 2006, an applicant for initial licensure or registration shall submit his or her fingerprints to the department of state police to have a criminal history check conducted and request that the department of state police forward his or her fingerprints to the federal bureau of investigation for a national criminal history check. The department of state police shall conduct a criminal history check and request the federal bureau of investigation to make a determination of the existence of any national criminal history pertaining to the applicant. The department of state police shall provide the department with a written report of the criminal history check if the criminal history check contains any criminal history record information. The department of state police shall forward the results of the federal bureau of investigation determination to the department within 30 days after the request is made. The department shall notify the board and the applicant in writing of the type of crime disclosed on the federal bureau of investigation determination without disclosing the details of the crime. The department of state police may charge a reasonable fee to cover the cost of conducting the criminal history check. The criminal history record information obtained under this subsection shall be used only for the purpose of evaluating an applicant's qualifications for licensure or registration for which he or she has applied. A member of the board shall not disclose the report or its contents to any person who is not directly involved in evaluating the applicant's qualifications for licensure or registration. Information obtained under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be

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disclosed to any person except for purposes of this section or for law enforcement purposes.

(4) Before granting a license, registration, specialty certification, or a health profession specialty field license to an applicant, the board or task force to which the applicant applies may do 1 of the following:

(a) Make an independent inquiry into the applicant's compliance with the requirements described in subsection (2). If a licensure or registration board or task force determines under subsection (2)(b) that sanctions have been imposed and are in force at the time of application, the board or task force shall not grant a license or registration or specialty certification or health profession specialty field license to the applicant.

(b) Require the applicant to secure from a national association or federation of state professional licensing boards certification of compliance with the requirements described in subsection (2).

(5) If, after issuing a license, registration, specialty certification, or health profession specialty field license, a board or task force or the department determines that sanctions have been imposed against the licensee or registrant by a similar licensure or registration or specialty licensure or specialty certification board as described in subsection (2)(b), the disciplinary subcommittee may impose appropriate sanctions upon the licensee or registrant. The licensee or registrant may request a show cause hearing before a hearing examiner to demonstrate why the sanctions should not be imposed.

(6) An applicant for licensure, registration, specialty certification, or a health profession specialty field license who is or has been licensed, registered, or certified in a health profession or specialty by another state or country shall disclose that fact on the application form.

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Sec. 16245

(1) An individual whose license is limited, suspended, or revoked under this part may apply to his or her board or task force for a reinstatement of a revoked or suspended license or reclassification of a limited license pursuant to section 16247 or 16249.

(2) An individual whose registration is suspended or revoked under this part may apply to his or her board for a reinstatement of a suspended or revoked registration pursuant to section 16248.

(3) A board or task force shall reinstate a license or registration suspended for grounds stated in section 16221(j) upon payment of the installment.

(4) Except as otherwise provided in this subsection, in case of a revoked license or registration, an applicant shall not apply for reinstatement before the expiration of 3 years after the effective date of the revocation. In the case of a license or registration that was revoked for a violation of section 16221(b)(vii), a violation of section 16221(c)(iv) consisting of a felony conviction, any other felony conviction involving a controlled substance, or a violation of section 16221(q), an applicant shall not apply for reinstatement before the expiration of 5 years after the effective date of the revocation. The department shall return an application for reinstatement received before the expiration of the applicable time period under this subsection.

(5) The department shall provide an opportunity for a hearing before final rejection of an application for reinstatement.

(6) Based upon the recommendation of the disciplinary subcommittee for each health profession, the department shall adopt guidelines to establish specific criteria to be met by an applicant for reinstatement under this article or article 7. The criteria may include corrective measures or remedial education as a condition of reinstatement. If a board or task force, in reinstating a license or registration, deviates from the guidelines adopted under this subsection, the board or task force shall state the reason for the deviation on the record.

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(7) An individual who seeks reinstatement or reclassification of a license or registration pursuant to this section shall pay the application processing fee as a reinstatement or reclassification fee. If approved for reinstatement or reclassification, the individual shall pay the per year license or registration fee for the applicable license or registration period.

(8) An individual who seeks reinstatement of a revoked or suspended license or reclassification of a limited license pursuant to this section shall have a criminal history check conducted in accordance with section 16174 and submit a copy of the results of the background check to the board with his or her application for reinstatement or reclassification.

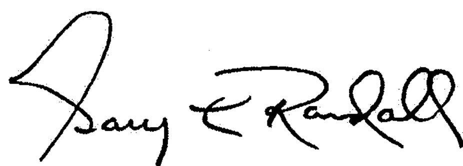
Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

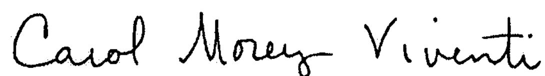
(a) Senate Bill No. 621.

(b) Senate Bill No. 622.

(c) House Bill No. 5448.

This act is ordered to take immediate effect.





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Act No. 27

Public Acts of 2006

Approved by the Governor

February 16, 2006

Filed with the Secretary of State

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EFFECTIVE DATE: See act for multiple effective dates

STATE OF MICHIGAN

93RD LEGISLATURE
REGULAR SESSION OF 2006

Introduced by Reps. Vander Veen, Green, Zelenko, Anderson, Stewart, Kolb, Lipsey, Kooiman, Meyer, Newell, Williams, Farrah, LaJoy, Hopgood, Brandenburg, Clack, Accavitti, Gleason, Shaffer, Nofs, Ward, Byrum, Sak, Stahl, Moolenaar, Palsrok, Gillard, Ball, Booher, Byrnes, Caul, Cushingberry, Espinoza, Gonzales, Hansen, Hildenbrand, Jones, Kahn, David Law, Lemmons, III, Lemmons, Jr., Marleau, Mayes, Mortimer, Pearce, Polidori, Proos, Rocca and Murphy

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ENROLLED HOUSE BILL No. 5448

AN ACT to amend 1974 PA 258, entitled "An act to codify, revise, consolidate, and classify the laws relating to mental health; to prescribe the powers and duties of certain state and local agencies and officials and certain private agencies and individuals; to regulate certain agencies and facilities providing mental health services; to provide for certain charges and fees; to establish civil admission procedures for individuals with mental illness or developmental disability; to establish guardianship procedures for individuals with developmental disability; to establish procedures regarding individuals with mental illness or developmental disability who are in the criminal justice system; to provide for penalties and remedies; and to repeal acts and parts of acts," by amending section 147 (MCL 330.1147), as amended by 1991 PA 40, and by adding section 134a.

The People of the State of Michigan enact:

Sec. 134a

(1) Except as otherwise provided in subsection (2), a psychiatric facility or intermediate care facility for people with mental retardation shall not employ, independently contract with, or grant clinical privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the psychiatric facility or intermediate care facility for people with mental retardation after the effective date of this section if the individual satisfies 1 or more of the following:

(a) Has been convicted of a relevant crime described under 42 USC 1320a-7.

(b) Has been convicted of any of the following felonies, an attempt or conspiracy to commit any of those felonies, or any other state or federal crime that is similar to the felonies described in this subdivision, other than a felony for a relevant crime described under 42 USC 1320a-7, unless 15 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for

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employment or clinical privileges or the date of the execution of the independent contract:

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

(ii) A felony involving cruelty or torture.

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

(iv) A felony involving criminal sexual conduct.

(v) A felony involving abuse or neglect.

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

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

(c) Has been convicted of a felony or an attempt or conspiracy to commit a felony, other than a felony for a relevant crime described under 42 USC 1320a-7 or a felony described under subdivision (b), unless 10 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or clinical privileges or the date of the execution of the independent contract.

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

(i) A misdemeanor involving the use of a firearm or dangerous weapon with the intent to injure, the use of a firearm or dangerous weapon that

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results in a personal injury, or a misdemeanor involving the use of force or violence or the threat of the use of force or violence.

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

(iii) A misdemeanor involving criminal sexual conduct.

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

(v) A misdemeanor involving abuse or neglect.

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

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

(ii) A misdemeanor involving home invasion.

(iii) A misdemeanor involving embezzlement.

(iv) A misdemeanor involving negligent homicide.

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

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

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

(f) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 3 years immediately preceding the date of application for

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employment or clinical privileges or the date of the execution of the independent contract:

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

(ii) A misdemeanor of retail fraud in the third degree unless otherwise provided under subdivision (g).

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

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

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

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

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

(i) Has been the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

(2) Except as otherwise provided in subsection (5), a psychiatric facility or intermediate care facility for people with mental retardation shall not employ, independently contract with, or grant privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the psychiatric facility or intermediate care

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facility for people with mental retardation after the effective date of this section until the psychiatric facility or intermediate care facility for people with mental retardation conducts a criminal history check in compliance with subsection (4). This subsection and subsection (1) do not apply to any of the following:

(a) An individual who is employed by, under independent contract to, or granted clinical privileges in a psychiatric facility or intermediate care facility for people with mental retardation before the effective date of this section. Within 24 months after the effective date of this section, an individual who is exempt under this subdivision shall provide the department of state police with a set of fingerprints and the department of state police shall input those fingerprints into the automated fingerprint identification system database established under subsection (12). An individual who is exempt under this subdivision is not limited to working within the psychiatric facility or intermediate care facility for people with mental retardation with which he or she is employed by, under independent contract to, or granted clinical privileges on the effective date of this section. That individual may transfer to another psychiatric facility or intermediate care facility for people with mental retardation that is under the same ownership with which he or she was employed, under contract, or granted privileges. If that individual wishes to transfer to another psychiatric facility or intermediate care facility for people with mental retardation that is not under the same ownership, he or she may do so provided that a criminal history check is conducted by the new psychiatric facility or intermediate care facility for people with mental retardation in accordance with subsection (4). If an individual who is exempt under this subdivision is subsequently convicted of a crime described under subsection (1)(a) through (g) or found to be the subject of a substantiated finding described under subsection (1)(i) or an order or disposition described under subsection (1)(h), or is found to have been convicted of a relevant crime described under subsection (1)(a), then he or she is no longer exempt and shall be terminated from employment or denied employment.

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(b) An individual who is an independent contractor with a psychiatric facility or intermediate care facility for people with mental retardation if the services for which he or she is contracted is not directly related to the provision of services to a patient or resident or if the services for which he or she is contracted allows for direct access to the patients or residents but is not performed on an ongoing basis. This exception includes, but is not limited to, an individual who independently contracts with the psychiatric facility or intermediate care facility for people with mental retardation to provide utility, maintenance, construction, or communications services.

(3) An individual who applies for employment either as an employee or as an independent contractor or for clinical privileges with a psychiatric facility or intermediate care facility for people with mental retardation and has received a good faith offer of employment, an independent contract, or clinical privileges from the psychiatric facility or intermediate care facility for people with mental retardation shall give written consent at the time of application for the department of state police to conduct an initial criminal history check under this section, along with identification acceptable to the department of state police.

(4) Upon receipt of the written consent and identification required under subsection (3), a psychiatric facility or intermediate care facility for people with mental retardation that has made a good faith offer of employment or an independent contract or clinical privileges to the applicant shall make a request to the department of state police to conduct a criminal history check on the applicant, to input the applicant's fingerprints into the automated fingerprint identification system database, and to forward the applicant's fingerprints to the federal bureau of investigation. The department of state police shall request the federal bureau of investigation to make a determination of the existence of any national criminal history pertaining to the applicant. The applicant shall provide the department of state police with a set of fingerprints. The request shall be made in a manner prescribed by the department of state police. The psychiatric facility or intermediate care facility for people with mental retardation shall make the written consent and identification available to the department of state police. The psychiatric facility or intermediate care facility for

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people with mental retardation shall make a request to the relevant licensing or regulatory department to conduct a check of all relevant registries established pursuant to federal and state law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property. If the department of state police or the federal bureau of investigation charges a fee for conducting the initial criminal history check, the charge shall be paid by or reimbursed by the department with federal funds as provided to implement a pilot program for national and state background checks on direct patient access employees of long-term care facilities or providers in accordance with section 307 of the Medicare prescription drug, improvement, and modernization act of 2003, Public Law 108-173. The psychiatric facility or intermediate care facility for people with mental retardation shall not seek reimbursement for a charge imposed by the department of state police or the federal bureau of investigation from the individual who is the subject of the initial criminal history check. A psychiatric facility or intermediate care facility for people with mental retardation, a prospective employee, or a prospective independent contractor covered under this section may not be charged for the cost of an initial criminal history check required under this section. The department of state police shall conduct a criminal history check on the applicant named in the request. The department of state police shall provide the department with a written report of the criminal history check conducted under this subsection if the criminal history check contains any criminal history record information. The report shall contain any criminal history record information on the applicant maintained by the department of state police. The department of state police shall provide the results of the federal bureau of investigation determination to the department within 30 days after the request is made. If the requesting psychiatric facility or intermediate care facility for people with mental retardation is not a state department or agency and if a criminal conviction is disclosed on the written report of the criminal history check or the federal bureau of investigation determination, the department shall notify the psychiatric facility or intermediate care facility for people with mental retardation and the applicant in writing of the type of crime disclosed on the written report of the criminal history check or the federal bureau of investigation determination without disclosing the details of the crime. Any charges imposed by the department of

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state police or the federal bureau of investigation for conducting an initial criminal history check or making a determination under this subsection shall be paid in the manner required under this subsection. The notice shall include a statement that the applicant has a right to appeal a decision made by the psychiatric facility or intermediate care facility for people with mental retardation regarding his or her employment eligibility based on the criminal background check. The notice shall also include information regarding where to file and describing the appellate procedures established under section 20173b of the public health code, 1978 PA 368, MCL 333.20173b.

(5) If a psychiatric facility or intermediate care facility for people with mental retardation determines it necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check under this section, the psychiatric facility or intermediate care facility for people with mental retardation may conditionally employ or grant conditional clinical privileges to the individual if all of the following apply:

(a) The psychiatric facility or intermediate care facility for people with mental retardation requests the criminal history check under this section upon conditionally employing or conditionally granting clinical privileges to the individual.

(b) The individual signs a statement in writing that indicates all of the following:

(i) That he or she has not been convicted of 1 or more of the crimes that are described in subsection (1)(a) through (g) within the applicable time period prescribed by each subdivision respectively.

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

(iii) That he or she has not been the subject of a substantiated finding as described in subsection (1)(i).

(iv) The individual agrees that, if the information in the criminal history check conducted under this section does not confirm the individual's statements under subparagraphs (i) through (iii), his or her employment or clinical privileges will be terminated by the psychiatric facility or

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intermediate care facility for people with mental retardation as required under subsection (1) unless and until the individual appeals and can prove that the information is incorrect.

(v) That he or she understands the conditions described in subparagraphs (i) through (iv) that result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination.

(6) The department shall develop and distribute a model form for the statement required under subsection (5)(b). The department shall make the model form available to psychiatric facilities or intermediate care facilities for people with mental retardation subject to this section upon request at no charge.

(7) If an individual is employed as a conditional employee or is granted conditional clinical privileges under subsection (5), and the report described in subsection (4) does not confirm the individual's statement under subsection (5)(b)(i) through (iii), the psychiatric facility or intermediate care facility for people with mental retardation shall terminate the individual's employment or clinical privileges as required by subsection (1).

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

(9) A psychiatric facility or intermediate care facility for people with mental retardation shall use criminal history record information obtained under subsection (4) only for the purpose of evaluating an applicant's qualifications for employment, an independent contract, or clinical privileges in the position for which he or she has applied and for the purposes of subsections (5) and (7). A psychiatric facility or intermediate care facility for people with mental retardation or an employee of the psychiatric facility or intermediate care facility for people with mental retardation shall not disclose criminal history record information obtained under subsection (4) to a person who is not directly involved in evaluating the applicant's qualifications for employment, an independent contract, or

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clinical privileges. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection (4) in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both. Upon written request from another psychiatric facility or intermediate care facility for people with mental retardation, health facility or agency, or adult foster care facility that is considering employing, independently contracting with, or granting clinical privileges to an individual, a psychiatric facility or intermediate care facility for people with mental retardation that has obtained criminal history record information under this section on that individual shall, with the consent of the applicant, share the information with the requesting psychiatric facility or intermediate care facility for people with mental retardation, health facility or agency, or adult foster care facility. Except for a knowing or intentional release of false information, a psychiatric facility or intermediate care facility for people with mental retardation has no liability in connection with a criminal background check conducted under this section or the release of criminal history record information under this subsection.

(10) As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges shall do each of the following:

(a) Agree in writing to report to the psychiatric facility or intermediate care facility for people with mental retardation immediately upon being arraigned for 1 or more of the criminal offenses listed in subsection (1)(a) through (g), upon being convicted of 1 or more of the criminal offenses listed in subsection (1)(a) through (g), upon becoming the subject of an order or disposition described under subsection (1)(h), and upon being the subject of a substantiated finding of neglect, abuse, or misappropriation of property as described in subsection (1)(i). Reporting of an arraignment under this subdivision is not cause for termination or denial of employment.

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

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(11) In addition to sanctions set forth in this act, a licensee, owner, administrator, or operator of a psychiatric facility or intermediate care facility for people with mental retardation who knowingly and willfully fails to conduct the criminal history checks as required under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $5,000.00, or both.

(12) In collaboration with the department of state police, the department of information technology shall establish an automated fingerprint identification system database that would allow the department of state police to store and maintain all fingerprints submitted under this section and would provide for an automatic notification if and when a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this section. Upon such notification, the department of state police shall immediately notify the department and the department shall immediately contact the respective psychiatric facility or intermediate care facility for people with mental retardation with which that individual is associated. Information in the database established under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(13) Within 1 year after the effective date of the amendatory act that added this section, the department shall submit a written report to the legislature regarding each of the following:

(a) The impact and effectiveness of this amendatory act.

(b) The feasibility of implementing criminal history checks on volunteers who work in those psychiatric facilities or intermediate care facilities for people with mental retardation and on state agency employees who are involved in the licensing of those psychiatric facilities or intermediate care facilities for people with mental retardation and regulation of those employees.

(c) The amount of federal funds provided to implement a pilot program for national and state background checks on direct access employees of long-term

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care facilities or providers, the amount of those funds expended to date, and the amount of those funds remaining.

(14) Within 3 years after the effective date of this section, the department shall submit a written report to the legislature outlining a plan to cover the costs of the criminal history checks required under this section if federal funding is no longer available or is inadequate to cover those costs.

(15) By March 1, 2007, the department and the department of state police shall develop and implement an electronic web-based system to assist those psychiatric facilities or intermediate care facilities for people with mental retardation required to check relevant registries and conduct criminal history checks of its employees and independent contractors and to provide for an automated notice to those psychiatric facilities or intermediate care facilities for people with mental retardation for those individuals inputted in the system who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding of abuse, neglect, or misappropriation of property.

(16) As used in this section:

(a) "Adult foster care facility" means an adult foster care facility licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.
(b) "Direct access" means access to a patient or resident or to a patient's or resident's property, financial information, medical records, treatment information, or any other identifying information.
(c) "Health facility or agency" means a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency and licensed as required under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.
(d) "Home health agency" means a person certified by medicare whose business is to provide to individuals in their places of residence other than in a hospital, nursing home, or county medical care facility 1 or more of the following services:

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nursing services, therapeutic services, social work services, homemaker services, home health aide services, or other related services.

(e) "Independent contract" means a contract entered into by a health facility or agency with an individual who provides the contracted services independently or a contract entered into by a health facility or agency with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the health facility or agency on behalf of the organization or agency.

(f) "Medicare" means benefits under the federal Medicare program established under title XVIII of the social security act, 42 USC 1395 to 1395ggg.

Sec. 147. Except as otherwise provided in sections 134a and 149b, psychiatric hospitals or units operated by the state or federal government are exempt from sections 134 through 150.

Enacting section 1. Section 134a of the mental health code, 1974 PA 258, MCL 330.1134a, as added by this amendatory act, takes effect April 1, 2006, since the department has secured the necessary federal approval to utilize federal funds to reimburse those facilities for the costs incurred for requesting a national criminal history check to be conducted by the federal bureau of investigation and the department has filed written notice of that approval with the secretary of state.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

(a) Senate Bill No. 621.

(b) Senate Bill No. 622.

(c) House Bill No. 5168.

This act is ordered to take immediate effect.

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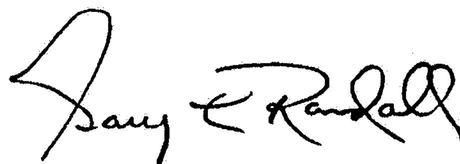
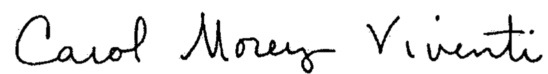


Clerk of the House of Representatives



Secretary of the Senate

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Act No. 28

Public Acts of 2006

Approved by the Governor

February 16, 2006

Filed with the Secretary of State
February 17, 2006

EFFECTIVE DATE: See act for multiple effective dates

STATE OF MICHIGAN

93RD LEGISLATURE
REGULAR SESSION OF 2006

Introduced by Senators Birkholz, Cropsey, Gilbert, Patterson, Stamas, Toy and Allen

ENROLLED SENATE BILL No. 621

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to

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provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," (MCL 333.1101 to 333.25211) by adding sections 20173a and 20173b; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 20173a

(1) Except as otherwise provided in subsection (2), a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency shall not employ, independently contract with, or grant clinical privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the health facility or agency after the effective date of this section if the individual satisfies 1 or more of the following:

(a) Has been convicted of a relevant crime described under 42 USC 1320a-7.

(b) Has been convicted of any of the following felonies, an attempt or conspiracy to commit any of those felonies, or any other state or federal crime that is similar to the felonies described in this subdivision, other than a felony for a relevant crime described under 42 USC 1320a-7, unless 15 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for

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employment or clinical privileges or the date of the execution of the independent contract:

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

(ii) A felony involving cruelty or torture.

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

(iv) A felony involving criminal sexual conduct.

(v) A felony involving abuse or neglect.

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

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

(c) Has been convicted of a felony or an attempt or conspiracy to commit a felony, other than a felony for a relevant crime described under 42 USC 1320a-7 or a felony described under subdivision (b), unless 10 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or clinical privileges or the date of the execution of the independent contract.

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

(i) A misdemeanor involving the use of a firearm or dangerous weapon with the intent to injure, the use of a firearm or dangerous weapon that

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results in a personal injury, or a misdemeanor involving the use of force or violence or the threat of the use of force or violence.

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

(iii) A misdemeanor involving criminal sexual conduct.

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

(v) A misdemeanor involving abuse or neglect.

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

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

(ii) A misdemeanor involving home invasion.

(iii) A misdemeanor involving embezzlement.

(iv) A misdemeanor involving negligent homicide.

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

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

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

(f) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 3 years immediately preceding the date of application for

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employment or clinical privileges or the date of the execution of the independent contract:

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

(ii) A misdemeanor of retail fraud in the third degree unless otherwise provided under subdivision (g).

(iii) A misdemeanor under part 74 unless otherwise provided under subdivision (g).

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

(i) A misdemeanor under part 74 if the individual, at the time of conviction, is under the age of 18.

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

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

(i) Has been the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

(2) Except as otherwise provided in subsection (5), a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency shall not employ, independently contract with, or grant privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the health facility or agency after the effective date of this section until the health facility or agency conducts a criminal history

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check in compliance with subsection (4). This subsection and subsection (1) do not apply to any of the following:

(a) An individual who is employed by, under independent contract to, or granted clinical privileges in a health facility or agency before the effective date of this section. Within 24 months after the effective date of this section, an individual who is exempt under this subdivision shall provide the department of state police with a set of fingerprints and the department of state police shall input those fingerprints into the automated fingerprint identification system database established under subsection (12). An individual who is exempt under this subdivision is not limited to working within the health facility or agency with which he or she is employed by, under independent contract to, or granted clinical privileges on the effective date of this section. That individual may transfer to another health facility or agency that is under the same ownership with which he or she was employed, under contract, or granted privileges. If that individual wishes to transfer to another health facility or agency that is not under the same ownership, he or she may do so provided that a criminal history check is conducted by the new health facility or agency in accordance with subsection (4). If an individual who is exempt under this subdivision is subsequently convicted of a crime described under subsection (1)(a) through (g) or found to be the subject of a substantiated finding described under subsection (1)(i) or an order or disposition described under subsection (1)(h), or is found to have been convicted of a relevant crime described under subsection (1)(a), then he or she is no longer exempt and shall be terminated from employment or denied employment.

(b) An individual who is an independent contractor with a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency if the services for which he or she is contracted is not directly related to the provision of services to a patient or resident or if the services for which he or she is contracted allows for direct access to the patients or residents but is not performed on an ongoing basis. This exception includes, but is not limited to, an individual who

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independently contracts with the health facility or agency to provide utility, maintenance, construction, or communications services.

(3) An individual who applies for employment either as an employee or as an independent contractor or for clinical privileges with a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency and has received a good faith offer of employment, an independent contract, or clinical privileges from the health facility or agency shall give written consent at the time of application for the department of state police to conduct an initial criminal history check under this section, along with identification acceptable to the department of state police.

(4) Upon receipt of the written consent and identification required under subsection (3), a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency that has made a good faith offer of employment or an independent contract or clinical privileges to the applicant shall make a request to the department of state police to conduct a criminal history check on the applicant, to input the applicant's fingerprints into the automated fingerprint identification system database, and to forward the applicant's fingerprints to the federal bureau of investigation. The department of state police shall request the federal bureau of investigation to make a determination of the existence of any national criminal history pertaining to the applicant. The applicant shall provide the department of state police with a set of fingerprints. The request shall be made in a manner prescribed by the department of state police. The health facility or agency shall make the written consent and identification available to the department of state police. The health facility or agency shall make a request to the relevant licensing or regulatory department to conduct a check of all relevant registries established pursuant to federal and state law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property. If the department of state police or the federal bureau of investigation charges a fee for conducting the initial criminal history check, the charge shall be paid by or reimbursed by the department with federal funds as provided to

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implement a pilot program for national and state background checks on direct patient access employees of long-term care facilities or providers in accordance with section 307 of the medicare prescription drug, improvement, and modernization act of 2003, Public Law 108-173. The health facility or agency shall not seek reimbursement for a charge imposed by the department of state police or the federal bureau of investigation from the individual who is the subject of the initial criminal history check. A health facility or agency, a prospective employee, or a prospective independent contractor covered under this section may not be charged for the cost of an initial criminal history check required under this section. The department of state police shall conduct a criminal history check on the applicant named in the request. The department of state police shall provide the department with a written report of the criminal history check conducted under this subsection if the criminal history check contains any criminal history record information. The report shall contain any criminal history record information on the applicant maintained by the department of state police. The department of state police shall provide the results of the federal bureau of investigation determination to the department within 30 days after the request is made. If the requesting health facility or agency is not a state department or agency and if a criminal conviction is disclosed on the written report of the criminal history check or the federal bureau of investigation determination, the department shall notify the health facility or agency and the applicant in writing of the type of crime disclosed on the written report of the criminal history check or the federal bureau of investigation determination without disclosing the details of the crime. Any charges imposed by the department of state police or the federal bureau of investigation for conducting an initial criminal history check or making a determination under this subsection shall be paid in the manner required under this subsection. The notice shall include a statement that the applicant has a right to appeal a decision made by the health facility or agency regarding his or her employment eligibility based on the criminal background check. The notice shall also include information regarding where to file and describing the appellate procedures established under section 20173b.

(5) If a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health

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agency determines it necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check under this section, the health facility or agency may conditionally employ or grant conditional clinical privileges to the individual if all of the following apply:

(a) The health facility or agency requests the criminal history check under this section upon conditionally employing or conditionally granting clinical privileges to the individual.

(b) The individual signs a statement in writing that indicates all of the following:

(i) That he or she has not been convicted of 1 or more of the crimes that are described in subsection (1)(a) through (g) within the applicable time period prescribed by each subdivision respectively.

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

(iii) That he or she has not been the subject of a substantiated finding as described in subsection (1)(i).

(iv) The individual agrees that, if the information in the criminal history check conducted under this section does not confirm the individual's statements under subparagraphs (i) through (iii), his or her employment or clinical privileges will be terminated by the health facility or agency as required under subsection (1) unless and until the individual appeals and can prove that the information is incorrect.

(v) That he or she understands the conditions described in subparagraphs (i) through (iv) that result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination.

(6) The department shall develop and distribute a model form for the statement required under subsection (5)(b). The department shall make the model form available to health facilities or agencies subject to this section upon request at no charge.

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(7) If an individual is employed as a conditional employee or is granted conditional clinical privileges under subsection (5), and the report described in subsection (4) does not confirm the individual's statement under subsection (5)(b)(i) through (iii), the health facility or agency shall terminate the individual's employment or clinical privileges as required by subsection (1).

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

(9) A health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency shall use criminal history record information obtained under subsection (4) only for the purpose of evaluating an applicant's qualifications for employment, an independent contract, or clinical privileges in the position for which he or she has applied and for the purposes of subsections (5) and (7). A health facility or agency or an employee of the health facility or agency shall not disclose criminal history record information obtained under subsection (4) to a person who is not directly involved in evaluating the applicant's qualifications for employment, an independent contract, or clinical privileges. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection (4) in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both. Upon written request from another health facility or agency, psychiatric facility or intermediate care facility for people with mental retardation, or adult foster care facility that is considering employing, independently contracting with, or granting clinical privileges to an individual, a health facility or agency that has obtained criminal history record information under this section on that individual shall, with the consent of the applicant, share the information with the requesting health facility or agency, psychiatric facility or intermediate care facility for people with mental retardation, or adult foster care facility. Except for a knowing or

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intentional release of false information, a health facility or agency has no liability in connection with a criminal background check conducted under this section or the release of criminal history record information under this subsection.

(10) As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges shall do each of the following:

(a) Agree in writing to report to the health facility or agency immediately upon being arraigned for 1 or more of the criminal offenses listed in subsection (1)(a) through (g), upon being convicted of 1 or more of the criminal offenses listed in subsection (1)(a) through (g), upon becoming the subject of an order or disposition described under subsection (1)(h), and upon being the subject of a substantiated finding of neglect, abuse, or misappropriation of property as described in subsection (1)(i). Reporting of an arraignment under this subdivision is not cause for termination or denial of employment.

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

(11) In addition to sanctions set forth in section 20165, a licensee, owner, administrator, or operator of a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency who knowingly and willfully fails to conduct the criminal history checks as required under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $5,000.00, or both.

(12) In collaboration with the department of state police, the department of information technology shall establish an automated fingerprint identification system database that would allow the department of state police to store and maintain all fingerprints submitted under this section and would provide for an automatic notification if and when a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this section. Upon such notification, the department of state police shall immediately notify the department and the department shall immediately contact the respective health facility or agency with which that

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individual is associated. Information in the database established under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(13) Within 1 year after the effective date of the amendatory act that added this section, the department shall submit a written report to the legislature regarding each of the following:

(a) The impact and effectiveness of this amendatory act.

(b) The feasibility of implementing criminal history checks on volunteers who work in those health facilities or agencies and on state agency employees who are involved in the licensing of those health facilities or agencies and regulation of those employees.

(c) The amount of federal funds provided to implement a pilot program for national and state background checks on direct access employees of long-term care facilities or providers, the amount of those funds expended to date, and the amount of those funds remaining.

(14) Within 3 years after the effective date of this section, the department shall submit a written report to the legislature outlining a plan to cover the costs of the criminal history checks required under this section if federal funding is no longer available or is inadequate to cover those costs.

(15) By March 1, 2007, the department and the department of state police shall develop and implement an electronic web-based system to assist those health facilities and agencies required to check relevant registries and conduct criminal history checks of its employees and independent contractors and to provide for an automated notice to those health facilities or agencies for those individuals inputted in the system who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding of abuse, neglect, or misappropriation of property.

(16) As used in this section:

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(a) "Adult foster care facility" means an adult foster care facility licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.

(b) "Direct access" means access to a patient or resident or to a patient's or resident's property, financial information, medical records, treatment information, or any other identifying information.

(c) "Home health agency" means a person certified by medicare whose business is to provide to individuals in their places of residence other than in a hospital, nursing home, or county medical care facility 1 or more of the following services: nursing services, therapeutic services, social work services, homemaker services, home health aide services, or other related services.

(d) "Independent contract" means a contract entered into by a health facility or agency with an individual who provides the contracted services independently or a contract entered into by a health facility or agency with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the health facility or agency on behalf of the organization or agency.

(e) "Medicare" means benefits under the federal Medicare program established under title XVIII of the social security act, 42 USC 1395 to 1395ggg.

Sec. 20173b

(1) An individual who has been disqualified from or denied employment by a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency or by a psychiatric facility or intermediate care facility for people with mental retardation based on a criminal history check conducted pursuant to section 20173 or 20173a or pursuant to section 134a of the mental health code, 1974 PA 258, MCL 330.1134a, respectively, may appeal to the department if he or she believes that the criminal history report is inaccurate, and the appeal shall be conducted as a contested case hearing pursuant to the administrative procedures act of 1969. The individual shall file the appeal with the director of the department within 15 business days after receiving the written report of the

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criminal history check unless the conviction contained in the criminal history report is one that may be expunged or set aside. If an individual has been disqualified or denied employment based on a conviction that may be expunged or set aside, then he or she shall file the appeal on a form provided by the department within 15 business days after a court order granting or denying his or her application to expunge or set aside that conviction is granted. If the order is granted and the conviction is expunged or set aside, then the individual shall not be disqualified or denied employment based solely on that conviction. The director shall review the appeal and issue a written decision within 30 business days after receiving the appeal. The decision of the director is final.

(2) One year after the effective date of this section and each year thereafter for the next 3 years, the department shall provide the legislature with a written report regarding the appeals process implemented under this section for employees subject to criminal history checks. The report shall include, but is not limited to, for the immediately preceding year the number of applications for appeal received, the number of inaccuracies found and appeals granted with regard to the criminal history checks conducted under section 20173a, the average number of days necessary to complete the appeals process for each appeal, and the number of appeals rejected without a hearing and a brief explanation of the denial.

(3) As used in this section, "business day" means a day other than a Saturday, Sunday, or any legal holiday.

Enacting section 1. (1) Section 20173 of the public health code, 1978 PA 368, MCL 333.20173, is repealed effective April 1, 2006.

(2) Section 20173a of the public health code, 1978 PA 368, MCL 333.20173a, as added by this amendatory act, takes effect April 1, 2006, since the department has secured the necessary federal approval to utilize federal funds to reimburse those facilities for the costs incurred for requesting a national criminal history check to be conducted by the federal bureau of investigation and the department has filed written notice of that approval with the secretary of state. The department shall issue a medicaid policy bulletin

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regarding the payment and reimbursement for the criminal history checks by April 1, 2006.

(3) Section 20173b of the public health code, 1978 PA 368, MCL 333.20173b, as added by this amendatory act, takes effect the date this amendatory act is enacted.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

(a) Senate Bill No. 622.

(b) House Bill No. 5168.

(c) House Bill No. 5448.

This act is ordered to take immediate effect.

Carol Morey Viventi

Gary E Randall

Clerk of the House of Representatives
Approved

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Act No. 29

Public Acts of 2006

Approved by the Governor

February 16, 2006

Filed with the Secretary of State
February 17, 2006

EFFECTIVE DATE: See act for multiple effective dates

STATE OF MICHIGAN

93RD LEGISLATURE
REGULAR SESSION OF 2006

Introduced by Senators Stamas, Cropsey, Birkholz, Gilbert, Patterson, Toy and Allen

ENROLLED SENATE BILL No. 622

AN ACT to amend 1979 PA 218, entitled "An act to provide for the licensing and regulation of adult foster care facilities; to provide for the establishment of standards of care for adult foster care facilities; to prescribe powers and duties of the department of social services and other departments; to prescribe certain fees; to prescribe penalties; and to repeal certain acts and parts of acts," (MCL 400.701 to 400.737) by adding sections 34b and 34c; and to repeal acts and parts of acts.

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The People of the State of Michigan enact:

Sec. 34b

(1) In addition to the restrictions prescribed in sections 13, 22, and 31, and except as otherwise provided in subsection (2), an adult foster care facility shall not employ or independently contract with an individual who regularly has direct access to or provides direct services to residents of the adult foster care facility after the effective date of this section if the individual satisfies 1 or more of the following:

(a) Has been convicted of a relevant crime described under 42 USC 1320a-7.

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

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

(ii) A felony involving cruelty or torture.

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

(iv) A felony involving criminal sexual conduct.

(v) A felony involving abuse or neglect.

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

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

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(c) Has been convicted of a felony or an attempt or conspiracy to commit a felony, other than a felony for a relevant crime described under 42 USC 1320a-7 or a felony described under subdivision (b), unless 10 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or the date of the execution of the independent contract.

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

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

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

(iii) A misdemeanor involving criminal sexual conduct.

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

(v) A misdemeanor involving abuse or neglect.

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

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

(ii) A misdemeanor involving home invasion.

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(iii) A misdemeanor involving embezzlement.

(iv) A misdemeanor involving negligent homicide.

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

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

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

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

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

(ii) A misdemeanor of retail fraud in the third degree unless otherwise provided under subdivision (g).

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

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

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

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

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

(i) Has been the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

(2) Except as otherwise provided in subsection (6), an adult foster care facility shall not employ or independently contract with an individual who has direct access to residents after the effective date of this section until the adult foster care facility conducts a criminal history check in compliance with subsections (4) and (5). This subsection and subsection (1) do not apply to an individual who is employed by or under contract to an adult foster care facility before the effective date of this section. Within 24 months after the effective date of this section, an individual who is exempt under this subsection shall provide the department of state police a set of fingerprints and the department of state police shall input those fingerprints into the automated fingerprint identification system database established under subsection (12). An individual who is exempt under this subsection is not limited to working within the adult foster care facility with which he or she is employed by or under independent contract with on the effective date of this section. That individual may transfer to another adult foster care facility that is under the same ownership with which he or she was employed or under contract. If that individual wishes to transfer to an adult foster care facility that is not under the same ownership, he or she may do so provided that a criminal history check is conducted by the new facility in accordance with subsection (4). If an individual who is exempt under this subsection is subsequently convicted of a crime or offense described under subsection (1)(a) through (g) or found to be the subject of a substantiated finding described under subsection (1)(i) or an order or disposition described under subsection (1)(h), or is found to have been convicted of a relevant crime described under subsection (1)(a), he or she is no longer exempt and shall be terminated from employment or denied employment.

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(3) An individual who applies for employment either as an employee or as an independent contractor with an adult foster care facility and has received a good faith offer of employment or independent contract from the adult foster care facility shall give written consent at the time of application for the department of state police to conduct an initial criminal history check under this section. The individual, at the time of initial application, shall provide identification acceptable to the department of state police.

(4) Upon receipt of the written consent and identification required under subsection (3), the adult foster care facility that has made a good faith offer of employment or independent contract shall make a request to the department of state police to conduct a criminal history check on the individual and input the individual's fingerprints into the automated fingerprint identification system database, and shall make a request to the relevant licensing or regulatory department to perform a check of all relevant registries established pursuant to federal and state law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property. The request shall be made in a manner prescribed by the department of state police and the relevant licensing or regulatory department or agency. The adult foster care facility shall make the written consent and identification available to the department of state police and the relevant licensing or regulatory department or agency. If the department of state police or the federal bureau of investigation charges a fee for conducting the initial criminal history check, the charge shall be paid by or reimbursed by the department with federal funds as provided to implement a pilot program for national and state background checks on direct patient access employees of long-term care facilities or providers in accordance with section 307 of the medicare prescription drug, improvement, and modernization act of 2003, Public Law 108-173. The adult foster care facility shall not seek reimbursement for a charge imposed by the department of state police or the federal bureau of investigation from the individual who is the subject of the initial criminal history check. The department of state police shall conduct an initial criminal history check on the individual named in the request. The department of state police shall provide the department with a written report of the criminal history check conducted under this subsection that contains

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a criminal record. The report shall contain any criminal history record information on the individual maintained by the department of state police.

(5) Upon receipt of the written consent and identification required under subsection (3), if the individual has applied for employment either as an employee or as an independent contractor with an adult foster care facility, the adult foster care facility that has made a good faith offer of employment or independent contract shall comply with subsection (4) and shall make a request to the department of state police to forward the individual's fingerprints to the federal bureau of investigation. The department of state police shall request the federal bureau of investigation to make a determination of the existence of any national criminal history pertaining to the individual. An individual described in this subsection shall provide the department of state police with a set of fingerprints. The department of state police shall complete the criminal history check under subsection (4) and, except as otherwise provided in this subsection, provide the results of its determination under subsection (4) and the results of the federal bureau of investigation determination to the department within 30 days after the request is made. If the requesting adult foster care facility is not a state department or agency and if a criminal conviction is disclosed on the written report of the criminal history check obtained under subsection (4) or the federal bureau of investigation determination, the department shall notify the adult foster care facility and the individual in writing of the type of crime disclosed on the written report of the criminal history check obtained under subsection (4) or the federal bureau of investigation determination without disclosing the details of the crime. The notification shall inform the facility or agency and the applicant regarding the appeal process in section 34c. Any charges imposed by the department of state police or the federal bureau of investigation for conducting an initial criminal history check or making a determination under this subsection shall be paid in the manner required under subsection (4).

(6) If an adult foster care facility determines it necessary to employ or independently contract with an individual before receiving the results of the individual's criminal history

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check required under this section, the adult foster care facility may conditionally employ the individual if both of the following apply:

(a) The adult foster care facility requests the criminal history check required under this section, upon conditionally employing the individual.

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

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

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

(iii) That he or she has not been the subject of a substantiated finding as described in subsection (1)(i).

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

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

(7) The department shall develop and distribute the model form for the statement required under subsection (6)(b). The department shall make the model form available to adult foster care facilities upon request at no charge.

(8) If an individual is conditionally employed under subsection (6), and the report described in subsection (4) or (5), if applicable, does not confirm the individual's statement under subsection (6)(b)(i) to (iii), the adult foster care facility shall terminate the individual's employment as required by subsection (1).

(9) An individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings on a statement described in subsection

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(6)(b)(i) to (iii) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

(10) An adult foster care facility shall use criminal history record information obtained under subsection (4) or (5) only for the purpose of evaluating an individual's qualifications for employment in the position for which he or she has applied and for the purposes of subsections (6) and (8). An adult foster care facility or an employee of the adult foster care facility shall not disclose criminal history record information obtained under this section to a person who is not directly involved in evaluating the individual's qualifications for employment or independent contract. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection (4) or (5) in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both. Upon written request from another adult foster care facility, psychiatric facility or intermediate care facility for people with mental retardation, or health facility or agency that is considering employing or independently contracting with an individual, an adult foster care facility that has obtained criminal history record information under this section on that individual shall, with the consent of the applicant, share the information with the requesting adult foster care facility, psychiatric facility or intermediate care facility for people with mental retardation, or health facility or agency. Except for a knowing or intentional release of false information, an adult foster care facility has no liability in connection with a background check conducted under this section or the release of criminal history record information under this subsection.

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

(a) Agree in writing to report to the adult foster care facility immediately upon being arraigned on 1 or more of the criminal offenses listed in subsection (1)(a) to (g), upon being convicted of 1 or more of the criminal offenses listed in subsection (1)(a) to (g), upon becoming the subject of an order or disposition described under subsection (1)(h), and upon becoming the subject of a

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substantiated finding described under subsection (1)(i). Reporting of an arraignment under this subdivision is not cause for termination or denial of employment.

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

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

(13) In collaboration with the department of state police, the department of information technology shall establish an automated fingerprint identification system database that would allow the department of state police to store and maintain all fingerprints submitted under this section and would provide for an automatic notification at the time a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this section. Upon such notification, the department of state police shall immediately notify the department and the department shall immediately contact the respective adult foster care facility with which that individual is associated. Information in the database established under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(14) If an individual independently contracts with an adult foster care facility, subsections (1) and (2) do not apply if the contractual work performed by the individual is not directly related to the clinical, health care, or personal services delivered by the adult foster care facility or if the individual's duties are not performed on an ongoing basis with direct access to residents. This exception includes, but is not limited to, an individual who independently contracts with the adult foster care facility to provide utility, maintenance, construction, or communication services.

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(15) Within 1 year after the effective date of the amendatory act that added this section, the department shall submit a written report to the legislature regarding each of the following:

(a) The impact and effectiveness of this amendatory act.

(b) The feasibility of implementing criminal history checks on volunteers who work in the adult foster care facilities and on state agency employees who are involved in the licensing of the adult foster care facilities and regulation of the employees.

(c) The amount of federal funds provided to implement a pilot program for national and state criminal history checks on direct access employees of long-term care facilities or providers, the amount of those funds expended to date, and the amount of those funds remaining.

(16) By March 1, 2007, the department and the department of state police shall develop and implement an electronic web-based system to assist the adult foster care facilities required to check relevant registries and conduct criminal history checks of its employees and independent contractors and to provide for an automated notice to the adult foster care facilities for the individuals entered in the system who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding of abuse, neglect, or misappropriation of property.

(17) The department shall submit to the legislature not later than 3 years after the effective date of the amendatory act that added this subsection a written report regarding the department's plan to continue performing criminal history checks if adequate federal funding is not available to continue performing future criminal history checks.

(18) An adult foster care facility or a prospective employee covered under this section may not be charged for the cost of an initial criminal history check required under this act.

(19) As used in this section:

(a) "Direct access" means access to a resident or resident's property, financial information, medical records, treatment information, or any other identifying information.

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(b) "Health facility or agency" means a health facility or agency as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(c) "Independent contract" means a contract entered into by an adult foster care facility with an individual who provides the contracted services independently or a contract entered into by an adult foster care facility with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the adult foster care facility on behalf of the organization or agency.

(d) "Title XIX" means title XIX of the social security act, 42 USC 1396 to 1396r-6 and 1396r-8 to 1396v.

Sec. 34c

(1) An individual who has been disqualified from or denied employment by an adult foster care facility based on a criminal history check conducted pursuant to section 34a or 34b may appeal to the department if he or she believes that the criminal history report is inaccurate, and the appeal shall be conducted as a contested case hearing conducted pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The individual shall file the appeal with the director of the department within 15 business days after receiving the written report of the criminal history check unless the conviction contained in the criminal history report is one that may be expunged or set aside. If an individual has been disqualified or denied employment based on a conviction that may be expunged or set aside, then he or she shall file the appeal within 15 business days after a court order granting or denying his or her application to expunge or set aside that conviction is granted. If the order is granted and the conviction is expunged or set aside, then the individual shall not be disqualified or denied employment based solely on that conviction. The director shall review the appeal and issue a written decision within 30 business days after receiving the appeal. The decision of the director is final.

(2) One year after the effective date of this section and each year thereafter for the next 3 years, the department shall provide the legislature with a written report regarding the appeals process implemented under this section for employees subject to criminal history

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checks. The report shall include, but is not limited to, for the immediately preceding year the number of applications for appeal received, the number of inaccuracies found and appeals granted with regard to the criminal history checks conducted under section 34b, the average number of days necessary to complete the appeals process for each appeal, and the number of appeals rejected without a hearing and a brief explanation of the denial.

(3) As used in this section, "business day" means a day other than a Saturday, Sunday, or any legal holiday.

Enacting section 1. Section 34a of the adult foster care facility licensing act, 1979 PA 218, MCL 400.734a, is repealed effective April 1, 2006.
Enacting section 2. Sections 34b and 34c of the adult foster care facility licensing act, 1979 PA 218, MCL 400.734b, as added by this amendatory act, take effect April 1, 2006, since the department has secured the necessary federal approval to utilize federal funds to reimburse those facilities for the costs incurred for requesting a national criminal history check to be conducted by the federal bureau of investigation and the department has filed written notice of that approval with the secretary of state. The department shall issue a medicaid policy bulletin regarding the payment and reimbursement for the criminal history checks by April 1, 2006.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 93rd Legislature are enacted into law:

(a) Senate Bill No. 621.

(b) House Bill No. 5168.

(c) House Bill No. 5448.

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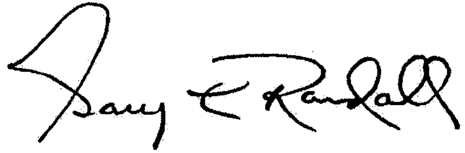
This act is ordered to take immediate effect.



Clerk of the House of Representatives
Approved

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