

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 48  
Judiciary

(Delegate Conaway)

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Criminal Procedure - Shielding - Nolle Prosequi

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This bill establishes that within 60 days after the State enters a *nolle prosequi* as to a charge in a criminal case within the jurisdiction of the District Court of Maryland, the court, on its own motion, must order the shielding of all police and court records relating to the charge. The bill also establishes procedures for when a State's Attorney objects to the shielding and required notifications to victims in shieldable cases.

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Fiscal Summary

**State Effect:** Potential significant increase in general fund expenditures for the Judiciary in FY 2018 only for computer reprogramming. Revenues are not affected, as discussed below.

**Local Effect:** The bill does not materially affect circuit court expenditures.

**Small Business Effect:** None.

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Analysis

**Bill Summary:**

*Objections to Shielding by State's Attorneys:* The State's Attorney may object to the shielding of a defendant's record by filing an objection within 30 days after the entry of *nolle prosequi*. If the State's Attorney files a timely objection, the court must schedule a hearing to be held within 45 days after the objection. During the hearing, the court must hear arguments in support of, and if presented, in opposition to, the objection to shielding. The court may take testimony from any individual that the court considers useful in

reaching its decision. If the court finds that the State's Attorney demonstrated that shielding the defendant's records would present a real and substantial risk of harm to the public or an individual, the court must order that the defendant's records remain unshielded. If the court finds that the State's Attorney has not made this showing, the court must enter an order shielding the police and court records relating to the charge for which the State entered a *nolle prosequi*.

*Victim Notification:* Within 30 days after the State enters a *nolle prosequi*, the court must send written notice to all listed victims in the case at the address listed in the court file notifying them that the defendant's police and court records relating to the shieldable charges will be shielded. When the State files a timely objection to the shielding, the court must also advise the victim(s) prior to the hearing date of the right to offer additional information relevant to the shielding of the defendant's records during the hearing.

**Current Law:** A *nolle prosequi* is a formal motion by a State's Attorney, indicating that the charge(s) will not be prosecuted.

Chapter 313 of 2015 authorizes a person to petition a court to shield the person's court records and police records relating to one or more "shieldable convictions" of the person entered in the circuit court or the District Court in one county no earlier than three years after the person satisfies the sentence imposed for all convictions for which shielding is requested, including parole, probation, or mandatory supervision. This authorization does not apply to a conviction for a domestically related crime. If a person is not eligible for shielding of one conviction in a "unit," the person is not eligible for shielding of any other conviction in the unit. A person may be granted only one shielding petition over the lifetime of the person, and a court may grant a shielding petition for good cause.

"Shield" means to render a court record and police record relating to a conviction of a crime inaccessible by members of the public. Also, the Maryland Judiciary Case Search may not in any way refer to the existence of specific records shielded in accordance with the statute. "Shieldable conviction" means a conviction of 1 of a list of 12 specified crimes. A "unit" means two or more convictions that arise from the same incident, transaction, or set of facts.

If the person is convicted of a new crime during the applicable time period, the original conviction or convictions are not eligible for shielding unless the new conviction becomes eligible for shielding. A person who is a defendant in a pending criminal proceeding is not eligible for shielding. A shielded conviction may not be considered a conviction for specified expungement provisions.

Chapter 313 also contains provisions regarding continued access to shielded information by specified individuals and entities (including law enforcement, State's Attorneys, and the

courts), prohibited disclosures of shielded information, and prohibited inquiries into a person's shielded information.

**Background:** According to the Judiciary, there were 67,822 *nolle prosequi* dispositions in the District Court during fiscal 2016.

**State Revenues:** Because the bill requires automatic shielding of records associated with specified District Court dispositions rather than discretionary, petition-based shielding of these records, this analysis assumes that shielding of records under the bill is not subject to a fee. Petitions for shielding under Chapter 313 of 2015 are subject to a \$30 fee.

**State Expenditures:** General fund expenditures may increase significantly for the Judiciary in fiscal 2018 only to implement the bill's requirements. Judiciary operations are also impacted.

The Judiciary advises that computer reprogramming costs to implement the bill are \$180,060 in fiscal 2018. If other legislation is passed requiring computer reprogramming changes, economies of scale could be realized, thereby reducing the costs associated with this bill and other legislation affecting the Judiciary.

The Judiciary advises that even with computer reprogramming, charges cannot be renumbered to reflect the removal of a charge. The numbering of charges in court records is linked and corresponds with tracking information in the Maryland Criminal Justice Information System. Thus, if a petitioner has three charges, and the second charge is the only charge eligible for shielding, the post-shielding record will still show Charge #1 and Charge #3, thereby implying that Charge #2 existed at one point but is missing from the record.

The bill also has an operational impact due to increased hearings and clerk processing time to redact records, notify relevant agencies of the shielding, and confirm compliance with the order by those agencies. Information in the case record needs to be reviewed line by line to determine what information can be shielded and what information cannot be shielded. This can be especially time-consuming in cases involving multiple charges stemming from a common set of facts and only one or some of the charges are eligible for shielding. The Judiciary also advises that redaction of information from files requires judicial review.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of State Police; Department of Legislative Services

**Fiscal Note History:** First Reader - January 27, 2017  
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Analysis by: Amy A. Devadas

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