

# HOUSE BILL 1532

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By: **Chair, Health and Government Operations Committee (By Request –  
Departmental – Health and Mental Hygiene)**

Introduced and read first time: February 22, 2008

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health – Direct Access of State Agencies to Criminal Background Checks**  
3 **Conducted by Department of Public Safety and Correctional Services**

4 FOR the purpose of authorizing certain State agencies to receive criminal history  
5 background check information for prospective employees of certain programs;  
6 altering the definition of an “adult dependent care program” as it relates to  
7 certain employee background checks; requiring certain employees to submit  
8 certain information and fees; requiring the Central Repository to forward  
9 certain information to certain employees and departments; requiring that  
10 certain information be kept confidential; and generally relating to employee  
11 background checks.

12 BY repealing and reenacting, with amendments,  
13 Article – Health – General  
14 Section 19–1901 and 19–1902  
15 Annotated Code of Maryland  
16 (2005 Replacement Volume and 2007 Supplement)

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

19 **Article – Health – General**

20 19–1901.

21 (a) In this subtitle the following words have the meanings indicated.

22 (b) “Adult dependent care program” means:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) An adult day care facility regulated under Title 14, Subtitle 2 of  
2 this article;

3 (2) An assisted living program facility regulated under Subtitle 18 of  
4 this title;

5 (3) A group home regulated under Title 10, Subtitle 5 or Title 7,  
6 Subtitle 6 of this article;

7 (4) A home health agency regulated under Subtitle 4 of this title;

8 (5) A congregate housing services program regulated under Title 10,  
9 Subtitle 2 of the Human Services Article;

10 (6) A residential service agency as defined under § 19–4A–01 of this  
11 title;

12 (7) An alternative living unit as defined under § 7–101 of this article;

13 (8) A hospice facility regulated under Subtitle 9 of this title; [or]

14 (9) A related institution regulated under Subtitle 3 of this title; **OR**

15 **(10) A PROVIDER OF SERVICES TO A FEDERALLY APPROVED**  
16 **HOME- AND COMMUNITY-BASED SERVICES WAIVER PROGRAM AUTHORIZED BY**  
17 **42 U.S.C. § 1396(N) OPERATED BY THE DEPARTMENT OF HEALTH AND MENTAL**  
18 **HYGIENE UNDER SUBTITLE 15 OF THIS TITLE.**

19 (c) “Background check” means a check of court and other records by a  
20 private agency.

21 **(D) “CENTRAL REPOSITORY” MEANS THE CRIMINAL JUSTICE**  
22 **INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF**  
23 **PUBLIC SAFETY AND CORRECTIONAL SERVICES.**

24 [(d)] (E) “Conviction” means a:

25 (1) Plea or verdict of guilty;

26 (2) Plea of nolo contendere;

27 (3) Disposition of probation before judgment; or

28 (4) Disposition of not criminally responsible.

1           [(e)] (F)       “Criminal history records check” means a check of criminal history  
2 record information, as defined in § 10–201 of the Criminal Procedure Article, by the  
3 Department of Public Safety and Correctional Services.

4           [(f)] (G)       “Department” means the Department of Public Safety and  
5 Correctional Services.

6           [(g)] (H)       “Disclosure statement” means a sworn statement or affirmation of  
7 the existence of a criminal conviction or pending criminal charges without a final  
8 disposition.

9           [(h)] (I)       (1)   “Eligible employee” means an individual:

10                           (i)   Who, for compensation, works for an adult dependent care  
11 program;

12                           (ii)   Who has routine, direct access to dependent adults in the  
13 program; and

14                           (iii)   Who is not licensed or certified under the Health  
15 Occupations Article.

16                           (2)   “Eligible employee” does not include an individual delivering or  
17 retrieving medical equipment.

18           [(i)] (J)       “Printed statement” means a document issued by the Criminal  
19 Justice Information System Central Repository in the Department of Public Safety  
20 and Correctional Services in response to an application for a criminal history records  
21 check.

22           [(j)] (K)       “Private agency” means a person that:

23                           (1)   Is licensed as a private detective agency under Title 13, Subtitle 3  
24 of the Business Occupations and Professions Article;

25                           (2)   Maintains an errors and omissions insurance policy in an amount  
26 not less than \$1,000,000;

27                           (3)   Offers customer assistance in the use of background checks for  
28 employment purposes; and

29                           (4)   Is capable of conducting a background check within the State  
30 within 2 working days of a request and outside the State within 5 working days of a  
31 request.

32           [(k)] (L)       “Secretary” means the Secretary of Public Safety and Correctional  
33 Services.

1 19–1902.

2 (a) (1) [Before] **NOTWITHSTANDING ANY PROVISION OF LAW TO THE**  
3 **CONTRARY, BEFORE** an eligible employee may begin work for an adult dependent  
4 care program **IDENTIFIED IN § 19–1901(B)(1), (2), (3), (4), (5), (6), (7), (8), OR (9)**  
5 **OF THIS SUBTITLE**, each adult dependent care program shall, for each eligible  
6 employee:

7 [(1) (i) Apply for a State criminal history records check; or]

8 (I) 1. **APPLY TO THE CENTRAL REPOSITORY FOR A**  
9 **STATE AND NATIONAL CRIMINAL HISTORY RECORDS CHECK; AND**

10 2. **REQUEST A REFERENCE FROM THE POTENTIAL**  
11 **EMPLOYEE’S MOST RECENT EMPLOYER; OR**

12 (ii) 1. Request a private agency to conduct a background  
13 check; and

14 [(2) 2. Request a reference from the potential employee’s  
15 most recent employer.

16 (2) (I) **AS PART OF THE APPLICATION FOR A CRIMINAL**  
17 **HISTORY RECORDS CHECK, THE ELIGIBLE EMPLOYEE SHALL SUBMIT TO THE**  
18 **CENTRAL REPOSITORY:**

19 1. **TWO COMPLETE SETS OF THE ELIGIBLE**  
20 **EMPLOYEE’S LEGIBLE FINGERPRINTS TAKEN ON FORMS APPROVED BY THE**  
21 **DIRECTOR OF THE CENTRAL REPOSITORY AND THE DIRECTOR OF THE**  
22 **FEDERAL BUREAU OF INVESTIGATION;**

23 2. **THE FEE AUTHORIZED UNDER § 10–221(B)(7) OF**  
24 **THE CRIMINAL PROCEDURE ARTICLE FOR ACCESS TO MARYLAND CRIMINAL**  
25 **HISTORY RECORDS; AND**

26 3. **THE MANDATORY PROCESSING FEE REQUIRED BY**  
27 **THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL**  
28 **HISTORY RECORDS CHECK.**

29 (II) **IN ACCORDANCE WITH §§ 10–201 THROUGH 10–234 OF**  
30 **THE CRIMINAL PROCEDURE ARTICLE, THE CENTRAL REPOSITORY SHALL**  
31 **FORWARD THE ELIGIBLE EMPLOYEE’S CRIMINAL HISTORY RECORD**  
32 **INFORMATION TO THE ELIGIBLE EMPLOYEE, THE DEPARTMENT OF HEALTH**  
33 **AND MENTAL HYGIENE, THE DEPARTMENT OF AGING, THE DEPARTMENT OF**

1 HUMAN RESOURCES, AND ANY OTHER STATE OR LOCAL AGENCY THAT IS  
2 AUTHORIZED TO ADMINISTER AN ADULT DEPENDENT CARE PROGRAM AS  
3 DEFINED IN § 19-1901(B) OF THIS SUBTITLE.

4 (III) INFORMATION OBTAINED FROM THE CENTRAL  
5 REPOSITORY UNDER THIS SUBTITLE SHALL BE CONFIDENTIAL, MAY NOT BE  
6 REDISSEMINATED, AND MAY BE USED ONLY FOR THE EMPLOYMENT PURPOSE  
7 AUTHORIZED BY THIS SUBTITLE.

8 (IV) THE SUBJECT OF THE CRIMINAL HISTORY RECORDS  
9 CHECK UNDER THIS SUBTITLE MAY CONTEST THE CONTENTS OF THE PRINTED  
10 STATEMENT ISSUED BY THE CENTRAL REPOSITORY AS PROVIDED IN § 10-223  
11 OF THE CRIMINAL PROCEDURE ARTICLE.

12 (B) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY,  
13 BEFORE AN ELIGIBLE EMPLOYEE MAY BEGIN WORK FOR AN ADULT DEPENDENT  
14 CARE PROGRAM IDENTIFIED IN § 19-1901(B)(10) OF THIS SUBTITLE, EACH  
15 ADULT DEPENDENT CARE PROGRAM SHALL, FOR EACH ELIGIBLE EMPLOYEE:

16 (1) APPLY FOR A STATE CRIMINAL HISTORY RECORDS CHECK;  
17 AND

18 (2) REQUEST A REFERENCE FROM THE POTENTIAL EMPLOYEE'S  
19 MOST RECENT EMPLOYER.

20 (C) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, AN  
21 INDIVIDUAL EMPLOYED DIRECTLY BY A DEPENDENT ADULT WHO PARTICIPATES  
22 IN A FEDERALLY APPROVED HOME- AND COMMUNITY-BASED SERVICES WAIVER  
23 PROGRAM AUTHORIZED BY 42 U.S.C. § 1396(N) OPERATED BY THE  
24 DEPARTMENT OF HEALTH AND MENTAL HYGIENE UNDER SUBTITLE 15 OF THIS  
25 TITLE OR OPERATED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
26 WITH THE ASSISTANCE OF THE DEPARTMENT OF AGING UNDER SUBTITLE 15 OF  
27 THIS TITLE SHALL OBTAIN A CRIMINAL HISTORY RECORDS CHECK UNDER  
28 SUBSECTION (A)(1) OF THIS SECTION.

29 [(b)] (D) The reference request required under subsection [(a)(2)] (A)(1)(I)2  
30 AND (II)2 of this section shall, at a minimum, seek information about any history of  
31 physical abuse on the part of the potential employee.

32 [(c)] (E) An adult dependent care program shall pay for each eligible  
33 employee:

34 (1) A State criminal history records check; or

35 (2) A private agency background check.

1            [(d) (F)     If an adult dependent care program requests a private agency to  
2     conduct a background check, the private agency shall conduct a background check in  
3     each state in which the adult dependent care program knows or has reason to know  
4     the eligible employee worked or resided during the past 7 years.

5            SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6     July 1, 2008.