

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 543 (Senator Conway)
Education, Health, and Environmental Affairs

**Higher Education - Admissions Process - Criminal History (Maryland Fair
Access to Education Act of 2017)**

This bill prohibits an institution of higher education that receives State funds from inquiring into or considering information about the criminal history of an individual during the admissions process, except if the institution knows or should know that the crime is ongoing. A student's criminal history may be inquired into and considered for the purposes of deciding campus residency, offering counseling and services, or deciding whether the student may participate in activities and aspects of campus life. An institution of higher education must use an individualized process that considers specified issues in denying or limiting an affected student's campus residency, an activity, or an aspect of campus life. An affected student must be given reasonable notice and an opportunity to appeal a denial or limitation. Institutions must inform accepted students in writing of the individualized process and the right students have to provide evidence of rehabilitation and good conduct.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: Higher education expenditures for public four-year institutions of higher education and Baltimore City Community College (BCCC) may increase, potentially significantly, in FY 2018 to alter their application forms and process as explained below. Higher education expenditures for public four-year institutions and BCCC may also increase if significant numbers of students with criminal histories are admitted due to the individualized process of consideration that the institutions must use to determine specified limitations on the student; however, these expenditures cannot be reliably estimated. Revenues are not materially affected.

Local Effect: Local community college expenditures may increase, potentially significantly, to alter their application forms and process as explained below. Local community college expenditures may also increase if significant numbers of students with criminal histories are admitted due to the individualized process of consideration that the institutions must use to determine specified limitations on the student; however, these expenditures cannot be reliably estimated. Revenues are not materially affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: In making inquiries or considering information to deny or limit an affected student's campus residency, an activity, or an aspect of campus life, an institution of higher education may not use any information about a student's criminal history to rescind an offer of admission, or automatically or unreasonably restrict a student's activities or aspects of campus life based on that student's criminal history.

The individualized process must consider the following: (1) the age of the student at the time of any aspect of the student's criminal history; (2) the time that has elapsed since any aspect of the student's criminal history occurred; (3) the nature of the criminal history and whether it bears a direct relationship to campus residency, the activity, or the aspect of campus life at issue; and (4) any evidence of rehabilitation or good conduct produced by the student.

An institution of higher education that inquires into or considers information about a student's criminal history, in a manner consistent with the bill, must consider the State's policy to promote the admission of students with criminal records, including formerly incarcerated individuals, to provide these students with the opportunity to obtain the knowledge and skills needed to contribute to the State's economy.

Current Law: Chapter 160 of 2013 prohibited, for most State jobs, inquiring into the criminal record or history of an applicant for employment until the applicant has been given an opportunity for an interview. There are no laws in Maryland related to what may be asked on a college application.

Background: According to a 2015 [Center for Community Alternatives](#) study, asking about an applicant's criminal history deters those with a criminal history from applying to college. At the time of the study, many college entry applications, including the common application used by more than 600 colleges, asked applicants about their criminal history.

Not getting a college degree can further limit an individual's ability to find a stable, well-paying job and contribute to the economy.

In a May 9, 2016 [letter](#), the U.S. Secretary of Education urged colleges and universities to remove barriers that can prevent the estimated 70 million citizens with criminal records from pursuing higher education. In response, the [Common Application](#) reported that the 2016-2017 application will still ask whether an applicant has been found guilty of a misdemeanor or felony, but it will remove the part of the question asking about any other crimes.

Legislation to ban inquiry into an applicant's criminal history on college applications has been introduced in New York and Illinois.

There have also been movements to ban employment applications from asking about an applicant's criminal history. This movement is known as "ban-the-box" since many employment applications require those with a criminal history to check a box on the application. Generally, under employment ban-the-box legislation, employers are banned from asking about criminal history until the applicant has been given an opportunity for an interview. The movement to ban colleges from asking about criminal history is likewise known as the college "ban-the-box" movement.

State Fiscal Effect: Higher education expenditures for public four-year institutions of higher education and BCCC may increase, potentially significantly, in fiscal 2018 due to alterations of the application forms and process as explained below. As noted above, the 2016-2017 common application asked whether an applicant has been found guilty of a misdemeanor or felony. It is unknown if the 2017-2018 common application or any future versions will ask about an applicant's criminal history.

The following four public institutions of higher education use the common application: Coppin State University; Salisbury University; University of Maryland Baltimore County; and St. Mary's College of Maryland. Thus, these institutions will need to either stop accepting the common application or figure out a way to hide the answer regarding criminal history from consideration. However, since the bill prohibits inquiring about an applicant's criminal history, just hiding the answer regarding criminal history may not be sufficient. If any of those institutions that use the common application do not have another application, they may need to develop one prior to the 2017-2018 application process. This may result in significant programming costs.

It is unknown how many institutions ask about criminal history on their own college applications. Those that ask will need to alter their applications. The costs will depend on their current system.

College applications generally start in November, and some applications such as the common application are released in August. Higher education expenditures in fiscal 2018 may increase, potentially significantly, to comply with the bill's restriction about inquiring into an applicant's criminal history. If institutions are barred from using the common application or if the institution's application release date is delayed, their applicant pool may decrease; however, this is not anticipated to materially affect higher education revenues.

Higher education expenditures for public four-year institutions and BCCC may increase if significant numbers of students with criminal histories are admitted due to the individualized process of consideration that the institutions must use to determine specified limitations on the student; however, these expenditures cannot be reliably estimated.

Local Fiscal Effect: As described above, local community college expenditures may increase, potentially significantly, due to alterations of the application forms and process, and if a significant number of students with criminal histories are admitted, due to the individualized process of consideration that the institutions must use to determine specified limitations on the students.

Additional Comments: It is unclear how an institution of higher education could or should know that a crime is ongoing if inquiry into a student's criminal history is prohibited unless the criminal activity was major national news.

In addition to public institutions, the bill affects private, nonprofit, four-year institutions that receive State funding. The Maryland Independent College and University Association (MICUA) advises that 11 of the 13 MICUA institutions that receive State aid use the common application, which asks about an applicant's criminal history. Like the public institutions, their expenditures may increase, potentially significantly, in fiscal 2018 to alter their application process. Any expenditures related to the individualized consideration process cannot be reliably estimated. The bill is not expected to affect for-profit institutions as they do not receive State funding or student financial aid; private career schools are not included in the definition of institution of higher education.

Additional Information

Prior Introductions: None.

Cross File: HB 694 (Delegates McIntosh and Barron) - Appropriations.

Information Source(s): Maryland Higher Education Commission; Baltimore City Community College; University System of Maryland; St. Mary's College of Maryland;

Maryland Independent College and University Association; Center for Community Alternatives; U.S. Department of Education; Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2017
md/rhh

Analysis by: Caroline L. Boice

Direct Inquiries to:
(410) 946-5510
(301) 970-5510