

**Department of Legislative Services**  
Maryland General Assembly  
2016 Session

**FISCAL AND POLICY NOTE**

**Third Reader - Revised**

Senate Bill 109

(Chair, Education, Health, and Environmental Affairs  
Committee)(By Request - Departmental - Health and  
Mental Hygiene)

Education, Health, and Environmental Affairs

Health and Government Operations

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**Health Occupations Boards - Criminal History Records Checks - Required**

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This departmental bill requires specified applicants and licensees of the Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists (BAHS); the Board of Examiners of Nursing Home Administrators (BENHA); the Board of Occupational Therapy Practice (BOTP); and the Board of Podiatric Medical Examiners (BPME) to submit to a criminal history records check (CHRC) under specified circumstances. The bill also creates new grounds for disciplinary action if a licensee fails to submit to a CHRC as required under the bill.

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**Fiscal Summary**

**State Effect:** Processing of CHRC results can be handled by the affected boards with existing budgeted resources. Any additional payments to the Criminal Justice Information System (CJIS) for CHRCs are anticipated to cover the costs associated with the additional checks.

**Local Effect:** None.

**Small Business Effect:** The Department of Health and Mental Hygiene has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

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## Analysis

**Bill Summary:** Applicants and licensees for BAHS, BENHA, BOTP, and BPME must submit to a CHRC as shown in **Exhibit 1**.

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### Exhibit 1 Criminal History Records Checks Required Under the Bill

<b><u>Board</u></b>	<b><u>Occupation(s)</u></b>	<b><u>CHRC Required Upon</u></b>
Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists	Audiologists	Initial Application
	Hearing Aid Dispensers	First renewal <sup>1</sup>
	Speech-Language Pathologists	
	Speech-Language Pathologist Assistants	
Nursing Home Administrators	Nursing Home Administrators	Initial Application
		First renewal <sup>1</sup>
		Reinstatement
		Designation or appointment to serve as acting administrator <sup>2</sup>
Occupational Therapy Practice	Occupational Therapists	Initial Application
	Occupational Therapist Assistants	First renewal <sup>1</sup>
		Reinstatement
Podiatric Medical Examiners	Podiatrists	Initial Application

<sup>1</sup>If no CHRC performed at initial application.

<sup>2</sup>Not applicable if the individual being designated or appointed is licensed by a health occupations board and previously completed a CHRC required for licensure.

Source: Department of Legislative Services

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The boards are prohibited from issuing, renewing, or reinstating specified licenses or approving specified appointments if the required CHRC information has not been received. BAHS, BENHA, and BOTP may deny an application for a license, reprimand a licensee, place a licensee on probation, suspend or revoke a license or limited license of a licensee, or impose a civil fine on an applicant or licensee for failure to submit to a CHRC. BENHA must consider, and may deny, an appointment as an acting nursing home administrator based on the same criteria used for initial applications, renewals, and reinstatements.

BPME may vote to deny a license or limited license to any applicant who fails to submit to a CHRC.

On receipt of criminal history records information, each board must consider the following factors in determining whether to grant, renew, or reinstate a license or approve an individual for appointment:

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

An applicant or licensee who is required to have a CHRC must apply to CJIS for both a State and national CHRC. An applicant must submit one complete set of fingerprints, the State criminal history fee, and the processing fee required by the Federal Bureau of Investigation (FBI). CJIS must forward to the relevant board and to the applicant the criminal history record information of the applicant. Information obtained from CJIS is confidential, may not be redisseminated, and may be used only for licensing, permitting, or registering purposes. The subject of a CHRC may contest the contents of the printed statement issued by CJIS. The cost of the CHRC is to be paid by the applicant.

For applicants and licensees of BAHS, BENHA, and BOTP, if additional CHRC information is reported to CJIS after the initial CHRC, CJIS must provide a revised printed statement of the individual's State criminal history record to the board.

**Current Law/Background:** Generally, applications for licensure, certification, or registration from health occupations boards include questions regarding past disciplinary actions, such as whether the individual has ever been denied an application, had any disciplinary action taken against him or her by any state licensing or disciplinary board, or had any investigation or charge brought against him or her. Applications also typically ask if the individual has ever pled guilty, pled *nolo contendere*, been convicted, or received probation before judgment for any criminal act. Based on an applicant's responses, a board may investigate an applicant. If a board determines that an individual made incomplete or false statements about disciplinary or criminal actions, the board may pursue disciplinary action for fraudulently or deceptively obtaining or attempting to obtain a license, certificate, or registration. As shown in **Exhibit 2**, 10 health occupations boards currently require CHRCs.

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**Exhibit 2**  
**Health Occupations Required to Obtain Criminal History Records Checks**

<b><u>Board</u></b>	<b><u>Occupation(s)</u></b>
Chiropractic and Massage Therapy	Chiropractors Massage Therapists Massage Practitioners
Morticians and Funeral Directors	Mortuary Transport Service Morticians and Funeral Directors Apprentices Surviving Spouses Executors Pre-need Trustees Corporations (under limited circumstances) Funeral Establishments
Nursing	Registered Nurses <sup>1</sup> Licensed Practical Nurses <sup>1</sup> Certified Nursing Assistants <sup>1</sup> Electrologists <sup>1</sup> Direct-entry Midwives <sup>2</sup>
Pharmacy	Registered Pharmacy <sup>3</sup> Wholesale Pharmaceutical Distributors
Physical Therapy	Physical Therapists Physical Therapy Assistants
Professional Counselors and Therapists	All applicants for licensure or certification <sup>4</sup>
Examiners of Psychologists	Licensed Psychologists
Residential Child Care Professionals	Program Administrators Residential Child and Youth Care Practitioners
Social Work Examiners	Licensed Bachelor Social Workers Licensed Certified Social Workers Licensed Certified Social Workers-Clinical
Physicians	All licensees regulated by the board

<sup>1</sup> Subsequent criminal history records checks are required upon renewal at least once every 12 years.

<sup>2</sup> Licensure estimated to begin in 2016. Subsequent checks required at least once every 12 years.

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

<sup>4</sup> Subsequent criminal history records checks are required every 6 years.

Source: Department of Legislative Services; Laws of Maryland

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All but four of these boards require CHRCs upon initial application only. Four boards require subsequent CHRCs upon renewal and/or reinstatement: Professional Counselors and Therapists (at renewal every six years); Nursing (at renewal every 12 years); and both Residential Child Care Professionals and Physicians (at renewal or reinstatement, no specified frequency). With the exception of registered pharmacy technicians, both a State and national check are required for all noted professions. Only Morticians and Funeral Directors permits the option of a CHRC conducted by an accredited agency.

In addition to licensure, certification, and registration by health occupations boards, some other individuals are required to obtain a CHRC. For example, under § 19-1902 of the Health-General Article, before an eligible employee may begin work for an adult dependent care program, the program must apply for a State CHRC or request a private agency to conduct a background check and request a reference from the potential employee's most recent employer. A nurse referral agency must develop and implement a procedure to screen licensed health care professionals and care providers, including a State CHRC or a private agency background check. The Maryland Department of Aging must adopt regulations that require a CHRC for an individual providing continuing-care-at-home services if the individual will have routine, direct access to a continuing care subscriber.

### ***Rap Back Program***

The requirement that CJIS provide a revised printed statement of the individual's State criminal history record to the board if additional CHRC information is reported to CJIS for applicants and licensees of BAHS, BENHA, and BOTP effectively enrolls BAHS, BENHA, and BOTP applicants in the CJIS "rap back" program. The fee for the rap back program is included in the State record check fee.

### ***Impact on State Boards***

Previous analysis of the Board of Nursing's CHRC reports found that about 9% of CHRCs contain positive results (a criminal record is returned) and require further inquiry by the board. Using this projected rate, the anticipated additional workload on each board is discussed below. BAHS, BENHA, BOTP, and BPME all advise that they can handle the bill's requirements and this additional workload with existing budgeted resources.

*Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists:* Currently, BAHS licenses 4,591 individuals and renews an average of 2,035 licenses each year. In fiscal 2015, BAHS received approximately 385 initial applications. Therefore, BAHS likely has to confirm that approximately 2,420 individuals completed a CHRC in fiscal 2017 and 2018. Approximately 218 may require further investigation. Once all previously licensed individuals have submitted proof of an applicable CHRC, the annual

number of individuals completing CHRCs likely decreases to approximately 400, with approximately 36 requiring further investigation.

*Nursing Home Administrators:* Currently, BENHA licenses 565 individuals and renews an average of 240 licenses each year. In fiscal 2015, BENHA also received 32 initial applications, 5 applications for reinstatement, and notice of 5 appointments. Therefore, BENHA likely has to confirm that approximately 280 individuals completed a CHRC in fiscal 2017 and 2018. Approximately 26 may require further investigation. Once all previously licensed individuals have submitted proof of a CHRC, the annual number of individuals completing CHRCs likely decreases to approximately 40, with approximately 4 requiring further investigation.

*Occupational Therapy:* Currently, BOTP licenses 4,006 individuals and renews licenses annually. Beginning in 2016, BOTP is transitioning to a biennial licensure period with one-half of licensees renewing each year. In fiscal 2015, BOTP received 386 initial applications and 55 applications for reinstatement. Assuming BOTP successfully transitions to biennial licensure, BOTP likely has to confirm that approximately 2,450 individuals completed a CHRC in fiscal 2017 and 2018. Approximately 220 may require further investigation. Once all previously licensed individuals have submitted proof of an applicable CHRC, the annual number of individuals completing CHRCs likely decreases to approximately 440, with approximately 40 requiring further investigation.

*Podiatric Medical Examiners:* Currently, BPME licenses 431 individuals. Under the bill, CHRCs are required for initial applicants only. In fiscal 2015, BPME received approximately 25 initial applications. Therefore, BPME likely has to confirm that approximately 25 individuals completed a CHRC in fiscal 2017, and annually thereafter. Approximately 2 may require further investigation.

### ***Cost to Applicant/Licensee***

Each individual who requests CJIS to conduct a CHRC under the bill is required to pay \$52.75 for a complete State and national CHRC. The fees include a \$20 fingerprinting fee, a \$14.75 FBI federal background check fee, and an \$18 CJIS State background check fee. The fee for the State rap back program is included in the initial State record check fee.

**Additional Comments:** Senate Bill 372 and House Bill 712 of 2013 would have authorized every health occupations board to adopt regulations requiring that a CHRC be performed under specified circumstances. Senate Bill 372 was recommitted to the Senate Education, Health, and Environmental Affairs Committee. House Bill 712 was withdrawn after a hearing by the House Health and Government Operations Committee.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - January 26, 2016  
kb/jc Revised - Senate Third Reader - March 23, 2016

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**ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

**Department of Health and Mental Hygiene  
Session 2016**

**TITLE OF PROPOSAL: Health Occupations Boards – Criminal History Records  
Checks – Required**

Bill Number: SB 109

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**PART A. ECONOMIC IMPACT RATING**

This agency estimates that the proposed bill:

X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESSES

**PART B. ECONOMIC IMPACT ANALYSIS**

No impact to the Boards or the Department. Any additional work required by receiving and reviewing the criminal history record checks can be absorbed with existing resources. For the licensees and applicants, there will be a fiscal impact of approximately \$60 for the check, paid to the Department of Public Safety and Correctional Services.