

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 767 (Senators Patterson and Augustine)  
Education, Health, and Environmental Affairs  
and Judicial Proceedings

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Higher Education - Admissions Process - Criminal History

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This bill expands a prohibition against an institution of higher education in the State using an admissions application that contains questions about the criminal history of the applicant. The bill does this by repealing a provision of the Maryland Fair Access to Education Act of 2017 that authorizes an institution of higher education to use a third-party admissions application that contains questions about the criminal history of the applicant if the institution posts a notice on its website stating that a criminal history does not disqualify an applicant from admission. **The bill takes effect July 1, 2020.**

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Fiscal Summary

**State Effect:** Operations of institutions that use a third-party application that contains questions about the criminal history of an applicant may be significantly impacted; however, the fiscal impact is likely minimal overall, as explained below.

**Local Effect:** Operations of local community colleges that use a third-party application that contains questions about the criminal history of an applicant may be significantly impacted; however, the fiscal impact is likely minimal overall, as explained below.

**Small Business Effect:** None.

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Analysis

**Current Law:** The Maryland Fair Access to Education Act of 2017 (Chapter 2 of 2018) generally prohibits an institution of higher education that receives State funds from using an undergraduate admissions application that contains questions about the criminal history

of the applicant. However, an institution may use a third-party admissions application that contains questions about the criminal history of the applicant if the institution posts a notice on its website stating that a criminal history does not disqualify an applicant from admission. A student's criminal history may be inquired into and considered for the purposes of deciding admission and access to campus residency or offering counseling and services. An institution of higher education must develop a process that considers specified issues in denying admission or limiting access to an affected student's campus residency or a specific academic program.

**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 would still ask whether an applicant had been found guilty of a misdemeanor or felony, but it would remove the part of the question asking about any other crimes. A competing application system, [Coalition for College Access](#), which is used by the University of Maryland, College Park Campus (UMCP), reportedly still asks about a student's criminal background.

According to an October 3, 2018 article in the *Diamondback*, the Coalition for College Access asks, "Have you ever been convicted of a crime?" and "Do you have criminal charges pending against you?" The questions also ask the applicants whether they have faced disciplinary action from another institution or the military and if they have a restraining order against them. According to the article, checking "yes" requires that an applicant explain their criminal background. Then an admissions officer evaluates what the applicant wrote and determines whether or not the applicant should be considered for admissions. In 2017, 142 applicants with criminal backgrounds applied to the university. Only 14 were not cleared to be admitted to the university.

### *Employment Ban-the-box*

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 application 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.

Maryland is one of 33 states with “ban-the-box” statutes affecting state hiring; 11 states extend the prohibition to private-sector employers. Baltimore City and Montgomery and Prince George’s counties have “ban-the-box” laws. Chapters 3 and 8 of 2020 prohibit an employer with 15 or more full-time employees from, before the first in-person interview, requiring the applicant to disclose whether the applicant has a criminal record or has had criminal accusations brought against the applicant. Chapters 3 and 8 do not apply to an employer that is expressly authorized to do so by another applicable federal or State law or if the employer provides programs, services, or direct care to minors or to vulnerable adults.

[Montgomery County](#) generally prohibits employers with at least 15 employees from conducting a criminal background check or otherwise inquiring into an applicant’s criminal record before the conclusion of a first interview. [Baltimore City](#) generally prohibits employers with at least 10 employees from conducting a criminal background check or otherwise inquiring into an applicant’s criminal record until a conditional offer of employment has been extended. [Prince George’s County](#) generally prohibits employers with at least 25 employees from conducting a criminal background check or otherwise inquiring into an applicant’s criminal record before the conclusion of a first interview. In fiscal 2018, Prince George’s County successfully pursued two cases against employers who demonstrated some discriminatory activity against individuals with a criminal history.

**State Fiscal Effect:** Operations of institutions that use a third-party application that contains questions about the criminal history of an applicant may be significantly impacted; however, the fiscal impact is likely minimal overall.

UMCP advises that it uses the Coalition Application, which asks about criminal history. UMCP uses this information to determine which students need to go through a judicial review process. To conduct these reviews in a timely fashion, UMCP advises criminal history needs to be examined as part of the application process or else the university must be prepared to rescind offers of admission for any student who does not provide requested documentation or who is denied clearance through the judicial review process.

If criminal history is not collected as part of the application process, UMCP advises it will need to develop an alternative technology system to collect and track this information and hire additional staff to manage the process. Thus, UMCP advises that it incurs hundreds of thousands of dollars for technology costs and additional personnel. UMCP receives approximately 33,500 applications annually; therefore, less than 0.4% of applicants in 2017 reported a criminal history. Thus, the Department of Legislative Services advises that

UMCP can likely switch to the Coalition Application, which does not ask about criminal history, and process the criminal history of accepted applicants using existing resources.

However, while this change will likely not have a significant fiscal impact, the operational impact on UMCP admissions staff may be significant. The application software has tools used by the admissions office to select applicants to accept for admissions, which affects the overall operations of the admissions office. As explained above, UMCP will need to develop a new operational process to inquire about an accepted student's criminal background (or choose not to review an individual's criminal background); either choice will have a large operational impact. Further, the application software used by an institution impacts the applicant pool that applies to the institution. The overall impact on the individual accepted is likely minimal; however, it may have an operational impact on the admissions staff.

The other University System of Maryland institutions and Baltimore City Community College did not report which application system they use or if the bill has a fiscal impact.

St. Mary's College of Maryland (SMCM) and Morgan State University both reported minimal fiscal impact. SMCM advises it uses the common application, which does not ask about criminal background.

**Local Fiscal Effect:** Operations of local community colleges that use a third-party application that contains questions about the criminal history of an applicant may be significantly impacted; however, the fiscal impact is likely minimal overall, as explained above.

**Additional Comments:** Private institutions of higher education are also prohibited from using an admissions application that contains questions about the criminal history of the applicant.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Higher Education Commission; University System of Maryland; Morgan State University; St. Mary's College of Maryland; Department of Legislative Services

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