

Department of Legislative Services
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FISCAL AND POLICY NOTE

Senate Bill 701

(Senator Jones-Rodwell, *et al.*)

Judicial Proceedings

Criminal Records - Shielding - Nonviolent Misdemeanor Convictions

This bill authorizes a person to request that court records and police records relating to a conviction of the person remain inaccessible to members of the public (shielded) no earlier than three years after the person satisfies the sentence imposed for the conviction, including parole, probation, or mandatory supervision. This authorization does not apply to a conviction for a felony, a misdemeanor requiring registration as a sex offender, or a specified domestically related crime. If the person is convicted of a new crime during this three-year period, the original conviction is not eligible for shielding unless the new conviction becomes eligible for shielding. A shielded conviction may not be considered a conviction for specified expungement provisions.

The bill also prohibits an employer, educational institution, or a governmental entity from requiring disclosures of information about shielded criminal charges and taking specified actions against persons who refuse to disclose this information. Violators of this prohibition are subject to criminal penalties, including imprisonment and fines.

Fiscal Summary

State Effect: Significant increase in general fund expenditures for the Judiciary and the Department of Public Safety and Correctional Services (DPSCS) for computer programming and personnel. Significant operational impact for the District Court and DPSCS to comply with the bill's provisions. Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in local expenditures for circuit courts and local police departments to comply with the shielding requirements. Potential minimal increase in local expenditures due to the bill's incarceration penalty. Revenues are not affected.

Small Business Effect: Potential meaningful. Small businesses will no longer be able to conduct a complete background check on a prospective employee.

Analysis

Bill Summary: A shielded record must remain fully accessible to criminal justice units for legitimate criminal justice purposes, prospective employers who are statutorily required to inquire into an applicant's criminal background, specified facilities that are statutorily required to inquire into an employee's or an employer's criminal background, the person who is the subject of the shielded record, and the person's attorney.

An employer may not require a job applicant to disclose shielded information about criminal charges or discharge or refuse to hire a person solely because of the person's refusal to disclose information about shielded criminal charges.

An educational institution is prohibited from requiring a person who applies for admission to disclose shielded information about criminal charges or expel or refuse to admit a person solely because of the person's refusal to disclose information about shielded criminal charges.

A unit, an official, or an employee of the State or a political subdivision of the State may not require a person who applies for a license, permit, registration, or governmental service to disclose shielded information about criminal charges or deny a relevant application by the person because of the person's refusal to disclose information about shielded criminal charges.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a maximum fine of \$1,000. A violator who is an official or employee of the State or a political subdivision of the State may also be removed or dismissed from public service.

Current Law: Generally, court records and police records are not eligible for shielding. State law does authorize, under specified circumstances, the shielding of court records pertaining to domestic violence proceedings if the petition has been dismissed and upon the respondent's written request.

A person who has been charged with the commission of a crime may file a petition for expungement listing the relevant facts of a police record, court record, or other record maintained by the State or a political subdivision of the State, under various circumstances listed in the statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, *stet* of charge, and

gubernatorial pardon. Individuals convicted of specified public nuisance crimes are eligible for expungement of the associated criminal records under certain circumstances.

Expungement of a court record means removal from public inspection:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and
- if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

A “court record” is the official record of a court that the clerk of a court or other court personnel keeps about a criminal proceeding or any other proceeding, except a juvenile proceeding, concerning a civil offense or infraction enacted under State or local law as a substitute for a criminal charge. A court record includes (1) a record of a violation of the Transportation Article for which a term of imprisonment may be imposed and (2) an index, docket entry, charging document, pleading, memorandum, transcript of a proceeding, electronic recording, order, and judgment.

A “police record” is an official record maintained by a law enforcement unit, booking facility, or the Central Repository about the arrest and detention of, or further proceeding against, a person for (1) a criminal charge; (2) a suspected violation of criminal law; (3) a violation of the Transportation Article for which a term of imprisonment may be imposed; and (4) a civil offense or infraction (except a juvenile offense), enacted under State or local law as a substitute for a criminal charge.

State law requires a criminal history records check for various types of public- and private-sector employment in the State, typically where it is determined that there is a job-related need. Employees and employers in the following facilities must apply for a national and State criminal history records check at any designated law enforcement office in Maryland: (1) a licensed child care center; (2) a registered family day care home; (3) a licensed child care home; (4) a licensed child care institution; (5) a juvenile detention, correction, or treatment facility; (6) a public school; (7) a private or nonpublic school that is required to report to the State Board of Education; (8) a foster care family home or group facility; (9) a government-operated recreation center or program that primarily serves minors; or (10) a day or residential camp that primarily serves minors. Many local jurisdictions also specify requirements in statute regarding criminal background checks for employees, volunteers, or license applicants.

Background: Chapters 625 and 626 of 2009 (SB 908/HB 637) established a Task Force on Prisoner Reentry. The task force issued a final report of its findings and recommendations in 2011. The shielding of criminal records for nonviolent convictions from public view after an appropriate waiting/proving period was one of the task force's recommendations.

The Judiciary's website includes a link to "CaseSearch." CaseSearch provides public Internet access to information from case records maintained by the Judiciary. Maryland District Court traffic, criminal, and civil case records and circuit court criminal and civil case records are available. Records can remain in CaseSearch indefinitely and are not removed except by a court-ordered expungement.

State Expenditures: To the extent that shielding of records as prescribed by the bill is possible, general fund expenditures increase significantly for the Judiciary and DPSCS.

Judiciary

The Judiciary advises that it may not be able to comply with the bill's requirements with its current computer system. However, to the extent that compliance is possible, the Judiciary incurs significant general fund expenditures for computer reprogramming costs. *For illustrative purposes only*, computer reprogramming costs for bills requiring a similar level of effort ranged from \$124,000 to \$152,000.

In terms of manual procedures, in order to comply with the bill's provisions, a clerk has to examine court records to determine (1) if the conviction is for an eligible offense; (2) whether the petitioner has satisfied his/her sentence (including, parole, probation, or mandatory supervision); (3) whether three years have passed since the terms of the sentence were satisfied; and (4) whether the individual who is the subject of the record has been convicted of a new crime during the applicable time period, which impacts eligibility for shielding.

If an individual requests access to a shielded record, a clerk then has to make a determination as to whether the requestor is allowed access to the records due to the exceptions provided in the bill for criminal justice units and prospective employers who are required to perform a criminal background check on applicants. Complying with these procedures may significantly impact District Court operations and may require additional personnel, the extent to which cannot be reliably estimated at this time.

Department of Public Safety and Correctional Services

The Maryland Criminal Justice Information System (CJIS) advises that the bill results in a significant fiscal and operational effect. Due to the extensive number of crimes eligible

for shielding under the bill, CJIS needs to reprogram its computer systems in order to filter those records that should be shielded under the bill. CJIS estimates that the initial reprogramming will take six months to complete at a cost of \$150,000 in fiscal 2014.

In addition to computer reprogramming, CJIS needs to create and implement a manual process in order to filter shielded records from unshielded records and still maintain access to authorized requestors. According to CJIS, this process requires the creation of a unit dedicated to this process. CJIS estimates that the staffing needs of the unit alone exceed \$700,000. However, the extent of the costs (including staffing needs) associated with the manual process is unclear at this time and depends on the number of individuals who request that their records be shielded from public view.

Local Expenditures: Expenditures increase minimally for local police departments and circuit courts to comply with the bill's requirements.

Baltimore, Dorchester, and Garrett counties advise that the bill has no or minimal fiscal impact on their jurisdictions. Howard County advises that, according to its police department, the bill has a significant fiscal impact.

Additional Comments: The Department of Budget and Management (DBM) advises that there are some State positions that while sensitive in nature, do not require a statutory background check. These positions are typically considered "positions of trust" and involve the collection of money and access to personal information. While there is a legitimate business need for background checks on applicants for these positions, employers screening these applicants would not be granted "full access" to records under the bill. DBM advises that shielding information in these instances could negatively impact State hiring decisions and expose the State to harm from theft of funds or confidential information, as well as mismanagement of State programs by individuals whose criminal histories are incompatible with certain State positions.

In addition, applicants for certain business licenses are often required to report convictions (misdemeanors and felonies) that are related to the fitness of the applicant and the license sought. The governmental entities that license these individuals are not included in the list of entities allowed continued access to shielded records under the bill and would be subject to the criminal penalties in the bill if they require the applicant to disclose information about shielded records or deny an application based solely on the applicant's failure to disclose.

Additional Information

Prior Introductions: HB 652 of 2012, a similar bill, was withdrawn after receiving a hearing in the House Judiciary Committee. Its cross file, SB 667, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None designated. However, HB 1006 (Delegate Anderson, *et al.* – Judiciary) is virtually identical.

Information Source(s): Baltimore, Dorchester, Garrett, and Howard counties; Department of Budget and Management; Department of Natural Resources; Department of General Services; Maryland Higher Education Commission; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Maryland Department of Transportation; University System of Maryland; Maryland Task Force on Prisoner Reentry; Department of Legislative Services

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