

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1300

(Chair, Judiciary Committee)(By Request - Departmental
- Public Safety and Correctional Services)

Judiciary

Judicial Proceedings

Family Law - Child Care - Criminal Background Investigations

This departmental bill alters statutory provisions related to criminal background investigations for specified individuals who care for, supervise, or otherwise have specified access to children.

Fiscal Summary

State Effect: The bill's changes do not materially affect State finances or alter State operations; however, the changes are intended to ensure that State law conforms to federal requirements and that designated entities may continue to secure national criminal history records checks (CHRC) as required.

Local Effect: The bill's changes do not materially affect local finances or alter local operations but are intended to enable certain local entities to continue to secure national CHRCs as required.

Small Business Effect: The Department of Public Safety and Correctional Services (DPSCS) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) disagrees with this assessment as discussed below.

Analysis

Bill Summary: In general, the bill alters numerous provisions under Part V of Title 5, Subtitle 5 of the Family Law Article that govern when certain individuals who care for, supervise, or otherwise have access to children are required (or authorized) to secure a CHRC. While numerous alterations represent only stylistic or technical changes, the bill

notably (1) specifies that a *facility* (instead of the employee or other individual) must apply to DPSCS/the Central Repository for a national and State CHRC for an employee (or other individual); (2) specifies that in accordance with provisions within the Criminal Procedure Article, the Central Repository must forward criminal history record information (CHRI) to the employee, employer, individual, or volunteer and the authorized agencies, as specified; (3) repeals an authorization for a local department of social services to request that a location other than a designated State or local law enforcement agency perform a federal name-based check for specified individuals when a child is placed in an emergency out-of-home placement; and (4) requires a child to be removed immediately from an emergency out-of-home placement if an individual who is required to submit a name-based check refuses to submit the follow-up fingerprints.

Current Law/Background: The Criminal Justice Information System Central Repository (CJIS-CR) is established by the Criminal Procedure Article, §§ 10-213 *et seq.*, within DPSCS to collect, manage, and disseminate Maryland CHRI for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes. For national CHRCs, CJIS-CR collects the fee and submits the requests for national CHRI to the Federal Bureau of Investigation (FBI) electronically.

In general, employees and employers who work in specified facilities and who care for or supervise children (or have access to children who are cared for or supervised in the facility) are required to apply for a national and State CHRC at any designated law enforcement office in the State or other location approved by DPSCS. Among the facilities requiring CHRCs are child care centers, family child care homes, schools, foster care homes, and recreation centers that primarily serve minors. Contractors or subcontractors must also require employees that will have direct, unsupervised, and uncontrolled access to children in one of the specified facilities to obtain a CHRC. Employers and local departments of social services may require volunteers at the facility to obtain a CHRC.

Statutory provisions also authorize a local department of social services, if a child is placed in an emergency out-of-home placement, to request that a designated State or local law enforcement agency or other location approved by DPSCS perform a federal name-based check on specified individuals, such as adults residing in the home. Within 15 calendar days after the local department receives the results of the name-based check, the local department must submit fingerprints on the individual. Within 15 calendar days after the date on which the name-based check was performed, DPSCS must perform a CHRC. A child must be removed immediately from an out-of-home placement if any individual required to submit to a name-based check refuses to comply with the statutory provisions.

DPSCS advises that it has been notified by the FBI that certain provisions within the Family Law Article regarding CHRCs are not in compliance with federal requirements; the bill's

changes are intended to bring the State into compliance. According to DPSCS, federal law only authorizes *national* background checks to be disseminated to authorized entities. The bill therefore specifies that (1) *facilities* are to apply to DPSCS/CJIS-CR for national and State CHRCs and (2) *in accordance with specified provisions of the Criminal Procedure Article*, the Central Repository must forward the employee's, employer's, individual's, or volunteer's CHRI to the employee, employer, individual, or volunteer and the authorized licensing, registration, approval, or certification agency. Pursuant to § 10-219 of the Criminal Procedure Article, the Central Repository may not disseminate CHRI *except in accordance with applicable federal law and regulation*. The bill also makes necessary changes to statutory provisions regarding the use of name-based checks to ensure compliance with federal requirements.

According to DPSCS, it has been informed by the Department of Human Services that certain requests for national background checks have been denied because of the existing statutory language not meeting federal requirements.

Small Business Effect: As noted above, the bill is intended to conform statutory language regarding CHRCs to federal requirements; otherwise, according to DPSCS, specified entities will no longer have the ability to continue to secure required national background checks. Accordingly, DLS advises that the bill has a meaningful impact on small businesses (particularly child care providers) that are required to have background checks performed on certain individuals within their facilities.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Department of Human Services; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - March 21, 2023
rh/lgc Third Reader - April 7, 2023

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL Family Law – Child Care – Criminal Background Investigations

BILL NUMBER: HB 1300

PREPARED BY: Jennifer Beskid, DPSCS

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

OR

 WILL HAVE A MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS