

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 769

(Senator Conway)

Education, Health, and Environmental Affairs

Health and Government Operations

Health Occupations - State Board of Nursing - Criminal History Records Checks

This bill requires specified State Board of Nursing license and selected certification applicants (including temporary license applicants), beginning October 1, 2006, and selected existing licensees and certificate holders, beginning January 2008, to submit to a criminal history records check and provide the board written, verified evidence that they have done so. Instead, applicants who completed a criminal history records check through another state board of nursing within the five years preceding the application date may submit evidence of that check. The bill applies to registered nurses, licensed practical nurses, certified nursing assistants, and licensed electrologists.

Fiscal Summary

State Effect: Potential minimal decrease in State Board of Nursing special fund revenues beginning in FY 2007 if fewer licenses and certificates are issued. No effect on special fund expenditures. The Department of Public Safety and Correctional Services (DPSCS) could process the criminal background records checks within existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The board may not issue a license or certificate if it has not received the applicant's criminal history record information. Additional criminal history records checks for licensees and certificate holders must be performed every 10 years. The bill

adds failing to submit to a criminal history records check as a reason the board may take disciplinary action against a licensee or certificate holder.

On receiving the information and determining whether to issue or renew the license or certificate, the board must consider: 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 demonstrating that the applicant, licensee, or certificate holder does not pose a threat to the public health or safety.

Additionally, the bill requires the board to revoke a temporary license or temporary certificate if the criminal history records information forwarded to the board reveals the applicant, certificate holder, or licensee pleaded guilty or pleaded *nolo contendere* to an act that, if committed in Maryland, would be a violation listed as a statutory reason for which the board may take disciplinary action against such an individual.

Current Law: The board currently does not require as part of its license and certification application and renewal process that registered nurses, licensed practical nurses, certified nursing assistants, certified medication technicians, or electrologists submit to a criminal history records background check.

There are various statutory reasons the board may take disciplinary actions against a license or certificate applicant, a licensee, or a certificate holder. Those reasons include being convicted of or pleading guilty or *nolo contendere* to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside. Before the board takes any disciplinary action, it must give the person against whom the action is contemplated an opportunity for a hearing before the board. A license or certificate applicant, licensee, or certificate holder may appeal the board's decision in a disciplinary matter.

Other persons specified in statute must apply for a national and State criminal history records check at any designated law enforcement facility in Maryland. Also, an employer may require a volunteer at one of these facilities to obtain a criminal history records check. A local department of social services may require a volunteer of that department who works with children to obtain a criminal history records check. An employer at a facility not listed above who employs individuals to work with children may require employees, including volunteers, to obtain a criminal history records check.

A person who is required to have a criminal history records check must pay the mandatory processing fee for the national records check assessed by the Federal Bureau of Investigation (FBI), reasonable administrative costs to DPSCS, and the fee for access

to Maryland criminal history records. An employer or other party may pay the costs for the person who must obtain the records check.

Background: In fiscal 2005, there were approximately 61,150 licensed registered nurses, 12,150 licensed practical nurses, 43,500 certified nursing assistants, 32,600 certified medication technicians, and 100 licensed electrologists. The board advises that it licenses or certifies as many as 8,000 individuals each month and that it expects 10% of those individuals (800) to have a criminal background.

The bill requires a criminal history records check for each new applicant for a license or certificate issued by the State Board of Nursing (except for certified medication technicians) and phases in the requirement for existing licensees and certificate holders. In Maryland, the total maximum cost of each criminal history records check is \$52, which includes State and national background checks plus fingerprinting. The Criminal Justice Information System (CJIS) Central Repository in DPSCS is authorized by law to collect an \$18 fee established for Maryland criminal history checks. This fee represents cost recovery for processing and administration and is revenue/cost neutral. The FBI charges a fee of \$24 for a national criminal history records check. There is also normally a \$10 fee for two fingerprint cards (\$5 for the State card; \$5 for the separate FBI card). CJIS Central Repository must collect the fees from the applicant, or other payer, and reimburse the FBI through that agency's monthly billing.

State Revenues: Potential minimal decrease in special fund revenues beginning in fiscal 2007 if the State Board of Nursing issues fewer licenses or certificates for those individuals who have a criminal background or who did not submit to or provide evidence of submitting to a criminal history records check.

State Expenditures: The bill would not affect State Board of Nursing expenditures, as the board is not required to pay any of the fees for records checks. Existing board staff could review the records checks for applicants for new and renewal licenses and certificates and put aside those that need the board's determination as to whether a license or certificate should be granted.

The board states that implementing the bill would cost \$157,586 in fiscal 2007 to hire one staff attorney, one paralegal, and three administrative specialists to review criminal history records (40 records daily) and present records showing a criminal history before the board.

The Department of Legislative Services (DLS) disagrees. The criminal history records check requirement initially only applies to new applicants for licensure or certification and then, beginning in January 2008, allows the board to determine how to phase in that requirement for existing licensees and certificate holders. DLS believes that the bill gives

the board the authority to slowly apply the requirement to the existing licensees and certificate holders so that existing staff could handle the additional duties. DLS assumes that follow-up criminal history records could be likewise reviewed by existing staff. To the extent that the review workload cannot be handled by existing staff, the board may need to hire additional administrative specialists and could do so through the annual budget process.

DPSCS could absorb the additional criminal history records checks within existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: Although HB 1318 is listed as a cross file, it is not identical.

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

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