
TO: Senate Education, Energy, and the Environment Committee
BILL: House Bill (HB) 1254 – Child Care Providers – Criminal History Records Checks and Abuse and Neglect Clearances – Requirements
DATE: March 27, 2024
POSITION: Oppose

EXPLANATION:

The Maryland State Department of Education (MSDE) and the Maryland State Board of Education (State Board) respectfully oppose House Bill (HB) 1254 - Child Care Providers - Criminal History Records Checks and Abuse and Neglect Clearances – Requirements, which requires the Department, subject to the availability of existing resources, to establish a dedicated unit to process criminal history record checks for individuals seeking positions in child care across the State.

While MSDE is in support of guidelines and initiatives intended to keep children safe, the Agency notes concerns with several components of the bill. First, HB 1254 would require Child Protection Services (CPS) record clearances on a five-year basis, as opposed to the current requirement of submitting release forms every two years. During that time frame, if CPS fails to notify MSDE’s Office of Child Care (OCC) of a pending CPS investigation or finding, the OCC would not be able to determine the suitability of employment for an individual until the next clearance is completed. Unlike the Criminal Justice Information System (CJIS) system for fingerprinting personnel, the CPS clearance process is not automated. The change in the CPS background check timeframe creates a serious risk to child safety.

Currently, the OCC’s regional licensing staff reviews and processes in-state and out-of-state criminal background clearances and child abuse and neglect records for all providers, adult residents, child care staff, and associated parties. For the 2022 calendar year, there were more than 75,000 associated parties in the child care database and 101,776 in state criminal background clearances that were received and processed. The processes for receiving, reviewing, and investigating the in-state background checks are determined based on the Federal mandates of the CJIS and Child Care and Development Block Grant (CCDBG). Any operational changes to the processing of the in-state criminal background clearances would need to be in alignment with federal requirements and approved by CJIS.

Under current procedures, if the Agency receives an “alert” (for prospective staff) and/or a “hit” (for employed staff) in regard to a criminal charge, the OCC is required to obtain court records regarding the incident and determine whether it took place in-state or out of state, which involves further engagement with the courts and law enforcement agencies involved. The OCC also partners with the local Department of Human Services (DHS) Child Protection Services (CPS) offices to review initial child abuse and neglect records for providers, adult residents, child care staff, and associated parties and every two years thereafter. Given the policy changes in HB 1254, MSDE registers major concerns with the new five-year time frame for CPS clearances. Additionally, it should be noted that in some cases, the OCC must request additional records from DHS to determine the suitability of employment. As part of this process, the OCC may be required to obtain additional CPS records and has no control over the time frame for obtaining this information.

Lastly, HB1254 recommends that a Credentialing Specialist in the regional licensing offices process the background checks. OCC does not have any Credentialing Specialist positions. As mentioned, the current licensing staff are tasked with obtaining the clearances. Given the timeframes specified in the bill, which may not be attainable due to the timeframes of outside agencies, it would be imperative that licensing staff receive overtime compensation in order to meet the requirement of HB 1254. The OCC recently filled the 126 licensing positions to maintain manageable caseloads in accordance with the federal CCDBG standards, and the additional responsibilities of this bill raise capacity concerns for these individuals.

MSDE seeks to draw awareness to additional challenges the Agency would face in its efforts to operationalize this legislation. First, considering that the criminal background clearances and child abuse and neglect records come from other agencies such as the Department of Human Services (DHS) and the Criminal Justice Information System (CJIS), the Department cannot guarantee the timeframes specified for the clearances. Thus, statutory language would need to account for these factors outside the Agency's control by making the timelines flexible.

Additionally, MSDE previously provided information indicating that the Department does not have the capacity to absorb the additional work as outlined in HB 1254 without added resources. While MSDE notes amendments to the bill, specifically subsection (A), attempt to provide flexibility for implementation based on the Agency's resources, MSDE is concerned that the language is impermissibly vague. Subsection (A) states the statute is contingent on "the availability of existing resources" but the rest of the statute relies on mandatory language (i.e. "shall"). The language of the bill, as amended, creates legal ambiguity around the mandatory nature of the provisions of the proposed statute, unnecessarily complicating the implementation of any adopted language.

In summary, while MSDE recognizes the need for comprehensive criminal history record checks and child abuse and neglect clearances that will ensure the health and well-being of our children, the Department cannot extend its support to HB1254 with these outstanding concerns around child safety and without proper consideration for the operational and fiscal impact to the agency. The Department requests that this initiative be revisited in the interim period to allow opportunities for collaboration.

The Department and the State Board respectfully request that the committee consider this information on **HB 1254**. Please contact Dr. Akilah Alleyne, Executive Director of Government Affairs, Education Policy, and Government Relations, at Akilah.alleyne@maryland.gov or at 410-767-0504 or Zach Hands, Executive Director of the State Board, at Zachary.hands1@maryland.gov or at 443-915-6094, if you would like any additional information.