

## **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.