



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

EDUCATIONAL ALERT!!!

TO: DDA Licensed Service Providers
All Concerned

FROM: Michael S. Chapman, Executive Director, Developmental Disabilities Administration
Margie Heald, Acting Director, Office of Health Care Quality

DATE: September 8, 2009

RE: **Employee Background Checks**

The purpose of this educational alert is to re-emphasize that all provider agencies licensed by the Developmental Disabilities Administration (DDA) are to perform thorough background checks of potential hires, prior to employment. If the background check reveals behavior which could potentially harm people receiving services, the provider agency is not to hire the individual.

The purpose of all background checks is to assure to the extent possible that the potential employee is unlikely to harm an individual physically, psychologically or financially.

COMAR 10.22.02.11B provides: "A licensee may not employ or contract with any person who has a criminal history which would indicate behaviors potentially harmful to individuals, documented through either a criminal history records check or a criminal background check, pursuant to Health-General Article, §19-1902 et seq., Annotated Code of Maryland, and COMAR 12.15.03." This regulation and its statutory references require two types of background checks – former employer and criminal.

Although the following is a summary of the requirements, the licensee should not rely on this alert alone. The licensee shall be familiar with and comply with all the laws and statutes cited above as well as other DHMH regulations requiring reporting of abuse and neglect incidents. DDA regards failure to comply with this, a basic health and safety standard, a serious violation of its regulations.

EMPLOYER REFERENCE CHECK

This background information is essential to a provider contemplating a new hire. The licensee is required to request a reference from the most recent employer. The reference request shall, at a minimum, seek information about any history of physical abuse on the part of the potential employee.

Additionally, DDA notes that dependent on what that employer says, good judgment may require that the licensee dig deeper and check all references. If the eligible employee is licensed/certified/approved by a Health Occupations Board, the licensee would check their status. Often, this can be done on-line through the respective board's website.

Remember, when seeking information from former employers, that HG 19-1911 provides certain immunity for a former employer who reports information. (*§ 19-1911(a) An employer providing a reference for employment under this subtitle and acting in good faith may not be held liable for disclosing any information about the job performance or the reason for termination of employment of an employee or former employee of the employer.*)

CRIMINAL BACKGROUND CHECKS

COMAR 12.15.03 and Health-General Article, §19-1902 and the following set forth the requirements of conducting a criminal background check. Provider agencies must comply with these directives. The licensee shall, for each potential employee or contractor (before s/he works with individuals):

- A. Apply for a State criminal history records check as set forth in COMAR 12.15.03, **or**
- B. Request a private agency perform the background check as set forth in COMAR 12.15.03

A “criminal history records check” means a check of criminal history record information, as defined in § 10-201 of the Criminal Procedure Article, by the Department of Public Safety and Correctional Services.

A “background check” means a check of court and other records by a private agency.

The licensee should pay for the cost of the State criminal history records check or a private agency background check for each potential employee. For licensees who use a private agency to conduct a background check, the private agency shall conduct a background check in **each state** in which the licensee knows or has reason to know the eligible employee worked or resided during the **past 7 years**.

Please note that:

- 1) An internet search of a potential employee’s background information or
- 2) A reference from the potential employee’s most recent employer are **not** substitutes for a State criminal history records check or a private agency background check.

ADDITIONAL REQUIREMENTS FOR LICENSEES SERVING CHILDREN

Licensees serving children must **also** be in compliance with COMAR 14.31.06.05 and Family Law Article § 5-560—5-568 et seq.:

- 1. An agency that provides services to people under the age of 21 may not appoint as an employee, a member of a board of directors, or a volunteer with unsupervised access to children any individual who refuses to submit to a criminal background check or a Child Protective Services clearance;
- 2. In addition, per Family Law § 5-561(c)(5)(iii), an adult who is residing in a foster care home requires a criminal history records check; The local department of social services shall reimburse this adult for the cost of a criminal history records check;
- 3. An agency that provides services to people under the age of 21 may not utilize an individual in a capacity provided unsupervised access to children if the individual has an indicated child abuse or neglect finding; or a conviction for child abuse or neglect, spousal abuse, rape, sexual assault, homicide, or any crime against children; or has a conviction within 5 years of application for assault, drug-related offense, or a violation of the Courts and Judicial Proceedings Article §3-838 or 3-8A-30, Annotated Code of Maryland..

ADDITIONAL INFORMATION

In addition to the checks required, licensees are permitted to require further screening of potential employees. Other checks are allowed, such as substance abuse and credit reports, inquiries to licensing boards, and original source documentation. DDA strongly suggests that all licensees have internal policies and procedures that guide their hiring practices as related to applicants/employees with a documented criminal history, especially if the history denotes prior convictions for felony crimes.

SUMMARY

The purpose of background checks is to protect the individuals supported by the licensees and staff. Thus the licensee is responsible for not only obtaining information but also weighing the information to decide whether or not to hire or contract with a potential employee. Although the law requires the licensee to obtain both former employer information and criminal background information, there is no formula for what information the licensee might need in making an employment decision. As with all decisions, much depends on the information. However, whenever a background check reveals negative information and a licensee decides to hire the individual, DDA expects that the reasons for so doing should be contained in the employee's personnel record.

Thank you for your attention to this important issue. If you have questions, please contact Amy Daugherty, Statewide Quality Assurance Chief of DDA, at 410-767-5630, or Jennifer Baker, DD Program Manager of OHCQ at 410-402-8100.

Enclosures: Health General Article § 19-1902
Family Law § 5-560—5-568

§ 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) "Secretary" means the Secretary of Public Safety and Correctional Services.

§ 5-561.

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

- (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 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.
- (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 Article 83C of the Code;
 - (4) a child care institution required to be licensed under this subtitle or under Article 83C of the Code;
 - (5) a juvenile detention, correction, or treatment facility provided for in Article 83C of the Code;
 - (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 State or local government 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.

(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 local department of social services or licensed child placement agency;

(2) an individual who is seeking to become a guardian through a local department of social services;

(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 of social services, is placed by the local department of social services;

(5) any adult known by a local department of social services to be residing in a:

(i) family day care home required to be registered under Title 5 of this article;

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

(iii) foster care home or child care home required to be approved under Title 5 of this article;

(iv) home of an individual seeking to adopt a child through a local department of social services or a licensed child placement agency; or

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

(6) if requested by a local department of social services:

(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 of social services 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) A person who is required to have a criminal history records check under this Part VI of this subtitle shall pay for:

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

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

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

(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 of social services 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.

** SPECIAL NOTE: EFFECTIVE - JANUARY 1, 2006 - CHAPTER 464 - 2005 **

(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 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.

(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 Article 83C of the Code;

(4) a child care institution required to be licensed under this subtitle or under Article 83C of the Code;

(5) a juvenile detention, correction, or treatment facility provided for in Article 83C of the Code;

(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 State or local government 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.

(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) 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) A person who is required to have a criminal history records check under this Part VI of this subtitle shall pay for:

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

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

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

(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.

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

(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 child who is committed to a local department of social services is placed by the local department of social services 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 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.

**** SPECIAL NOTE: EFFECTIVE - JANUARY 1, 2006 - CHAPTER 464 - 2005 ****

(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 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.

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

(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 local department of social services, registering agency, licensed child placement agency, or facility.

**** SPECIAL NOTE: EFFECTIVE - JANUARY 1, 2006 - CHAPTER 464 - 2005 ****

(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.

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

(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.

(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) local departments of social services and licensed 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 specified in § 5-563(b) of this subtitle; 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) (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 local department of social services, registering agency, or licensed placement agency.
- (e) 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) 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) 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.

**** SPECIAL NOTE: EFFECTIVE - JANUARY 1, 2006 - CHAPTER 464 - 2005 ****

(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.

(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 specified in § 5-563(b) of this subtitle; 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) (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) 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) 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) 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 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.

(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.

§ 5-566.

(a) An individual who fails to disclose a conviction, a probation before judgment disposition, a not criminally responsible disposition, or the existence of pending charges for a criminal offense or attempted criminal offense as required under § 5-563 of this subtitle shall be guilty of perjury and upon conviction is subject to the penalty provided by law.

(b) Unless otherwise provided, a person who violates any provision of this Part VI of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

§ 5-567.

CAUTION: READ FULL TEXT OF SECTION FOR SPECIAL NOTE

The following persons or agencies shall have the immunity from civil or criminal liability described under § 5-619 of the Courts and Judicial Proceedings Article in connection with a criminal history records check under this Part VI of this subtitle:

- (1) an employer;
- (2) a State or local agency; and
- (3) a local department of social services.

** SPECIAL NOTE: EFFECTIVE - JANUARY 1, 2006 - CHAPTER 464 - 2005 **

The following governmental units or persons shall have the immunity from civil or criminal liability described under § 5-619 of the Courts Article in connection with a criminal history records check under this Part VI of this subtitle:

- (1) an employer; and
- (2) a State or local agency, including a local department.

§ 5-568.

On or before August 15, 1986, the Secretary shall:

- (1) provide for the adoption of a specified form or forms to be used in applying for the criminal history records check to be issued by the Department, including an appropriate disclosure statement;
- (2) designate the appropriate State or local law enforcement offices in the State, or other approved locations, where fingerprints may be obtained and application for a criminal history records check may be made; and
- (3) adopt rules and regulations necessary and reasonable to administer this Part VI of this subtitle.

Health-General Article, 19-1901 through 19-1912, Annotated Code of Maryland

§ 19-1901.

- (a) In this subtitle the following words have the meanings indicated.
- (b) "Adult dependent care program" means:
 - (1) An adult day care facility regulated under Title 14, Subtitle 2 of this article;
 - (2) An assisted living program facility regulated under Subtitle 18 of this title;
 - (3) A group home regulated under Title 10, Subtitle 5 or Title 7, Subtitle 6 of this article;
 - (4) A home health agency regulated under Subtitle 4 of this title;
 - (5) A congregate housing services program regulated under Article 70B of the Code;
 - (6) A residential service agency as defined under § 19-4A-01 of this title;
 - (7) An alternative living unit as defined under § 7-101 of this article;
 - (8) A hospice facility regulated under Subtitle 9 of this title; or
 - (9) A related institution regulated under Subtitle 3 of this title.
- (c) "Background check" means a check of court and other records by a private agency.
- (d) "Conviction" means a:
 - (1) Plea or verdict of guilty;
 - (2) Plea of nolo contendere;
 - (3) Disposition of probation before judgment; or
 - (4) Disposition of not criminally responsible.
- (e) "Criminal history records check" means a check of criminal history record information, as defined in § 10-201 of the Criminal Procedure Article, by the Department of Public Safety and Correctional Services.
- (f) "Department" means the Department of Public Safety and Correctional Services.
- (g) "Disclosure statement" means a sworn statement or affirmation of the existence of a criminal conviction or pending criminal charges without a final disposition.
- (h) (1) "Eligible employee" means an individual:
 - (i) Who, for compensation, works for an adult dependent care program;
 - (ii) Who has routine, direct access to dependent adults in the program; and
 - (iii) Who is not licensed or certified under the Health Occupations Article.
- (2) "Eligible employee" does not include an individual delivering or retrieving medical equipment.
- (i) "Printed statement" means a document issued by the Criminal Justice Information System Central Repository in the Department of Public Safety and Correctional Services in response to an application for a criminal history records check.
- (j) "Private agency" means a person that:
 - (1) Is licensed as a private detective agency under Title 13, Subtitle 3 of the Business Occupations and Professions Article;
 - (2) Maintains an errors and omissions insurance policy in an amount not less than \$1,000,000;
 - (3) Offers customer assistance in the use of background checks for employment purposes; and
 - (4) Is capable of conducting a background check within the State within 2 working days of a request and outside the State within 5 working days of a request.
- (k) "Secretary" means the Secretary of Public Safety and Correctional Services.

§ 19-1902.

(a) Before an eligible employee may begin work for an adult dependent care program, each adult dependent care program shall, for each eligible employee:

- (1) (i) Apply for a State criminal history records check; or
- (ii) Request a private agency to conduct a background check; and
- (2) Request a reference from the potential employee's most recent employer.

(b) The reference request required under subsection (a)(2) of this section shall, at a minimum, seek information about any history of physical abuse on the part of the potential employee.

(c) An adult dependent care program shall pay for each eligible employee:

- (1) A State criminal history records check; or
- (2) A private agency background check.

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

§ 19-1903.

(a) In addition to the checks required under this subtitle, an adult dependent care program may require an alcohol or controlled dangerous substance test of the potential employee.

(b) An alcohol or controlled dangerous substance test conducted under this section shall comply with the provisions of § 17-214 of this article.

§ 19-1904.

(a) As part of the application for a State criminal history records check to be conducted by the Department, an eligible employee shall submit to the adult dependent care program:

- (1) Except as provided in subsection (c) of this section, a complete set of legible fingerprints taken on forms specified by the Director of the Criminal Justice Information System Central Repository; and
- (2) The disclosure statement required under § 19-1905 of this subtitle.

(b) The adult dependent care program shall submit the fingerprints, disclosure statement, and payment for the costs of the criminal history records check.

(c) The requirement that a complete set of legible fingerprints taken on forms specified by the Director of the Criminal Justice Information System Central Repository be submitted as part of the application for a criminal history records check may be waived by the Department if:

- (1) The eligible employee has attempted to have a complete set of fingerprints taken on at least two occasions;
- (2) The taking of a complete set of legible fingerprints is not possible because of a physical or medical condition of the eligible employee's fingers or hands;
- (3) The eligible employee submits documentation satisfactory to the Department of the requirements of this subsection; and
- (4) The eligible employee submits the other information required for a criminal history records check to be conducted by the Department as part of the application process.

§ 19-1905.

(a) As part of the application process for a criminal history records check, an eligible employee shall complete and sign a disclosure statement.

(b) The Department or its designee shall mail an acknowledged receipt of the application with a disclosure statement from an eligible employee within 3 days after receipt of the application to:

- (1) The adult dependent care program seeking to hire the eligible employee; and
- (2) The eligible employee.

§ 19-1906.

- (a) If the adult dependent care program requests a private agency background check:
 - (1) The private agency shall issue a statement of its findings to:
 - (i) On request, the eligible employee; and
 - (ii) The adult dependent care program; and
 - (2) The eligible employee shall have an opportunity to contest the findings.
- (b) The adult dependent care program shall comply with the federal Fair Credit Reporting Act that includes the issuance of a statement by the program of its findings to an eligible employee when adverse information is obtained that precludes the hiring of that employee.

§ 19-1907.

- (a)
 - (1) The Department shall conduct the criminal history records check and issue the printed statement provided for under this subtitle.
 - (2) The Department shall update an initial criminal history records check and issue a revised printed statement, listing any of the convictions or pending charges occurring in the State after the date of the initial criminal history records check.
 - (3) The Department shall provide an initial and a revised statement of an eligible employee's State criminal record to the recipients of the acknowledgments specified in § 19-1905(b) of this subtitle.
 - (4) The Department shall adopt regulations requiring employers to verify periodically the continuing employment of an employee.
- (b) The Department shall provide a printed statement of the eligible employee's State criminal record to the recipients of the acknowledgments specified in § 19-1905(b) of this subtitle.
- (c) Information obtained from the Department or a private agency under this subtitle shall be confidential and may be disseminated only to the eligible employee who is the subject of the criminal history records check or private agency background check and to an adult dependent care program seeking to hire the eligible employee.
- (d) Information obtained from the Department or a private agency under this subtitle may not:
 - (1) Be used for any purpose other than that for which it was disseminated; or
 - (2) Be redisseminated.
- (e) Information obtained from the Department or a private agency under this subtitle shall be maintained in a manner to insure the security of the information.

§ 19-1908.

- (a) An eligible employee may contest the finding of a criminal conviction or pending charge reported in a printed statement issued by the Department as provided in this section.
- (b)
 - (1) In contesting the finding of a conviction or a pending charge, the eligible employee 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 eligible employee.
 - (2) The Secretary, or a designee of the Secretary, shall render a decision regarding the appeal within 5 workdays after the hearing.

(c) (1) For the purposes of this subtitle, the record of a conviction for a crime or a copy of the record certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction.

(2) 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 eligible employee to appear at the scheduled hearing shall be considered grounds for dismissal of the appeal.

§ 19-1909.

(a) An eligible employee who fails to disclose a conviction or the existence of pending charges for a criminal offense or attempted criminal offense as required under § 19-1905 of this subtitle shall be guilty of perjury and on conviction is subject to the penalty provided by law.

(b) Unless otherwise provided, an eligible employee who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

§ 19-1910.

The following persons or agencies shall have the immunity from civil or criminal liability described under § 5-619 of the Courts and Judicial Proceedings Article in connection with a criminal history records check under this subtitle:

- (1) An adult dependent care program; and
- (2) A State agency.

§ 19-1911.

(a) An employer providing a reference for employment under this subtitle and acting in good faith may not be held liable for disclosing any information about the job performance or the reason for termination of employment of an employee or former employee of the employer.

(b) An employer providing a reference under this subtitle shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the employer:

- (1) Acted with actual malice toward the employee or former employee; or
- (2) Intentionally or recklessly disclosed false information about the employee or former employee.

§ 19-1912.

Nothing in this subtitle may be construed to prevent an adult dependent care program from obtaining a criminal history records check or background check on any other individual applying for a job or volunteering services in the program.