

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 442  
Judiciary

(Delegate Dumais)

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Criminal History Records Checks - Child Care Providers

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This bill requires individuals who provide informal child care, as defined in State regulations, to obtain a criminal history records check. Any adult residing in a home where specified informal child care is being provided or will be provided must also obtain a criminal history records check. The bill also requires the Department of Public Safety and Correctional Services (DPSCS) to weekly transmit the sex offender registry and a listing of juvenile sex offenders to the Maryland State Department of Education (MSDE) and requires MSDE to use that information in a specified manner. Finally, the bill prohibits a registered sex offender from entering a home where informal child care is being provided or will be provided to a child who does not reside there. Existing penalties apply to a violation of that prohibition.

The bill takes effect January 1, 2014.

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Fiscal Summary

**State Effect:** Any additional payments to the Criminal Justice Information System (CJIS) for criminal history records checks are cost recovery only. CJIS can handle any additional background checks and weekly transmit the sex offender registry to MSDE using existing resources. Potential minimal reduction in federal and general fund expenditures if providers are deemed ineligible for child care subsidy payments. The application of existing criminal penalties to the bill's prohibition does not have a material impact on State finances or operations.

**Local Effect:** The application of existing criminal penalties to the bill's prohibition does not have a material impact on local finances or operations.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** The sex offender registry and listing of juvenile sex offenders must be transmitted to MSDE in a format that can be used by the State Superintendent to cross-reference with the database of licensed child care centers, registered family child care or large family child care homes, and approved child care subsidy program informal providers. MSDE must use the information to conduct a cross-reference check of (1) employees and employers of licensed child care centers and registered family child care or large family child care homes and (2) individuals known to be residing in a registered family child care home or large family care home or a home where informal child care is being provided or will be provided to a child who does not reside there.

### **Current Law:**

#### *Informal Child Care Providers*

The child care subsidy program provides child care subsidies for recipients of Temporary Cash Assistance and low-income families who meet eligibility requirements. In addition to providing vouchers for child care that may be used at registered family child care homes or licensed child care centers, an informal voucher may be provided and used when care is provided by (1) a relative in the relative's home or in the child's home; (2) a nonrelative in the child's home; or (3) a nonrelative in the nonrelative's home for less than 20 hours per month. Informal child care is defined in regulations relating to the child care subsidy program as child care that (1) is self-arranged and nonregulated and (2) requires child care providers to submit a signed affirmation of compliance with child care health and safety standards and to agree to a Child Protective Services record check. Informal child care providers are not required to be licensed or regulated under State law. A local department of social services is required to deny payment to an informal provider if it has documented information indicating a risk to the health and safety of the child. (See the Code of Maryland Regulations (COMAR) 13A.14.06.09).

#### *Criminal History Records Checks*

The following individuals must obtain a criminal history records check: (1) an individual seeking to adopt a child through a 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; and (4) an adult relative with whom a child, committed to a local department of social services, is placed by the local department. In addition, any adult known by a local department of social services to be residing in (1) a family child care home or large family child care home required to be registered; (2) a home of an adult relative of a child with whom the child, committed to a local department, is placed by the local department; (3) specified foster care homes or

child care homes; (4) a home of an individual seeking to adopt a child through a child placement agency; or (5) the home of an individual seeking to become a guardian through a local department. Other individuals must obtain a criminal history records check if requested by a local department, as specified.

Employees and employers in the following facilities must apply for a criminal history records check: (1) a licensed child care center; (2) a registered family child care home or large family child care home; (3) a licensed child care home; (4) a licensed child care institution; (5) a juvenile detention, correction, or treatment facility; (6) a public school; (7) a private or nonpublic school that is required to report to the State Board of Education; (8) a foster care family home or group facility; (9) a recreation center or program operated by a governmental or private entity that primarily serves minors; (10) a day or residential camp that primarily serves minors; or (11) a home health agency or residential service agency licensed by the Department of Health and Mental Hygiene that is authorized to provide home or community-based health services for minors.

### *Sex Offender Registry*

Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment under specified circumstances, is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland. The registry is maintained by DPSCS.

Juveniles are also required to register in specified circumstances set forth in statute. The registry of juvenile sex offenders must be accessible only by law enforcement personnel for law enforcement purposes.

Unless otherwise specified in statute, a registrant may not knowingly enter onto real property (1) that is used for public or nonpublic elementary or secondary education or (2) on which a registered family child care home or a licensed child care home or licensed child care institution is located. A violator is guilty of a misdemeanor and subject to maximum penalties of five years imprisonment and/or a \$5,000 fine.

**Background:** According to MSDE, as of September 2012, there were 1,083 informal providers actively receiving payments from child care subsidy recipients in the State. This bill requires these providers, before receiving child care subsidy funds, to undergo criminal background checks.

The CJIS Central Repository is established by the Criminal Procedure Article, §§ 10-213 *et seq.*, within DPSCS to collect, manage, and disseminate Maryland Criminal History Record Information (CHRI) for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes.

**State Fiscal Effect:** The CJIS Central Repository is authorized by law to collect a fee for providing CHRI for purposes other than criminal justice. COMAR 12.15.01.14A sets the fee at \$18. Revenue from these fees is used to provide the service. The total cost for each criminal history records check and fingerprinting is \$54.50, which includes State and national background checks. Any additional expenditures for CJIS to provide the additional background checks is offset by the fees from the CHRI checks, which are paid by the applicants.

The Governor's proposed fiscal 2014 budget includes \$75.0 million in child care subsidy funds (\$35.1 million in federal funds/\$39.9 million in general funds). Expenditures for the child care subsidy program may be minimally reduced to the extent that informal child care providers do not submit to criminal history records checks or have information on their criminal records that requires the local departments to deny payments. However, any such impact is expected to be minimal.

DPSCS advises that it routinely sends to MSDE a transmittal of the sex offender registry; therefore those provisions of the bill largely codify existing practice and do not materially affect DPSCS or MSDE. DPSCS further advises that pursuant to § 11-704.1 of the Criminal Procedure Article, the listing of juvenile sex offenders must be accessible only by law enforcement personnel for law enforcement purposes. Therefore, it is not authorized to transmit a listing of juvenile sex offenders to MSDE.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 415 (Senator King, *et al.*) - Judicial Proceedings.

**Information Source(s):** Maryland State Department of Education, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - February 19, 2013  
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