

HOUSE BILL 1384

D4, E4

9lr0111

By: **Chair, Judiciary Committee (By Request – Departmental – Public Safety and Correctional Services)**

Introduced and read first time: February 23, 2009

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Criminal History Records Checks – Employees of Facilities and**
3 **Other Individuals Who Care for or Supervise Children**

4 FOR the purpose of expanding the categories of persons required to have a criminal
5 history records check; authorizing the Department of Public Safety and
6 Correctional Services to waive a certain fingerprint requirement on behalf of the
7 Department of Human Resources; altering the locations where certain persons
8 are required to apply for a certain criminal history records check; repealing a
9 requirement that an employer apply for a certain printed statement on or before
10 a certain date; altering the circumstances under which a certain fingerprint
11 requirement may be waived; repealing certain requirements that the
12 Department of Public Safety and Correctional Services mail certain
13 acknowledged receipts; altering the process for contesting certain findings
14 reported in a certain printed statement; defining a certain term; making certain
15 conforming changes; and generally relating to criminal history records checks
16 for employees of facilities and other individuals that care for or supervise
17 children.

18 BY repealing and reenacting, with amendments,
19 Article – Family Law
20 Section 5–560, 5–561, 5–562(a) and (c), 5–563, 5–564(b)(1), and 5–565
21 Annotated Code of Maryland
22 (2006 Replacement Volume and 2008 Supplement)

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

25 **Article – Family Law**

26 5–560.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 (b) “Conviction” means a plea or verdict of guilty or a plea of nolo contendere.

4 (c) “Department” means the Department of Public Safety and Correctional
5 Services.

6 (d) (1) “Employee” means a person that for compensation is employed to
7 work in a facility identified in § 5–561 of this subtitle and who:

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

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

11 (2) “Employee” includes a person who:

12 (i) participates in a pool described in subsection (e)(2) of this
13 section;

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

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

19 (3) “Employee” does not include any person employed to work for
20 compensation by the Department of Juvenile Services.

21 (e) (1) “Employer” means an owner, operator, proprietor, or manager of a
22 facility identified in § 5–561 of this subtitle who has frequent contact with children
23 who are cared for or supervised in the facility.

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

30 (3) “Employer” does not include a State or local agency responsible for
31 the temporary or permanent placement of children in a facility identified in § 5–561 of
32 this subtitle.

1 (F) **“PRIVATE ENTITY” MEANS A NONGOVERNMENTAL AGENCY,**
2 **ORGANIZATION, OR EMPLOYER.**

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

5 5–561.

6 (a) Notwithstanding any provision of law to the contrary, an employee and
7 employer in a facility identified in subsection (b) of this section and persons identified
8 in subsection (c) of this section shall apply for a national and State criminal history
9 records check at any [designated law enforcement office in this State] **DESIGNATED**
10 **STATE OR LOCAL LAW ENFORCEMENT OFFICE IN THE STATE OR OTHER**
11 **LOCATION APPROVED BY THE DEPARTMENT.**

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

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

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

18 (3) a child care home required to be licensed under this subtitle or
19 under Title 9 of the Human Services Article;

20 (4) a child care institution required to be licensed under this subtitle
21 or under Title 9 of the Human Services Article;

22 (5) a juvenile detention, correction, or treatment facility provided for
23 in Title 9 of the Human Services Article;

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

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

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

29 (9) a recreation center or recreation program operated by **THE** State
30 **[or], A local government, OR A PRIVATE ENTITY** primarily serving minors; **[or]**

31 (10) a day or residential camp, as defined in Title 10, Subtitle 16 of the
32 Code of Maryland Regulations, primarily serving minors; **OR**

1 **(11) A HOME HEALTH OR RESIDENTIAL SERVICE AGENCY**
2 **LICENSED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE AND**
3 **AUTHORIZED UNDER TITLE 19 OF THE HEALTH – GENERAL ARTICLE TO**
4 **PROVIDE HOME OR COMMUNITY–BASED HEALTH SERVICES FOR MINORS.**

5 (c) The following individuals shall obtain a criminal history records check
6 under this Part VI of this subtitle:

7 (1) an individual who is seeking to adopt a child through a child
8 placement agency;

9 (2) an individual who is seeking to become a guardian through a local
10 department;

11 (3) an individual whom the juvenile court appoints as a guardian of a
12 child;

13 (4) an adult relative with whom a child, committed to a local
14 department, is placed by the local department;

15 (5) any adult known by a local department to be residing in:

16 (i) a family day care home required to be registered under this
17 title;

18 (ii) a home of an adult relative of a child with whom the child,
19 committed to a local department, is placed by the local department;

20 (iii) a foster care home or child care home required to be
21 approved under this title;

22 (iv) a home of an individual seeking to adopt a child through a
23 child placement agency; or

24 (v) a home of an individual seeking to become a guardian
25 through a local department; and

26 (6) if requested by a local department:

27 (i) a parent or guardian of a child who is committed to the local
28 department and is or has been placed in an out-of-home placement within the past
29 year; and

30 (ii) any adult known by the local department to be residing in
31 the home of the parent or guardian.

1 (d) An employer at a facility under subsection (b) of this section may require
2 a volunteer at the facility to obtain a criminal history records check under this Part VI
3 of this subtitle.

4 (e) A local department may require a volunteer of that department who
5 works with children to obtain a criminal history records check under this Part VI of
6 this subtitle.

7 (f) An employer at a facility not identified in subsection (b) of this section
8 who employs individuals to work with children may require employees, including
9 volunteers, to obtain a criminal history records check under this Part VI of this
10 subtitle.

11 (g) An employer, as defined in § 5-560(e)(2) of this subtitle, shall require an
12 employee, as defined in § 5-560(d)(2) of this subtitle, to obtain a criminal history
13 records check under this Part VI of this subtitle.

14 (h) (1) Except as provided in paragraph (2) of this subsection, a person
15 who is required to have a criminal history records check under this Part VI of this
16 subtitle shall pay for:

17 (i) the mandatory processing fee required by the Federal
18 Bureau of Investigation for a national criminal history records check;

19 (ii) reasonable administrative costs to the Department, not to
20 exceed 10% of the processing fee; and

21 (iii) the fee authorized under § 10-221(b)(7) of the Criminal
22 Procedure Article for access to Maryland criminal history records.

23 (2) A volunteer under subsection (d), (e), or (f) of this section who
24 volunteers for a program that is registered with the Maryland Mentoring Partnership
25 is not required to pay for costs or fees under paragraph (1)(ii) and (iii) of this
26 subsection.

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

29 (2) The local department shall reimburse:

30 (i) an adult residing in a foster care home for the costs borne by
31 the individual under subsection (h) of this section; and

32 (ii) an individual described in subsection (c)(4)(ii) of this section
33 for the costs borne by the individual under subsection (h) of this section.

34 5-562.

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

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

6 [(3)] (2) Within 5 days after a local department places a child who is
7 committed to the local department with an adult relative, an individual identified in §
8 5–561(c) or (e) of this subtitle shall apply to the Department for a printed statement.

9 (c) The requirement that a complete set of legible fingerprints taken on
10 standard fingerprint cards be submitted as part of the application for a criminal
11 history records check may be waived by the **DEPARTMENT ON BEHALF OF THE**
12 Department of Human Resources if:

13 (1) the application is submitted by a person who has attempted to
14 have a complete set of fingerprints taken on at least [3] 2 occasions;

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

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

19 (4) the person submits the other information required for a criminal
20 history records check.

21 5–563.

22 [(a)] As part of the application process for a criminal history records check, the
23 employee, employer, and individual identified in § 5–561(c), (d), (e), or (f) of this
24 subtitle shall complete and sign a sworn statement or affirmation disclosing the
25 existence of a criminal conviction, probation before judgment disposition, not
26 criminally responsible disposition, or pending criminal charges without a final
27 disposition.

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

31 (2) The Department or its designee shall mail an acknowledged receipt
32 of the application with a sworn statement or affirmation from an employer to the
33 appropriate State or local licensing, registering, approving, or certifying agency,
34 within 3 days of the application.

(3) The Department or its designee shall mail an acknowledged receipt of the application with a sworn statement or affirmation from an individual identified in § 5-561(c), (d), (e), or (f) of this subtitle to the appropriate child placement or registering agency or facility.]

5-564.

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

(i) the recipients of the [acknowledgments] **PRINTED STATEMENT** specified in [§ 5-563(b) of this subtitle] **SUBSECTION (D) OF THIS SECTION**; and

(ii) the State Department of Education if the applicant is an employee of:

1. a child care center that is required to be licensed or to hold a letter of compliance under Part VII of this subtitle; or

2. a family day care home that is required to be registered under Part V of this subtitle.

5-565.

[(a) In conformity with the following procedures, an] **AN** individual may contest the finding of a criminal conviction, a probation before judgment disposition, a not criminally responsible disposition, or pending charge reported in a printed statement **IN ACCORDANCE WITH §§ 10-223 THROUGH 10-228 OF THE CRIMINAL PROCEDURE ARTICLE.**

[(b) In contesting the finding of a conviction, a probation before judgment disposition, a not criminally responsible disposition, or a pending charge, the individual shall contact the office of the Secretary, or a designee of the Secretary, and a hearing shall be convened within 20 workdays, unless subsequently waived by the individual. The Secretary, or a designee of the Secretary, shall render a decision regarding the appeal within 5 workdays of the hearing.

(c) For purposes of this Part VI of this subtitle, the record of a conviction, a probation before judgment disposition, or a not criminally responsible disposition for a crime or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction or disposition occurred, shall be conclusive evidence of the conviction or disposition. In a case where a pending charge is recorded, documentation provided by a court to the Secretary, or a designee of the Secretary, that a pending charge for a crime which has not been finally adjudicated shall be conclusive evidence of the pending charge.

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

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2009.