

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 1056

(Senator Raskin, *et al.*)

Judicial Proceedings

Rules and Executive Nominations

Maryland Second Chance Act of 2014

This bill authorizes a person to petition a court to shield the person's court records and police records relating to all "shieldable convictions" of the person no earlier than three years after the person satisfies the sentence imposed for all convictions, including parole, probation, or mandatory supervision. A court may grant one shielding petition to a person over the person's lifetime and may deny a petition for good cause. "Shield" means to render a court record and police record relating to a conviction of a crime inaccessible by members of the public. "Shieldable conviction" means a conviction of 1 of a list of 12 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. A "unit" means two or more convictions that arise from the same incident, transaction, or set of facts.

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. A shielded conviction may not be considered a conviction for specified expungement provisions.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Judiciary and the Department of Public Safety and Correctional Services (DPSCS) for computer reprogramming and personnel. Potential significant operational impact for the District Court and DPSCS to comply with the bill's provisions. Potential minimal increase in general fund revenues from civil penalties imposed in the District Court.

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

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

Analysis

Bill Summary:

Continued Access to Shielded Information: A shielded record must remain fully accessible by (1) criminal justice units for legitimate criminal justice purposes; (2) prospective or current employers who are subject to a statutory or contractual requirement to inquire into the criminal background of an applicant or employee for purposes of carrying out that requirement; (3) facilities that are authorized to inquire into an individual's criminal background under specified provisions relating to child care facilities; (4) the person who is the subject of the shielded record and that person's attorney; and (5) health occupations boards.

Petitions to Shield Convictions, Objections to Petitions, and Victim Notification: 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 all police and court records relating to the 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 have his/her conviction shielded, the court must order the shielding of all police and court records relating to the shielding. If the court finds that the person is not entitled to shielding, the court must deny the petition.

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. The court must advise the victim or victims of the right to offer additional information relevant to the shielding petition to the court.

Prohibited Disclosures and Requests for Information: A person authorized to access a shielded record may not disclose any information from a shielded record to a person who is not authorized to access shielded records.

Except as authorized under the bill, an employer may not require a job applicant to disclose shielded information about criminal charges or discharge or refuse to hire a

person solely because of the person's refusal to disclose information about shielded criminal charges.

Except as authorized under the bill, an educational institution is prohibited from requiring a person who applies for admission to disclose shielded information about criminal charges or expel or refuse to admit a person solely because of the person's refusal to disclose information about shielded criminal charges.

Except as authorized under the bill, a unit, an official, or an employee of the State or a political subdivision of the State may not require a person who applies for a certificate, license, permit, registration, or governmental service to disclose shielded information about criminal charges or deny a relevant application by the person because of the person's refusal to disclose information about shielded criminal charges.

A person who violates any of the aforementioned prohibitions is subject to a maximum civil penalty of \$1,000 for each violation.

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

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 SB 1056/ Page 4

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: General fund expenditures may increase significantly for the Judiciary and DPSCS to comply with the bill's requirements. Potential significant operational impact on the Department of Budget and Management; the Department of Labor, Licensing, and Regulation; and the Maryland State Commission on Criminal Sentencing Policy (MSCCSP).

Judiciary

The Judiciary advises that it may not be able to comply with the bill's requirements with its existing computer system, since its current legacy systems cannot assign a consistent unique identifier to parties related to a case that would allow shielded information to remain accessible to specified individuals. Thus, the "fully accessible" access to records under the bill can only be provided through the courthouse at this time. Furthermore, once the Judiciary 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.

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.

If an individual requests access to a shielded record, a clerk then has to make a determination as to whether the requestor is 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 may significantly impact District Court operations and may require additional personnel, the extent to which cannot be reliably estimated at this time.

Department of Public Safety and Correctional Services

The Maryland Criminal Justice Information System (CJIS) advises that it needs to reprogram its computer systems in order to filter those records that are subject to shielding under previous legislation and advises that it takes six months to complete at a cost of \$150,000 in fiscal 2015.

In addition to computer reprogramming, CJIS advises that it needs to create and implement a manual process in order to filter shielded records from unshielded records and still maintain access to authorized requestors. According to CJIS, this process requires the creation of a unit dedicated to this process, with personnel expenditures for the unit totaling approximately \$782,000 in fiscal 2015 and approximately \$1.0 million in future years. The unit also requires significant technological resources during the first two years of operation. However, any personnel increase depends on the volume of requests received, which cannot be reliably estimated at this time in light of the bill's limitation on petitions filed to one per person per lifetime, judicial discretion to grant a petition, and the waiting period required under the bill.

Department of Budget and Management

The Department of Budget and Management (DBM) advises that there are some State positions that, while sensitive in nature, do not require a background check to comply with statutory or contractual obligations. These positions are typically considered "positions of trust" and involve the collection of money and access to personal information. While there is a legitimate business need for background checks on applicants for these positions, employers screening these applicants would not be granted "full access" to records under the bill. DBM advises that shielding information in these instances could negatively impact State hiring decisions and expose the State to harm from theft of funds or confidential information, as well as mismanagement of State programs by individuals whose criminal histories are incompatible with certain State positions.

Department of Labor, Licensing, and Regulation

For other similar bills, the department has advised that applicants for certain business licenses are often required to report convictions (misdemeanors and felonies) that are related to the fitness of the applicant and the license sought. It is unclear at this time whether all of the governmental entities that license these individuals are included in the list of entities allowed continued access to shielded records under the bill. To the extent that one of these entities is not included in that list, it may not require the applicant to disclose information about shielded records or deny an application based solely on the

applicant's failure to disclose. Employees of the entity could also face civil penalties for making such inquiries.

Maryland State Commission on Criminal Sentencing Policy

MSCCSP advises that the bill significantly impacts MSCCSP operations. According to MSCCSP, the commission routinely relies on the Judiciary's CaseSearch to supplement incomplete information on judicial sentencing worksheets. Also, MSCCSP routinely responds to requests for data from the sentencing guidelines database. According to MSCCSP, the bill requires the commission to retroactively identify and remove information pertaining to shielded records from the data for each request received. Given the staff's limited resources, this places a substantial burden on MSCCSP resources.

Additional Information

Prior Introductions: HB 1006 of 2013, a similar bill, passed the House and Senate with amendments. The House adopted the conference committee's report and passed the bill with the conference committee amendments. No further action was taken in the Senate following the appointment of a conference committee. HB 652 of 2012, a similar bill, was withdrawn after receiving a hearing in the House Judiciary Committee. Its cross file, SB 667, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Department of Budget and Management; Department of Natural Resources; Department of General Services; Maryland Higher Education Commission; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Public Safety and Correctional Services; State's Attorneys' Association; Maryland Department of Transportation; University System of Maryland; Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2014
mm/kdm Revised - Senate Third Reader - April 7, 2014

Analysis by: Amy A. Devadas

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