

**FAMILY LAW  
TITLE 5. CHILDREN  
SUBTITLE 5. CHILD CARE; FOSTER CARE  
PART VI. CRIMINAL BACKGROUND INVESTIGATIONS FOR EMPLOYEES OF  
FACILITIES AND OTHER INDIVIDUALS THAT CARE FOR OR SUPERVISE CHILDREN**

**Md. FAMILY LAW Code Ann. § 5-560 (2014)**

**§ 5-560. Definitions**

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

(b) Conviction. -- "Conviction" means a plea or verdict of guilty or a plea of nolo contendere.

(c) Department. -- "Department" means the Department of Public Safety and Correctional Services.

(d) Employee. --

(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) Employer. --

(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), 5-564(a)(2)(i) and (c)(1)(i) and (2), and 5-567 of this subtitle, "employer" includes a child care resource and referral center, an association of registered family child 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. -- "Private entity" means a nongovernmental agency, organization, or employer.

(g) Secretary. -- "Secretary" means the Secretary of Public Safety and Correctional Services.

### **§ 5-561. Required; facilities requiring criminal history records check**

(a) History records check application required. -- Notwithstanding any provision of law to the contrary, an employee and employer in a facility identified in subsection (b) of this section and 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) Facilities requiring criminal history records check. -- 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 child care home or large family child 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, a local government, or a private entity primarily serving minors;

(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) Individuals requiring criminal history records check. -- 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 or the State Department of Education to be residing in:

(i) a family child care home or large family child care home required to be registered under this title;

(ii) a home where informal child care, as defined in child care subsidy regulations adopted under Title 13A of the Code of Maryland Regulations, is being provided or will be provided to a child who does not reside there;

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

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

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

(vi) a home of an individual seeking to become a guardian through a local department;

(6) an individual who agrees to provide, or to continue providing, informal child care, as

defined in child care subsidy regulations, adopted under Title 13A of the Code of Maryland Regulations; and

(7) 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) Volunteers at facilities. -- 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) Volunteers at a local department. -- 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) Facilities not identified in subsection (b). -- 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) Employer responsibility. -- 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) Fees -- In general. --

(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) Payment by employer or other party; payments for adults residing in foster care homes or in home of parent or guardian. --

(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)(7)(ii) of this section for the costs borne by the individual under subsection (h) of this section.

### **§ 5-562. Printed statement**

(a) Application. --

(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) (i) Before an individual may be approved to provide or to continue providing informal child care, as defined in child care subsidy regulations adopted under Title 13A of the Code of Maryland Regulations, the individual shall apply to the Department for a printed statement.

(ii) An individual who was approved before January 1, 2014, to provide informal child care and who intends to continue providing informal child care on or after that date has until June 30, 2014, to apply to the Department for a printed statement.

(4) 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) Information accompanying application. -- 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 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) Waiver of fingerprint requirement. -- The requirement that a complete set of legible fingerprints be submitted as part of the application for a criminal history records check may be waived by the Department if:

(1) the application is submitted by a person who has attempted to have a complete set of fingerprints taken on at least 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 the requirements of this subsection; and

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

#### **§ 5-563. Prior criminal offenses**

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.

#### **§ 5-564. Duties of Department**

(a) In general. --

(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 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) Distribution of applicant's State criminal record. --

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

(i) the recipients of the printed statement specified in subsection (c) of this section; and

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

1. an employee of, or an adult resident in, a child care center that is required to be licensed or to hold a letter of compliance under Part VII of this subtitle;

2. an employee of, or an adult resident in, a family child care home or large family child care home that is required to be registered under Part V of this subtitle; or

3. an individual who provides or agrees to provide informal child care or an adult who resides in a home where informal child care is being provided or will be provided to a child who does not reside there.

(2) The Department shall distribute the printed statement in accordance with federal law and regulations on dissemination of FBI identification records.

(c) Submission of printed statement. --

(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 child care home that is required to be registered under Part V of this subtitle, the State Department of Education.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, 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.

(ii) Upon receiving a written request from a student teacher employed under § 6-107 of the Education Article, the Department shall submit the printed statement to additional employers if the criminal history records check was completed during the prior 365 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.

(5) A printed statement issued under this section is valid in any county in the State.

(d) Confidentiality of information. -- 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.

(e) Limitations on use of information. -- 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.

(f) Maintenance of information. -- 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.

#### **§ 5-564.1. Cross-reference check**

The State Department of Education shall conduct a cross-reference check, including cross-referencing the individual and the individual's address, with the central registry of registrants transmitted weekly by the Department under § 11-713 of the Criminal Procedure Article, of:

(1) an employee, employer, or individual identified in § 5-561(b)(1), (b)(2), or (c)(5)(i) of this subtitle; and



(2) an individual who provides or agrees to provide informal child care, as defined in child care subsidy regulations adopted under Title 13A of the Code of Maryland Regulations.

**§ 5-565. Contesting findings**

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.

**§ 5-566. Failure to disclose prior conviction or existence of pending charge**

(a) Penalty for violation of § 5-563 of subtitle. -- 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) Penalty for violation of Part VI of subtitle. -- 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. Immunity from civil or criminal liability**

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. Duties of Secretary**

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.

**§ 5-569. Criminal history records checks in emergency out-of-home placements**

(a) "Emergency out-of-home placement" defined. -- In this section, "emergency out-of-home placement" means an out-of-home placement in which a local department places a child in the home of a private individual, including a neighbor, friend, or relative, as a result of a sudden unavailability of the child's primary caretaker.

(b) In general. --

(1) If a child is placed in an emergency out-of-home placement, a local department may request that a designated State or local law enforcement agency in the State or other location approved by the Department perform a federal name-based check on any individual described in § 5-561(c)(4), (5)(iii), and (7)(ii) of this subtitle.

(2) The designated agency described in paragraph (1) of this subsection may provide the results of the name-based check to the local department.

(3) Within 15 calendar days after the local department receives the results of the name-based check, the local department shall submit a complete set of fingerprints to the Department for each individual described in paragraph (1) of this subsection on whom a name-based check was performed.

(4) Within 15 calendar days after the date on which the name-based check was performed, the Department shall perform a criminal history records check, in accordance with § 5-564 of this subtitle.

(c) Failure to comply with section. -- A child shall be removed immediately from an emergency out-of-home placement if any individual required to submit to a name-based check fails to comply with this section.

(d) Contesting denial of placement. -- When the placement of a child in a home is denied as a result of a name-based criminal history records check of an individual and the individual contests that denial, the individual shall submit to the local department:

(1) a complete set of fingerprints; and

(2) written permission allowing the local department to forward the fingerprints to the Department for submission to the Federal Bureau of Investigation.

(e) Fees. -- An individual who is required to submit to a criminal history records check under this section shall pay the fees required under § 5-561(h) of this subtitle.