

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 642

(Delegate Luedtke, *et al.*)

Ways and Means

Education, Health, and Environmental Affairs

Children - Child Care Facilities, Public Schools, and Nonpublic Schools -
Contractors and Subcontractors

This bill establishes that nonpublic school contracts and local school system contracts must prohibit contractors or subcontractors from knowingly assigning an employee to work on school premises with direct, unsupervised, and uncontrolled access to children if the employee has been convicted of specified crimes. The State Board of Education may revoke the certificate of approval or letter of tentative approval of a nonpublic school if a contract is in violation of these provisions. The bill expands the underlying crimes for which prohibitions against the hiring, retaining, or assignment of individuals who have been convicted of specified crimes apply to include fourth-degree sexual offenses and offenses committed in another state that would constitute a third- or fourth-degree sexual offense if committed in this State. The bill also requires contractors and subcontractors to require an employee who has direct, unsupervised, and uncontrolled access to children in specific facilities to submit to a criminal history records check.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: The bill's requirements can be implemented and enforced using existing budgeted resources. Any additional payments to the Criminal Justice Information System (CJIS) for criminal history records checks cover the costs associated with the additional checks.

Local Effect: Local school systems can use existing resources to ensure that its contractors and subcontractors comply with the bill's provisions and that its contracts contain the required provisions.

Small Business Effect: Potential minimal for small businesses that contract with specified facilities.

Analysis

Current Law: Nonpublic schools may not hire or retain any employee who works with or has access to students and who the school knows has been convicted of specified crimes. The State Board of Education must revoke the certificate of approval or letter of tentative approval of a nonpublic school that violates these provisions. A local board of education may not knowingly hire or retain any individual who has been convicted of specified crimes. Applicable crimes are third-degree sexual offenses, child sexual abuse, or any crime of violence, including offenses under the laws of another state that would constitute child sexual abuse or be a crime of violence if committed in this State. Crimes of violence are (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) an attempt to commit crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Employers and employees who care for or supervise children or have access to children in the following facilities must apply for a criminal history records check: (1) a licensed child care center; (2) a registered family day care home; (3) a licensed child care home; (4) a licensed child care institution; (5) a juvenile detention, correction, or treatment facility; (6) a public school; (7) a private or nonpublic school that is required to report to the State Board of Education; (8) a foster care family home or group facility; (9) a government-operated recreation center or program that primarily serves minors; (10) a day or residential camp that primarily serves minors; and (11) a home health agency or residential service agency licensed by the Department of Health and Mental Hygiene that is authorized to provide home or community-based health services for minors.

Pursuant to regulation, operators of child care facilities regulated by the Maryland State Department of Education must remain within sight and sound of contractors in areas where children are present. In family child care homes, operators must remain within sight and sound of independent contractors performing services at the home unless documentation is on file within the home that the contractor has successfully passed federal and State criminal background checks and a review of child abuse and neglect records.

The CJIS Central Repository is established by the Criminal Procedure Article, §§ 10-213 *et seq.*, within the Department of Public Safety and Correctional Services to collect, manage, and disseminate Maryland Criminal History Record Information (CHRI) for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes.

Fourth-degree Sexual Offense

The crime of fourth-degree sexual offense prohibits a person from (1) engaging in sexual contact with another without the consent of the other or (2) engaging in a sexual act or vaginal intercourse with a victim who is age 14 or 15 and the defendant is at least four years older than the victim. In addition, the crime prohibits a “person in a position of authority” from engaging in a sexual act, sexual contact, or vaginal intercourse with a minor who, at the time of the act, contact, or intercourse, is a student enrolled at a school where the person is employed. A “person in a position of authority” is a person who (1) is at least 21 years old; (2) is employed by or under contract with a public or private preschool, elementary school, or secondary school; and (3) because of the person’s position or occupation, exercises supervision over a minor who attends the school. A “person of authority” includes a principal, vice principal, teacher, coach, or school counselor at a public or private preschool, elementary school, or secondary school.

State Fiscal Effect: The CJIS Central Repository is authorized by law to collect a fee for providing CHRI for purposes other than criminal justice. The fee is currently set at \$18 in regulation. Revenue from these fees is used to provide the service. While the bill may result in additional requests for background checks, any additional expenditures for CJIS to provide the additional background checks is offset by the fees from the CHRI checks, which are paid by the applicant. The Department of Legislative Services further advises that because the bill only requires contractors or subcontractors to require employees who have *direct, unsupervised, and uncontrolled* access to children to submit to a criminal history records check, the provisions are likely to apply in limited situations and will therefore not necessitate additional expenditures by agencies responsible for monitoring the impacted facilities.

Local Fiscal Effect: Local school systems can establish guidelines using existing resources to ensure that contracts meet the specified requirements and that contractors or subcontractors require employees who have specified access to children to submit to a criminal history records check.

Small Business Effect: A contractor or subcontractor who works with nonpublic schools or local school systems will need to establish procedures to ensure that it is not knowingly assigning employees to work on school premises with direct, unsupervised, and uncontrolled access to children if the employee has been convicted of specified crimes. Contractors or subcontractors in specified facilities must require employees to submit to a

criminal history records check if they have direct, unsupervised, and uncontrolled access to children.

Additional Information

Prior Introductions: None.

Cross File: SB 508 (Senator Hough, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland State Department of Education, Department of Health and Mental Hygiene, Department of Juvenile Services, Charles and Frederick counties, Department of Legislative Services

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