

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 56

(Delegate Smigiel, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

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State Board of Professional Counselors and Therapists - Criminal History  
Records Checks

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This bill requires all applicants for a license or certificate from the State Board of Professional Counselors and Therapists to submit to a criminal history records check (CHRC). An additional CHRC must be performed every six years. The bill also creates a new ground for disciplinary action if an applicant, licensee, or certificate holder fails to submit to a CHRC as required under the bill.

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Fiscal Summary

**State Effect:** Potential minimal increase in special fund expenditures for the State Board of Professional Counselors and Therapists beginning in FY 2016 for seasonal contractual support to assist with the processing of CHRC results for renewal applications. Processing CHRC results for new applications can likely be handled with existing budgeted resources. No effect on revenues.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** Individuals licensed or certified on or after October 1, 2013, must submit to a CHRC as a condition of licensure or certification. Beginning with the renewal cycle in 2015, the board must require CHRCs on (1) selected renewal applicants as determined by board regulations and (2) former licensees filing for reinstatement after failure to renew a license for a period of one year or longer. An additional CHRC must be performed every six years after the initial CHRC is conducted. The board is

prohibited from issuing or renewing a license or certificate if the required CHRC information has not been received.

On receipt of criminal history records information, the board must consider the following factors in determining whether to grant or renew a license or certificate:

- the age at which the crime was committed;
- the circumstances surrounding the crime;
- the length of time that has passed since the crime;
- subsequent work history;
- employment and character references; and
- other evidence that demonstrates whether the applicant, licensee, or certificate holder poses a threat to public health or safety.

During the process of submitting information to the Central Repository for a CHRC, if an applicant has made three or more attempts at securing legible fingerprints, the board may accept an alternate method of CHRC as permitted by the director of the Central Repository and the director of the Federal Bureau of Investigation (FBI). The subject of a CHRC may contest the contents of the statement issued by the Central Repository.

**Current Law/Background:** The State Board of Professional Counselors and Therapists licenses and certifies professional counselors, alcohol and drug counselors, marriage and family therapists, and art therapists. In fiscal 2012, the board regulated a total of 5,192 individuals, issuing 1,160 initial licenses and 565 initial certificates.

*Criminal History Records Checks:* The board does not currently require CHRCs. However, each application for licensure or certification includes questions regarding past disciplinary actions, including whether the individual has ever (1) been denied an application, a request for reinstatement, or renewal; (2) had any disciplinary action taken against him or her by any state licensing or disciplinary board; or (3) had any investigation or charge brought against him or her. Each application also asks if the individual has ever pled guilty, *nolo contendere*, been convicted, or received probation before judgment of any criminal act (excluding traffic violations). If the board determines that an individual made incomplete or false statements about disciplinary or criminal actions, the board may pursue disciplinary action against the individual for fraudulently or deceptively obtaining or attempting to obtain a license or certificate.

As shown in **Exhibit 1**, five health occupations boards require CHRCs – all but one upon initial application only, while the State Board of Nursing also requires subsequent CHRCs at least once every 12 years upon renewal. With the exception of registered pharmacy technicians, both a State and federal check are required for all noted professions.

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**Exhibit 1**  
**Health Occupations Required to Obtain Criminal History Records Checks**

<b><u>Board</u></b>	<b><u>Occupation(s)</u></b>
Morticians and Funeral Directors	Mortuary Transport Service Providers <sup>1</sup>
Nursing	Registered Nurses <sup>2</sup> Licensed Practical Nurses <sup>2</sup> Certified Nursing Assistants <sup>2</sup> Electrologists <sup>2</sup>
Pharmacy	Registered Pharmacy Technicians <sup>3</sup> Wholesale Pharmaceutical Distributors
Examiners of Psychologists	Licensed Psychologists
Residential Child Care Professionals	Program Administrators Residential Child and Youth Care Practitioners <sup>4</sup>

<sup>1</sup> Certification began in 2013.

<sup>2</sup> Subsequent criminal history records checks are required upon renewal at least once every 12 years.

<sup>3</sup> State-only check required.

<sup>4</sup> Certification is not required until October 1, 2015.

Source: Department of Legislative Services

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According to the board, there have been two disciplinary cases in the past two years resulting from criminal backgrounds, both of which were applicants who were denied licensure or certification. It is unknown how many applicants or licensees may have criminal backgrounds that have not been reported to or identified by the board.

**State Expenditures:** Special fund expenditures for the board may increase by a minimal amount beginning in fiscal 2016 due to the bill's requirement that counselors and therapists obtain a CHRC as a condition of renewal at least once every six years. All counselors and therapists renew their license or certificate on a biennial basis. The board processes as many as 2,500 renewals annually between November 27 and January 31, with late renewals handled in February. The bill allows the board to stagger subsequent CHRCs by regulation provided that one is conducted at least every six years. Thus, the board may handle as many as 833 CHRCs on renewal annually beginning in fiscal 2016. Based on an analysis of the State Board of Nursing's CHRC results, an estimated 9% of results may be positive (a criminal history is identified); thus, the board may need to

follow up on approximately 75 CHRC results within a three-month timeframe annually. Given the board's relatively small staff, additional seasonal contractual support may be required to assist with processing CHRC results for renewal applications.

According to the board, any additional workload from the CHRC requirement for *new* applicants can likely be handled within existing budgeted resources as these applications are received on a rolling basis throughout the year. If the board continues to issue about 1,725 new licenses and certificates annually (the number issued in fiscal 2012) and approximately 9% are positive (a criminal history is identified), the board may need to follow up on roughly 155 CHRC results annually from new applicants.

**Additional Comments:** Each individual subject to a CHRC under the bill will be required to pay \$54.50 for a State and national CHRC including a \$20 fingerprinting fee, a \$16.50 FBI fee, an \$18 fee to the Criminal Justice Information System (CJIS) Central Repository in the Department of Public Safety and Correctional Services. CJIS collects, manages, and disseminates Maryland Criminal History Record Information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** *Sunset Review: Evaluation of the State Board of Nursing*, Department of Legislative Services, October 2011; Department of Health and Mental Hygiene; Department of Legislative Services

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