

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

Senate Bill 130 (Senator Gladden)
 Judicial Proceedings

Criminal Procedure - Shielding - Misdemeanor Convictions

This bill authorizes a person to request the shielding of a court or police record relating to a conviction no earlier than 10 years after the person satisfies the sentence imposed for the conviction, including parole, probation, or mandatory supervision. “Shield” means to render a court record or police record inaccessible to members of the public.

If the person is convicted of a new crime during this waiting period, the original conviction is not eligible for shielding unless the new conviction becomes eligible for shielding. These provisions do not apply to a conviction for a (1) felony; (2) misdemeanor requiring registration as a sex offender; or (3) domestically related crime.

Fiscal Summary

State Effect: General fund expenditures increase by *at least* \$551,500 in FY 2016 for the Judiciary and the Department of Public Safety and Correctional Services (DPSCS) to comply with the bill’s provisions; costs could be significantly higher to the extent the Judiciary requires additional personnel. Future year expenditures reflect annualization and inflation. Potential significant operational impact on entities that no longer have access to information shielded under the bill. Revenues are not affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	551,500	302,800	317,200	332,400	348,300
Net Effect	(\$551,500)	(\$302,800)	(\$317,200)	(\$332,400)	(\$348,300)

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

Local Effect: Potential significant increase in local expenditures for circuit courts and local law enforcement to comply with the bill’s provisions. 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: The Maryland Judiciary Case Search may not in any way refer to the existence of shielded records. A custodian must deny inspection of criminal records and police records relating to the conviction of a crime that have been shielded. A shielded record must remain fully accessible to (1) criminal justice units for legitimate criminal justice purposes; (2) prospective employers who are subject to a statutory requirement to inquire into an applicant's criminal background for purposes of carrying out that statutory requirement; (3) facilities that are required to inquire into an employee's or employer's criminal background under specified provisions in the Family Law Article; and (4) the person who is the subject of the shielded record or that person's attorney.

The Court of Appeals must establish procedures relating to the filing of a request for shielding.

A person authorized to access a shielded record under the bill may not disclose any information from a shielded record to a person who is not authorized to access shielded records. An educational institution may not (1) require an applicant for admission to disclose shielded information about criminal charges in an application, an interview, or otherwise or (2) expel or refuse to admit a person solely because of his or her refusal to disclose shielded information.

Except as otherwise authorized under the bill, a unit, an official, or an employee of the State or a political subdivision of the State may not (1) require a person who applies for a license, permit, registration, or governmental service to disclose shielded information about criminal charges in an application, an interview or otherwise or (2) deny such an application solely because of the person's refusal to disclose shielded information.

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 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: General fund expenditures increase by *at least* \$551,536 in fiscal 2016 for the Judiciary and DPSCS to comply with the bill’s requirements, as discussed below. The increase in general fund expenditures could be significantly higher to the extent the Judiciary requires additional personnel. The bill may also have a significant operational impact on the Department of Budget and Management (DBM); the Department of Labor, Licensing, and Regulation (DLLR); and the Department of Health and Mental Hygiene (DHMH).

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS increase by \$389,581 in fiscal 2016, which accounts for the bill’s October 1, 2015 effective date. This estimate reflects the cost of hiring one administrative officer and four administrative specialists to create a new unit to process shielding requests. It includes salaries, fringe benefits, one-time start-up costs, computer reprogramming, and ongoing operating expenses.

Position(s)	5
Salaries and Fringe Benefits	\$219,482
Computer Reprogramming	150,000
Operating Expenses	<u>20,099</u>
FY 2016 DPSCS Expenditures	\$389,581

The Maryland Criminal Justice Information System (CJIS) within DPSCS provides criminal background information to individuals or entities with statutorily authorized access to that information. CJIS does not provide information to the general public. In addition to the entities eligible for full access to shielded records under the bill, CJIS also provides information to current employers and licensing agencies that are able to get background checks and updates pursuant to statute. According to CJIS, licensing agencies

comprise approximately 35% of the background checks for which CJIS is responsible. Because these entities are not included in the list of continued access entities under the bill, CJIS advises that it needs to reprogram its computer systems in order to filter those records that are subject to shielding and advises that it likely takes six months to complete at a cost of \$150,000 in fiscal 2016.

CJIS also 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 requires the creation of a unit dedicated to this process, consisting of one administrative officer and four administrative specialist positions. This unit reviews each request for a record to be a shielded record and ensures that whatever information required to be shielded is done so for the licensing category. The process is likely to be a combination of manual and electronic processing because there needs to be a filter of records from the employment category versus the licensing category.

Future year expenditures for DPSCS reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Judiciary

General fund expenditures for the Judiciary increase by \$161,955 in fiscal 2016 only for computer reprogramming costs. However, in addition to those computer reprogramming costs, the Judiciary may incur additional personnel costs beginning in fiscal 2016, as discussed below. Accordingly, costs for the Judiciary could be significantly higher in fiscal 2016 and continue in future years.

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. Also, the court can only shield an entire case electronically, not specific counts within a case. 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.

To the extent that electronic compliance is possible, the bill requires 2,124 hours of computer reprogramming at a cost of \$161,955 in fiscal 2016 only. 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. Information eligible for shielding then needs to be redacted from the record.

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 of which cannot be reliably estimated at this time.

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 and the Department of Health and Mental Hygiene

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. Occupational licensing boards are not included in the list of entities to which a shielded record must remain fully accessible under the bill. Thus, the bill may have an operational impact on licensing boards within DLLR.

More than 225,000 individuals or businesses are licensed by the Division of Occupational and Professional Licensing (DOPL) in DLLR through 21 autonomous boards or commissions. These boards and commissions issue or reissue more than 100,000 licenses annually. DOPL advises that only a very small number – fewer than 20 per year – of new or renewal license applications are denied on the basis of the applicant’s criminal history. DOPL boards and commissions are lenient in regards to an applicant’s criminal history and only deny an application in cases where the applicant has been convicted of a heinous crime or a felony directly related to the practice of the related vocation. In general, DOPL boards and commissions require applicants to provide a written explanation of the circumstances

of the criminal conviction in order to base an approval or denial decision. Such information is confidential and is shared with board members and staff in closed sessions of board meetings.

Similar concerns and operational impact apply to licensing boards within DHMH.

Local Expenditures: Although the bill excludes felonies, which are primarily heard in the circuit courts, there are several instances in which a misdemeanor case is heard in the circuit courts, including jury trials. Depending on the volume of shielding requests, the bill may result in a significant increase in expenditures for the circuit courts.

Local law enforcement agencies may also incur additional expenditures, depending on the volume of shielding requests received. The Town of Bel Air advises that the bill impacts the police department's Records Administration. The Montgomery County Police Department advises that while the bill may not pose a staffing burden on the department, it does require \$100,000 in computer reprogramming costs.

The Circuit Court for Montgomery County advises that the impact of the bill is difficult to determine without additional information.

The State's Attorneys' Association advises that the impact of the bill on prosecutors is unclear at this time.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Montgomery, Washington, and Worcester counties; City of Westminster; towns of Bel Air and Leonardtown; Department of Budget and Management; Department of Natural Resources; Maryland State Department of Education; Maryland Higher Education Commission; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of State Police; Department of Aging; 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 - February 18, 2015
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