

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 686

(Senator Benson, *et al.*)

Judicial Proceedings

Criminal Procedure - Maryland Uniform Collateral Consequences of Conviction Act

This bill (1) requires the Attorney General to collect and publish a list of collateral consequences a person may face in the State as a result of a criminal conviction; (2) requires a person be given notice of the potential collateral consequences at formal charging, before a guilty plea or *nolo contendere*, upon conviction, and upon release from incarceration; (3) authorizes a person to seek relief from the court or Maryland Parole Commission (MPC) through an Order of Limited Relief or a Certificate of Restoration of Rights; and (4) requires State entities that impose the collateral consequences to consider a person's individual circumstances, including criminal history, nature of the offense, and relief provided by the court, before making a determination about denying a benefit.

The bill takes effect July 1, 2015. Although the bill does not invalidate the imposition of a collateral sanction on an individual before July 1, 2015, it does authorize that a collateral sanction validly imposed before July 1, 2015 may be the subject of relief under the bill.

Fiscal Summary

State Effect: Significant increase in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) to comply with the bill's requirements; the impact may be as high as \$1.0 million in FY 2016, increasing to \$1.1 million by FY 2020. Potential significant increase in general fund expenditures for the Judiciary to accommodate additional hearings or proceedings under the bill. Revenues are not affected.

Local Effect: Local expenditures increase if the circuit courts experience an appreciable increase in hearings or proceedings as a result of the bill.

Small Business Effect: None.

Analysis

Bill Summary:

Compilation of Collateral Consequences: The Attorney General must compile a list of State provisions that impose or provide relief from collateral sanctions. The list must be published for free online and, to the extent possible, the online resource should also include federal consequences and relief provisions. The Attorney General must complete the first list within 180 days after July 1, 2015, and again 180 days after the end of every annual legislative session.

Notice Requirements: The bill requires that the collateral consequences of a criminal conviction be publicly accessible and provided to an individual at charging, before a plea, upon conviction, and upon release from incarceration. The bill defines a “collateral consequence” as penalties, disabilities, or disadvantages that either apply as an operation of law or that an administrative agency, government official, or court in a civil proceeding is authorized to impose, as a result of a criminal conviction. Collateral consequences do not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fines, assessment, or costs of prosecution.

When a person is formally charged with a crime, the State’s Attorney must provide the person notice of the potential legal consequences. The bill outlines a form that incorporates substantially sufficient language. Before a guilty plea or plea of nolo contendere, the court must confirm that the person received and understands the notice and has had the opportunity to discuss the notice with counsel.

Upon conviction and as part of sentencing, the court must provide the person with notice of (1) potential collateral consequences; (2) the Attorney General’s website information; (3) types of potential relief; (4) contact information for agencies or nonprofits offering assistance; and (5) when the person may vote. If part of the person’s sentence is incarceration, when the person is released, the officer or agency housing the person must provide the same notice.

Imposition of Collateral Consequences: For purposes of imposing a collateral consequence, in most circumstances an out-of-state conviction is considered a conviction of an offense in the State. For the purposes of juvenile proceedings, the term conviction applies to delinquent adjudications and the same out-of-state principles hold true. A State entity (decision maker) cannot use a conviction as a basis for collateral consequences if the conviction has been reversed, overturned, or vacated on grounds other than good behavior or rehabilitation; or if an individual participates in a deferral or diversion program that holds sentencing in obedience.

After July 1, 2015, any decision maker that has established collateral consequences must undertake individualized assessments before determining whether to apply the consequence and deny a benefit or opportunity. When making the determination, the decision maker must consider any relevant information such as the decision's effect on third parties and whether the individual has been granted relief through an Order of Limited Relief or a Certificate of Restoration of Rights. The decision maker may also consider particular facts involved in the offense and the essential elements of the offense.

New Collateral Consequences: After July 1, 2015, new collateral consequences may only be imposed by statute, ordinance, or rule. A law that creates a collateral consequence may expressly deem the bill's requirements inapplicable.

Relief: For purposes of relief, the bill distinguishes between two types of collateral consequences: collateral sanctions and disqualification consequences. Collateral sanctions apply as operation of law and do not include discretionary consequences imposed by a licensing or regulatory board after the opportunity for a hearing. A disqualification is a collateral consequence that an entity is authorized, but not required, to impose. After July 1, 2015, if a collateral consequence is ambiguous as to whether it is a sanction or discretionary action, it will be construed as discretionary. A person may only petition for relief from a collateral sanction, but an Order of Limited Relief supersedes any discretionary action imposed by a licensing or regulatory board after the opportunity for a hearing.

The bill establishes two types of relief: an Order of Limited Relief and a Certificate of Restoration of Rights. A person must petition either the court or MPC for relief and upon receipt, the court or MPC must notify the State's Attorney. The victim of the underlying crime may participate in the same way as in a sentencing or a parole hearing. The court or MPC may order any test, report, or investigation it may need to make decisions regarding issuance of relief. If there is any disputed material, or issue of fact or law regarding relief, the court may grant a hearing. The standard of proof throughout the process is preponderance of the evidence.

A person may petition for an Order of Limited Relief from collateral sanctions related to employment, education, housing, public benefits, or occupational licensing. The petition may be presented to the sentencing court at or before sentencing or to MPC at any time after sentencing. The court or MPC may issue the order if it finds that granting the petition will materially assist the person in obtaining employment, education, housing, public benefits, or occupational licensing; the person has a substantial need in order to live a law abiding life; and granting the petition would not pose an unreasonable risk to the safety or welfare of the public or another person. The order must specify the sanction relieved and any restrictions imposed.

A Certificate of Restoration of Rights relieves most collateral sanctions, with limited exceptions. A person must wait until five years after his or her last conviction or release from incarceration, whichever arises later, before the person may petition for a Certificate of Restoration of Rights. The court or MPC may grant the petition if it finds that the person is engaged in or seeking to engage in a lawful occupation or activity; the person is not in unjustifiable violation of a criminal sentence; the person does not have a pending criminal charge; and relief would not pose an unreasonable risk to the safety or welfare of the public or another person. The order must specify any restrictions on relief.

Either form cannot relieve requirements related to sex offender laws, motor vehicle laws, and employment restrictions imposed by law enforcement agencies. Either form may be revoked or restricted on motion by a State's Attorney, after a hearing, if requested, and if the court or MPC finds just cause, such as a new felony conviction.

The court or MPC must maintain public records of relief issuance. The State's criminal history record system must also include reference to relief.

Current Law/Background: A federal, State, or administrative entity may impose collateral consequences on an individual convicted of a crime that are beyond the terms of the criminal sentence. Some collateral consequences are discretionary and others occur as a matter of law. The consequences are varied and are not officially maintained in any centralized area. Criminal convictions affect individuals in areas such as voting rights, jury service, public housing, firearms ownership, licensing and employment, and family law.

Examples of State and federally imposed collateral consequences include (1) preventing an individual from registering to vote in the State if convicted of a felony and serving a court-order sentence of imprisonment, including parole or probation (Election Law Article, § 3-102(b)(1)); (2) disqualifying an individual from jury service if convicted and sentenced to more than six months in prison (Courts and Judicial Proceedings Article, § 8-103(b)(4)); (3) giving the State Board of Cosmetologists discretion in denying, revoking, or suspending the license of someone who has been convicted of a felony or misdemeanor (Business Occupations and Professions Article, § 5-314); (4) requiring submission to drug testing and in some cases deeming an individual ineligible for temporary cash assistance or food stamps after a conviction of certain drug-related offenses (Human Services Article, § 5-601); and (5) denying students federal educational or financial aid after a conviction for any federal or State offense involving possession or sale of a controlled dangerous substance. (U.S.C.A. § 1091)

The Maryland Rules of Professional Conduct require a defense attorney to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions.” (Maryland Rule of Professional Conduct 1.4(b)). This standard includes advising an individual of the collateral consequences surrounding a criminal conviction. The legal

requirement for the judge to advise an individual of a guilty plea's collateral consequences is outlined in Maryland Rule 4-242(f). The judge, State's Attorney, or the defendant's attorney must advise the individual on the record:

- (1) that by entering the plea, if the defendant is not a U.S. citizen, the defendant may face additional consequences of deportation, detention, or ineligibility for citizenship;
- (2) that by entering a plea to the offenses set out in Code, Criminal Procedure Article, § 11-701, the defendant shall have to register with the defendant's supervising authority as defined in Code, Criminal Procedure Article, § 11-701 (p); and
- (3) that the defendant should consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequences of the plea.

In some situations, improper advisement could deem the plea invalid.

State Expenditures: General fund expenditures increase significantly for MPC within DPSCS, as discussed below. The bill also may result in an increase in expenditures for the Judiciary to provide notice and hold hearings. The magnitude of these increases in expenditures depends on the volume of requests for relief, which cannot be reliably estimated at this time.

Department of Public Safety and Correctional Services: General fund expenditures for MPC may increase by *as much as* \$1,000,594 in fiscal 2016, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring one supervisor, two parole commissioners, four hearing officers, six office clerks, and one clerical employee to prepare notices and conduct hearings required under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position(s)	14
Salaries and Fringe Benefits	\$938,574
Operating Expenses	<u>62,020</u>
Total FY 2016 State Expenditures	\$1,000,594

Future year expenditures, which may increase to \$1.1 million by fiscal 2020, reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include additional investigator positions that may be needed to conduct investigations pertaining to revocation of relief or expenses related to office space to accommodate additional hearings.

In fiscal 2014, MPC paroled 3,201 offenders from DPSCS and local detention centers.

The bill authorizes MPC to grant relief from one or more of the collateral sanctions related to employment, education, housing public benefits, or occupational licensing. Under the bill, MPC decides whether to issue an order granting relief after reviewing the petition, criminal history, and victim or prosecutor input.

MPC is required to maintain records on offenders released on parole or mandatory supervision for five years after supervision has expired. Upon receipt of a petition for relief, MPC must update the criminal history as well as notify any victims of the petition. In addition, MPC must notify the State's Attorney of the jurisdictions in which the offender was convicted of the petition. MPC may need two additional clerical employees to handle the various notifications required under the bill.

The majority of parole hearings are conducted by hearing officers. Hearing officers make recommendations. Their recommendations must be reviewed by parole commissioners. Reviewing these petitions is similar to the preparation done prior to conducting a parole hearing. MPC currently has 11 hearing officers and 10 parole commissioners. According to MPC, there are 9,116 offenders under parole or mandatory supervision, and there is no way to know how many offenders would seek relief under the bill. Compliance with the bill's requirements may require 4 additional hearing officers and 2 additional commissioners for MPC.

MPC advises that it most likely needs to create a new unit within the agency to handle the receipt of petitions, distribution of petitions for review after notifications are completed, preparation and delivery of orders and certificates, processing requests for revoking or restricting certificates or orders, and scheduling hearings. In order to accommodate these responsibilities, MPC may need five clerical employees and a supervisor.

Judiciary – The Judiciary advises that the bill's requirements may have an “enormous fiscal and operational impact on the Judiciary.” However, the extent of this increase depends on the demand for the relief and procedures contained in the bill and the extent to which the bill's provisions prolong existing judicial proceedings or create the need for additional proceedings.

Office of the Attorney General (OAG): **Despite a request for information, OAG did not provide a fiscal estimate of the impact of the bill.** Although the bill requires the office to compile and publish a list of collateral consequences of a conviction, which may be extensive, the Department of Legislative Services assumes that OAG can handle the bill's requirements with existing resources.

Local Fiscal Effect: Circuit courts may incur additional expenditures for additional proceeding pursuant to the bill.

Howard County advises that the bill is not expected to have a fiscal impact on the county.

The Montgomery County Attorney's Office advises that the bill may have a fiscal impact on the office.

The State's Attorneys' Association advises that the bill has a significant impact on prosecutors. However, the association cannot quantify the fiscal impact at this time.

Additional Comments: It is unclear to what extent MPC has the authority to eliminate the collateral consequence of a sentence imposed by a court or the administrative or disciplinary actions of another entity (*e.g.*, licensing boards). Also, some collateral consequences are connected to federally subsidized or federally operated programs, which are subject to federal laws and regulations. The extent to which the types of relief offered under the bill can affect eligibility or participation in such programs is unclear.

Additional Information

Prior Introductions: None.

Cross File: HB 1059 (Delegate D. Barnes, *et al.*) - Judiciary.

Information Source(s): Howard and Montgomery counties; City of Takoma Park; Department of Budget and Management; Department of Housing and Community Development; Department of Health and Mental Hygiene; 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; Department of Legislative Services

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