

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 667

(Senator Jones-Rodwell)(By Request - Task Force on
Prisoner Reentry) and Senator Frosh

Judicial Proceedings

Criminal Records - Shielding - Nonviolent Convictions

This bill requires court records and police records to be shielded under specified circumstances. Shielding a record means to render a court record or police record inaccessible by members of the public. A shielded record must remain fully accessible by criminal justice units and prospective employers who are subject to a statutory requirement to perform a criminal background check for applicants.

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase by \$152,400 in FY 2013 for computer reprogramming costs. Significant operational impact for the District Court, in addition to a potential minimal increase in expenditures to comply with the bill's provisions.

Local Effect: Potential minimal expenditures for circuit courts to comply with the shielding requirements.

Small Business Effect: Potential meaningful. Small businesses will no longer be able to conduct a complete background check on prospective employees.

Analysis

Bill Summary: Court records and police records relating to a conviction must be shielded automatically:

- three years after the person satisfies the sentence imposed for the conviction, including parole, probation, or mandatory supervision, in the case of a misdemeanor conviction; or
- five years after the person satisfies the sentence imposed for the conviction, including parole, probation, or mandatory supervision, in the case of a felony conviction.

If a person is convicted of a new crime during the applicable time period as specified above, the original conviction is not eligible for shielding unless the new conviction becomes eligible for shielding. A conviction for a “crime of violence” is not eligible for shielding. The bill establishes that a conviction that has been shielded under the provisions of the bill may not be considered a conviction for purposes of determining eligibility for an expungement.

The bill specifies that the Maryland Judiciary Case Search may not in any way refer to the existence of specified records shielded in accordance with the bill’s provisions. A custodian of records must deny inspection of criminal records and police records relating to the conviction of a crime that have been shielded under the bill’s provisions.

Current Law: Generally, court records and police records are not eligible for shielding. State law does authorize, under specified circumstances, the shielding of court records pertaining to domestic violence proceedings if the petition has been dismissed and upon the respondent’s written request.

A person who has been charged with the commission of a crime may file a petition for expungement listing the relevant facts of a police record, court record, or other record maintained by the State or a political subdivision of the State, under various circumstances listed in the statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, *stet* of charge, and gubernatorial pardon. Individuals convicted of specified public nuisance crimes are eligible for expungement of the associated criminal records under certain circumstances.

Expungement of a court record means removal from public inspection:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and
- if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

A “court record” is the official record of a court that the clerk of a court or other court personnel keeps about a criminal proceeding or any other proceeding, except a juvenile proceeding, concerning a civil offense or infraction enacted under State or local law as a substitute for a criminal charge. A court record includes (1) a record of a violation of the Transportation Article for which a term of imprisonment may be imposed and (2) an index, docket entry, charging document, pleading, memorandum, transcript of a proceeding, electronic recording, order, and judgment.

A “police record” is an official record maintained by a law enforcement unit, booking facility, or the Central Repository about the arrest and detention of, or further proceeding against, a person for (1) a criminal charge; (2) a suspected violation of criminal law; (3) a violation of the Transportation Article for which a term of imprisonment may be imposed; and (4) a civil offense or infraction, (except a juvenile offense), enacted under State or local law as a substitute for a criminal charge.

Under § 14-101 of the Criminal Law Article, “crime of violence” means (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking; (11) armed carjacking; (12) sexual offenses in the first and second degrees; (13) use of a handgun in the commission of a felony or other crime of violence; (14) child abuse in the first degree; (15) specified instances of sexual abuse of a minor; (16) an attempt to commit any of the crimes listed above; (17) continuing course of conduct with a child; (18) assault in the first degree; (19) assault with intent to murder; (20) assault with intent to rape; (21) assault with intent to rob; and (22) assault with intent to commit a sexual offense in the first or second degree.

State law requires a criminal history records check for various types of public- and private-sector employment in the State, typically where it is determined that there is a job-related need. Employees and employers in the following facilities must apply for a national and State criminal history records check at any designated law enforcement office in Maryland: (1) a licensed child care center; (2) a registered family day care home; (3) a licensed child care home; (4) a licensed child care institution; (5) a juvenile detention, correction, or treatment facility; (6) a public school; (7) a private or nonpublic school that is required to report to the State Board of Education; (8) a foster care family home or group facility; (9) a government-operated recreation center or program that primarily serves minors; or (10) a day or residential camp that primarily serves minors. Many local jurisdictions also specify requirements in statute regarding criminal background checks for employees, volunteers, or license applicants.

Background: Chapters 625 and 626 of 2009 established a Task Force on Prisoner Reentry to be chaired by the Secretary of Public Safety and Correctional Services, or the Secretary's designee. The task force issued a final report of its findings and recommendations in 2011. The provisions of this bill represent one of the recommendations from the task force.

The Judiciary's website includes a link to "CaseSearch." CaseSearch provides public Internet access to information from case records maintained by the Judiciary. Maryland District Court traffic, criminal, and civil case records and circuit court criminal and civil case records are available. Records can remain in CaseSearch indefinitely and are not removed except by a court-ordered expungement.

State and Local Fiscal Effect: General fund expenditures for the Judiciary increase by \$152,400 in fiscal 2013 only for computer programming costs. In addition, the Judiciary advises that compliance with the shielding requirements of this bill will significantly impact operations at the District Court and, to a lesser extent, the circuit courts. Unlike proceedings relating to expungements and the shielding of records in peace and protective order cases, the shielding requirement in this bill is triggered automatically once the statutory period of time has passed and does not require that a petition be filed to initiate the shielding procedure. The records that are subject to shielding may be kept in the same location as other court records, however, the courts will have to implement procedures to ensure that if an individual appears in person at the courthouse to request a record, the clerk can make a proper determination as to whether or not the record can be made accessible to the requestor.

To comply with the bill's provisions, the clerk will have to examine the records to determine (1) if three or five years (depending on whether the conviction was for a misdemeanor or a felony) has passed since the terms of the sentence were satisfied; (2) whether the record includes a conviction for a crime of violence, and (3) whether the individual who is the subject of the record has been convicted of a new crime during the applicable time period, which impacts eligibility for shielding. If a record appears to be eligible for shielding, a clerk will then have to make a determination as to whether the requestor is still allowed access to the records due to the exceptions provided in the bill for criminal justice units and prospective employers who are required to perform a criminal background check on applicants. Complying with these procedures will significantly impact operations and may require additional personnel depending on the volume of in-person requests received.

The Maryland State Archives will have to adopt procedures to comply with the provisions of the bill, although it is anticipated that the volume of requests they receive

for information will be less than that experienced by the Judiciary and can be handled using existing resources.

Additional Comments: The Department of Labor, Licensing, and Regulation (DLLR) advises that the bill will place the Office of the Commissioner of Financial Regulation out of compliance with State and federal law, as performing a criminal background check on mortgage loan originator applicants is required because the office is prohibited from licensing anyone who has had a felony conviction for an act of fraud, dishonesty, a breach of trust, or money laundering at any time preceding the application. Evaluating applicants under these standards is required pursuant to the Federal SAFE Mortgage Licensing Act, and noncompliance may result in the federal government assuming responsibility for the regulation of the mortgage industry in the State. DLLR also notes that the Maryland Racing Commission and the Occupational and Professional Licensing Units rely on criminal record checks for licensing and would be impacted by the bill's provisions, as there are no exceptions in the bill for background checks for business licenses.

Additional Information

Prior Introductions: None.

Cross File: HB 652 (Delegate Waldstreicher, *et al.*) (By Request - Task Force on Prisoner Reentry) - Judiciary.

Information Source(s): Department of Natural Resources; Department of Labor, Licensing, and Regulation; Department of Health and Mental Hygiene; Maryland Department of Transportation; Department of Public Safety and Correctional Services; Maryland State Archives; Judiciary; Office of the Public Defender; Commission on Criminal Sentencing Policy; Carroll, Cecil, Harford, and Montgomery counties; Department of Legislative Services

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