

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

House Bill 1489 (Delegate McComas, *et al.*)
Health and Government Operations

Guardianship of a Minor or Disabled Person - Criminal History Records Check

This bill requires a court to conduct a criminal history records check, unless otherwise specified, before appointing any individual as a guardian of the person of a minor or a disabled person. A criminal history records check is not required for emergency orders or the appointment of a local department of social services, local office on aging, the Secretary of Aging, or a licensed Maryland attorney as a guardian of the person of a minor or a disabled person.

Fiscal Summary

State Effect: General fund expenditures increase by \$33,200 in fiscal 2017 only for computer reprogramming costs as a result of the bill's requirement that the court collect a fee for a records check from prospective guardians. Any additional payments to the Criminal Justice Information System (CJIS) for criminal history records checks are cost recovery only. CJIS can handle the bill's requirements with existing resources. Potential minimal increase in State expenditures to the extent that local departments of social services receive additional requests for guardianship from individuals who are unable to pay for the required criminal history records checks.

Local Effect: Local expenditures increase in circuit and orphan's courts, with a minor impact in some jurisdictions and perhaps a significant impact in others, to process applications for the criminal history records checks required under the bill for guardians of the person of a minor or disabled person. No data is available to reliably estimate the number of criminal history records applications and in what jurisdictions they are likely to be submitted. Local Area Agencies on Aging (AAA) caseloads may also increase minimally, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, a court must submit a prospective guardian's fingerprints to both State and federal authorities. The prospective guardian(s) must pay the fee both for the Maryland criminal history and the federal national criminal history records checks. The Department of Public Safety and Correctional Services must forward a printed statement from the Central Repository of CJIS both to the court and the prospective guardian. An individual subject to a criminal history records check under the bill may contest its contents using specified procedures in the Criminal Procedure Article.

Current Law:

Criminal History Records Checks: There is no requirement in State law for a circuit court or orphan's court to conduct a criminal history records check of guardians of the person.

The following individuals must obtain a criminal history records check: (1) an individual seeking to adopt a child through a child placement agency; (2) an individual who is seeking to become a guardian through a local department of social services; (3) an individual whom the juvenile court appoints as a guardian; and (4) an adult relative with whom a child, committed to a local department of social services, is placed by the local department. Also required to obtain a criminal history records check is any adult known by a local department of social services or the Maryland State Department of Education to be residing in (1) a family child care home or large family child care home required to be registered; (2) a home where informal child care is being provided to a child not residing in the home; (3) a home of an adult relative of a child with whom the child, committed to a local department, is placed by the local department; (4) specified foster care homes or child care homes; (5) a home of an individual seeking to adopt a child through a child placement agency; or (6) the home of an individual seeking to become a guardian through a local department. Other individuals must obtain a criminal history records check if requested by a local department, as specified.

Guardianship Petitions: Unless good cause is shown for the appointment, a court is prohibited from appointing, as a guardian of the person of a minor or disabled person, a person who has been convicted of (1) a felony; (2) a crime of violence; (3) assault in the second degree; or (4) a sexual offense in the third or fourth degree or attempted rape or sexual offense in the third or fourth degree.

A court is also prohibited from appointing as guardian of the property of a minor or disabled person, a person who has been convicted of a crime that reflects adversely on an individual's honesty, trustworthiness, or fitness to perform the duties of a guardian, including fraud, extortion, embezzlement, forgery, perjury, and theft unless good cause can be shown for the appointment.

If neither parent is serving as guardian of the person and no testamentary appointment has been made, a guardian of an unmarried minor may be appointed by a court, after notice and hearing, if any person interested in the welfare of the minor petitions the court. On petition and after any required notice or hearing, a guardian of the person of a disabled person is appointed if the court determines from clear and convincing evidence that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, alcoholism, or drug addiction, and where the court finds that no less restrictive form of intervention is available that is consistent with the person's welfare and safety.

A court may appoint a guardian of the property of a minor or a disabled person upon petition and after any required notice or hearing. A guardian of the property of a minor is appointed if the court determines that (1) a minor owns or is entitled to property that requires management or protection or (2) funds are needed for the minor's support, care, welfare, and education, and protection is necessary or desirable to obtain or provide funds. A guardian of the property of a disabled person is appointed if the court determines that (1) the person is unable to manage his or her property and affairs effectively because of physical or mental disability, disease, alcoholism, drug addiction, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance and (2) the person has or may be entitled to property or benefits that require proper management.

State Fiscal Effect:

Judiciary: General fund expenditures increase by \$33,240 in fiscal 2017 only for computer reprogramming costs. This estimate includes costs for analysis, programming, testing, and project management.

CJIS: CJIS is authorized by law to collect a fee for providing criminal history records information for purposes other than criminal justice. COMAR 12.15.01.14A sets the fee at \$18. Revenue from the fees is used to provide the service. The total cost for each criminal history records check and fingerprinting is \$52.75, which includes State and national criminal history records checks. Any additional expenditures for CJIS to provide additional criminal history records checks is offset by the fees, which are paid by the applicants. CJIS can handle the requirements of the bill with existing resources.

Local Expenditures:

Judiciary: The Judiciary advises that the fiscal and operational impact on circuit and orphan's courts varies, depending on the jurisdiction, and that the data is not available to reliably estimate which jurisdictions may be subject to additional costs and operational

impacts under the bill. The Judiciary advises that for the two-year period from January 1, 2013, through December 31, 2014, about 5,500 new guardianship petitions were filed in the circuit and orphan's courts. It is unknown how many of the petitions were for guardians of the property, which are not subject to the bill, and how many were for guardians of the person.

Local Area Agencies on Aging: The Maryland Department of Aging advises that AAAs can be appointed guardian of the person of an older adult by a court. The bill exempts AAAs from the criminal history records check requirement, but caseloads may increase in the event that a prospective guardian refuses a guardianship appointment due to inability to pay the criminal history records check fee and, therefore, requests that an AAA become guardian instead. Also, emergency requests for temporary guardianship may increase if the processing time for guardianship is lengthened due to the criminal history records check requirement. It is unknown how many petitions for guardians are affected by the bill. In fiscal 2015, local AAAs served as guardian of the person for 911 older individuals.

Additional Information

Prior Introductions: None.

Cross File: SB 171 (Senator Kelley, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Maryland Department of Aging, Department of Legislative Services

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