

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

House Bill 1076

(Delegate Marriott, *et al.*)

Economic Matters

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**Labor and Employment - Employer Requests for Information Relating to an Individual's Arrest Record - Prohibited**

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This bill prohibits an employer, which includes the State, county and municipal jurisdictions, and private employers, from requiring information relating to an individual's arrest record as a condition of employment, prospective employment, or continued employment.

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**Fiscal Summary**

**State Effect:** Significant operational impact for State law enforcement and public safety agencies. Potentially significant fiscal impact to the extent that the State's exposure to civil liability is increased for actions committed by employees with arrest records. General fund expenditures would increase by \$75,000 in FY 2005 for additional personnel to handle additional complaints. Out-year costs reflect annualization and inflation.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	75,000	37,900	40,300	43,000	45,800
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$75,000)	(\$37,900)	(\$40,300)	(\$43,000)	(\$45,800)

*Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** No direct fiscal impact. However, local law enforcement agencies could experience the same operational or legal impacts as State agencies.

**Small Business Effect:** Meaningful. Small businesses, particularly day care centers and retail operations, would be required to hire employees whose arrest records would otherwise indicate a criminal background.

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## Analysis

**Bill Summary:** The bill allows an employer to require or demand information related to the individual's criminal convictions as a condition of employment. The bill requires each employment application to include a notice in bold-faced uppercase type that informs the applicant of these provisions and provide space for the applicant to acknowledge it. The bill does not apply to the federal government or any of its units.

The bill also authorizes an employee or employment applicant to submit a complaint to the Commissioner of Labor and Industry if an employer violates the provisions of the bill. The commissioner may try to resolve the issue informally or ask the Attorney General to bring action on behalf of the employee. The Attorney General may bring an action in the county where the alleged violation occurred for injunctive relief or other relief.

An employer who violates the bill's provisions is guilty of a misdemeanor and subject to a fine not to exceed \$100.

**Current Law:** Federal and State laws prohibit an employer from discriminating for or against employees or applicants for employment on the bases of race, color, national origin, religion, sex, age, or disability. However, an employer is not barred from making an employee's arrest record a condition of employment. Certain employers are required to obtain a criminal background check, which includes arrest information, prior to hiring an applicant.

Under an executive order signed April 2003, all State departments and agencies must require each employee to report to the Secretary or director of the department of any arrest of the employee, as well as any legal proceeding to which the employee is a party and other legal process in which the employee is involved. Additionally, an executive order requires State employees to report a finding of guilty, *nolo contendere* (no contest), or a probation before judgment for an alcohol-related driving offense to the appointing authority within five days of the finding.

**State Effect:** General fund expenditures would increase by \$75,000 in fiscal 2005 for the Department of Labor, Licensing, and Regulation (DLLR) to hire a wage and hour investigator to handle the projected volume of complaints and to notify 130,000 employers about the law. DLLR advises that an investigator can handle 500 complaints annually and estimates that it would receive approximately 500 new complaints as a result of the bill.

The bill would also incur a significant operational impact on the Department of State Police (DSP) and the Department of Public Safety and Correctional Services. DSP advises that arrest records are part of an extensive criminal background check for hiring

State troopers and other employees. As a matter of practice, it advises that individuals arrested for certain misdemeanors would not be automatically disqualified for employment; however, anyone charged with a crime related to use of a firearm or domestic violence would not be hired.

The Department of Legislative Services (DLS) advises that if the State hires or retains an individual with an arrest record indicating criminal behavior that interferes with the individual's job duties, it could be subject to a civil suit if the employee engages in criminal behavior on the job. The amount of civil damages cannot be estimated but could be significant.

**Local Effect:** The City of College Park indicated that it does not obtain arrest records for employment purposes and the City of Rockville advised that arrest data from criminal background checks would presumably be deleted before review to comply with the bill. Charles County also indicated no impact. However, DLS advises that some local law enforcement or human services agencies would be affected to the extent they will be required to hire an applicant whose arrest record reflects adverse behavior related to prospective job duties.

The Town of Bladensburg advises that the circumstances of any arrests for a police department applicant are examined and evaluated in an effort to determine that the applicant is of good moral character and reputation, is emotionally stable, and displays the behavior necessary to perform his/her duties. Restricting this evaluation process to criminal convictions will hamper this process and may allow for the employment of what would otherwise be considered unqualified persons.

**Small Business Effect:** Child care facilities could be adversely affected, as would other small businesses. Maryland regulations permit the State to deny a license to a child care facility if an evaluation of criminal records or records of abuse or neglect of children indicates harmful behavior.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** City of Rockville; City of College Park; Montgomery County; Prince George's County; Charles County; Town of Bladensburg; Department of Labor, Licensing, and Regulation; Department of Budget and Management; Office of the Attorney General; Department of Legislative Services

**Fiscal Note History:** First Reader - March 1, 2004  
ncs/mdr

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