

Chapter 18

(Senate Bill 61)

AN ACT concerning

Family Law – Criminal History Records Checks – Employees and Employers in Facilities and Other Individuals That Care for or Supervise Children

FOR the purpose of altering the locations at which certain employees, employers, and individuals are required to apply for a certain criminal history records check; altering the facilities that are required to require employees and employers to obtain a criminal history records check; repealing a requirement that certain fingerprints be taken on standard fingerprint cards; altering the State unit authorized to waive a certain fingerprint requirement; altering the conditions under which a certain fingerprint requirement may be waived; repealing a requirement that the Department of Public Safety and Correctional Services mail certain receipts and statements to certain persons and units; altering certain procedures and requirements relating to issuance of certain printed statements; altering the procedure for contesting certain findings in a certain printed statement; defining certain terms; making certain conforming and technical changes; and generally relating to criminal history records checks.

BY repealing and reenacting, with amendments,

Article – Family Law

Section 5–560, 5–561, 5–562, 5–563, 5–564, and 5–565

Annotated Code of Maryland

(2006 Replacement Volume and 2009 Supplement)

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

Article – Family Law

5–560.

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

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

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

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

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

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

(2) “Employee” includes a person who:

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

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

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

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

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

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

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

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

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

5–561.

(a) Notwithstanding any provision of law to the contrary, an employee and employer in a facility identified in subsection (b) of this section and **[persons] INDIVIDUALS** identified in subsection (c) of this section shall apply for a national and State criminal history records check at any designated law enforcement office in this State **OR OTHER LOCATION APPROVED BY THE DEPARTMENT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) an individual who is seeking to adopt a child through a child placement agency;
 - (2) an individual who is seeking to become a guardian through a local department;
 - (3) an individual whom the juvenile court appoints as a guardian of a child;
 - (4) an adult relative with whom a child, committed to a local department, is placed by the local department;
 - (5) any adult known by a local department to be residing in:
 - (i) a family day care home required to be registered under this title;
 - (ii) a home of an adult relative of a child with whom the child, committed to a local department, is placed by the local department;
 - (iii) a foster care home or child care home required to be approved under this title;
 - (iv) a home of an individual seeking to adopt a child through a child placement agency; or
 - (v) a home of an individual seeking to become a guardian through a local department; and
 - (6) if requested by a local department:
 - (i) a parent or guardian of a child who is committed to the local department and is or has been placed in an out-of-home placement within the past year; and
 - (ii) any adult known by the local department to be residing in the home of the parent or guardian.
- (d) An employer at a facility under subsection (b) of this section may require a volunteer at the facility to obtain a criminal history records check under this Part VI of this subtitle.
- (e) A local department may require a volunteer of that department who works with children to obtain a criminal history records check under this Part VI of this subtitle.

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

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

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

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

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

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

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

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

(2) The local department shall reimburse:

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

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

5–562.

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

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

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

(b) As part of the application for a criminal history records check, the employee, employer, and individual identified in § 5–561(c), (d), (e), or (f) of this subtitle shall submit:

(1) except as provided in subsection (c) of this section, a complete set of legible fingerprints [taken on standard fingerprint cards] at any designated State or local law enforcement office in the State or other location approved by the Department;

(2) the disclosure statement required under § 5–563 of this subtitle;
and

(3) payment for the costs of the criminal history records check.

(c) The requirement that a complete set of legible fingerprints [taken on standard fingerprint cards] be submitted as part of the application for a criminal history records check may be waived by the Department [of Human Resources] if:

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

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

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

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

5–563.

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

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

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

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

(ii) It shall update an initial criminal history records check for an employee, employer, or individual identified in § 5-561(c), (d), (e), or (f) of this subtitle and issue a revised printed statement[, listing any convictions, probation before judgment dispositions, not criminally responsible dispositions, or pending criminal charges occurring in the State after the date of the initial criminal history records check] **IN ACCORDANCE WITH FEDERAL LAW AND REGULATIONS ON DISSEMINATION OF FBI IDENTIFICATION RECORDS.**

(2) The Department shall adopt regulations requiring:

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

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

(iii) child placement agencies that place a child as described in § 5-561(c) of this subtitle to verify periodically the continuing participation or presence of individuals identified in § 5-561(c) of this subtitle.

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

(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 (C) 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.

(2) The Department shall[:

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

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

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

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

(2) shall disclose to a private entity the existence of a conviction, a probation before judgment disposition, a not criminally responsible disposition, or pending charges for any of the crimes, attempted crimes, or a criminal offense that is equivalent to those enumerated in the regulations adopted by the Department.]

[(d)] **(C)** (1) Upon completion of the criminal history records check of an employee, the Department shall submit the printed statement to:

(i) the employee's current or prospective employer at the facility or program;

(ii) the employee; and

(iii) for an employee of a child care center that is required to be licensed or to hold a letter of compliance under Part VII of this subtitle or an employee of a family day care home that is required to be registered under Part V of this subtitle, the State Department of Education.

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

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

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

(ii) the employer.

(4) Upon completion of the criminal history records check of an individual identified in § 5-561(c), (d), (e), or (f) of this subtitle, the Department shall submit the printed statement to the appropriate child placement or registering agency.

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

[(f)] (E) Information obtained from the Department under this Part VI of this subtitle may not:

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

(2) be redisseminated.

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

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.

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2010.

Approved by the Governor, April 13, 2010.