

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1166
Judiciary

(Delegate Anderson, *et al.*)

Judicial Proceedings

Maryland Second Chance Act of 2014

This bill authorizes a person to petition a court to shield a “shieldable conviction” of the person no earlier than three or eight years (depending on the offense) after the person satisfies the sentence imposed for the conviction, including parole, probation, or mandatory supervision. “Shield” means to completely remove all information relating to, and all references to the existence of, a conviction from a public website maintained by the Maryland Judiciary. “Shieldable conviction” means a conviction of 1 of a list of 13 specified crimes. 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.

If the person is convicted of a new crime during the applicable time period, the original conviction is 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.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Judiciary for computer reprogramming and personnel. Potential significant operational impact for the District Court to comply with the bill’s provisions. Revenues are not affected.

Local Effect: Minimal increase in local expenditures for circuit courts to comply with the shielding requirements. Revenues are not affected.

Small Business Effect: None. It is assumed that shielding records from the Judiciary’s website while maintaining full access at courthouses does not materially affect the ability of small businesses to conduct background checks on prospective employees.

Analysis

Bill Summary: When a petition to shield a conviction is filed, the court must have a copy of the petition served on the State's Attorney. Unless the State's Attorney files an objection to the petition within 30 days after the petition is served, the court may order the shielding of a conviction after taking into consideration any objections or additional information provided by the State's Attorney or the victim. If the State's Attorney files a timely objection to the petition, the court must hold a hearing. If the court finds at the hearing that the petitioner is entitled to shielding, the court may order the shielding of the conviction. The court may deny a petition for good cause. The court must send written notice of the proposed action to all listed victims in the case in which the petitioner is seeking shielding at the address listed in the court file advising the victim or victims of the right to offer additional information relevant to the shielding petition to the court.

The bill may not prevent (1) a person from obtaining the full, shielded or unshielded criminal or traffic record of another person from the appropriate custodian of records by consent of the other person or (2) a person from obtaining the person's full, shielded or unshielded criminal or traffic record upon request from the appropriate custodian of records.

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.

If two or more charges, other than one for a minor traffic violation, arise from the same incident, transaction, or set of facts, they are considered to be a unit. If a person is not entitled to expungement of one charge or nuisance conviction in a unit, the person is not entitled to expungement of any other charge in the unit.

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.

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. The task force issued a final report of its findings and recommendations in 2011. The shielding of criminal records for nonviolent convictions from public view after an appropriate waiting/proving period was one of the task force’s recommendations.

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 Expenditures: The bill may result in a significant increase in general fund expenditures for the Judiciary and a significant operational impact on the Administrative Office of the Courts and the District Court, which may require additional personnel, the extent of which cannot be reliably estimated at this time. The bill may also result in a significant operational impact on the Maryland State Commission for Criminal Sentencing Policy (MCSSCP).

Given that the bill's definition of "shield" exclusively applies to records on a public *website* maintained by the Maryland Judiciary, this estimate assumes that (1) a paper record cannot be a shielded record; (2) a paper record may not be shielded; and (3) a record maintained by an entity other than the Maryland Judiciary (such as the Criminal Justice Information System within the Department of Public Safety and Correctional Services) cannot be shielded, nor can those entities be required to shield a record or maintain separate versions of records. Thus, this estimate assumes that the bill does not impact those entities. This estimate further assumes that the shielding of records from the Judiciary's website, but the retention of full access to court records in other forms, does not materially impact the ability of State agencies to vet prospective employees or applicants for licenses.

Judiciary

The Judiciary advises that the bill results in a significant fiscal and operational impact, but is unable to estimate the exact impact based on the information in the bill. However, the Judiciary has previously advised that bills requiring a similar level of effort require approximately 1,622 hours of computer reprogramming at a cost of \$100,000.

For manual procedures, in order to comply with the bill's provisions, a clerk has to examine court records to determine (1) if the conviction is for an eligible offense; (2) whether the petitioner has satisfied his/her sentence (including, parole, probation, or mandatory supervision); (3) whether the applicable waiting period has passed since the terms of the sentence were satisfied; and (4) whether the individual who is the subject of the record has been convicted of a new crime during the applicable time period or is a defendant in a pending criminal proceeding, which impacts eligibility for shielding.

The bill's impact is likely to be more significant in the initial years of implementation (as the option to shield a conviction becomes more widely known and individuals with historical convictions that are immediately eligible for shielding petition to have their records shielded) and less so in future years, as the shielding petition process becomes incorporated into standard court practice.

With respect to computer programming, the Judiciary must actively remove conviction records from The Maryland Judiciary Case Search website in response to granted petitions. Depending on the volume of granted petitions, this may require additional personnel.

The Judiciary notes that once it releases someone's conviction record, it does not have control over what third parties do with the record, even if the record is eventually shielded.

Maryland State Commission on Criminal Sentencing Policy

MSCCSP advises that the bill may significantly impact MSCCSP operations. According to MSCCSP, the commission routinely relies on the Judiciary's CaseSearch to supplement incomplete information on judicial sentencing worksheets.

Local Fiscal Effect: Montgomery and Talbot counties do not anticipate a significant fiscal impact from the bill. Harford County advises that it needs to hire an additional full-time prosecutor to review and respond to shielding petitions, at an estimated cost of \$66,000 in fiscal 2015.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, SB 804 (Senator Raskin, *et al.* - Judicial Proceedings) is different.

Information Source(s): Harford, Montgomery, and Talbot counties; Maryland Department of Agriculture; Maryland State Commission on Criminal Sentencing Policy; Department of Budget and Management; Department of Human Resources; Department of Natural Resources; Maryland Department of the Environment; Maryland Higher Education Commission; Department of Health and Mental Hygiene; Maryland Insurance Administration; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2014
ncs/kdm Revised - House Third Reader - March 27, 2014

Analysis by: Amy A. Devadas

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