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Overview - MARYLAND ; ART 5-560 Revised Statutes Annotated

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Annotated Code of Maryland

Article

Family Law

§ 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" 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) "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.* — "Secretary" means the Secretary of Public Safety and Correctional Services. (1986, ch. 110; 1989, ch. 5, § 1; 1991, ch. 274.)

Effect of amendment. — The 1991 amendment, effective July 1, 1991, in (d), designated the former introductory language as present (1), redesignated former (1) and (2) as present (1) (i) and (ii), and added present (2).
Editor's note. — Section 2, ch. 110, Acts

1986, provides that "the provisions of this act are prospective and shall apply only to an employee who is initially employed on or after October 1, 1986 and to an employer who operates a facility on or after October 1, 1986."

§ 5-561. Required; facilities requiring investigations.

(a) *Investigations required.* — 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 federal and State criminal background investigation at any designated law enforcement office in this State.

(b) *Facilities requiring investigations.* — The following facilities shall require employees and employers to obtain a criminal background investigation 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 overnight camp, as defined in Title 10, Subtitle 16 of the Code of Maryland Regulations, primarily serving minors.

(c) *Individuals requiring investigations.* — The following individuals shall obtain a criminal background investigation 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 adult relative with whom a child, committed to a local department of social services, is placed by the local department of social services; and

(3) 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; or

(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.

(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 background investigation under this Part VI of this subtitle.

(e) *Volunteers at a local department of social services.* — A local department of social services may require a volunteer of that department who works with children to obtain a criminal background investigation 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 background investigation under this Part VI of this subtitle.

(g) *Fees.* — A person who is required to have a criminal background investigation under this Part VI of this subtitle shall pay for:

(1) the mandatory processing fee required by the Federal Bureau of Investigation for conducting the criminal background investigation; and

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

(h) *Payment by employer or other party.* — An employer or other party may pay for the costs borne by the employee or other individual under subsection (g) of this section. (1986, ch. 110; 1987, ch. 290, § 9; 1988, ch. 6, §§ 8, 10; ch. 247, § 6; 1989, ch. 5, § 1; ch. 324; 1990, ch. 6, § 2; 1991, ch. 55, § 1; ch. 78.)

§ 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) 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) of this subtitle shall apply to the Department for a printed statement.

(b) *Information accompanying application.* — As part of the application for a criminal background investigation, the employee, employer, and individual identified in § 5-561 (c) or (e) of this subtitle shall submit:

(1) 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 background investigation. (1986, ch. 110; 1989, ch. 5, § 1; ch. 324; 1990, ch. 6, § 2; 1991, ch. 78.)

§ 5-563. Prior criminal offenses.

(a) *Offenses requiring disclosure.* — As part of the application process for a criminal background investigation, the employee, employer, and individual identified in § 5-561 (c) or (e) of this subtitle shall complete and sign a sworn statement or affirmation disclosing the existence of a conviction or pending charges without a final disposition for the commission of, attempt to commit, or assault with intent to commit any of the following criminal offenses or a criminal offense which is equivalent to any of the following:

- (1) murder;
- (2) child abuse;
- (3) rape;
- (4) a sexual offense involving a minor, nonconsenting adult, or a person who is mentally defective, mentally incapacitated, or physically helpless;
- (5) child pornography;
- (6) kidnapping of a child;
- (7) child abduction;
- (8) manufacturing, distributing, or dispensing a controlled dangerous substance;
- (9) possession with intent to manufacture, distribute, or dispense a controlled dangerous substance; or
- (10) hiring, soliciting, engaging, or using a minor for the purpose of manufacturing, distributing, or delivering a controlled dangerous substance.

(b) *Disclosure statement mailed to employer.* — (1) The Department or its designee shall mail a copy of an employee's disclosure statement to the employer within 3 days of the application.

(2) The Department or its designee shall mail a copy of an employer's disclosure statement 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 a copy of a disclosure form of an individual identified in § 5-561 (c) or (e) of this subtitle to the appropriate local department of social services, registering agency, or licensed child placement agency. (1986, ch. 110; 1989, ch. 324; 1990, ch. 6, § 2; 1991, chs. 78, 325.)

§ 5-564. Duties of Department.

(a) *In general.* — The Department shall conduct the criminal background investigation and issue the printed statement provided for under this Part VI of this subtitle. It shall update an initial investigation and issue a revised printed statement, listing any of the convictions, pending charges, or offenses described in subsection (b) of this section occurring after the date of the initial criminal background investigation statement.

(b) *Convictions or pending charges for certain crimes, attempted crimes, etc.* — Subject to the provisions of subsection (c) of this section, the Department shall record on the printed statement the existence of a conviction or pending charges for any of the following crimes, attempted crimes, or a criminal offense that is equivalent to any of the following:

- (1) murder;
- (2) child abuse;
- (3) rape;
- (4) a sexual offense, as defined under Article 27, §§ 464, 464A, 464B, and 464C of the Code;
- (5) child pornography;
- (6) kidnapping of a child;
- (7) child abduction;
- (8) manufacturing, distributing, or dispensing a controlled dangerous substance;
- (9) possession with intent to manufacture, distribute, or dispense a controlled dangerous substance; or
- (10) hiring, soliciting, engaging, or using a minor for the purpose of manufacturing, distributing, or delivering a controlled dangerous substance.

(c) *Information contained in printed statement.* — (1) Except for any necessary administrative or personal identification information or the date on which the criminal background investigation was conducted or completed, the

printed statement shall contain the following information only, stated in the affirmative or negative:

(i) that the Department has or has not conducted the criminal background investigation as required under this Part VI of this subtitle; and

(ii) that the employee, employer, or individual identified in § 5-561 (c) or (e) of this subtitle is or is not the subject of any pending charges without a final disposition, or has or has not been convicted of a crime or attempted crime identified in subsection (b) of this section.

(2) The printed statement may not identify or disclose the specific crime or attempted crime that is the subject of the employee's, employer's, or individual's identified in § 5-561 of this subtitle criminal background investigation.

(d) *Submission of printed statement.* — (1) Upon completion of the criminal background investigation of an employee, the Department shall submit the printed statement to:

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

(ii) the employee.

(2) Upon completion of the criminal background investigation 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.

(3) Upon completion of the criminal background investigation of an individual identified in § 5-561 (c) or (e) of this subtitle, the Department shall submit the printed statement to the appropriate local department of social services.

(e) *Confidentiality of information.* — (1) Except in the case where a person who is the subject of an outstanding arrest warrant or criminal summons has been identified, all information obtained by the Department regarding any criminal charges and their disposition may not be transmitted outside the Department, except as expressly authorized under this Part VI of this subtitle.

(2) Information obtained by the employer from the Department under this Part VI of this subtitle shall be confidential. (1986, ch. 110; 1987, ch. 329; 1989, ch. 5, § 1; ch. 324; 1990, ch. 6, § 2; 1991, chs. 78, 325.)

§ 5-565. Contesting findings.

(a) *Authorized.* — In conformity with the following procedures, an individual may contest the finding of a criminal conviction or pending charge reported in a printed statement.

(b) *Procedure.* — In contesting the finding of a conviction 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) *Evidence of conviction of crime.* — For purposes of this Part VI of this subtitle, the record of a conviction for a crime identified in § 5-564 of this subtitle, or a copy thereof 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. 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 identified in § 5-564 of this subtitle which has not been finally adjudicated shall be conclusive evidence of the pending charge.

(d) *Failure to appear.* — Failure of the individual to appear at the scheduled hearing shall be considered grounds for dismissal of the appeal. (1986, ch. 110; 1989, ch. 5, § 1.)

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

An individual who fails to disclose a conviction 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. (1986, ch. 110; 1989, ch. 5, § 1.)

§ 5-567. Immunity from civil or criminal liability.

The following persons or agencies shall have the immunity from civil or criminal liability described under § 5-361 of the Courts and Judicial Proceedings Article in connection with a criminal background investigation under this Part VI of this subtitle:

- (1) an employer;
- (2) a State or local agency;
- (3) a local department of social services; and
- (4) a State or local agency. (1986, ch. 110; 1989, ch. 5, § 1; ch. 324; 1990, ch. 546, § 3.)

§ 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 background investigation 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 background investigation may be made; and
- (3) adopt rules and regulations necessary and reasonable to administer this Part VI of this subtitle. (1986, ch. 110.)

Article 27

CRIMINAL RECORDS

§ 735. Definitions.

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

(b) "Court records" means all official records maintained by the clerk of a court or other court personnel pertaining to a criminal proceeding. It includes indices, docket entries, charging documents, pleadings, memoranda, transcriptions of proceedings, electronic recordings, orders, judgments, and decrees. It does not include:

(1) Records pertaining to violations of the vehicle laws of the State or of any other traffic law, ordinance, or regulation;

(2) Written opinions of a court that have been published;

(3) Cash receipt and disbursement records necessary for audit purposes; or

(4) A court reporter's transcript of proceedings in multiple defendant cases.

(c) "Expungement", with respect to court records or police records, means the effective removal of these records from public inspection:

(1) By obliteration;

(2) By removal to a separate secure area to which the public and other persons having no legitimate reason for being there are denied access; or

(3) If effective access to a record can be obtained only by reference to other records, by the expungement of the other records, or the part of them providing the access.

(d) "Law enforcement agency" includes any State, county, and municipal police department or agency, sheriff's offices, the State's Attorney's offices, and the Attorney General's office.

(e) "Police records" means all official records maintained by a law enforcement agency or the Central Repository pertaining to the arrest and detention of or further proceeding against a person on a criminal charge or for a suspected violation of a criminal law. It does not include investigatory files, police work-product records used solely for police investigation purposes, or

records pertaining to violations of the vehicle laws of the State or of any other traffic law, ordinance, or regulation.

(f) "Crime of violence" has the meaning stated in § 643B (a) of this article.

(g) "Central Repository" means the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services. (1975, ch. 260; 1976, ch. 525; 1982, ch. 872; 1983, ch. 8; 1990, ch. 84.)

§ 736. Expungement of police records; release without charge.

(a) *Notice and request for expungement.* — If a person is arrested, detained, or confined by a law enforcement agency for a suspected violation of a criminal law other than a violation of the vehicle laws of the State or any other traffic law, ordinance, or regulation, and is released without being charged with the commission of a crime, he may give written notice of these facts to any law enforcement agency which he believes may have police records concerning that arrest, detention, or confinement, and request the expungement of those police records.

(b) *General waiver and release.* — This notice may not be given prior to the expiration of the statute of limitations for tort actions arising from the incident unless the person attaches to the notice a written general waiver and release, in proper legal form, of all claim he may have against any person for tortious conduct arising from the incident. The notice and waiver are not subject to expungement, but shall be maintained by the law enforcement agency at least until the expiration of any applicable statute of limitations. The notice must be given within eight years after the date of the incident.

(c) *Investigation.* — The law enforcement agency shall, upon receipt of a timely filed notice, promptly investigate and attempt to verify the facts stated in the notice. If it finds the facts to be verified, it shall,

- (1) Make a diligent search for any police records concerning that arrest, detention, or confinement of the person;
- (2) Within 60 days after receipt of the notice, expunge the police records it has concerning that arrest, detention, or confinement; and
- (3) Notify any other law enforcement agency and the Central Repository it believes may have police records concerning that arrest, detention, or confine-

ment of the notice and its verification of the facts contained in it. A copy of this notice shall be sent to the person requesting expungement.

(d) *Duties of other agencies.* — The other law enforcement agency and the Central Repository shall, within 30 days after receipt of the notice provided for in subsection (c) (3),

(1) Make a diligent search for any police records concerning the arrest, detention, or confinement; and

(2) Expunge the police records it has concerning that arrest, detention, or confinement.

(e) *Denial of request.* — If the law enforcement agency to which the person has addressed his notice finds that the person is not entitled to an expungement of the police records, it shall, within 60 days after receipt of the notice, advise the person in writing of its denial of the request for expungement and of the reasons for its denial.

(f) *Court order.* — A person whose request for expungement is denied in accordance with subsection (e) may, within 30 days after written notice of the denial is mailed or otherwise delivered to him, file an application in the District Court having proper venue against the law enforcement agency for an order of expungement. If the court finds, after a hearing held upon proper notice to the agency, that the person is entitled to expungement, it shall enter an order requiring the agency to comply with subsection (c). Otherwise, it shall deny the application. The agency is deemed to be a party to the proceeding. All parties to the proceeding have the right of appellate review on the record provided for in the Courts and Judicial Proceedings Article with respect to appeals in civil cases from the District Court. (1975, ch. 260; 1990, ch. 84.)

§ 737. Expungement of police and court records.

(a) *Petition for expungement generally.* — A person charged with the commission of a crime may file a petition setting forth the relevant facts and requesting expungement of the police records, court records, and other records maintained by the State of Maryland and its subdivisions, pertaining to the charge if:

- (1) The person is acquitted,
- (2) The charge is otherwise dismissed or quashed,
- (3) A judgment of probation before judgment is entered,
- (4) A nolle prosequi is entered,
- (5) The proceeding is placed on the stet docket,
- (6) The case is compromised pursuant to Article 27, § 766 of this Code,
- (7) The person is convicted of only one criminal act, which is not a crime of violence, and is subsequently granted a full and unconditional pardon by the Governor, or
- (8) The charge was transferred to juvenile court jurisdiction under § 594A of this article.

(b) *Petition for expungement of a criminal charge transferred to juvenile court.* — (1) If a criminal charge was transferred to the juvenile court under § 594A of this article, a court shall grant a petition for expungement if:

- (i) The charge transferred under § 594A of this article did not result in the filing of a petition under § 3-810 of the Courts and Judicial Proceedings Article; or

(ii) The charge did result in the filing of a petition under § 3-810 of the Courts and Judicial Proceedings Article but the decision on the petition was a finding of facts-not-sustained.

(2) (i) A petition for expungement of a criminal charge transferred to the juvenile court under § 594A of this article may be filed at any time after:

1. If a petition is not filed under § 3-810 of the Courts Article, the date of the decision not to file a petition; or

2. If a petition is filed under § 3-810 of the Courts Article, the decision on a petition of facts-not-sustained.

(ii) If a charge transferred under § 594A of this article resulted in the filing of a petition under § 3-810 of the Courts and Judicial Proceedings Article and the adjudication of the child as delinquent, the court may grant a petition for expungement on or after the 21st birthday of the petitioner.

(c) *Where petition filed.* — The petition shall be filed in the court in which the proceeding was commenced. If the proceeding was commenced in one court and transferred to another court, the petition shall be filed in the court to which the proceeding was transferred. If the proceeding in a court of original jurisdiction was appealed to a court exercising appellate jurisdiction, the peti-

tion shall be filed in the appellate court. However, the appellate court may remand the matter to the court of original jurisdiction.

(d) *Time of filing when case resulted in acquittal, nolle prosequi or dismissal.* — (1) Except as provided in paragraph (2) of this subsection, a petition for expungement based on the following dispositions may not be filed earlier than 3 years after the date of the disposition:

(i) An acquittal;

(ii) A nolle prosequi; or

(iii) A dismissal or quashing of a charge.

(2) (i) A petition for expungement based on the dispositions described in paragraph (1) of this subsection may be filed earlier than 3 years after the date of the disposition if the person files with the petition a written general waiver and release, in proper legal form, of all claims the person may have against any person for tortious conduct arising from the charge.

(ii) Notwithstanding the provisions of subparagraph (i) of this paragraph, a petition for expungement may not be filed earlier than 3 years after acquittal if the acquittal was on the grounds of a verdict of not criminally responsible.

(e) *Time of filing when case resulted in probation.* — A petition for expungement based on a probation before judgment may not be filed earlier than the later of:

(1) 3 years after the date of the entry of judgment or order of probation; or

(2) The date of the person's discharge from probation.

(f) *Time of filing when case resulted in pardon.* — A petition for expungement based on a full and unconditional pardon by the Governor for a conviction for only one criminal act which is not a crime of violence may not be filed earlier than 5 years nor later than 10 years after the pardon was signed by the Governor.

(g) *Time of filing when case resulted in stet or compromise.* — A petition for expungement based on the entry of a stet or a compromise under Article 27, § 766 of the Code may not be filed earlier than 3 years after the judgment or order was entered.

(h) *Granting of petition for good cause.* — Notwithstanding any other provision of this section, a court may grant a petition for expungement at any time on a showing of good cause by the petitioner.

(i) *Service on State's Attorney; objection requirements.* — A copy of the petition shall be served on the State's Attorney. Unless the State's Attorney files an objection to the petition within 30 days after it is served on him, the court shall enter an order requiring the expungement of police records and court records pertaining to the charge.

(j) *Hearing by court; granting or denial of expungement.* — If the State's Attorney files a timely objection to the petition, the court shall conduct a hearing. If the court finds that the person is entitled to expungement, it shall enter an order requiring the expungement of police records and all court records pertaining to the charge. Otherwise, it shall deny the petition. If the petition is based upon the entry of a judgment of probation before judgment, a nolle prosequi, placement on the stet docket, or a full and unconditional pardon by the Governor, the person is not entitled to expungement if:

(1) He has since been convicted of any crime, other than violations of the State vehicle laws or other traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; or

(2) He is then a defendant in a pending criminal proceeding.

(k) *Appellate review.* — The State's Attorney is a party to the proceeding. Any party aggrieved by the decision of the court has the right of appellate review provided in the Courts and Judicial Proceedings Article.

(l) *Notice of compliance.* — Every custodian of the police records and court records subject to the order shall, within 60 days after entry of the order, unless it is stayed pending an appeal, advise the court and the person in writing of compliance with the order. (1975, ch. 260; 1976, chs. 842, 863; 1981 ch. 288; 1982, ch. 872; 1984, ch. 139; 1985, ch. 10, § 1; 1988, chs. 592, 628, 715, 1989, ch. 668; 1994, ch. 693; 1996, ch. 585, § 18; ch. 613.)

§ 738. Expungement of consolidated charges.

(a) *Charges resulting from same incident to be considered as a unit.* — Except as provided in subsection (b) of this section, for purposes of this subtitle, two or more charges arising from the same incident, transaction, or set of facts, shall be considered as a unit. If a person is not entitled to an expungement of any one charge of a unit, he is not entitled to expungement of the other charges in the unit.

(b) *Charges resulting from traffic violation.* — If a person is charged with a violation of any provision of the Maryland Vehicle Law or any other traffic law, ordinance, or regulation:

(1) The violation may not be considered as part of a unit under subsection (a) of this section; and

(2) The disposition entered on the violation may not preclude expungement of any criminal charge that arises from the same incident, transaction, or set of facts if the person is otherwise entitled to an expungement of the charge. (1975, ch. 260; 1996, ch. 565.)

§ 739. Disclosure of expunged records.

(a) *Disclosure unlawful.* — It is unlawful for any person having or acquiring access to an expunged record to open or review it or to disclose to another person any information from it without an order from the court which ordered the record expunged, or, in the case of police records expunged pursuant to § 736, the District Court having venue.

(b) *Hearing and notice required.* — Except as provided in subsection (c), a court shall not enter an order authorizing the opening or review of an expunged record or the disclosure of information from it except after a hearing held upon notice to the person to whom the record pertains and upon good cause shown.

(c) *Ex parte order.* — Upon a verified petition filed by the State's Attorney alleging that the record is needed by a law enforcement agency for purposes of a pending criminal investigation and that the investigation will be jeopardized or that life or property will be endangered without immediate access to the record, the court may enter an ex parte order, without notice to the person, permitting such access. An ex parte order may permit a review of the record, but may not permit a copy to be made of it.

(d) *Penalties.* — A person who violates this section is guilty of a misdemeanor, and, upon conviction, is subject to a fine of not more than \$1,000 or imprisonment for not more than one year, or both. If the person is an official or employee of the State or of any subdivision of the State, he shall, in addition to these penalties, be subject to removal or dismissal from public service on grounds of misconduct in office. (1975, ch. 260.)

University of Baltimore Law Review. — Applied in *Grandison v. State*, 305 Md. 685, For article, "The Maryland Rules — A Time for Overhaul," see 9 U. Balt. L. Rev. 1 (1979). 506 A.2d 580 (1986).

§ 740. Prohibited practices by employers and educational institutions.

(a) *Applicants for employment or admission.* — An employer or educational institution may not, in any application, interview, or otherwise, require an

applicant for employment or admission to disclose information concerning criminal charges against him that have been expunged. An applicant need not, in answering any question concerning criminal charges that have not resulted in a conviction, or in answering any questions concerning convictions pardoned by the Governor, include a reference to or information concerning charges that have been expunged. An employer may not discharge or refuse to hire a person solely because of his refusal to disclose information concerning criminal charges against him that have been expunged.

(b) *Applicants for licenses, etc.* — Agencies, officials, and employees of the State and local governments may not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning criminal charges against him that have been expunged. An applicant need not, in answer to any question concerning criminal charges that have not resulted in a conviction, or convictions pardoned by the Governor, include a reference to or information concerning charges that have been expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning criminal charges against him that have been expunged.

(c) *Penalties.* — A person who violates this section is guilty of a misdemeanor, and upon conviction, is subject to a fine of not more than \$1,000 or imprisonment for not more than one year, or both, for each violation. If the person is an official or employee of the State or any subdivision of the State, he shall, in addition to these penalties, be subject to removal or dismissal from public service on grounds of misconduct in office. (1975, ch. 260; 1982, ch. 872.)

§ 741. Retroactivity.

(a) Police records and court records which were made prior to July 1, 1975, and are presently maintained are subject to expungement in accordance with this subtitle.

(b) A person who, on or after July 1, 1975, becomes entitled to the expungement of police records or court records made prior to that date may utilize the procedures set forth in this subtitle for expungement. The limitation periods provided in §§ 736 and 737 shall, in that case, be deemed to date from the first day the person becomes entitled to expungement.

(c) With respect to police records or court records made prior to July 1, 1975, subject to expungement under this subtitle, the duty of the custodian is to make a reasonable search. There is no duty to expunge records that cannot be located after a reasonable search. (1975, ch. 260.)

Article 27

V

CRIMINAL JUSTICE INFORMATION SYSTEM

§ 742. Purpose of subtitle; legislative findings.

(a) The purpose of this subtitle is to create and maintain an accurate and efficient criminal justice information system in Maryland consistent with applicable federal law and regulations, the need of criminal justice agencies in the State for accurate and current criminal history record information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy.

(b) In order to achieve this result, the General Assembly finds that there is a need:

- (1) To create a central repository for criminal history record information;
- (2) To require the reporting of accurate, relevant, and current information to the central repository by all criminal justice agencies;
- (3) To ensure that criminal history record information is kept accurate and current; and
- (4) To prohibit the improper dissemination of such information.

(c) This subtitle is intended to provide a basic statutory framework within which these objectives can be attained. (1976, ch. 239.)

§ 743. Definitions.

(a) As used in this subtitle, the following words have the meanings indicated.

(b) "Advisory Board" means the Criminal Justice Information Advisory Board.

(c) "Central repository" means the criminal justice information system central repository created by § 747 (b) of this article.

(d) "County" includes Baltimore City.

(e) "Criminal history record information" means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event and includes data from an agency that is required to report to the central repository under Title 12 of the Health-General Article. The term does not include:

(1) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(2) Data pertaining to a proceeding under Subtitle 8 of Title 3 of the Courts Article (Juvenile Causes), but it does include data pertaining to a person following waiver of jurisdiction by a juvenile court;

(3) Wanted posters, police blotter entries, court records of public judicial proceedings, or published court opinions;

(4) Data pertaining to violations of the traffic laws of the State or any other traffic law, ordinance, or regulation, or violations of any local ordinances, or any State or local regulations, or violations of the Natural Resources Article or public local laws;

(5) Data concerning the point system established by the Motor Vehicle Administration in accordance with the provisions of Title 16 of the Transportation Article; or

(6) Presentence investigation and other reports prepared by a probation department for use by a court in the exercise of criminal jurisdiction or by the Governor in the exercise of his power of pardon, reprieve, commutation, or nolle prosequi.

(f) "Criminal justice agency" means any government agency or subunit of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, custodial treatment or confinement under Title 12 of the Health-General Article, rehabilitation, or release of persons suspected, charged, or convicted of a crime or relieved of criminal punishment by a verdict of not criminally responsible, or is responsible for criminal identification activities and the collection, storage, and dissemination of criminal history record information, and which allocates a substantial portion of its annual budget to any of these functions. The term does not include the Department of Juvenile Services or a juvenile court, but it does include the following agencies, when exercising jurisdiction over criminal matters or alternative dispositions of criminal matters, or criminal history record information:

(1) State, county, and municipal police departments and agencies, sheriffs' offices, correctional facilities, jails, and detention centers;

(2) Any agency required to report to the central repository under § 12-107 or § 12-112 of the Health-General Article;

(3) The offices of the Attorney General, the State's Attorneys, and any other person authorized by law to prosecute persons accused of criminal offenses; or

(4) The Administrative Office of the Courts, the Court of Appeals, the Court of Special Appeals, the circuit courts, the District Court of Maryland, and the offices of the clerks of these courts.

(g) "Criminal justice information system" means the equipment (including computer hardware and software), facilities, procedures, agreements, and personnel used in the collection, processing, preservation, and dissemination of criminal history record information.

(h) "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

- (1) The transmittal of such information within a criminal justice agency;
- (2) The reporting of such information as required by § 747 of this article; or
- (3) The transmittal of such information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

(i) "Reportable event" means an event specified or provided for in § 747.

the judicial branch of government to implement the provisions of this subtitle and to establish, operate, and maintain the criminal justice information system. The Court of Appeals and its Chief Judge, acting pursuant to §§ 18 and 18A of Article IV of the Constitution of Maryland, shall adopt appropriate rules and regulations for the same purposes for the judicial branch of government.

(b) *Scope of rules.* — Subject to the provisions of Title 3, Subtitle 4 of the State Finance and Procurement Article, the rules and regulations adopted by the Secretary, the Court, and the Chief Judge shall include those:

(1) Governing the collection, reporting, and dissemination of criminal history record information by the courts and all other criminal justice agencies;

(2) Necessary to insure the security of the criminal justice information system and all criminal history record information reported and collected from it;

(3) Governing the dissemination of criminal history record information in accordance with the provisions of this subtitle and the provisions of §§ 735 to 741;

(4) Governing the procedures for inspection and challenging of criminal history record information;

(5) Governing the auditing of criminal justice agencies to insure that criminal history record information is accurate and complete and that it is collected, reported, and disseminated in accordance with the provisions of this subtitle and the provisions of §§ 735 to 741;

(6) Governing the development and content of agreements between the central repository and criminal justice and noncriminal justice agencies;

(7) Governing the exercise of the rights of inspection and challenge provided for in §§ 751 through 755; and

(8) Governing the development of a fee schedule and the collection of these fees for accessing criminal history records for other than criminal justice purposes.

(c) *Consistent with subtitle.* — Rules and regulations adopted by the Secretary or the Court or its Chief Judge may not be inconsistent with the provisions of this subtitle. (1976, ch. 239; 1985, ch. 717, § 1; 1990, ch. 159; 1991, ch. 56.)

§ 744. Criminal Justice Information Advisory Board created; composition; appointment and terms of members; chairman; vacancy; compensation and expenses; staff.

(a) *Created; term; composition; designation of representative.* — There is a Criminal Justice Information Advisory Board which, for administrative and budgetary purposes only, is within the Department of Public Safety and Cor-

rectional Services. Subject to the provisions of subsection (b) of this section, the members shall be appointed for a term of three years. One member shall be designated by the Governor as chairman. Each member, other than the member from the general public, may designate a person to represent him in any Advisory Board activity or meeting. A designee may vote. A majority of members or designees constitutes a quorum for the transaction of business. The Advisory Board consists of the following members:

- (1) One member of the Maryland Senate appointed by the President of the Senate;
- (2) One member of the House of Delegates appointed by the Speaker of the House of Delegates;
- (3) The executive director of the Governor's Office of Justice Assistance;
- (4) Three persons from the judicial branch of State government appointed by the Chief Judge of the Court of Appeals;
- (5) Three persons recommended by the Secretary of Public Safety and Correctional Services;
- (6) Two executive officials from State, county, or municipal police agencies;
- (7) The Director of the Maryland Justice Analysis Center of the Institute of Criminal Justice and Criminology of the University of Maryland;
- (8) Two elected county officials;
- (9) The Attorney General of Maryland;
- (10) One elected municipal official;
- (11) One State's Attorney; and
- (12) One person from the general public.

(b) *Appointment of members.* — Except for those members appointed by the President of the Senate, the Speaker of the House, and the Chief Judge of the Court of Appeals, all members are appointed by the Governor. The executive director of the Governor's Office of Justice Assistance, 2 of the members recommended by the Secretary of Public Safety and Correctional Services, and the Attorney General shall serve ex officio. The Secretary shall designate which 1 of the 3 members recommended by the Secretary may vote.

(c) *Vacancy.* — A vacancy occurring before the expiration of a term shall be filled by the appointing authority for the remainder of the term. A member serves until his successor is appointed and qualifies.

(d) *Compensation and expenses.* — A member of the Advisory Board may not receive compensation, but is entitled to reimbursement for expenses under the State Standard Travel Regulations, as provided in the State budget.

(e) *Use of staff and facilities of other agencies.* — In the performance of its functions, the Advisory Board may use the services of the staff and the facilities of the Department of Public Safety and Correctional Services, the Administrative Office of the Courts, and the Governor's Office of Justice Assistance subject to the approval of the head of the respective department or agency. (1976, ch. 239; 1988, ch. 122; 1989, ch. 5, § 1.)

§ 745. Duties of Advisory Board.

(a) *In general.* — The Advisory Board shall perform the duties set forth in this section and those of an advisory nature that may otherwise be delegated to it in accordance with law.

(b) *Information to Secretary and Court of Appeals.* — It shall advise the Secretary and the Court of Appeals and its Chief Judge on matters pertaining to the development, operation, and maintenance of the criminal justice information system, and shall monitor the operation of the system.

(c) *Rules and regulations.* — It shall propose and recommend to the Secretary, and, in conjunction with the Standing Committee on Rules of the Court of Appeals, to the Court and its Chief Judge, rules and regulations necessary to the development, operation, and maintenance of the criminal justice information system.

(d) *Recommendations and reports.* — It shall:

(1) Recommend procedures and methods for the use of criminal history record information for the purpose of research, evaluation, and statistical analysis of criminal activity; and

(2) Recommend any legislation necessary for the implementation, operation, and maintenance of the criminal justice information system. (1976, ch. 239; 1982, ch. 911, § 1; 1984, ch. 285, § 2; 1994, ch. 662, § 6.)

§ 746. Adoption of rules.

(a) *Duty of Secretary and Court of Appeals.* — The Secretary shall adopt appropriate rules and regulations for agencies in the executive branch of government and for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this subtitle and to establish, operate, and maintain the criminal justice information system. The Court of Appeals and its Chief Judge, acting pursuant to §§ 18 and 18A of Article IV of the Constitution of Maryland, shall adopt appropriate rules and regulations for the same purposes for the judicial branch of government.

(b) *Scope of rules.* — Subject to the provisions of Article 15A, § 23B, the rules and regulations adopted by the Secretary, the Court, and the Chief Judge shall include those:

(1) Governing the collection, reporting, and dissemination of criminal history record information by the courts and all other criminal justice agencies;

(2) Necessary to insure the security of the criminal justice information system and all criminal history record information reported and collected from it;

(3) Governing the dissemination of criminal history record information in accordance with the provisions of this subtitle and the provisions of §§ 735 to 741;

(4) Governing the procedures for inspection and challenging of criminal history record information;

(5) Governing the auditing of criminal justice agencies to insure that criminal history record information is accurate and complete and that it is collected, reported, and disseminated in accordance with the provisions of this subtitle and the provisions of §§ 735 to 741;

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(6) Governing the development and content of agreements between the central repository and criminal justice and noncriminal justice agencies;

(7) Governing the exercise of the rights of inspection and challenge provided for in §§ 751 through 755.

(c) *Consistent with subtitle.* — Rules and regulations adopted by the Secretary or the Court or its Chief Judge may not be inconsistent with the provisions of this subtitle. (1976, ch. 239.)

§ 747. Reporting criminal history record information; central repository.

(a) *Reportable events.* — The following events are reportable events under this subtitle:

- (1) Issuance or withdrawal of an arrest warrant;
- (2) An arrest;
- (3) Release of a person after arrest without the filing of a charge;
- (4) Presentment of an indictment, filing of a criminal information, or filing of a statement of charges after arrest;
- (5) A release pending trial or appeal;
- (6) Commitment to a place of pretrial detention;
- (7) Dismissal or quashing of an indictment or criminal information;
- (8) A nolle prosequi;
- (9) Placement of a charge on the stet docket;
- (10) An acquittal, conviction, verdict of not criminally responsible, or other disposition at or following trial, including a finding of probation before judgment;
- (11) Imposition of a sentence;
- (12) Commitment to a correctional facility, whether State or locally operated;
- (13) Commitment to the Department of Health and Mental Hygiene under § 12-105 or § 12-111 of the Health-General Article as incompetent to stand trial or not criminally responsible;
- (14) Release from detention or confinement;
- (15) Conditional release, revocation of conditional release, or discharge of an individual committed to the Department of Health and Mental Hygiene as incompetent to stand trial or as not criminally responsible;
- (16) An escape from confinement, or escape from commitment;
- (17) A pardon, reprieve, commutation of sentence, or other change in a sentence, including a change ordered by a court;

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- (18) Entry of an appeal to an appellate court;
- (19) Judgment of an appellate court;
- (20) Order of a court in a collateral proceeding that affects a person's conviction, sentence, or confinement; and
- (21) Any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the Secretary or the Court of Appeals.

(b) *Establishment and operation of central repository.* — (1) There is a criminal justice information system central repository in the Department of Public Safety and Correctional Services.

(2) The repository is under the administrative control of the Secretary and shall be operated as directed by the Secretary with the advice of the Advisory Board.

(c) *Time for reporting criminal history record information.* — Every criminal justice agency shall report criminal history record information, whether collected manually or by means of an automated system, to the central repository, in accordance with the following provisions:

(1) Data pertaining to an arrest or the issuance of an arrest warrant shall be reported within 72 hours after the arrest is made or the warrant is issued whichever first occurs;

(2) Data pertaining to the release of a person after arrest without the filing of a charge shall be reported within 30 days after the person is released;

(3) Data pertaining to any other reportable event shall be reported within 60 days after occurrence of the event; and

(4) The time requirements in this subsection may be reduced by rules adopted by the Secretary or the Court of Appeals.

(d) *Reporting methods.* — Reporting methods may include:

(1) Submittal of criminal history record information by a criminal justice agency directly to the central repository;

(2) If the information can readily be collected and reported through the court system, submittal to the central repository by the Administrative Office of the Courts; or

(3) If the information can readily be collected and reported through criminal justice agencies that are part of a geographically based information system, submittal to the central repository by such agencies.

(e) *Maintenance and dissemination of more detailed information.* — Nothing in this section shall prevent a criminal justice agency from maintaining more detailed information than is required to be reported to the central repository. However, the dissemination of any such criminal history record information is governed by the provisions of § 749.

(f) *Avoidance of duplication in reporting.* — The Secretary and the Court of Appeals may determine, by rule, the reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting. (1976, ch. 239; 1979, ch. 633; 1984, ch. 501, § 2; 1988, ch. 122; 1989, ch. 5, § 1.)

§ 747A. Fingerprinting of criminal defendants.

(a) *"Law enforcement agency" defined.* — In this section, "law enforcement agency" includes:

- (1) A State, county, or municipal police department or agency; or
- (2) A sheriff's office.

(b) *Order by judge; failure of defendant to appear for fingerprinting contempt of court.* — (1) When a defendant is found guilty, or pleads guilty or nolo contendere to an offense that is criminal history record information, as defined in § 743 (e) of this article, and is sentenced to commitment in a local correctional facility, or receives a suspended sentence, probation other than probation prior to judgment under §§ 292 and 641 of this article, or a fine, and the defendant has not previously been fingerprinted as a result of arrest for the sentenced offense, the judge imposing the sentence shall order that the defendant be fingerprinted by the appropriate available law enforcement agency.

(2) If the fingerprinting cannot be done immediately, the judge shall order that the defendant report to the designated law enforcement agency for fingerprinting within 3 days after sentencing.

(3) If a defendant fails to report as ordered under paragraph (2) of this subsection, the defendant shall be in contempt of court.

(c) *Minors.* — (1) This subsection applies only to an adjudication of delinquency for a child:

(i) Who is at least 14 years old, for an act described in § 3-804 (e) (1) of the Courts and Judicial Proceedings Article; or

(ii) Who is at least 16 years old, for an act described in § 3-804 (e) (4) or (5) of the Courts and Judicial Proceedings Article.

(2) When a child described under paragraph (1) of this subsection is adjudicated delinquent by reason of an offense described in this subsection and the child has not previously been fingerprinted as a result of arrest for the delinquent act, the court that conducted the disposition hearing shall order that the child be fingerprinted by the appropriate available law enforcement agency.

(3) If the fingerprinting cannot be done immediately, the court shall order that the child report to the designated law enforcement agency for fingerprinting within 3 days after making a disposition on an adjudication of delinquency described under paragraph (1) of this subsection.

§ 748. Agreements with criminal justice agencies; sharing criminal history record information.

(a) *Duty of Secretary and Chief Judge of Court of Appeals; provisions of agreements.* — The Secretary and the Chief Judge of the Court of Appeals shall develop agreements between the central repository and criminal justice agencies pertaining to:

(1) The method by which the agency will report information, including the method of identifying an offender in a manner that permits other criminal justice agencies to locate the offender at any stage in the criminal justice system, the time of reporting, the specific data to be reported by the agency, and the place of reporting;

(2) The services to be provided to the agency by the central repository;

(3) The conditions and limitations upon the dissemination of criminal history record information by the agency;

(4) The maintenance of security in all transactions between the central repository and the agency;

(5) The method of complying with the right of a person to inspect, challenge, and correct criminal history record information maintained by the agency;

(6) Audit requirements to ensure the accuracy of all information reported or disseminated;

(7) The timetable for the implementation of the agreement;

(8) Sanctions for failure of the agency to comply with any of the provisions of this subtitle, including the revocation of any agreement between the agency and the central repository and appropriate judicial or administrative proceedings to enforce compliance; and

(9) Other provisions that the Chief Judge and the Secretary may deem necessary.

(b) *Sharing information with other states and countries and federal agencies.* — The Secretary and the Chief Judge of the Court of Appeals may develop procedures for the sharing of criminal history record information with federal criminal justice agencies and criminal justice agencies of other states and other countries, consistent with the provisions of this subtitle. (1976, ch. 239; 1979, ch. 633.)

§ 749. Dissemination of criminal history record information.

A criminal justice agency and the central repository may not disseminate criminal history record information except in accordance with the applicable federal law and regulations. (1976, ch. 239.)

§ 750. Compliance with §§ 735 to 741.

Notwithstanding any other provisions of this subtitle no record may be maintained or disseminated inconsistently with the provisions of §§ 735 through 741 of Article 27. (1976, ch. 239.)

§ 750A. Maintenance and dissemination of records.

(a) *Compliance with Courts and Judicial Proceedings Article.* — Except as provided in subsection (b) of this section, notwithstanding any other provision of this subtitle, no record may be maintained or disseminated in a manner inconsistent with the provisions of § 3-828 of the Courts and Judicial Proceedings Article.

(b) *Separation of records.* — Notwithstanding § 3-828 (a) of the Courts and Judicial Proceedings Article, a reportable event described under § 747 (a) (21) of this subtitle and fingerprinting of a child required under § 747A of this subtitle need not be maintained separate and apart from those of adults. (1994, ch. 693.)

§ 751. Right of inspection; copies.

(a) Subject to the provisions of § 752 (f), a person may inspect criminal history record information maintained by a criminal justice agency concerning him. A person's attorney may inspect such information if he satisfactorily establishes his identity and presents a written authorization from his client.

(b) Nothing in this section requires a criminal justice agency to make a copy of any information or allows a person to remove any document for the purpose of making a copy of it. A person having the right of inspection may make notes of the information. (1976, ch. 239.)

§ 752. Challenging information.

(a) *Notice of challenge.* — A person who has inspected criminal history record information relating to him may challenge the completeness, contents, accuracy, or dissemination of such information by giving written notice of his challenge to the central repository and to the agency at which he inspected the information, if other than the central repository. The notice shall set forth the portion of the information challenged, the reason for the challenge, certified documentation or other evidence supporting the challenge, if available, and the change requested in order to correct or complete the information or the dissemination of the information. The notice shall contain a sworn statement, under penalty of perjury, that the information in or supporting the challenge is accurate and that the challenge is made in good faith.

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(b) *Audit of information; notice of repository's determination.* — Upon receipt of the notice, the central repository shall conduct an audit of that part of the person's criminal history record information necessary to determine the accuracy of the challenge. As part of the audit, the central repository may require any criminal justice agency that was the source of challenged information to verify the information. The central repository shall notify the person of the results of its audit and its determination within 90 days after receipt of the notice of challenge. This notice shall be in writing, and, if the challenge or any part of it is rejected, the notice shall inform the person of his rights of appeal.

(c) *Correction of records.* — If the challenge or any part of it is determined to be valid, the central repository shall make the appropriate correction on its records and shall notify any criminal justice agency which has custody of the incomplete or inaccurate information, or portion of it, of the correction, and the agency shall take appropriate steps to correct its records. The agency shall certify to the central repository that the correction was made.

(d) *Notice of correction when information disseminated.* — A criminal justice agency required to correct any criminal history record information pursu-

ant to subsection (c) that had previously disseminated such information shall give written notice to the agency or person to whom the information was disseminated of the correction. That agency or person shall promptly make the correction on its records, and certify to the disseminating agency that the correction was made.

(e) *Notice to agencies of denial of challenge.* — If the challenge, or any part of it, is denied, the central repository shall give written notice of the denial to any agency with which a copy of the challenge was filed.

(f) *Inspection or challenge of information relevant to pending criminal proceeding.* — A person is not entitled to inspect or challenge any criminal history record information pursuant to this subtitle if the information or any part of it is relevant to a pending criminal proceeding. This subsection does not affect any right of inspection and discovery permitted under the Maryland Rules or under any statute, rule, or regulation not part of or adopted pursuant to this subtitle.

(g) *Delay in requiring performance of duties by central repository.* — The provisions of this section concerning the duties of the central repository may, by rule of the Secretary, be delayed until the Secretary determines that the central repository is able to comply with them, but not later than July 1, 1977. Until then, the duties of the central repository shall be performed by the appropriate criminal justice agencies. (1976, ch. 239; 1983, ch. 8; 1988, ch. 6, § 1; ch. 122.)

§ 753. Rights of appeal.

(a) *Rules for administrative appeals.* — The Secretary and the Court of Appeals shall adopt appropriate rules and procedures for administrative appeals from decisions by criminal justice agencies denying the right of inspection of, or challenges made to, criminal history record information.

These rules shall include provisions for:

- (1) The forms, manner, and time for taking an appeal;
- (2) The official or tribunal designated to hear the appeal;
- (3) Hearing and determining the appeal; and
- (4) Implementing the decision on appeal.

(b) *Right to take administrative appeal.* — A person aggrieved by a decision of a criminal justice agency concerning inspection or a challenge may take an administrative appeal in accordance with the rules and procedures adopted by the Secretary and the Court of Appeals.

(c) *Judicial review.* — A person aggrieved by a decision on an administrative appeal, including the central repository and a criminal justice agency, may seek judicial review in accordance with the Administrative Procedure Act and the Maryland Rules. (1976, ch. 239.)

§ 754. Requiring inspection or challenge of information in order to qualify for employment.

(a) It is unlawful for any employer or prospective employer to require a person to inspect or challenge any criminal history record information relating to that person for the purpose of obtaining a copy of the person's record in order to qualify for employment.

(b) Any person violating the provisions of this section is guilty of a misdemeanor, and, upon conviction, is subject to a fine of not more than \$5,000 or imprisonment for not more than six months, or both, for each violation. (1976, ch. 239.)

§ 754A. Requests by Howard County and Anne Arundel County Administrators for criminal history record information investigation.

(a) *Howard County Administrator.* — (1) The County Administrator of Howard County may request the criminal records central repository of the Maryland State Police to investigate any prospective employee of Howard County through the appropriate federal, State, and local criminal history record information system.

(2) The County Administrator shall pay the fee imposed to obtain federal criminal history record information.

(b) *Anne Arundel County Administrator.* — (1) In accordance with guidelines adopted by the Anne Arundel County Council, by resolution, the Director of Administration of Anne Arundel County may request the criminal records central repository of the Maryland State Police to investigate any prospective employee of Anne Arundel County through the appropriate federal, State, and local criminal history record information system.

(2) The Director of Administration shall pay the fee imposed to obtain federal criminal history record information. (1985, ch. 768; 1986, ch. 224.)

(c) *Carroll County.* — (1) This subsection does not apply to an individual who provides services or performs duties voluntarily and without compensation for the government of Carroll County.

(2) The County Commissioners of Carroll County may request a Maryland and federal criminal record check from the Criminal Justice Information System — Central Repository of the Department of Public Safety and Correctional Services for:

(i) A current or prospective employee of Carroll County who is or will be assigned to a position that involves:

1. Inspections;
2. The approval or denial of permits, licenses, or other grants of authority;
3. Work in the offices of the County Commissioners, sheriff, State's Attorney, circuit court, or county attorney; or
4. Work that involves the collection or handling of money; or

(ii) A current or prospective employee of a person who has a contract with Carroll County if the contract involves work in an area that requires security of personnel or files, including the county courthouse, county jail, State's Attorney's office, county commissioner's office, and county attorney's office.

(d) *Fees paid by Carroll County.* — The Comptroller of Carroll County shall pay the fee imposed to obtain criminal history record information.

(e) *Fingerprints.* — If a request for a criminal record check under this subsection requires information from the Federal Bureau of Investigation, the individual who is the subject of the request shall submit to the Department of Public Safety and Correctional Services a complete and legible set of the individual's fingerprints on standard fingerprint cards. (1985, ch. 768; 1986, ch. 224; 1994, ch. 431; 1995, ch. 20.)

**§ 754B. Request for criminal background record check —
Applicant for taxicab driver's license [Section
subject to abrogation].**

(a) *In general.* — Subject to the provisions of §§ 742 through 755 of this article, the Public Service Commission or a county or municipal corporation may request a criminal background record check on an applicant for a taxicab driver's license from the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services.

(b) *Fees and costs.* — On any request for a criminal background record check made by the Public Service Commission under Article 78, § 50H of the Code or by a county or municipal corporation, the applicant for a taxicab driver's license shall pay to the Department any required processing fee and administrative cost.

(c) *Reports.* — When a request is made to the central repository under subsection (a) of this section, the central repository shall conduct its record check and issue a report to the Public Service Commission or the county or municipal corporation within 25 calendar days of the request. (1991, ch. 513.)

**§ 754B. Request for criminal background record check —
Applicant for taxicab driver's license.**

Abrogated.

**§ 755. Inspection and challenge of information recorded
prior to July 1, 1976.**

Criminal history record information which was recorded prior to July 1, 1976 is subject to the right of access and challenge in accordance with this subtitle. However, the duty of a criminal justice agency is to make a reasonable search for such information. There is no duty to provide access to criminal history record information that cannot be located after a reasonable search. (1976, ch. 239.)

§ 292. Expunging criminal arrest record of person not convicted; probation and discharge of first offenders.

(a) Whenever any person who has not previously been convicted of any offense under this subheading or under any other prior law of this State or the laws of the United States or of any other state relating to controlled dangerous substances as defined in this subheading, and who is tried for any offense specified in this subheading and is found not guilty, or where the charges against such person are dismissed in any manner, by either the court or the prosecuting authority, the court, if satisfied that the best interest of the person and the welfare of the people of this State would be served thereby, shall expunge the criminal record resulting from the arrest in such case. No expunged criminal arrest record shall thereafter be regarded as an arrest for purposes of employment, civil rights, or any statute or regulation or license or questionnaire or any other public or private purpose.

§ 292. Expunging criminal arrest record of person not convicted; probation and discharge of first offenders [Repealed effective January 1, 1991].

(b) (1) Whenever any person who has not previously been convicted of any offense under this subheading or under any prior law of this State or the laws of the United States or of any other state relating to controlled dangerous substances defined in this subheading, pleads guilty to or is found guilty of any of the offenses specified in this subheading, the court, if satisfied that the best interests of the person and the welfare of the people of this State would be served thereby may, with the consent of such person stay the entering of the judgment of guilt, defer further proceedings, and place such person on probation subject to such reasonable terms and conditions as may be appropriate.

(2) (i) The terms and conditions may include ordering the person to pay a fine or pecuniary penalty to the State, to be paid through the office of the clerk of the court. Before the court orders a fine or pecuniary penalty, the person is entitled to notice and a hearing to determine the amount of the fine or pecuniary penalty, what payment will be required, and how payment will be made. Any fine or pecuniary penalty imposed as a term or condition of probation shall be within the amount prescribed by law for a violation resulting in conviction. The court may in addition require that such person undergo inpatient or outpatient treatment for drug abuse.

(ii) In Charles County, St. Mary's County, and Calvert County, the court may also impose a sentence of confinement as a condition of probation.

(3) By consenting to and receiving a stay of entering of the judgment of guilt as provided by this subsection, the person waives all rights to appeal from the judgment of guilt by the court at any time. Prior to the person consenting to the stay of entering of the judgment of guilt, the court shall notify the person that by consenting to and receiving the stay of entry of judgment, he waives the right to appeal from the judgment of guilt by the court at any time.

(4) Upon violation of a term or condition, the court may enter a judgment of conviction and proceed as otherwise provided. Upon fulfillment of the terms

and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without a judgment of conviction and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by the law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under § 293 of this subheading. Discharge and dismissal under this section may occur only once with respect to any person.

(5) Upon petition, any public criminal record in any such case shall be expunged upon the satisfactory completion of any such period of probation. Any expunged arrest and/or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute or regulation or license or questionnaire or any other public or private purpose, provided that any such conviction shall continue to constitute an offense for purposes of this subheading or any other criminal statute under which the existence of a prior conviction is relevant.

(1989, ch. 572.)

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State Government
Title 10 Governmental Procedures
Subtitle 6. Records
Part III Access to Public Records

§ 10-611. Definitions.

(a) *In general.* — In this Part III of this subtitle the following words have the meanings indicated.

(b) *Applicant.* — “Applicant” means a person or governmental unit that asks to inspect a public record.

(c) *Custodian.* — “Custodian” means:

- (1) the official custodian; or
- (2) any other authorized individual who has physical custody and control of a public record.

(d) *Official custodian.* — “Official custodian” means an officer or employee of the State or of a political subdivision who, whether or not the officer or employee has physical custody and control of a public record, is responsible for keeping the public record.

(e) *Person in interest.* — “Person in interest” means:

- (1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit; or
- (2) if the person has a legal disability, the parent or legal representative of the person.

(f) *Public record.* — (1) “Public record” means the original or any copy of any documentary material that:

(i) is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and

(ii) is in any form, including:

1. a card;
2. a computerized record;
3. correspondence;
4. a drawing;
5. film or microfilm;
6. a form;
7. a map;
8. a photograph or photostat;
9. a recording; or
10. a tape.

(2) “Public record” includes a document that lists the salary of an employee of a unit or instrumentality of the State government or of a political subdivision. (An. Code 1957, art. 76A, § 1; 1984, ch. 284, § 1; ch. 285, § 8.)

As it appeared in Ch. 284, Acts of 1984, this section was derived from former Art. 76A, § 1 (a) through (d), (f), (g), and (i), as those subsections related to the State and its units. However, this section was amended by Ch. 285, Acts of 1984.

See the General Revisor's Note to this subtitle.

Defined terms:

"Includes"; "including":	§ 1-101
"Person":	§ 1-101
"Political subdivision":	§ 10-601

Effect of amendment. — Section 8, ch. 285, Acts 1984, effective Oct. 1, 1984, substituted "an officer or employee of the State or of a political subdivision" for "a State officer or State employee" in subsection (d), and in subsection (f), inserted "or of a political subdivision" in subparagraph (i) of paragraph (1) and in paragraph (2).

Editor's note. — Section 9, ch. 285, Acts 1984, provides that "the provisions of this act are intended solely to correct outdated references and technical errors in the law and to delete certain obsolete provisions and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

University of Baltimore Law Review. — For note discussing executive privilege to prevent disclosure of official information, see 10 U. Balt. L. Rev. 385 (1981).

Official who obtains personnel records is "custodian". — Once a public official obtained the personnel records of a former employee of the urban services agency through the use of his offices as comptroller and a member of the board of estimates, he became a "custodian," regardless of whether he could be considered an official who supervised the former employee's work. 65 Op. Att'y Gen. 365 (1980).

Public Defender is "official custodian" of trial transcript obtained by the Public

Defender's office in the course of its legal representation of an indigent defendant. 68 Op. Att'y Gen. — (January 25, 1983).

Police records must be considered "public records." 57 Op. Att'y Gen. 518 (1972).

"Arrest logs" are public records. 63 Op. Att'y Gen. 543 (1978).

Police investigative report is a "public record" that is subject to disclosure to any person, including members of the press, unless refusal to disclose it is mandated or permitted by a statutory exception or otherwise by law. 64 Op. Att'y Gen. 236 (1979).

And voter registration records open to public inspection are clearly "public records," and not privileged or made confidential by law. 62 Op. Att'y Gen. 396 (1977).

And school attendance records. — The filing with a local board of education of the names and addresses of all pupils attending a school in a particular county would constitute a "public record." 59 Op. Att'y Gen. 586 (1974).

And personnel file of urban services agency. — The personnel file of a former employee of an urban services agency was a "public record," since all records in the file would have either been made or received by the urban services agency, a Baltimore City agency, in connection with the transaction of public business. 65 Op. Att'y Gen. 365 (1980).

And trial transcript is public record. 68 Op. Att'y Gen. — (January 25, 1983).

§ 10-612. General right to information.

(a) **General right to information.** — All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

(b) **General construction.** — To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this Part III of this subtitle shall be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.

(c) *General Assembly.* — This Part III of this subtitle does not preclude a member of the General Assembly from acquiring the names and addresses of and statistical information about individuals who are licensed or, as required by a law of the State, registered. (An. Code 1957, art. 76A, §§ 1A, 3; 1984, ch. 284, § 1.)

§ 10-613. Inspection of public records.

(a) *In general.* — Except as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time.

(b) *Rules or regulations.* — To protect public records and to prevent unnecessary interference with official business, each official custodian shall adopt reasonable rules or regulations that, subject to this Part III of this subtitle, govern timely production and inspection of a public record. (An. Code 1957, art. 76A, § 2; 1984, ch. 284, § 1.)

§ 10-614. Applications.

(a) *Required.* — (1) A person or governmental unit that wishes to inspect a public record shall submit a written application to the custodian.

(2) If the individual to whom the application is submitted is not the custodian of the public record, within 10 working days after receiving the application, the individual shall give the applicant:

(i) notice of that fact; and

(ii) if known:

1. the name of the custodian; and
2. the location or possible location of the public record.

(b) *Grant or denial by custodian.* — (1) Within 30 days after receiving an application, the custodian shall grant or deny the application.

(2) A custodian who approves the application shall produce the public record immediately or within the reasonable period that is needed to retrieve the public record, but not to exceed 30 days after receipt of the application.

(3) A custodian who denies the application shall:

(i) immediately notify the applicant;

(ii) within 10 working days, give the applicant a written statement that gives:

1. the reasons for the denial;
2. the legal authority for the denial; and
3. notice of the remedies under this Part III of this subtitle for review of the denial; and

(iii) permit inspection of any part of the record that is subject to inspection and is reasonably severable.

(4) With the consent of the applicant, any time limit imposed under this subsection may be extended for not more than 30 days. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1.)

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- (i) notice of that fact; and
- (ii) if known:

- 1. the name of the custodian; and
- 2. the location or possible location of the public record.

(b) *Grant or denial by custodian.* — (1) Within 30 days after receiving an application, the custodian shall grant or deny the application.

(2) A custodian who approves the application shall produce the public record immediately or within the reasonable period that is needed to retrieve the public record, but not to exceed 30 days after receipt of the application.

(3) A custodian who denies the application shall:

- (i) immediately notify the applicant;
- (ii) within 10 working days, give the applicant a written statement that

gives:

- 1. the reasons for the denial;
- 2. the legal authority for the denial; and
- 3. notice of the remedies under this Part III of this subtitle for review

of the denial; and

(iii) permit inspection of any part of the record that is subject to inspection and is reasonably severable.

(4) With the consent of the applicant, any time limit imposed under this subsection may be extended for not more than 30 days. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1.)

§ 10-615. Required denials — In general.

A custodian shall deny inspection of a public record or any part of a public record if:

(1) by law, the public record is privileged or confidential; or

(2) the inspection would be contrary to:

(i) a State statute;

(ii) a federal statute or a regulation that is issued under the statute and has the force of law;

(iii) the rules adopted by the Court of Appeals; or

(iv) an order of a court of record. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1.)

§ 10-616. Required denials — Specific records.

(a) *In general.* — Unless otherwise provided by law, a custodian shall deny inspection of a public record, as provided in this section.

(b) *Adoption records.* — A custodian shall deny inspection of public records that relate to the adoption of an individual.

(c) *Welfare records.* — A custodian shall deny inspection of public records that relate to welfare for an individual.

(d) *Letters of reference.* — A custodian shall deny inspection of a letter of reference.

(e) *Circulation records.* — A custodian shall deny inspection of a circulation record of a public library that identifies the transactions of a borrower.

(f) *Gifts.* — A custodian shall deny inspection of library, archival, or museum material given by a person to the extent that the person who made the gift limits disclosure as a condition of the gift.

(g) *Retirement records.* — (1) Subject to paragraphs (2) through (4) of this subsection, a custodian shall deny inspection of a retirement record for an individual.

(2) A custodian shall permit inspection:

(i) by the person in interest;

(ii) by the appointing authority of the individual; and

(iii) after the death of the individual, by a beneficiary, personal representative, or other person who satisfies the administrators of the retirement and pension systems that the person has a valid claim to the benefits of the individual.

(3) A custodian shall permit inspection by the employees of a county unit that, by county law, is required to audit the retirement records for current or former employees of the county. However, the information obtained during the inspection is confidential, and the county unit and its employees may not disclose any information that would identify a person in interest.

(4) On request, a custodian shall state whether the individual receives a retirement or pension allowance.

(h) *Personnel records.* — (1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of a personnel record of an individual, including an application, performance rating, or scholastic achievement information.

(2) A custodian shall permit inspection by:

(i) the person in interest; or

(ii) an elected or appointed official who supervises the work of the individual.

(i) *Hospital records.* — A custodian shall deny inspection of a hospital record that:

(1) relates to:

(i) medical administration;

(ii) staff;

(iii) medical care; or

(iv) other medical information; and

(2) contains general or specific information about 1 or more individuals.

(j) *Student records.* — (1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of a school district record about the biography, family, physiology, religion, academic achievement, or physical or mental ability of a student.

(2) A custodian shall permit inspection by:

(i) the person in interest; or

(ii) an elected or appointed official who supervises the student. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1; ch. 285, § 8.)

§ 10-617. Required denials — Specific information.

(a) *In general.* — Unless otherwise provided by law, a custodian shall deny inspection of a part of a public record, as provided in this section.

(b) *Medical and psychological information.* — (1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of the part of a public record that contains medical or psychological information about an individual, other than an autopsy report of a medical examiner.

(2) A custodian shall permit the person in interest to inspect the public record to the extent permitted under § 4-302 (b) of the Health-General Article.

(c) *Sociological information.* — If the official custodian has adopted rules or regulations that define sociological information for purposes of this subsection, a custodian shall deny inspection of the part of a public record that contains sociological information, in accordance with the rules or regulations.

(d) *Commercial information.* — A custodian shall deny inspection of the part of a public record that contains any of the following information provided by or obtained from any person or governmental unit:

(1) a trade secret;

(2) confidential commercial information;

(3) confidential financial information; or

(4) confidential geological or geophysical information.

(e) *Public employees.* — A custodian shall deny inspection of the part of a public record that contains the home address or telephone number of an employee of a unit or instrumentality of the State or of a political subdivision unless:

(1) the employee gives permission for the inspection; or

(2) the unit or instrumentality that employs the individual determines that inspection is needed to protect the public interest.

(f) *Financial information.* — (1) This subsection does not apply to the salary of a public employee.

(2) Subject to paragraph (3) of this subsection, a custodian shall deny inspection of the part of a public record that contains information about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or credit worthiness.

(3) A custodian shall permit inspection by the person in interest.

(g) *Information systems.* — A custodian shall deny inspection of the part of a public record that contains information about the security of an information system.

(h) *Licensing records.* — (1) Subject to paragraphs (2) through (4) of this subsection, a custodian shall deny inspection of the part of a public record that contains information about the licensing of an individual in an occupation or profession.

(2) A custodian shall permit inspection of the part of a public record that gives:

- (i) the name of the licensee;
- (ii) the business address of the licensee or, if the business address is not available, the home address;
- (iii) the business telephone number of the licensee;
- (iv) the educational and occupational background of the licensee;
- (v) the professional qualifications of the licensee;
- (vi) any orders and findings that result from formal disciplinary actions;

and

(vii) any evidence that has been provided to the custodian to meet the requirements of a statute as to financial responsibility.

(3) A custodian may permit inspection of other information about a licensee if:

- (i) the custodian finds a compelling public purpose; and
- (ii) the rules or regulations of the official custodian permit the inspection.

(4) Except as otherwise provided by this subsection or other law, a custodian shall permit inspection by the person in interest.

(5) A custodian who sells lists of licensees shall omit from the lists the name of any licensee, on written request of the licensee. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1; ch. 285, § 8.)

§ 10-618. Permissible denials.

(a) *In general.* — Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in this section.

(b) *Interagency and intra-agency documents.* — A custodian may deny inspection of any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit.

(c) *Examinations.* — (1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of test questions, scoring keys, and other examination information that relates to the administration of licenses, employment, or academic matters.

(2) After a written promotional examination has been given and graded, a custodian shall permit a person in interest to inspect the examination and the results of the examination, but may not permit the person in interest to copy or otherwise to reproduce the examination.

(d) *Research projects.* — (1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of a public record that contains the specific details of a research project that an institution of the State or of a political subdivision is conducting.

(2) A custodian may not deny inspection of the part of a public record that gives only the name, title, expenditures, and date when the final project summary will be available.

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(e) *Real property.* — (1) Subject to paragraph (2) of this subsection or other law, until the State or a political subdivision acquires title to property, a custodian may deny inspection of a public record that contains a real estate appraisal of the property.

(2) A custodian may not deny inspection to the owner of the property.

(f) *Investigations.* — (1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of:

(i) records of investigations conducted by the Attorney General, a State's Attorney, a city or county attorney, a police department, or a sheriff;

(ii) an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or

(iii) records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a city or county attorney, a police department, or a sheriff.

(2) A custodian may deny inspection by a person in interest only to the extent that the inspection would:

(i) interfere with a valid and proper law enforcement proceeding;

(ii) deprive another person of a right to a fair trial or an impartial adjudication;

(iii) constitute an unwarranted invasion of personal privacy;

(iv) disclose the identity of a confidential source;

(v) disclose an investigative technique or procedure;

(vi) prejudice an investigation; or

(vii) endanger the life or physical safety of an individual. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1; ch. 285, § 8.)

§ 10-619. Temporary denials.

(a) *Permitted.* — Whenever this Part III of this subtitle authorizes inspection of a public record but the official custodian believes that inspection would cause substantial injury to the public interest, the official custodian may deny inspection temporarily.

(b) *Petition.* — (1) Within 10 working days after the denial, the official custodian shall petition a court to order permitting the continued denial of inspection.

(2) The petition shall be filed with the circuit court for the county where:

(i) the public record is located; or

(ii) the principal place of business of the official custodian is located.

(3) The petition shall be served on the applicant, as provided in the Maryland Rules.

(c) *Rights of applicant.* — The applicant is entitled to appear and to be heard on the petition.

(d) *Hearing.* — If, after the hearing, the court finds that inspection of the public record would cause substantial injury to the public interest, the court may pass an appropriate order permitting the continued denial of inspection. (An. Code 1957, art. 76A, § 3; 1984, ch. 284, § 1.)

Determination whether disclosure is contrary to the public interest is within the discretion of the custodian. 64 Op. Att'y Gen. 236 (1979).

§ 10-620. Copies.

- (a) *In general.* — (1) Except as otherwise provided in this subsection, an applicant who is authorized to inspect a public record may have:
- (i) a copy, printout, or photograph of the public record; or
 - (ii) if the custodian does not have facilities to reproduce the public record, access to the public record to make the copy, printout, or photograph.
- (2) An applicant may not have a copy of a judgment until:
- (i) the time for appeal expires; or
 - (ii) if an appeal is noted, the appeal is dismissed or adjudicated.
- (b) *Conditions.* — (1) The copy, printout, or photograph shall be made:
- (i) while the public record is in the custody of the custodian; and
 - (ii) whenever practicable, where the public record is kept.
- (2) The official custodian may set a reasonable time schedule to make copies, printouts, or photographs. (An. Code 1957, art. 76A, § 4; 1984, ch. 284, § 1.)

§ 10-621. Fees.

- (a) *In general.* — Subject to the limitations in this section, the official custodian may charge an applicant a reasonable fee for the search for, preparation of, and reproduction of a public record.
- (b) *Limitation on search and preparation fees.* — The official custodian may not charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection.
- (c) *Limitation on reproduction fees.* — (1) If another law sets a fee for a copy, printout, or photograph of a public record, that law applies.

(2) The official custodian otherwise may charge any reasonable fee for making or supervising the making of a copy, printout, or photograph of a public record.

(3) The official custodian may charge for the cost of providing facilities for the reproduction of the public record if the custodian did not have the facilities.

(d) *Waiver.* — The official custodian may waive a fee under this section if:

- (1) The applicant asks for a waiver; and
- (2) After consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest. (An. Code 1957, art. 76A, § 4; 1984, ch. 284, § 1.)

§ 10-622. Administrative review.

(a) *Scope of section.* — This section does not apply when the official custodian temporarily denies inspection under § 10-619 of this subtitle.

(b) *Permitted.* — If a unit is subject to Subtitle 2 of this title, a person or governmental unit may seek administrative review in accordance with that subtitle of a decision of the unit, under this Part III of this subtitle, to deny inspection of any part of a public record.

(c) *Not required.* — A person or governmental unit need not exhaust the remedy under this section before filing suit. (An. Code 1957, art. 76A, § 5; 1984, ch. 284, § 1.)

§ 10-623. Judicial review.

(a) *Petition authorized.* — Whenever a person or governmental unit is denied inspection of a public record, the person or governmental unit may file a complaint with the circuit court for the county where:

- (1) the complainant resides or has a principal place of business; or

(2) the public record is located.

(b) *Defendant.* — (1) Unless, for good cause shown, the court otherwise directs and notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to the complaint within 30 days after service of the complaint.

(2) The defendant:

(i) has the burden of sustaining a decision to deny inspection of a public record; and

(ii) in support of the decision, may submit a memorandum to the court.

(c) *Court.* — (1) Except for cases that the court considers of greater importance, a proceeding under this section, including an appeal, shall:

(i) take precedence on the docket;

(ii) be heard at the earliest practicable date; and

(iii) be expedited in every way.

(2) The court may examine the public record in camera to determine whether any part of it may be withheld under this Part III of this subtitle.

(3) The court may:

(i) enjoin the State, a political subdivision, or a unit, official, or employee of the State or of a political subdivision from withholding the public record;

(ii) pass an order for the production of the public record that was withheld from the complainant; and

(iii) for noncompliance with the order, punish the responsible employee for contempt.

(d) *Damages.* — (1) A defendant governmental unit is liable to the complainant for actual damages and any punitive damages that the court considers appropriate if the court finds that any defendant knowingly and willfully failed to disclose or fully to disclose a public record that the complainant was entitled to inspect under this Part III of this subtitle.

(2) An official custodian is liable for actual damages and any punitive damages that the court considers appropriate if the court finds that, after temporarily denying inspection of a public record, the official custodian failed to petition a court for an order to continue the denial.

(e) *Disciplinary action.* — (1) Whenever the court orders the production of a public record that was withheld from the applicant and, in addition, finds that the custodian acted arbitrarily or capriciously in withholding the public record, the court shall send a certified copy of its finding to the appointing authority of the custodian.

(2) On receipt of the statement of the court and after an appropriate investigation, the appointing authority shall take the disciplinary action that the circumstances warrant.

(f) *Costs.* — If the court determines that the complainant has substantially prevailed, the court may assess against a defendant governmental unit reasonable counsel fees and other litigation costs that the complainant reasonably incurred. (An. Code 1957, art. 76A, §§ 3, 5; 1984, ch. 284, § 1; ch. 285, § 8.)

§ 10-624. Personal records.

(a) *"Personal record" defined.* — In this section, "personal record" means a public record that names or, with reasonable certainty, otherwise identifies an individual by an identifying factor such as:

- (1) an address;
- (2) a description;
- (3) a finger or voice print;
- (4) a number; or
- (5) a picture.

- (b) *Annual report.* — (1) This subsection does not apply to:
- (i) a unit in the Legislative Branch of the State government;
 - (ii) a unit in the Judicial Branch of the State government; or

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(iii) a board of license commissioners.

(2) If a unit or instrumentality of the State government keeps personal records, the unit or instrumentality shall submit an annual report to the Secretary of General Services, as provided in this subsection.

(3) An annual report shall state:

(i) the name of the unit or instrumentality;

(ii) for each set of the personal records:

1. the name;

2. the location; and

3. if a subunit keeps the set, the name of the subunit;

(iii) for each set of personal records that has not been previously reported:

1. the category of individuals to whom the set applies;

2. a brief description of the types of information that the set contains;

3. the major uses and purposes of the information;

4. by category, the source of information for the set; and

5. the policies and procedures of the unit or instrumentality as to access and challenges to the personal record by the person in interest and storage, retrieval, retention, disposal, and security, including controls on access; and

(iv) for each set of personal records that has been disposed of or changed significantly since the unit or instrumentality last submitted a report, the information required under item (iii) of this paragraph.

(4) A unit or instrumentality that has 2 or more sets of personal records may combine the personal records in the report only if the character of the personal records is highly similar.

(5) The Secretary of General Services shall adopt regulations that govern the form and method of reporting under this subsection.

(6) The annual report shall be available for public inspection.

(c) *Access for research.* — The official custodian may permit inspection of personal records for which inspection otherwise is not authorized by a person who is engaged in a research project if:

(1) the researcher submits to the official custodian a written request that:

(i) describes the purpose of the research project;

(ii) describes the intent, if any, to publish the findings;

(iii) describes the nature of the requested personal records;

(iv) describes the safeguards that the researcher would take to protect the identity of the persons in interest; and

(v) states that persons in interest will not be contacted unless the official custodian approves and monitors the contact;

(2) the official custodian is satisfied that the proposed safeguards will prevent the disclosure of the identity of persons in interest; and

(3) the researcher makes an agreement with the unit or instrumentality that:

(i) defines the scope of the research project;

(ii) sets out the safeguards for protecting the identity of the persons in interest; and

(iii) states that a breach of any condition of the agreement is a breach of contract. (An. Code 1957, art. 76A, § 5A; 1984, ch. 284, § 1.)

§ 10-625. Corrections of public record.

(a) *Request for change permitted.* — A person in interest may request a unit of the State government to correct inaccurate or incomplete information in a public record that:

- (1) the unit keeps; and
- (2) the person in interest is authorized to inspect.

(b) *Contents of request.* — A request under this section shall:

- (1) be in writing;
- (2) describe the requested change precisely; and
- (3) state the reasons for the change.

(c) *Action on request.* — (1) Within 30 days after receiving a request under this section, a unit shall:

- (i) make or refuse to make the requested change; and
- (ii) give the person in interest written notice of the action taken.

(2) A notice of refusal shall contain the unit's reasons for the refusal.

(d) *Statement of disagreement.* — (1) If the unit finally refuses a request under this section, the person in interest may submit to the unit a concise statement that, in 5 pages or less, states the reasons for the request and for disagreement with the refusal.

(2) Whenever the unit provides the disputed information to a third party, the unit shall provide to that party a copy of the statement submitted to the unit by the person in interest.

(e) *Administrative and judicial review.* — If a unit is subject to Subtitle 2 of this title, a person or governmental unit may seek administrative and judicial review in accordance with that subtitle of:

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- (1) a decision of the unit to deny:
 - (i) a request to change a public record; or
 - (ii) a right to submit a statement of disagreement; or
- (2) the failure of the unit to provide the statement to a third party. (An. Code 1957, art. 76A, §§ 4A, 5; 1984, ch. 284, § 1; ch. 285, § 8.)

§ 10-626. Unlawful disclosure of personal records.

(a) *Liability.* — A person, including an officer or employee of a governmental unit, is liable to an individual for actual damages and any punitive damages that the court considers appropriate if:

(1) the person willfully and knowingly permits inspection or use of a public record in violation of this Part III of this subtitle; and

(2) the public record names or, with reasonable certainty, otherwise identifies the individual by an identifying factor such as:

- (i) an address;
- (ii) a description;
- (iii) a finger or voice print;
- (iv) a number; or
- (v) a picture.

(b) *Costs.* — If the court determines that the complainant has substantially prevailed, the court may assess against a defendant reasonable counsel fees and other litigation costs that the complainant reasonably incurred. (An. Code 1957, art. 76A, § 5; 1984, ch. 284, § 1.)

§ 10-627. Prohibited acts; criminal penalties.

(a) *Prohibited acts.* — A person may not:

(1) willfully or knowingly violate any provision of this Part III of this subtitle;

(2) fail to petition a court after temporarily denying inspection of a public record; or

(3) by false pretenses, bribery, or theft, gain access to or obtain a copy of a personal record whose disclosure to the person is prohibited by this Part III of this subtitle.

(b) *Criminal penalties.* — A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000. (An. Code 1957, art. 76A, §§ 3, 5; 1984, ch. 284, § 1.)

§ 10-628. Immunity for certain disclosures.

A custodian is not civilly or criminally liable for transferring or disclosing the contents of a public record to the Attorney General under Article 64A, § 12J of the Code. (An. Code 1957, art. 76A, § 5; 1984, ch. 284, § 1.)

§§ 10-629, 10-630.

Reserved.

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Court Rules

Chapter 1200

Court Administration

Rule 1218. Court Information System.

a. Reporting and Transmittal of Criminal History Record Information.

1. The District Court of Maryland shall transmit to the Central Repository of Criminal History Record Information of the Department of Public Safety and Correctional Services the data elements of criminal history record information on offenses agreed to by the Secretary of the Department of Public Safety and Correctional Services and the Chief Judge of the Court of Appeals or his designee for purposes of completing a criminal history record maintained by the Central Repository of Criminal History Record Information.

2. Transmittal of Reports of Dispositions.

When a defendant has been charged by citation and a conviction is entered by reason of his payment of a fine or forfeiture of collateral before trial, the conviction is not a reportable event under Article 27, Section 747 (a) (10), Annotated Code of Maryland.

b. Inspection of Criminal History Record Information Contained in Court Records of Public Judicial Proceedings.

Unless expunged, sealed, marked confidential or otherwise prohibited by statute, court rule or order, criminal history record information contained in court records of public judicial proceedings is subject to inspection by any person at the times and under conditions as the clerk of a court reasonably determines necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of his office.

(Added Dec. 21, 1977, effective Jan. 1, 1978.)

Title 12
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES

Subtitle 15 CRIMINAL JUSTICE INFORMATION SYSTEM
CENTRAL REPOSITORY

Chapter 01 Implementation of the Criminal Justice Information
System Statute

Authority: Article 27, §746, Annotated Code of Maryland

.01 Purpose.

The purpose of these regulations is to implement the provisions of Article 27, §§742—755, Annotated Code of Maryland.

.02 Applicability.

These regulations apply to the executive branch of State government and local criminal justice agencies other than those in the judicial branch of government, and to individuals, agencies, and other organizations who have entered into an agreement with the Secretary, Department of Public Safety and Correctional Services, for access to criminal history record information, and to individuals who are the subject of an individual criminal history record.

.03 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Collection" refers to the receipt, organization, and processing of CHRI by a criminal justice agency, a criminal justice repository, or the Criminal Justice Information System Central Repository (Central Repository).

(2) "Conviction criminal history record information" means CHRI regarding reportable events which have resulted in a finding of guilt. For the purpose of dissemination, the acceptance of a plea of nolo contendere by a court, or a probation before judgment, shall be considered as conviction CHRI.

(3) "Criminal history record information (CHRI)" means data initiated or collected by a criminal justice agency on a person

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pertaining to a reportable event, and includes data from an agency required to report to the Central Repository under Health-General Article, Title 12, Annotated Code of Maryland. The term does not include:

(a) Data contained in intelligence or investigatory files or police work-product records used solely for police investigation purposes;

(b) Data pertaining to a proceeding under Courts and Judicial Proceedings Article (Juvenile Causes), Title 3, Subtitle 8, Annotated Code of Maryland, but it does include data pertaining to a person following waiver of jurisdiction by a juvenile court;

(c) Wanted posters, police blotter entries, court records of public judicial proceedings, or published court opinions;

(d) Data pertaining to violations of the traffic laws of the State or any other traffic law, ordinance, or regulation, or violations of local ordinances, or State or local regulations, or violations of the Natural Resources Article of the Annotated Code of Maryland, or public local laws;

(e) Data concerning the point system established by the Motor Vehicle Administration in accordance with the provisions of Transportation Article, Title 16, Annotated Code of Maryland;

(f) Presentence investigation and other reports prepared by a probation department for use by a court in the exercise of criminal jurisdiction or by the Governor in the exercise of his power of pardon, reprieve, commutation, or nolle prosequi.

(4) "Criminal justice agency":

(a) Means any government agency or subunit of an agency which:

(i) Is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, custodial treatment, or confinement under Health-General Article, Title 12, Annotated Code of Maryland, rehabilitation, or release of persons suspected, charged, or convicted of a crime or relieved of criminal punishment by verdict of not criminally responsible, or is responsible for criminal identification activities and the collection, storage, and dissemination of criminal history record information, and

(ii) Allocates a substantial portion of its annual budget to any of the functions in §B(4)(a)(i);

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(b) Does not include the Department of Juvenile Services or a juvenile court;

(c) Does include the following agencies, when exercising jurisdiction over criminal matters or criminal history record information:

(i) State, county, and municipal police departments and agencies, sheriff's offices, correctional facilities, parole and probation departments, jails, and detention centers,

(ii) An agency required to report to the Central Repository under Health-General Article, §12-107 or 12-112, Annotated Code of Maryland,

(iii) The Offices of the Attorney General, the State's Attorney, and any other person authorized by law to prosecute persons accused of criminal offenses,

(iv) The Administrative Office of the Courts, the Court of Appeals, the Court of Special Appeals, the circuit courts (including the courts of the Supreme Bench of Baltimore City), the District Court of Maryland, and the offices of the clerks of these courts.

(5) "Criminal justice information system" means the equipment (including computer hardware and software), facilities, procedures, agreements, and personnel used in the collection, processing, preservation, and dissemination of CHRI.

(6) "Criminal justice purpose" means any use of CHRI made by:

(a) A criminal justice agency in the performance of its functions as a criminal justice agency, or for the purpose of hiring or retaining its own employees and agents;

(b) The Maryland Public Defender or other defense counsel of record for the purpose of the defense of a client in a pending criminal proceeding.

(7) "Disseminate" means to transmit CHRI in any oral or written form. The term does not include the:

(a) Transmittal of this information within a criminal justice agency;

(b) Reporting of this information as required by Article 27, §747, Annotated Code of Maryland;

(c) Transmittal of this information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense;

(d) Disclosure of this information during the preparation for or during the conduct of a public judicial proceeding by the State's Attorney, Attorney General, any law enforcement officer, or any other person authorized by law to conduct criminal investigations or to prosecute persons accused of criminal offenses.

(8) "Nonconviction criminal history record information" means:

(a) Arrest information without disposition if an interval of 1 year has elapsed from the date of arrest and no active prosecution of the charge is pending;

(b) Information disclosing that the police have elected not to refer a matter to a prosecutor;

(c) A prosecutor has elected not to begin criminal proceedings;

(d) Proceedings have been indefinitely postponed;

(e) Acquittals;

(f) Dismissals.

(9) "Private party petitioner" means a nongovernmental employer, employment agency, membership association, landlord (including a public housing authority), or duly designated agents who are licensed, chartered, or registered in any state, territory, or possession of the United States, or in the District of Columbia.

(10) "Reportable event" means an event specified or provided for in Article 27, §747, Annotated Code of Maryland.

(11) "Reporting" means the transmittal of CHRI by criminal justice agencies or repositories to the Criminal Justice Information System Central Repository (Central Repository).

(12) "Secretary" means the Secretary of the Maryland Department of Public Safety and Correctional Services.

.04 Criminal Justice Information System Central Repository (Central Repository).

A. Pursuant to Article 27, §747(b), Annotated Code of Maryland, there is a Criminal Justice Information System Central Repository (Central Repository). The Central Repository shall perform functions assigned to the State Central Crime Records Bureau, and the Criminal Records Central Repository of the Maryland State Police, and other tasks delegated to it by the Secretary to ensure the accuracy, completeness, and security of CHRI in Maryland.

B. The Central Repository has the:

(1) Responsibility to enter into an agreement:

(a) With agencies which, by law or regulatory process, have the right to access or contribute to CHRI,

(b) Which complies with Article 27, §748, Annotated Code of Maryland; and

(c) Which requires the approval of the Secretary;

(2) Authority to perform audits of any criminal justice agency with respect to any individual CHRI to ensure the completeness and accuracy of information reported or disseminated;

(3) Authority to inspect and evaluate the procedures and facilities relating to the privacy and security of CHRI in any agency bound by these regulations, and to enforce the sanctions agreed upon with the Central Repository;

(4) Authority to deny a criminal justice agency access to any CHRI unless access is in accordance with an approved agreement;

(5) Authority to refuse acceptance of any CHRI unless the information is submitted in accordance with an approved agreement.

.05 Right of an Individual to Inspect His Criminal History Record.

A. Access to Criminal History Record.

(1) A person may inspect criminal history record information concerning the applicant, maintained by a criminal justice agency, unless the information or any part of it is relevant to a pending criminal proceeding.

(2) The restriction in §A(1) does not affect any right of inspection and discovery permitted by rule of court or by statute.

(3) Criminal history record information which was recorded before January 1, 1978 is subject to the right of access and challenge in accordance with this subtitle.

(4) The duty of a criminal justice agency is to make a reasonable search for the information maintained under its control.

(5) There is no duty to provide access to criminal history record information that cannot be located after a reasonable search.

B. A fee, as specified in Regulation .14 of this chapter, shall be charged an individual for each request to review that individual's record, unless the individual files a verified certificate of indigence.

C. Filing Request to Review CHRI.

(1) Individuals wishing to file a request and subsequently review their criminal history record may do so at the Central Repository or other locations designated by the Director, Central Repository.

(2) The address of the Central Repository is CJIS Central Repository, 1201 Reisterstown Road, Baltimore, MD 21208, telephone (301) 653-4455.

(3) The hours during which individuals may review their criminal history record at the Central Repository are 9 a.m.—3 p.m., Monday through Friday, except on State holidays.

D. Filing Request to Review CHRI from Local Police Agency.

(1) Until all criminal history data is filed at the Central Repository, individuals may file a request and subsequently review that part of their criminal history record maintained by a criminal justice agency other than the Central Repository.

(2) The request and review is subject to the procedures of the criminal justice agency which maintains the record.

(3) Each criminal justice agency which maintains criminal history record information shall adopt procedures for individual review and challenge of that information. These procedures shall be in compliance with applicable federal and State law and regulations.

E. An offender held in custody at a law enforcement agency, detention center, or correctional institution as the result of a court action may file a request and subsequently review his criminal history record at the location of his confinement.

F. Before individuals may review their record, they shall provide verification of their identity through fingerprint comparison with the Central Repository record through the use of an application form specified by the Central Repository. Information on where an individual may be fingerprinted can be obtained from the Director of the Central Repository.

G. An attorney may review a client's criminal history record if the attorney satisfactorily establishes his identity, presents a written authorization from the attorney's client, and submits a fee, as specified in Regulation .14 of this chapter.

H. An application form specified by the Central Repository, properly completed and including the individual's right thumbprint or other available print if the right thumb cannot be fingerprinted, shall be forwarded to the Central Repository for identification, verification, and the record check.

I. The Central Repository shall verify the identity of the applicant.

J. Upon confirmation of the applicant by fingerprint comparison and other available identifiers, the Central Repository shall complete the application form and return it, and a copy of any record information, within 30 days to the agency or barrack which submitted the request.

K. Denial of Review.

(1) The Central Repository or other agency possessing the individual's criminal history record may deny review of a record if, in its opinion, the individual is not:

(a) The subject of that record; or

(b) Entitled to review the record under the limitations set forth in Article 27, §752(f), Annotated Code of Maryland.

(2) The reason for denial of review shall be indicated on the application form by the Central Repository or other agency which denies access, and the form shall be returned to the individual within 30 days.

(3) The individual shall be advised in writing of his right to appeal the denial of review.

L. The Central Repository shall retain a copy of the application form.

M. When an individual returns to review his criminal history record, the individual:

(1) Shall countersign the application form;

(2) May make notes of the information; and

(3) May obtain a copy at the individual's expense.

N. A person who challenges his criminal history record information may challenge the completeness, contents, accuracy, or dissemination of this information.

.06 Right of an Individual to Challenge a Denial to Inspect.

A. If an individual is denied the right to inspect his criminal history record, pursuant to the procedures in Regulation .05 of this chapter, the individual may challenge this denial in accordance with the procedures in this regulation. This regulation does not pertain to court procedures or court records where inspection has been denied by the courts.

B. Challenge to Denial.

(1) An individual may file a challenge to a denial of the request to inspect a record by submitting:

(a) An application form specified by the Central Repository; and

(b) A complete set of fingerprints taken at the location of the individual's original request by the original agency, or at a location designated by the Director, Central Repository.

(2) A challenge shall be filed within 10 days of the denial to inspect a record.

C. The Secretary has the authority to designate a review officer.

D. The Secretary, or the Secretary's designee, shall:

(1) Set a review date within 30 days of the date the challenge was filed; and

(2) Within the 30-day period, compare the full set of fingerprints submitted by the person who challenged the record with the fingerprints on the arrest record.

E. The Secretary shall issue to the individual and to the Central Repository a written decision stating whether the individual filing the challenge is the individual in the record. A copy of the decision shall be retained by the Central Repository and copies shall be disseminated by the Central Repository to any other agency which is a party to the denial process.

F. If the Secretary decides that the challenger is:

(1) The subject of the record, the challenger may, upon submission of the written decision of the Secretary to the official who denied access to the record, or to the Central Repository, view the record;

(2) Not the subject of the record, the challenger may not be permitted to inspect the record.

G. The challenger or the agency maintaining the record may appeal the decision of the Secretary, and this appeal shall be taken in accordance with the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

.07 Right of an Individual to Challenge Completeness, Contents, Accuracy, and Dissemination.

A. An individual who has inspected his criminal history record information may challenge the completeness, contents, accuracy, or dissemination of this information.

B. Challenge to Inaccurate CHRI.

(1) The individual shall submit a form specified by the Central Repository as notice of the challenge to the Central Repository and to the agency at which the individual inspected the information, if other than the Central Repository.

(2) Upon receipt of the notice, the Central Repository shall conduct an examination of that part of the individual's criminal history record information which has been challenged as to completeness, contents, accuracy, and dissemination. As part of the examination, the Central Repository may require any criminal justice agency that was the source of challenged information to verify the information.

(3) The Central Repository shall notify the individual in writing of the results of its examination and determination within 90 days after receipt of the individual's notice of challenge.

(4) If the challenge or any part of it is rejected, the notification of results shall inform the individual of the individual's right of appeal.

C. Correction of CHRI.

(1) If a challenge is determined to be valid, the Central Repository shall:

(a) Make the appropriate correction on the Central Repository's record; and

(b) Notify any criminal justice or other agency which has custody of the incomplete or inaccurate information, of this correction.

(2) The criminal justice agency shall correct its records and certify to the Central Repository that the correction was made.

(3) Upon request, an individual whose record has been corrected shall be given the names of all noncriminal justice agencies or

individuals to whom the data has been given during the prior 12-month period.

D. Notice of Correction.

(1) A criminal justice agency or other agency required to correct any criminal history record information that had previously disseminated this incorrect information shall give written notice of the correction to any agency or individual to whom the information had been disseminated.

(2) The recipient agency or individual shall promptly make the correction on its records, and certify to the disseminating agency that the correction was made.

E. Appeal.

(1) If the individual's challenge to the completeness, contents, accuracy, or dissemination is denied by the Central Repository, the individual may appeal the decision.

(2) An individual shall file a form specified by the Central Repository within 30 days of the denial with the:

(a) Secretary;

(b) Law enforcement agency which contributed or created the record; and

(c) Central Repository.

F. The Secretary may designate a hearing officer to hear the challenge.

G. The Secretary or the Secretary's designee shall set a hearing date within 30 days of the date the appeal was filed, and the hearing shall be held within 60 days of the date the appeal was filed.

H. Failure of an applicant to appear at the hearing shall be cause to deny the challenge.

I. At the challenge hearing, the applicant who filed the challenge and any agency party to the challenge may:

(1) Be represented by an attorney;

(2) Introduce additional evidence; and

(3) Interrogate persons responsible for recording or maintaining the criminal history record in question.

J. Decision of Hearing.

(1) The Secretary shall issue a written order stating the decision of the hearing to the:

- (a) Applicant; and
- (b) Central Repository.

(2) The Central Repository shall:

- (a) Retain a copy of the order; and
- (b) Disseminate a copy of the order to any other agency or person who is party to the hearing.

K. Secretary's Order.

(1) If the Secretary's order concludes that the challenge to the completeness, contents, accuracy, or dissemination of the record is correct, the order shall direct that the record be corrected.

(2) The Central Repository and the local law enforcement agency which contributed or created the record shall:

- (a) Correct its records; and
- (b) Certify to the Secretary that the correction was made.

L. A criminal justice agency required to correct any criminal history record information pursuant to §§K—M, that had previously disseminated this information, shall give written notice to the agency or person to whom the information was disseminated, of the correction. That agency or person shall promptly make the correction on its records, and certify to the disseminating agency that the correction was made.

M. A party to the matter may further appeal the decision of the Secretary, and this appeal shall be taken in accordance with the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

N. Central Repository records relating to the individual's right to review and challenge shall be:

- (1) Centrally maintained in the place and manner designated by the Secretary; and
- (2) Retained for a minimum of 4 years, with the exception of the fingerprint card which shall be retained for a minimum of 15 years.

.08 Collection.

A. The Central Repository shall collect and store CHRI from all criminal justice agencies or CHRI repositories in the State.

B. Receipt by the Central Repository of CHRI shall be organized so as to accurately reflect the processing of an individual through the criminal justice system and to ensure complete, accurate, private, and secure records.

.09 Reporting.

A. Each criminal justice agency or CHRI repository shall report CHRI, whether collected manually or by means of an automated system, to the Central Repository in accordance with the following provisions:

(1) Data pertaining to an arrest or the issuance of an arrest warrant shall be reported within 72 hours after the arrest is made or the warrant is issued, whichever first occurs;

(2) Data pertaining to the release of a person after arrest without the filing of a charge shall be reported within 30 days after the person is released;

(3) Data pertaining to any other reportable event shall be reported within 60 days after occurrence of the event.

B. CHRI shall be reported by all criminal justice agencies to the Central Repository in an organized manner that:

(1) Reflects the identification of the offender and the movements of that individual through the criminal justice system; and

(2) Conforms to federal and State laws and regulations as supplemented by operational procedures issued by the Central Repository relating to the completeness, accuracy, privacy, and security of CHRI.

C. The Secretary shall specify the content, format, and media for CHRI reported to the Central Repository.

.10 Dissemination of CHRI—General.

A. The Central Repository and other criminal justice agencies may not access or disseminate criminal history record information except in accordance with federal and State laws and regulations and the regulations promulgated pursuant to Article 27, §746, Annotated Code of Maryland.

B. Only the Central Repository may disseminate CHRI to a noncriminal justice agency or individual. However, the Central Repository, through agreement with another criminal justice agency, may specify the other criminal justice agency as a location at which a noncriminal justice agency or individual may inquire to the Central Repository for the purpose of receiving CHRI. The agreement may also provide for the Central Repository to authorize the criminal justice agency to disseminate to the noncriminal justice agency appropriate CHRI maintained by the criminal justice agency. Under these circumstances the disseminating criminal justice agency shall maintain a log of each dissemination, showing the date the request was made, the purpose for which the request was made, the information disseminated, the agency or person receiving the information, and the date of the dissemination. The Central Repository shall maintain in its log the fact that it authorized the criminal justice agency to disseminate the CHRI and the name of the agency or individual to whom the CHRI was disseminated.

C. An agency or individual may not confirm the existence or nonexistence of CHRI to any person or agency that would not be eligible to receive the information itself.

D. Logs required to be kept under this chapter shall be maintained for at least 3 years.

E. The use of CHRI by an authorized agency or individual is limited to the specific purpose or purposes stated in this chapter and may not be disseminated further except with specific authorization.

F. In addition to any other remedy or penalty authorized by law, the Secretary may determine any individual or agency to be in violation of the provisions of this chapter and may take the necessary steps to enforce compliance with this chapter, including termination of access to CHRI, revocation of any agreement between the agency and the Central Repository, as well as appropriate judicial or administrative proceedings.

G. Dissemination of CHRI.

(1) The Secretary or the Secretary's designee shall, from time to time, review agreements and approved petitions to determine if continued dissemination of CHRI based on the agreements and petitions is consistent with current law, regulation, and policy.

(2) If the Secretary determines that continued dissemination under an agreement or petition is not consistent with current law, regulation, or policy, the Secretary shall revoke the agreement or

tion, terminate access to CHRI, and send written notice of the revocation to the individual, agency, private employer, or organization stating the reasons for the revocation.

(3) An individual, agency, private employer, or organization whose access is terminated by the Secretary may appeal the action in accordance with the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

.11 Dissemination of CHRI—Criminal Justice Agency.

A. Subject to the provisions of Regulation .12B, the Central Repository and other criminal justice agencies shall disseminate CHRI, be it conviction or nonconviction criminal history record information, to a criminal justice agency upon a request made in accordance with applicable regulations adopted by the Secretary. A criminal justice agency may request this information from the Central Repository or another criminal justice agency only if it has a need for the information:

- (1) In the performance of its function as a criminal justice agency; or
- (2) For the purpose of hiring or retaining its own employees and agents.

B. Dissemination Between Criminal Justice Agencies.

(1) A criminal justice agency may not disseminate CHRI to another criminal justice agency until the disseminating agency has requested and received from the Central Repository verification that the information to be disseminated is complete, accurate, and current.

(2) The criminal justice agency or the Central Repository shall verify the identity of the criminal justice agency to which the disseminating agency intends to provide the information.

(3) A criminal justice agency may satisfy the verification requirement through the use of an automated information system provided by the Department of Public Safety and Correctional Services.

(4) The Central Repository shall maintain a record or log of the request showing the:

- (a) Date the request was made;
- (b) Information to be disseminated;
- (c) Criminal justice agency receiving the information; and
- (d) Date of the dissemination.

(5) This section does not apply if the receiving criminal justice agency demonstrates to a responsible official of the disseminating criminal justice agency or the Central Repository that a delay in the receipt of information from the Central Repository will unduly impede necessary action by the requesting criminal justice agency or will violate or materially impair a substantive right of the person about whom the information is needed. However, the disseminating agency shall maintain a log of each dissemination under these conditions, showing the:

- (a) Date of dissemination;
- (b) Information disseminated;
- (c) Criminal justice agency to whom it was disseminated; and
- (d) Date of the dissemination.

C. When a request for the dissemination of CHRI is made by a criminal justice agency from another state, disseminations shall be limited to the purposes for which CHRI is disseminated to criminal justice agencies within Maryland.

D. A fee, as specified in Regulation .14 of this chapter, shall be charged for each request for access to CHRI for other than a criminal justice purpose.

.12 Dissemination of CHRI—Noncriminal Justice Agency.

A. Subject to the provisions of Regulations .10B, .11B, and §C of this regulation, and except as otherwise authorized by §B of this regulation, the Central Repository may not disseminate to a noncriminal justice federal, State, or local government agency the following:

(1) Conviction CHRI unless the person or agency to whom the information is to be disseminated is expressly authorized by statute, ordinance, executive order, or court rule, decision, or order to grant, deny, suspend, revoke, or terminate a license, employment, or other right or privilege, and the statute, ordinance, order, or rule specifies the existence or nonexistence of a prior conviction or other criminal conduct as a condition to the grant, denial, suspension, revocation, or termination of the license, employment, right, or privilege. References to "good moral character", "trustworthiness", or other less specific traits are sufficient to authorize dissemination when they are determined by the courts to be inclusive of criminal conduct.

(2) Nonconviction CHRI unless the person or agency to whom the information is to be disseminated is expressly authorized by statute,

ordinance, executive order, court rule, decision, or order to grant, deny, suspend, revoke, or terminate a license, employment, or other right or privilege, and the statute, ordinance, executive order, or court rule, decision, or order specifies access to nonconviction CHRI in consideration of the decision to grant, deny, suspend, revoke, or terminate a license, employment, right, or privilege.

B. The following noncriminal justice persons and agencies may receive from the Central Repository conviction and nonconviction CHRI for the purpose and under the conditions stated:

(1) For the purpose of determining suitability for employment or eligibility for security clearances, the following agencies may receive this information:

(a) The Department of Personnel; or

(b) Other appointing authority of the federal, State, or local unit of government.

(2) For the purpose of the defense of a client in a pending criminal proceeding, the following persons may receive this information:

(a) The Maryland Public Defender; or

(b) A defense counsel of record.

(3) A bail bondsman may receive this information relating to a client, if authorized by the Maryland Rules of Practice and Procedure of the Court of Appeals.

(4) The Department of Juvenile Services may receive this information for the purposes of an investigation pursuant to the disposition of a juvenile case.

(5) Research, Evaluation, and Statistical Analysis.

(a) For the purpose of research, evaluation, and statistical analysis of criminal activity the following agencies may receive this information:

(i) The Governor's Office of Justice Assistance;

(ii) The Maryland Justice Analysis Center of the Institute of Criminal Justice and Criminology of the University of Maryland; and

(iii) Another office, board, commission, or task force and the designated agents of these organizations established and granted CHRI access by Executive Order of the Governor or directive of the Secretary.

(b) Statistical analyses derived from this information may not include the name of any individual or any other unique identifiers relating to the individual.

(6) A person or agency engaged in legitimate research, evaluation, or statistical analysis activities may, pursuant to an agreement with the Secretary or the Chief Judge of the Court of Appeals, receive this information necessary to these activities, but this information may not include the name of any individual or other information allowing identification of individuals, such as fingerprint identification numbers, case numbers, record or file numbers, or the like.

(7) A person or agency under contract with a criminal justice agency to provide specific services required by the criminal justice agency to perform any of its criminal justice functions may, pursuant to an agreement with the Secretary, receive this information necessary in order to carry out its contract.

(8) The Attorney Grievance Commission and any of its subunits, the Board of Law Examiners and any of its subunits, the Commission on Judicial Disabilities, and a judicial nominating commission may receive and use CHRI for the purpose of exercising their respective functions in connection with lawyer discipline, bar admissions, judicial discipline, and judicial selection.

C. For CHRI disseminated to a noncriminal justice agency, the Central Repository or the designated criminal justice agency disseminating the CHRI shall:

(1) Verify the identity of the noncriminal justice agency and the person requesting to receive the information; and

(2) Maintain a record or log of a request showing the:

- (a) Date the request was made,
- (b) Purpose for which the request was made,
- (c) Information disseminated,
- (d) Agency or person receiving the information, and
- (e) Date of the dissemination.

D. A fee, as specified in Regulation .14 of this chapter, shall be charged for each request for access to CHRI for other than a criminal justice purpose.

.13 Dissemination of CHRI—Private Party Petitioner.

A. Subject to the provisions of §B of this regulation and Regulations .10B, .11B, and .12C, and except as otherwise authorized by Regulation .12B, the Central Repository may not disseminate to a private party petitioner the following:

(1) Conviction CHRI concerning current or prospective employees, occupants of leased real property, volunteers, or members of an association, unless the private party petitioner convincingly demonstrates to the Secretary that the subject of the request will, in the subject's status as an employee, occupant of the leased real property, volunteer, or member of the association, have the capability to:

(a) Jeopardize the life or safety of individuals,

(b) Cause significant loss or damage by illegally accessing or misusing the fiscal or nonfiscal assets of the employer, landlord, association or its members, or the public, or

(c) Otherwise engage or participate in criminal conduct in violation of State, local, and federal law;

(2) Nonconviction CHRI unless the private party petitioner is expressly authorized by statute, ordinance, executive order, or court rule, order, or decision specifying the right of access to nonconviction CHRI and the purpose and conditions for access.

B. A procedure when private party petitioners may petition for the right to be granted access to conviction CHRI consistent with §A(1) of this regulation shall be established by the Secretary in accordance with the following:

(1) The petition shall require the petitioner to list the instances when access is desired and the reason for requesting the access consistent with this regulation.

(2) The Secretary, with the advice of the Advisory Board, shall:

(a) Develop specific classes for which access consistent with this chapter is to be provided; and

(b) Maintain for each class a list of all private party petitioners who have petitioned for and been granted access.

(3) Access to CHRI may not be granted under this section if the private party petitioner is otherwise authorized under law, regulation, or agreement to access CHRI for the requested class.

(4) Each petitioner shall pay \$5 per individual conviction CHRI record check at the time of the request to the Department of Public Safety and Correctional Services.

C. A fee, as specified in Regulation .14 of this chapter, shall be charged for each request for access to CHRI for other than a criminal justice purpose.

.14 Fee for Accessing Criminal Records for Other Than Criminal Justice Purposes.

A. A nonrefundable fee of \$18 shall be submitted with each request to access for other than criminal justice purposes an individual criminal history record maintained by the Central Repository.

B. A nonrefundable fee to cover the costs of providing the requested information shall be submitted with each request to access CHRI for research, evaluation, and statistical analysis for other than criminal justice purposes as defined in Regulation .12B(5) and (6) of this chapter. The fee shall be comprised of costs, when applicable, for computer programming, computer processing, computer output media, handling, shipping, and other associated expenses based upon current rates.

C. Payment shall be made as follows:

(1) Method:

- (a) Certified check,
- (b) Cashier's check,
- (c) Money order, or
- (d) Personal check;

(2) The payee is the CJIS Central Repository;

(3) Maryland government units may submit interagency fund transfer authorizations instead of funds.

D. Requests for national CHRI access passing through the Central Repository to the Federal Bureau of Investigation (FBI) require the submission of an additional fee as specified by the FBI to cover the FBI's costs of processing the request.

.15 Security.

A. The Secretary incorporates by reference the specific federal regulations regarding security under 41 FR (March 19, 1976).

B. Criminal justice agencies are responsible for reporting in a timely manner breaches or failures of physical or operational security to the Secretary or the Secretary's designee.

C. If there is a breach of the physical security of CHRI or a failure to meet physical security standards of CHRI as stipulated in these regulations and as supplemented by operational policies issued by the Central Repository relating to the physical security of CHRI, the Secretary of Public Safety and Correctional Services has the responsibility to ensure that the breach is corrected.

D. If there is a failure to comply with personnel policies relating to CHRI as stipulated in these regulations and as supplemented by personnel policies issued by the Central Repository relating to CHRI, the Secretary of Public Safety and Correctional Services has the responsibility to ensure that this failure is corrected.

E. If there is a breach of the operational security of the Criminal Justice Information System as defined in Article 27, §743(g), Annotated Code of Maryland, or a failure to meet the operating security standards of that system as stipulated in these regulations and as supplemented by operational procedures issued by the Central Repository relating to the security of operations in the Criminal Justice Information System, the Secretary of Public Safety and Correctional Services has the responsibility to ensure that this breach or failure is corrected.

F. If the privacy or confidentiality of CHRI has been intentionally or inadvertently abused or when the potential for this abuse may exist, the Secretary of Public Safety and Correctional Services has the responsibility to ensure that this abuse or potential for abuse is corrected.

.16 Auditing.

A. Audit of CHRI.

(1) As required by applicable federal and State laws and regulations, criminal justice agencies and CHRI repositories shall be audited on site for compliance with applicable laws, regulations, and agreements pertaining to the security, dissemination, completeness, and accuracy of CHRI.

(2) An annual on-site audit of a random sample, representative of State and local criminal justice agencies and repositories, shall be made at the direction of the Secretary. The audit shall ensure that CHRI is accurate and complete and that it is collected, reported, and

disseminated in accordance with the provisions of Article 27, §§742—755, Annotated Code of Maryland.

(3) At a minimum, the on-site audit shall evaluate a criminal justice agency's compliance with applicable rules, regulations, agreements, and laws pertaining to physical, personal, and operational security, dissemination, completeness, and accuracy of CHRI.

(4) An audit of a representative sample of CHRI shall be made not less than quarterly.

(5) As required, other methods, procedures, and standards for auditing criminal justice agencies and CHRI repositories may be established at the direction of the Secretary.

B. Criminal justice agencies and CHRI repositories shall retain and provide access to CHRI source documents, dissemination logs, security manuals, and other data as deemed necessary to perform the audit in §A. Records shall be retained a minimum of 15 years.

.17 Agreements.

A. Agreements shall be developed between the Secretary and criminal justice agencies and CHRI repositories and other agencies, private employers, organizations, and individuals, as provided in this chapter, which shall incorporate the principles and requirements of applicable federal and State laws and regulations pertaining to the privacy, security, completeness, accuracy, and dissemination of CHRI.

B. Each agreement shall be a written document and signed by the individual, agency, private employer, organization, or repository, and the Secretary or the Secretary's designee.

Title 12
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES
Subtitle 15 CRIMINAL JUSTICE INFORMATION SYSTEM
CENTRAL REPOSITORY

Chapter 02 Criminal Background Investigations for the
Employee and Employer of a Child Care Facility
Authority: Family Law Article, §§5-560—5-568, Annotated Code of Maryland

.01 Purpose.

The purpose of these regulations is to establish the procedures for the application for and processing of a criminal background investigation required by Family Law Article, §§5-560—5-568, Annotated Code of Maryland.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Child" means a person younger than 18 years old who is cared for or supervised in a facility as defined in Family Law Article, §5-561, Annotated Code of Maryland.
- (2) "CJIS Central Repository" means the Criminal Justice Information System Central Repository established by Article 27, §747(b), Annotated Code of Maryland.
- (3) "Department" means the Department of Public Safety and Correctional Services.
- (4) "Director" means the Director of the Criminal Justice Information System Central Repository who is the designee of the Secretary of Public Safety and Correctional Services.
- (5) "Disclosure statement" means the application form which includes a sworn statement disclosing the existence of a conviction or pending charges for specified offenses.

(6) "Employee" means a person who works for compensation in a facility identified in Family Law Article, §5-561, Annotated Code of Maryland, and who:

- (a) Cares for or supervises a child in the facility; or
- (b) Has access to a child who is cared for or supervised in the facility.

(7) Employer.

(a) "Employer" means an owner, operator, proprietor, or manager of a facility identified in Family Law Article, §5-561, Annotated Code of Maryland.

(b) "Employer" does not include a State or local agency responsible for the temporary or permanent placement of a child in a facility identified in Family Law Article, §5-561, Annotated Code of Maryland.

(8) "Facility" has the meaning stated in Family Law Article, §5-561, Annotated Code of Maryland.

(9) Previously Processed.

(a) "Previously processed" means that an individual 18 years old or older has submitted a disclosure statement and fingerprint card, and the Department has completed a criminal background investigation.

(b) In the case of an individual younger than 18 years old, "previously processed" means the individual has submitted the disclosure statement (fingerprints are not required of applicants younger than 18 years old).

(10) "Regulatory authority" means a State, county, or local government agency responsible for licensing any facility identified under Family Law Article, §5-561, Annotated Code of Maryland.

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

.03 Application Process.

A. On or before the first day of employment at a facility, an individual shall, except as provided in §§E and F of this regulation, complete and submit to the CJIS Central Repository a disclosure statement, two fingerprint cards, and the required processing fees.

B. The disclosure statement and fingerprint cards may be obtained from the:

- (1) Regulatory authority responsible for approving the license;
- (2) Applicant's place of employment;
- (3) Local law enforcement agency; or
- (4) CJIS Central Repository. *Change*

C. An individual shall show proof of identity before being fingerprinted.

D. The disclosure statement and any information obtained by the employer from the Department under Family Law Article, §§5-560—5-568, Annotated Code of Maryland, are confidential.

E. An employee younger than 18 years old hired on or after October 1, 1986, shall:

- (1) Submit the disclosure statement and State processing fee, but it is not necessary to submit a fingerprint card or Federal Bureau of Investigation processing fee; and

- (2) Submit, within 3 months of the employee's 18th birthday, the documentation specified in §A of this regulation.

F. An individual previously processed under this subtitle who:

- (1) Ceases employment at a facility and has a contractual relationship to reestablish employment within 1 year does not need to submit the documentation and fee specified in §A of this regulation upon reestablishing employment;

- (2) Is currently employed at a facility shall submit only the disclosure statement and State processing fee when applying for employment at another facility.

G. If an individual's fingerprints have been rejected for illegibility on three or more occasions, the individual may request that the CJIS Central Repository evaluate the potential of capturing legible fingerprints from that individual.

.04 Payment of Fees.

A. The CJIS Central Repository shall charge a nonrefundable fee as specified by the Federal Bureau of Investigation to secure a federal criminal record check.

B. The CJIS Central Repository shall charge a nonrefundable fee as specified in COMAR 12.15.01.14 to secure a Maryland criminal record check.

C. The processing fee shall be paid when the disclosure statement is filed with the CJIS Central Repository. A check or money order shall be made payable to the CJIS Central Repository.

D. A State agency may submit an interagency fund transfer authorization.

.05 Criminal Justice Information System Central Repository Responsibilities.

A. The CJIS Central Repository shall receive, process, and respond to a request for a criminal record check for an individual who has been selected for employment in a facility identified in Family Law Article, §5-561, Annotated Code of Maryland.

B. The Director shall ensure that staff:

(1) Forward the disclosure statement and applicant's fingerprint card to the appropriate law enforcement agencies and other agencies designated by the Secretary;

(2) Return an incomplete disclosure statement or fingerprint card to the individual for proper completion;

(3) Forward a copy of the signed disclosure statement to the appropriate authority or employer within 3 days of receipt by the CJIS Central Repository;

(4) Forward a follow-up response when the Maryland background investigation identifies the existence of a conviction, pending charge, or offense described in Family Law Article, §5-564(b), Annotated Code of Maryland, or on receipt of the final Federal Bureau of Investigation record check, to the employer, employee, and State or local licensing, registering, approving, or certifying agency;

(5) Forward a revised response to the current employer, and the employee or volunteer after confirming current employment, when a conviction, pending charge, or offense described in the Family Law Article, §5-564(b), Annotated Code of Maryland, is recorded on the State computerized criminal history file;

(6) Inform the Maryland State Police of the probable commission of perjury by the applicant, if the response specified in §B(4) of this regulation indicates the prior existence of a conviction, pending

charge, or offenses described in Family Law Article, §5-564(b), Annotated Code of Maryland; and

(7) Coordinate and monitor processing procedures with all State, county, and local government agencies and implement necessary operational procedures relating to a request for criminal history record information under these regulations.

.06 Right of an Individual to Appeal the Finding of a Conviction or Pending Charge.

A. An individual may appeal the findings of the criminal record search. The appeal process does not pertain to denial of employment.

B. An individual shall contact the Director and a hearing shall be convened in 20 working days unless the hearing is subsequently waived by the appellant.

C. The Director shall render a decision regarding the appeal within 5 working days of the hearing and notify the appellant of the decision.

D. A certified copy of a court docket entry showing a conviction and identifying the individual shall be considered proof of conviction and grounds for denial of the appeal.

.07 Distribution of Disclosure Statements and Fingerprint Cards.

A. A blank disclosure statement and fingerprint cards shall be picked up from the CJIS Central Repository by employers, regulatory authorities, and law enforcement agencies.

B. Requests for these items shall be submitted in writing and contain an estimate of the amount required for a 30-day period.

.08 Designated Agencies for Fingerprinting.

A. Each designated agency shall establish times for fingerprinting. Proof of identity of the individual to be fingerprinted shall be required at the time of fingerprinting. The following law enforcement agencies are designated as approved locations for fingerprinting:

(1) Allegany County—Allegany County Sheriff's Department; Cumberland Police Department; Frostburg State University Police Department; Frostburg Police Department.

(2) Anne Arundel County—Anne Arundel County Police Department.

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(3) Baltimore City—Baltimore City Police Department; University of Maryland at Baltimore Police.

(4) Baltimore County—Baltimore County Police Department; Towson State University Police Department; University of Maryland at Baltimore County Police Department.

(5) Calvert County—Calvert County Sheriff's Department; North Beach Police Department.

(6) Caroline County—Denton Police Department; Federalsburg Police Department; Greensboro Police Department; Preston Police Department; Ridgely Police Department.

(7) Carroll County—Carroll County Sheriff's Department; Hampstead Police Department; Manchester Police Department; Sykesville Police Department; Taneytown Police Department; Westminster Police Department.

(8) Cecil County—Cecil County Sheriff's Department; Elkton Police Department; Northeast Police Department; Rising Sun Police Department.

(9) Charles County—Charles County Sheriff's Office.

(10) Dorchester County—Dorchester County Sheriff's Department; Cambridge Police Department.

(11) Frederick County—Frederick County Sheriff's Department; Brunswick Police Department; Frederick City Police Department; Thurmont Police Department.

(12) Garrett County—Garrett County Sheriff's Office.

(13) Harford County—Harford County Sheriff's Department; Aberdeen Police Department; Bel Air Police Department; Havre de Grace Police Department.

(14) Howard County—Howard County Sheriff's Department; Howard County Police Department.

(15) Kent County—Kent County Sheriff's Department; Chestertown Police Department; Rock Hall Police Department.

(16) Montgomery County—Montgomery County Sheriff's Department; Montgomery County Police Department; Montgomery County Division of the Maryland-National Capital Park Police; Rockville City Police Department; Takoma Park Police Department.

(17) Prince George's County—Prince George's County Sheriff's Department; Prince George's County Police Department; Berwyn

(3) Baltimore City—Baltimore City Police Department; University of Maryland at Baltimore Police.

(4) Baltimore County—Baltimore County Police Department; Towson State University Police Department; University of Maryland at Baltimore County Police Department.

(5) Calvert County—Calvert County Sheriff's Department; North Beach Police Department.

(6) Caroline County—Denton Police Department; Federalsburg Police Department; Greensboro Police Department; Preston Police Department; Ridgely Police Department.

(7) Carroll County—Carroll County Sheriff's Department; Hampstead Police Department; Manchester Police Department; Sykesville Police Department; Taneytown Police Department; Westminster Police Department.

(8) Cecil County—Cecil County Sheriff's Department; Elkton Police Department; Northeast Police Department; Rising Sun Police Department.

(9) Charles County—Charles County Sheriff's Office.

(10) Dorchester County—Dorchester County Sheriff's Department; Cambridge Police Department.

(11) Frederick County—Frederick County Sheriff's Department; Brunswick Police Department; Frederick City Police Department; Thurmont Police Department.

(12) Garrett County—Garrett County Sheriff's Office.

(13) Harford County—Harford County Sheriff's Department; Aberdeen Police Department; Bel Air Police Department; Havre de Grace Police Department.

(14) Howard County—Howard County Sheriff's Department; Howard County Police Department.

(15) Kent County—Kent County Sheriff's Department; Chestertown Police Department; Rock Hall Police Department.

(16) Montgomery County—Montgomery County Sheriff's Department; Montgomery County Police Department; Montgomery County Division of the Maryland-National Capital Park Police; Rockville City Police Department; Takoma Park Police Department.

(17) Prince George's County—Prince George's County Sheriff's Department; Prince George's County Police Department; Berwyn

Heights Police Department; Bladensburg Police Department; Cottage City Police Department; District Heights Police Department; Edmonston Police Department; Greenbelt Police Department; Hyattsville City Police Department; Landover Hills Police Department; Laurel Police Department; Prince George's County Division of the Maryland-National Capital Park Police; Riverdale Police Department.

(18) Queen Anne's County—Centreville Police Department.

(19) St. Mary's County—St. Mary's County Sheriff's Department; Security Department, Patuxent Naval Air Station.

(20) Somerset County—Crisfield Police Department; University of Maryland Eastern Shore Police Department.

(21) Talbot County—Talbot County Sheriff's Department; Easton Police Department; Oxford Police Department; St. Michaels Police Department.

(22) Washington County—Washington County Sheriff's Office; Hagerstown Police Department; Fort Ritchie Office of Security and Intelligence.

(23) Wicomico County—Wicomico County Sheriff's Department; Delmar Police Department; Fruitland Police Department; Salisbury Police Department; Salisbury State College Police Department.

(24) Worcester County—Berlin Police Department; Ocean City Police Department; Ocean Pines Police Department; Pocomoke City Police Department.

(25) All Maryland State Police Barracks and Natural Resources Police Departments.

(26) University of Maryland Police at College Park.

B. The Secretary shall designate additional appropriate State or local law enforcement offices in the State, or an approved location, where fingerprints may be obtained.

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Amendments to Regulations

Title 12

Department of Public Safety and Correctional Services

Subtitle 06 STATE POLICE

12.06.08 Implementation of the Criminal Justice Information System Statute

Authority: Article 27, §746,
Annotated Code of Maryland

Notice of Final Action

Notice is given that, on November 16, 1978, new Regulations .01—.14, under COMAR 12.06.08 Implementation of the Criminal Justice Information System Statute, were adopted by the Department of Public Safety and Correctional Services.

These new regulations, which were proposed for adoption in 4:25 Md. R. 1919—1928 (December 2, 1977), have been adopted substantially as proposed, with minor changes as shown below. The regulations become effective coincident with the date of this issue of the Maryland Register.

.01—.02 (proposed text unchanged)

.03 Definitions.

A. (proposed text unchanged)

B. "Criminal history record information (CHRI)" means data initiated or collected by a criminal justice agency on a person pertaining to a reportable event. The term does not include:

(1)—(3) (proposed text unchanged)

(4) Data pertaining to violations of the traffic laws of the State or any other traffic law, ordinance, or regulation, [except offenses involving death or injury to a person, or offenses under §11-902 of Article 66 ½ of the Code] or violations of local ordinances, or State or local regulations, or violations of the Natural Resources Article, unless the individual is arrested on a bench warrant issued for failure to appear in court or obey a court order for any of these violations, or unless the individual is committed to a correctional facility upon conviction for any of these violations;

(5)—(7) (proposed text unchanged)

C.—H. (proposed text unchanged)

I. "Conviction criminal history record information" means CHRI regarding reportable events which have resulted in a finding of guilt. For the purpose of dissemination [a finding of probation before verdict or judgment, or] the acceptance of a plea of nolle contendere by a court [L] shall be considered as conviction CHRI.

.04 (proposed text unchanged)

.05 **Right of an Individual to Inspect his Criminal History Record.**

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A.—E. (proposed text unchanged)

F. *Before an individual may review his record he will verify his identity by fingerprint comparison with the CRCR record through the use of Form CRCR001 [as described in these regulations].*

G.—L. (proposed text unchanged)

M. *When an individual returns to review his criminal history record, he shall countersign Form CRCR001. An individual inspecting his criminal history record may make notes of the information [but cannot require the agency to make a copy of any information or to remove any document in order to make a copy] or may obtain a certified copy at his expense.*

N. (proposed text unchanged)

.06—.07 (proposed text unchanged)

.08 CRCR Forms. (entire text deleted)

[[.09]] .08—[[.10]] .09 (proposed text unchanged)

[[.11]] .10 *Dissemination of Criminal History Record Information.*

A.—B. (proposed text unchanged)

C. *Subject to the provisions of §§ [(F) and] G, H, and I, below, and except as otherwise authorized by § [(E)] F, below, the CRCR may not disseminate to a non-criminal justice federal, State, or local government agency:*

(1)—(2) (proposed text unchanged)

D. *Subject to the provisions of §§ [(F) and] G, H, and I, below, and except as otherwise authorized by § [(E)] F, below, the CRCR may not disseminate to a private non-governmental employer or the private employer's designated agent:*

(1) (proposed text unchanged)

(2) *Non-conviction CHRI unless the employer is expressly authorized by statute, ordinance, executive order, or court rule, order, or decision specifying the right of access to non-conviction CHRI and the purpose and conditions for access.*

E. (proposed text unchanged)

[[1) Non-conviction CHRI unless the employer is expressly authorized by statute, ordinance, executive order, or court rule, order or decision specifying the right of access to non-conviction CHRI and the purpose and conditions for access.]]

F.—N. (proposed text unchanged)

[[.12]] .11—[[.14]] .13 (proposed text unchanged)

ROBERT J. LALLY

Secretary

Department of Public Safety
and Correctional Services

[Md. R. Doc. No. 78-1743. Filed at Div. of St. Doc. Nov. 17, 1978.]

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CRCR. The audit shall insure that CHRI is accurate and complete and that it is collected, reported, and disseminated in accordance with the provisions of Article 27, §§742--755, Annotated Code of Maryland. A quality control audit of a representative sample of CHRI will be made on a regular basis.

B. The CRCR will establish the methods, procedures, and standards for auditing criminal justice agencies and CHRI repositories.

C. Criminal justice agencies and CHRI repositories will retain and provide access to CHRI source documents, dissemination logs, security manuals, and other data as CRCR may deem necessary to perform an audit assuring adherence to the privacy, security, completeness, accuracy, and dissemination of CHRI.

D. Each criminal justice agency and CHRI repository will be subject to an on-site audit by CRCR to evaluate that agency's compliance with applicable rules, regulations, agreements, and laws pertaining to physical, personnel, and operational security, dissemination, and completeness and accuracy of CHRI.

E. Each criminal justice agency and CHRI repository will cooperate with CRCR in performing audits required by applicable federal and State laws and regulations.

.13 Agreements.

Agreements will be developed between the CRCR and criminal justice agencies and CHRI repositories which will incorporate the principles and requirements of applicable federal and State laws and regulations pertaining to the privacy, security, completeness, accuracy, and dissemination of CHRI.

Administrative History

Effective date: March 2, 1977 (4:5 Md. R. 384)

Chapter revised effective December 1, 1978 (5:24 Md. R. 1798)