
By: **Delegates Krebs, DeBoy, Elliott, Eckardt, Heller, Parker, Shewell, Stocksdale, Jameson, Boutin, Kaiser, Sophocleus, McDonough, Aumann, Barkley, Bates, Boteler, Bromwell, Donoghue, Feldman, Frank, Haddaway, Hubbard, Impallaria, Kach, Mandel, McComas, McHale, Miller, Myers, Rudolph, Smigiel, Trueschler, Weldon, and ~~Kullen~~ Kullen, Benson, Costa, Goldwater, Hammen, Hurson, Morhaim, Murray, Nathan-Pulliam, Oaks, Pendergrass, and V. Turner**

Introduced and read first time: January 20, 2005

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 22, 2005

CHAPTER _____

1 AN ACT concerning

2 **Child Care Centers and Family Day Care Homes - Employees - Background**
 3 **Checks**

4 FOR the purpose of authorizing the Child Care Administration of the Department of
 5 Human Resources to disclose to the operator of a child care center or to a family
 6 day care provider reports and records concerning child abuse and neglect for a
 7 certain purpose; requiring the Department of Public Safety and Correctional
 8 Services to provide an initial and a revised statement of a certain applicant's
 9 State criminal record to the Child Care Administration; requiring the
 10 Department of Public Safety and Correctional Services to submit a certain
 11 printed statement concerning a certain employee to the Child Care
 12 Administration; specifying that certain requirements of this Act apply only to
 13 certain employees; requiring that each employee of a child care center apply to
 14 the Child Care Administration, on or before a certain date, for a child abuse and
 15 neglect clearance; authorizing the Child Care Administration to prohibit the
 16 operator of a child care center from employing a certain individual; requiring
 17 the operator of a child care center to immediately notify the Child Care
 18 Administration of a certain criminal history records check of an employee; and
 19 generally relating to child care centers and family day care homes.

20 BY repealing and reenacting, with amendments,

21 Article 88A - Department of Human Resources

1 Section 6
2 Annotated Code of Maryland
3 (2003 Replacement Volume and 2004 Supplement)

4 BY repealing and reenacting, without amendments,
5 Article - Family Law
6 Section 5-560 and 5-561(a) and (b)
7 Annotated Code of Maryland
8 (2004 Replacement Volume)

9 BY repealing and reenacting, with amendments,
10 Article - Family Law
11 Section 5-564
12 Annotated Code of Maryland
13 (2004 Replacement Volume)

14 BY adding to
15 Article - Family Law
16 Section 5-580.3
17 Annotated Code of Maryland
18 (2004 Replacement Volume)

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

21 **Article 88A - Department of Human Resources**

22 6.

23 (a) Except in accordance with a court order or to an authorized officer or
24 employee of the State, another state or local government, or the United States, or a
25 fiduciary institution having a right thereto in an official capacity, and as necessary to
26 discharge responsibilities to administer public assistance, medical assistance, or
27 social services programs, it shall be unlawful for any person or persons to divulge or
28 make known in any manner any information concerning any applicant for or recipient
29 of social services, child welfare services, cash assistance, food stamps, or medical
30 assistance, directly or indirectly derived from the records, papers, files, investigations
31 or communications of the State, county or city, or subdivisions or agencies thereof, or
32 acquired in the course of the performance of official duties.

33 (b) Except as otherwise provided in Title 5, Subtitle 7 of the Family Law
34 Article, § 6A of this subtitle, and this section, all records and reports concerning child
35 abuse or neglect are confidential, and their unauthorized disclosure is a criminal
36 offense subject to the penalty set out in subsection (e) of this section. Reports or
37 records concerning child abuse or neglect:

- 1 (1) Shall be disclosed:
- 2 (i) Under a court order; or
- 3 (ii) Under an order of an administrative law judge, if the request for
4 disclosure concerns a case pending before the Office of Administrative Hearings and
5 provisions are made to comply with other State or federal confidentiality laws and to
6 protect the identity of the reporter or other person whose life or safety is likely to be
7 endangered by disclosure; [and]
- 8 (2) May be disclosed on request:
- 9 (i) To personnel of local or State departments of social services, law
10 enforcement personnel, and members of multidisciplinary case consultation teams,
11 who are investigating a report of known or suspected child abuse or neglect or who
12 are providing services to a child or family that is the subject of the report;
- 13 (ii) To local or State officials responsible for the administration of
14 child protective services or child care, foster care, and adoption licensing, approval, or
15 regulations as necessary to carry out their official functions;
- 16 (iii) To the State Council on Child Abuse and Neglect, the State
17 Citizens Review Board for Children, or their designees, or a child fatality review team
18 as necessary to carry out their official functions;
- 19 (iv) To a person who is the alleged child abuser or the person who is
20 suspected of child neglect if that person is responsible for the child's welfare and
21 provisions are made for the protection of the identity of the reporter or any other
22 person whose life or safety is likely to be endangered by disclosing the information;
- 23 (v) To a licensed practitioner who, or an agency, institution, or
24 program which, is providing treatment or care to a child who is the subject of a report
25 of child abuse or neglect for a purpose relevant to the provision of the treatment or
26 care;
- 27 (vi) To a parent or other person who has permanent or temporary
28 care and custody of a child, if provisions are made for the protection of the identity of
29 the reporter or any other person whose life or safety is likely to be endangered by
30 disclosing the information;
- 31 (vii) To the appropriate public school superintendent for the purpose
32 of carrying out appropriate personnel or administrative actions following a report of
33 suspected child abuse involving a student committed by:
- 34 1. A public school employee in that school system;
- 35 2. An independent contractor who supervises or works
36 directly with students in that school system; or

1 3. An employee of an independent contractor, including a bus
2 driver or bus assistant, who supervises or works directly with students in that school
3 system;

4 (viii) To the director of a licensed child care facility or licensed child
5 placement agency for the purpose of carrying out appropriate personnel actions
6 following a report of suspected child neglect or abuse alleged to have been committed
7 by an employee of the facility or agency and involving a child who is currently or who
8 was previously under that facility's or agency's care; or

9 (ix) To the Office of the Independent Juvenile Justice Monitor
10 established under Article 49D of the Code; AND

11 (3) MAY BE DISCLOSED BY THE CHILD CARE ADMINISTRATION OF THE
12 DEPARTMENT OF HUMAN RESOURCES TO THE OPERATOR OF A CHILD CARE CENTER
13 THAT IS REQUIRED TO BE LICENSED OR TO HOLD A LETTER OF COMPLIANCE UNDER
14 TITLE 5, SUBTITLE 5, PART VII OF THE FAMILY LAW ARTICLE OR TO A FAMILY DAY
15 CARE PROVIDER WHO IS REQUIRED TO BE REGISTERED UNDER TITLE 5, SUBTITLE 5,
16 PART V OF THE FAMILY LAW ARTICLE FOR THE PURPOSE OF DETERMINING THE
17 SUITABILITY OF AN INDIVIDUAL FOR EMPLOYMENT IN THE CHILD CARE CENTER OR
18 FAMILY DAY CARE HOME.

19 (c) Nothing in this section shall be construed to prohibit:

20 (1) The publication, for administrative or research purposes, of statistics
21 or other data so classified as to prevent the identification of particular persons or
22 cases;

23 (2) The Department of Human Resources from obtaining an individual's
24 financial records from a fiduciary institution in the course of verifying the
25 individual's eligibility for public assistance; or

26 (3) Disclosures as permitted by § 1-303 of the Financial Institutions
27 Article.

28 (d) The Department of Human Resources shall issue regulations governing
29 access to and use of confidential information which is in the possession of the
30 Department or local departments of social services.

31 (e) Any offense against the provisions of this section shall be a misdemeanor
32 and shall be punishable by a fine not exceeding \$500 or imprisonment for not
33 exceeding 90 days, or both, in the discretion of the court.

34 **Article - Family Law**

35 5-560.

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

1 (b) "Conviction" means a plea or verdict of guilty or a plea of nolo contendere.

2 (c) "Department" means the Department of Public Safety and Correctional
3 Services.

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

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

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

9 (2) "Employee" includes a person who:

10 (i) participates in a pool described in subsection (e)(2) of this
11 section;

12 (ii) for compensation will be employed on a substitute or temporary
13 basis to work in a facility identified in § 5-561(b)(1) or (2) of this subtitle; and

14 (iii) will care for or supervise children in the facility or will have
15 access to children who are cared for or supervised in the facility.

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

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
20 who are cared for or supervised in the facility.

21 (2) For purposes of §§ 5-561(g), 5-563(b)(1), 5-564(a)(2)(i) and (d)(1)(i)
22 and (2), and 5-567 of this subtitle, "employer" includes a child care resource and
23 referral center, an association of registered family day care providers, and an
24 association of licensed child care centers to the extent that the center or association
25 establishes and maintains a pool of individuals who are qualified to work as
26 substitute or temporary employees in a facility identified in § 5-561(b)(1) or (2) of this
27 subtitle.

28 (3) "Employer" does not include a State or local agency responsible for
29 the temporary or permanent placement of children in a facility identified in § 5-561 of
30 this subtitle.

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

33 5-561.

34 (a) Notwithstanding any provision of law to the contrary, an employee and
35 employer in a facility identified in subsection (b) of this section and persons identified

1 in subsection (c) of this section shall apply for a national and State criminal history
2 records check at any designated law enforcement office in this State.

3 (b) The following facilities shall require employees and employers to obtain a
4 criminal history records check under this Part VI of this subtitle:

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

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

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

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

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

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

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

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

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

22 (10) a day or residential camp, as defined in Title 10, Subtitle 16 of the
23 Code of Maryland Regulations, primarily serving minors.

24 5-564.

25 (a) (1) (i) The Department shall conduct the criminal history records
26 check and issue the printed statement provided for under this Part VI of this subtitle.

27 (ii) It shall update an initial criminal history records check for an
28 employee, employer, or individual identified in § 5-561(c), (d), (e), or (f) of this subtitle
29 and issue a revised printed statement, listing any convictions, probation before
30 judgment dispositions, not criminally responsible dispositions, or pending criminal
31 charges occurring in the State after the date of the initial criminal history records
32 check.

33 (2) The Department shall adopt regulations requiring:

34 (i) employers to verify periodically the continuing employment of
35 an employee and the continuing assignment of a volunteer;

1 (ii) State or local agencies that license, register, approve, or certify
2 any of the facilities identified in § 5-561(b) of this subtitle to verify periodically the
3 continuing licensure, registration, approval, or certification of a facility or the
4 continuing assignment of individuals identified in § 5-561(e) of this subtitle; and

5 (iii) local departments of social services and licensed child
6 placement agencies that place a child as described in § 5-561(c) of this subtitle to
7 verify periodically the continuing participation or presence of individuals identified in
8 § 5-561(c) of this subtitle.

9 (3) The employee, employer, volunteer, or other individual identified in §
10 5-561 of this subtitle is not responsible for payment of any fee to update criminal
11 history records checks.

12 (b) (1) The Department shall provide an initial and a revised statement of
13 the applicant's State criminal record to:

14 (I) the recipients of the acknowledgments specified in § 5-563(b) of
15 this subtitle; AND

16 (II) THE CHILD CARE ADMINISTRATION OF THE DEPARTMENT OF
17 HUMAN RESOURCES IF THE APPLICANT IS AN EMPLOYEE OF:

18 1. A CHILD CARE CENTER THAT IS REQUIRED TO BE
19 LICENSED OR TO HOLD A LETTER OF COMPLIANCE UNDER PART VII OF THIS
20 SUBTITLE; OR

21 2. A FAMILY DAY CARE HOME THAT IS REQUIRED TO BE
22 REGISTERED UNDER PART V OF THIS SUBTITLE.

23 (2) The Department shall:

24 (i) record on a printed statement the existence of a conviction, a
25 probation before judgment disposition, a not criminally responsible disposition, or
26 pending charge reported in the criminal history record information received from the
27 FBI Identification Division; and

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

30 (c) The recording of the existence of a conviction, a probation before judgment
31 disposition, a not criminally responsible disposition, or pending charge, contained in
32 the criminal history record information received from the FBI Identification Division:

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

36 (2) shall disclose to a private entity the existence of a conviction, a
37 probation before judgment disposition, a not criminally responsible disposition, or

1 pending charges for any of the crimes, attempted crimes, or a criminal offense that is
2 equivalent to those enumerated in the regulations adopted by the Department.

3 (d) (1) Upon completion of the criminal history records check of an
4 employee, the Department shall submit the printed statement to:

5 (i) the employee's current or prospective employer at the facility or
6 program; [and]

7 (ii) the employee; AND

8 (III) FOR AN EMPLOYEE OF A CHILD CARE CENTER THAT IS
9 REQUIRED TO BE LICENSED OR TO HOLD A LETTER OF COMPLIANCE UNDER PART VII
10 OF THIS SUBTITLE OR AN EMPLOYEE OF A FAMILY DAY CARE HOME THAT IS
11 REQUIRED TO BE REGISTERED UNDER PART V OF THIS SUBTITLE, THE CHILD CARE
12 ADMINISTRATION OF THE DEPARTMENT OF HUMAN RESOURCES.

13 (2) Upon receiving a written request from an employee, the Department
14 shall submit the printed statement to additional employers, if the criminal history
15 records check was completed during the prior 180 days.

16 (3) Upon completion of the criminal history records check of an employer,
17 the Department shall submit the printed statement to:

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

20 (ii) the employer.

21 (4) Upon completion of the criminal history records check of an
22 individual identified in § 5-561(c), (d), (e), or (f) of this subtitle, the Department shall
23 submit the printed statement to the appropriate local department of social services,
24 registering agency, or licensed placement agency.

25 (e) Information obtained from the Department under this Part VI of this
26 subtitle shall be confidential and may be disseminated only to the individual who is
27 the subject of the criminal history records check and to the participants in the hiring
28 or approval process.

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

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

33 (2) be redisseminated.

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

1 5-580.3.

2 (A) (1) THE REQUIREMENTS OF THIS SUBSECTION APPLY ONLY TO AN
3 EMPLOYEE HIRED ON OR AFTER OCTOBER 1, 2005.

4 (2) EACH EMPLOYEE, AS DEFINED IN § 5-560 OF THIS SUBTITLE, OF A
5 CHILD CARE CENTER THAT IS REQUIRED TO BE LICENSED OR TO HOLD A LETTER OF
6 COMPLIANCE UNDER THIS SUBTITLE SHALL APPLY TO THE CHILD CARE
7 ADMINISTRATION, ON OR BEFORE THE FIRST DAY OF ACTUAL EMPLOYMENT, FOR A
8 CHILD ABUSE AND NEGLECT CLEARANCE.

9 (B) THE CHILD CARE ADMINISTRATION MAY PROHIBIT THE OPERATOR OF A
10 CHILD CARE CENTER THAT IS REQUIRED TO BE LICENSED OR TO HOLD A LETTER OF
11 COMPLIANCE UNDER THIS SUBTITLE FROM EMPLOYING AN INDIVIDUAL WHO:

12 (1) HAS RECEIVED A CONVICTION, A PROBATION BEFORE JUDGMENT
13 DISPOSITION, A NOT CRIMINALLY RESPONSIBLE DISPOSITION, OR A PENDING
14 CHARGE FOR ANY CRIME OR ATTEMPTED CRIME ENUMERATED IN THE
15 REGULATIONS ADOPTED BY THE DEPARTMENT OF PUBLIC SAFETY AND
16 CORRECTIONAL SERVICES UNDER PART VI OF THIS SUBTITLE; OR

17 (2) HAS BEEN IDENTIFIED AS RESPONSIBLE FOR CHILD ABUSE OR
18 NEGLECT.

19 (C) THE OPERATOR OF A CHILD CARE CENTER THAT IS REQUIRED TO BE
20 LICENSED OR TO HOLD A LETTER OF COMPLIANCE UNDER THIS SUBTITLE SHALL
21 IMMEDIATELY NOTIFY THE CHILD CARE ADMINISTRATION OF A CRIMINAL HISTORY
22 RECORDS CHECK OF AN EMPLOYEE THAT REPORTS A CONVICTION, A PROBATION
23 BEFORE JUDGMENT DISPOSITION, A NOT CRIMINALLY RESPONSIBLE DISPOSITION,
24 OR A PENDING CHARGE FOR ANY CRIME OR ATTEMPTED CRIME ENUMERATED IN
25 THE REGULATIONS ADOPTED BY THE DEPARTMENT OF PUBLIC SAFETY AND
26 CORRECTIONAL SERVICES UNDER PART VI OF THIS SUBTITLE.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2005.