
By: Chairman, Judicial Proceedings Committee (Departmental - Public Safety and Correctional Services)

Requested: October 12, 1995

Introduced and read first time: January 10, 1996

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: January 30, 1996

CHAPTER ____

1 AN ACT concerning

2 **Criminal History Records Checks - Child Care in Various Settings**

3 FOR the purpose of including a disposition of probation before judgment or not
4 criminally responsible in ~~the~~ certain criminal history records check reports that are
5 required for ~~child care~~ certain employers and employees of certain facilities and
6 programs and certain individuals ~~seeking to adopt and volunteers~~; requiring the
7 Department of Public Safety and Correctional Services to update certain criminal
8 history records checks and to issue certain printed statements; requiring the
9 Department to adopt regulations requiring ~~the submission of certain information by~~
10 ~~State and local agencies who license, register, approve, or certify certain child care~~
11 ~~facilities or programs or place children in certain homes~~ certain persons and
12 agencies to verify periodically certain information; authorizing the Department to
13 provide a criminal history printed statement to additional employers under certain
14 conditions; making certain technical and stylistic changes; and generally relating to
15 criminal history records checks.

16 BY repealing and reenacting, without amendments,
17 Article - Family Law
18 Section 5-560
19 Annotated Code of Maryland
20 (1991 Replacement Volume and 1995 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article - Family Law
23 Section 5-561 through 5-568
24 Annotated Code of Maryland

2

1 (1991 Replacement Volume and 1995 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article - Family Law**

5 5-560.

6 (a) In this Part VI of this subtitle, the following words have the meanings
7 indicated.

8 (b) "Conviction" means a plea or verdict of guilty or a plea of nolocontendere.

9 (c) "Department" means the Department of Public Safety and Correctional
10 Services.

11 (d) (1) "Employee" means a person that for compensation is employed to work
12 in a facility identified in § 5-561 of this subtitle and who:

13 (i) cares for or supervises children in the facility; or

14 (ii) has access to children who are cared for or supervised in the
15 facility.

16 (2) "Employee" does not include any person employed to work for
17 compensation by the Department of Juvenile Justice.

18 (e) (1) "Employer" means an owner, operator, proprietor, or manager of a
19 facility identified in § 5-561 of this subtitle who has frequent contact with children who
20 are cared for or supervised in the facility.

21 (2) "Employer" does not include a State or local agency responsible for the
22 temporary or permanent placement of children in a facility identified in § 5-561 of this
23 subtitle.

24 (f) "Secretary" means the Secretary of Public Safety and Correctional Services.

25 5-561.

26 (a) Notwithstanding any provision of law to the contrary, an employee and
27 employer in a facility identified in subsection (b) of this section and persons identified in
28 subsection (c) of this section shall apply for a [federal] NATIONAL and State criminal
29 [background investigation] HISTORY RECORDS CHECK at any designated law
30 enforcement office in this State.

31 (b) The following facilities shall require employees and employers to obtain a
32 criminal [background investigation] HISTORY RECORDS CHECK under this Part VI of
33 this subtitle:

34 (1) a child care center required to be licensed under Part VII of this
35 subtitle;

36 (2) a family day care home required to be registered under Part V of this
37 subtitle;

3

1 (3) a child care home required to be licensed under this subtitle or under
2 Article 83C of the Code;

3 (4) a child care institution required to be licensed under this subtitle or
4 under Article 83C of the Code;

5 (5) a juvenile detention, correction, or treatment facility provided for in
6 Article 83C of the Code;

7 (6) a public school as defined in Title 1 of the Education Article;

8 (7) a private or nonpublic school required to report annually to the State
9 Board of Education under Title 2 of the Education Article;

10 (8) a foster care family home or group facility as defined under this subtitle;

11 (9) a recreation center or recreation program operated by State or local
12 government primarily serving minors; or

13 (10) a day or overnight camp, as defined in Title 10, Subtitle 16 of the Code
14 of Maryland Regulations, primarily serving minors.

15 (c) The following individuals shall obtain a criminal [background investigation]
16 HISTORY RECORDS CHECK under this Part VI of this subtitle:

17 (1) an individual who is seeking to adopt a child through a local department
18 of social services or licensed child placement agency;

19 (2) an adult relative with whom a child, committed to a local department of
20 social services, is placed by the local department of social services; and

21 (3) any adult known by a local department of social services to be residing in
22 a:

23 (i) family day care home required to be registered under Title 5 of this
24 article;

25 (ii) home of an adult relative of a child with whom the child,
26 committed to a local department of social services, is placed by the local department of
27 social services;

28 (iii) foster care home or child care home required to be approved
29 under Title 5 of this article; or

30 (iv) home of an individual seeking to adopt a child through a local
31 department of social services or a licensed child placement agency.

32 (d) An employer at a facility under subsection (b) of this section may require a
33 volunteer at the facility to obtain a criminal [background investigation] HISTORY
34 RECORDS CHECK under this Part VI of this subtitle.

35 (e) A local department of social services may require a volunteer of that
36 department who works with children to obtain a criminal [background investigation]
37 HISTORY RECORDS CHECK under this Part VI of this subtitle.

4

1 (f) An employer at a facility not identified in subsection (b) of this section who
2 employs individuals to work with children may require employees, including volunteers, to
3 obtain a criminal [background investigation] HISTORY RECORDS CHECK under this
4 Part VI of this subtitle.

5 (g) A person who is required to have a criminal [background investigation]
6 HISTORY RECORDS CHECK under this Part VI of this subtitle shall pay for:

7 (1) the mandatory processing fee required by the Federal Bureau of
8 Investigation for [conducting the criminal background investigation] A NATIONAL
9 CRIMINAL HISTORY RECORDS CHECK;

10 (2) reasonable administrative costs to the Department, not to exceed 10% of
11 the processing fee; and

12 (3) the fee authorized under Article 27, § 746(b)(8) of the Code for access
13 to Maryland criminal history records.

14 (h) (1) An employer or other party may pay for the costs borne by the employee
15 or other individual under subsection (g) of this section.

16 (2) The local department of social services shall reimburse an adult residing
17 in a foster care home for the costs borne by the individual under subsection (g) of this
18 section.

19 5-562.

20 (a) (1) On or before the 1st day of actual employment, an employee shall apply
21 to the Department for a printed statement.

22 (2) On or before the 1st day of actual operation of a facility identified in §
23 5-561 of this subtitle, an employer shall apply to the Department for a printed statement.

24 (3) Within 5 days after a child who is committed to a local department of
25 social services is placed by the local department of social services with an adult relative,
26 an individual identified in § 5-561(c)[, (d),] OR (e)[, or (f)] of this subtitle shall apply
27 to the Department for a printed statement.

28 (b) As part of the application for a criminal [background investigation] HISTORY
29 RECORDS CHECK, the employee, employer, and individual identified in § 5-561(c), (d),
30 (e), or (f) of this subtitle shall submit:

31 (1) except as provided in subsection (c) of this section, a complete set of
32 legible fingerprints taken on standard fingerprint cards at any designated State or local
33 law enforcement office in the State or other location approved by the Department;

34 (2) the disclosure statement required under § 5-563 of this subtitle; and

35 (3) payment for the costs of the criminal [background investigation]
36 HISTORY RECORDS CHECK.

37 (c) The requirement that a complete set of legible fingerprints taken on standard
38 fingerprint cards be submitted as part of the application for a criminal [background

5

1 investigation] HISTORY RECORDS CHECK may be waived by the Department of Human
2 Resources if:

3 (1) the application is submitted by a person who has attempted to have a
4 complete set of fingerprints taken on at least 3 occasions;

5 (2) the taking of a complete set of legible fingerprints is not possible
6 because of a physical or medical condition of the person's fingers or hands;

7 (3) the person submits documentation satisfactory to the Department of
8 Human Resources of the requirements of this subsection; and

9 (4) the person submits the other information required for a criminal
10 [background investigation] HISTORY RECORDS CHECK.

11 5-563.

12 (a) As part of the application process for a criminal [background investigation]
13 HISTORY RECORDS CHECK, the employee, employer, and individual identified in §
14 5-561(c), (d), (e), or (f) of this subtitle shall complete and sign a sworn statement or
15 affirmation disclosing the existence of a criminal conviction, PROBATION BEFORE
16 JUDGMENT DISPOSITION, NOT CRIMINALLY RESPONSIBLE DISPOSITION, or pending
17 criminal charges without a final disposition.

18 (b) (1) The Department or its designee shall mail an acknowledged receipt of
19 the application with a sworn statement or affirmation from an employee to the employer
20 within 3 days of the application.

21 (2) The Department or its designee shall mail an acknowledged receipt of
22 the application with a sworn statement or affirmation from an [employee] EMPLOYER to
23 the appropriate State or local licensing, registering, approving, or certifying agency,
24 within 3 days of the application.

25 (3) The Department or its designee shall mail an acknowledged receipt of
26 the application with a sworn statement or affirmation from an individual identified in §
27 5-561(c), (d), (e), or (f) of this subtitle to the appropriate local department of social
28 services, registering agency, [or] licensed child placement agency, OR FACILITY.

29 5-564.

30 (a) (1) (I) The Department shall conduct the criminal [background
31 investigation] HISTORY RECORDS CHECK and issue the printed statement provided for
32 under this Part VI of this subtitle.

33 (II) It shall update an initial [investigation] CRIMINAL HISTORY
34 RECORDS CHECK FOR AN EMPLOYEE, EMPLOYER, OR INDIVIDUAL IDENTIFIED IN §
35 ~~5-561(C) OR (D)~~ § 5-561(C), (D), (E), OR (F) OF THIS SUBTITLE and issue a revised printed
36 statement, listing any [of the] convictions, PROBATION BEFORE JUDGMENT
37 DISPOSITIONS, NOT CRIMINALLY RESPONSIBLE DISPOSITIONS, OR pending CRIMINAL
38 charges[, or offenses] occurring in the State [during the time of employment] after the
39 date of the initial criminal [background investigation statement] HISTORY RECORDS
40 CHECK.

6

1 (2) The Department shall adopt regulations requiring:

2 (I) employers to verify periodically the continuing employment of an
3 employee AND THE CONTINUING ASSIGNMENT OF A VOLUNTEER;

4 (II) STATE OR LOCAL AGENCIES ~~WHO THAT~~ LICENSE, REGISTER,
5 APPROVE, OR CERTIFY ANY OF THE FACILITIES ~~DEFINED IDENTIFIED~~ IN § 5-561(B)
6 OF THIS SUBTITLE TO VERIFY PERIODICALLY THE CONTINUING LICENSURE,
7 REGISTRATION, APPROVAL, OR CERTIFICATION OF A FACILITY OR THE
8 CONTINUING ASSIGNMENT OF INDIVIDUALS IDENTIFIED IN ~~§ 5-561(D) AND (E)~~ §
9 5-561(E) OF THIS SUBTITLE; AND

10 (III) LOCAL DEPARTMENTS OF SOCIAL SERVICES AND LICENSED
11 CHILD PLACEMENT AGENCIES THAT PLACE A CHILD AS DESCRIBED IN § 5-561(C) OF
12 THIS SUBTITLE TO VERIFY PERIODICALLY THE CONTINUING PARTICIPATION OR
13 PRESENCE OF INDIVIDUALS IDENTIFIED IN ~~§ 5-561(C)(2) AND (3)~~ § 5-561(C) OF THIS
14 SUBTITLE.

15 (3) The employee, EMPLOYER, VOLUNTEER, OR OTHER INDIVIDUAL
16 IDENTIFIED IN § 5-561 OF THIS SUBTITLE is not responsible for payment of any fee to
17 update criminal [background investigations] HISTORY RECORDS CHECKS.

18 (b) (1) The Department shall provide [a statement] AN INITIAL AND A
19 REVISED STATEMENT of the applicant's State criminal record to the recipients of the
20 acknowledgments specified in § 5-563(b) of this subtitle.

21 (2) The Department shall:

22 (i) record on a printed statement the existence of a conviction, A
23 PROBATION BEFORE JUDGMENT DISPOSITION, A NOT CRIMINALLY RESPONSIBLE
24 DISPOSITION, or pending charge reported in the criminal history record information
25 received from the FBI Identification Division; and

26 (ii) distribute the printed statement in accordance with federal law
27 and regulations on dissemination of FBI identification records.

28 (c) The recording of the existence of a conviction, A PROBATION BEFORE
29 JUDGMENT DISPOSITION, A NOT CRIMINALLY RESPONSIBLE DISPOSITION, or pending
30 charge, contained in the criminal history record information received from the FBI
31 Identification Division:

32 (1) may not identify or disclose to a private entity the specific crime or
33 attempted crime in the employee's, employer's, or applicant's criminal history record; and

34 (2) shall disclose to a private entity the existence of a conviction, A
35 PROBATION BEFORE JUDGMENT DISPOSITION, A NOT CRIMINALLY RESPONSIBLE
36 DISPOSITION, or pending charges for any of the crimes, attempted crimes, or a criminal
37 offense that is equivalent to those enumerated in the regulations adopted by the
38 Department.

39 (d) (1) Upon completion of the criminal [background investigation] HISTORY
40 RECORDS CHECK of an employee, the Department shall submit the printed statement to:

7

1 (i) the employee's current or prospective employer at the facility or
2 program; and

3 (ii) the employee.

4 (2) UPON RECEIVING A WRITTEN REQUEST FROM AN EMPLOYEE, THE
5 DEPARTMENT SHALL SUBMIT THE PRINTED STATEMENT TO ADDITIONAL
6 EMPLOYERS, IF THE CRIMINAL HISTORY RECORDS CHECK WAS COMPLETED
7 DURING THE PRIOR 180 DAYS.

8 [(2)] (3) Upon completion of the criminal [background investigation]
9 HISTORY RECORDS CHECK of an employer, the Department shall submit the printed
10 statement to:

11 (i) the appropriate State or local agency responsible for the licensure,
12 registration, approval, or certification of the employer's facility; and

13 (ii) the employer.

14 [(3)] (4) Upon completion of the criminal [background investigation]
15 HISTORY RECORDS CHECK of an individual identified in § 5-561(c), (d), (e), or (f) of
16 this subtitle, the Department shall submit the printed statement to the appropriate local
17 department of social services, registering agency, or licensed placement agency.

18 (e) Information obtained from the Department under this Part VI of this subtitle
19 shall be confidential and may be disseminated only to the individual who is the subject of
20 the criminal [background investigation] HISTORY RECORDS CHECK and to the
21 participants in the hiring or approval process.

22 (f) Information obtained from the Department under this Part VI of this subtitle
23 may not:

24 (1) be used for any purpose other than that for which it was disseminated; or

25 (2) be redisseminated.

26 (g) Information obtained from the Department under this Part VI of this subtitle
27 shall be maintained in a manner to insure the security of the information.

28 5-565.

29 (a) In conformity with the following procedures, an individual may contest the
30 finding of a criminal conviction, A PROBATION BEFORE JUDGMENT DISPOSITION, A
31 NOT CRIMINALLY RESPONSIBLE DISPOSITION, or pending charge reported in a printed
32 statement.

33 (b) In contesting the finding of a conviction, A PROBATION BEFORE JUDGMENT
34 DISPOSITION, A NOT CRIMINALLY RESPONSIBLE DISPOSITION, or a pending charge,
35 the individual shall contact the office of the Secretary, or a designee of the Secretary, and
36 a hearing shall be convened within 20 workdays, unless subsequently waived by the
37 individual. The Secretary, or a designee of the Secretary, shall render a decision
38 regarding the appeal within 5 workdays of the hearing.

8

1 (c) For purposes of this Part VI of this subtitle, the record of a conviction, A
2 PROBATION BEFORE JUDGMENT DISPOSITION, OR A NOT CRIMINALLY RESPONSIBLE
3 DISPOSITION for a crime or a copy thereof certified by the clerk of the court or by a judge
4 of the court in which the conviction OR DISPOSITION occurred, shall be conclusive
5 evidence of the conviction OR DISPOSITION. In a case where a pending charge is
6 recorded, documentation provided by a court to the Secretary, or a designee of the
7 Secretary, that a pending charge for a crime which has not been finally adjudicated shall
8 be conclusive evidence of the pending charge.

9 (d) Failure of the individual to appear at the scheduled hearing shall be
10 considered grounds for dismissal of the appeal.

11 5-566.

12 (a) An individual who fails to disclose a conviction, A PROBATION BEFORE
13 JUDGMENT DISPOSITION, A NOT CRIMINALLY RESPONSIBLE DISPOSITION, or the
14 existence of pending charges for a criminal offense or attempted criminal offense as
15 required under § 5-563 of this subtitle shall be guilty of perjury and upon conviction is
16 subject to the penalty provided by law.

17 (b) Unless otherwise provided, a person who violates any provision of this Part VI
18 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not
19 exceeding \$1,000 or imprisonment not exceeding 1 year or both.

20 5-567.

21 The following persons or agencies shall have the immunity from civil or criminal
22 liability described under § 5-361 of the Courts and Judicial Proceedings Article in
23 connection with a criminal [background investigation] HISTORY RECORDS CHECK
24 under this Part VI of this subtitle:

- 25 (1) an employer;
- 26 (2) a State or local agency; and
- 27 (3) a local department of social services.

28 5-568.

29 On or before August 15, 1986, the Secretary shall:

30 (1) provide for the adoption of a specified form or forms to be used in
31 applying for the criminal [background investigation] HISTORY RECORDS CHECK to be
32 issued by the Department, including an appropriate disclosure statement;

33 (2) designate the appropriate State or local law enforcement offices in the
34 State, or other approved locations, where fingerprints may be obtained and application
35 for a criminal [background investigation] HISTORY RECORDS CHECK may be made; and

36 (3) adopt rules and regulations necessary and reasonable to administer this
37 Part VI of this subtitle.

38 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
39 October 1, 1996.

