

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 733 (Delegate Anderson)
 Judiciary

Courts - Civil Court Records - Shielding

This bill requires a clerk of a court to “shield” a “civil court record” from public inspection within one year after the judgment entered in the applicable civil proceeding is satisfied or within seven years after the conclusion of the applicable civil proceeding if the judgment has not been satisfied. The bill’s provisions do not preclude criminal justice units or the person who is the subject of the shielded civil court record or that person’s attorney from accessing a shielded civil court record for a legitimate reason. A custodian must deny inspection of shielded records to persons who are not authorized to access those records.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$250,900 in FY 2019. Future year expenditures are annualized and reflect ongoing costs through December 2021. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	250,900	151,300	156,400	80,800	0
Net Effect	(\$250,900)	(\$151,300)	(\$156,400)	(\$80,800)	\$0

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

Local Effect: Local expenditures may increase for circuit courts to comply with the bill’s requirements. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A “civil court record” is an official record of a court about a civil proceeding that the clerk of a court or other court personnel keeps. A civil court record includes (1) an index, a docket entry, a petition, a memorandum, a transcription of proceedings, an electronic recording, an order, and a judgment and (2) any electronic information about a proceeding on the website maintained by the Maryland Judiciary.

“Shield” means to (1) remove a court record kept in a courthouse to a separate secure area to which persons who do not have a legitimate reason for access are denied and (2) completely remove all electronic information concerning the applicable proceeding from a public website maintained by the Maryland Judiciary, including the names of the parties, case numbers, and any reference to the proceeding or any reference to the removal of the proceeding from the website.

Current Law: Current provisions for shielding of court records apply to criminal records, not civil records. Chapter 313 of 2015 authorizes a person to petition a court to shield the person’s court records and police records relating to one or more “shieldable convictions” of the person entered in the circuit court or the District Court in one county no earlier than three years after the person satisfies the sentence imposed for all convictions for which shielding is requested, including parole, probation, or mandatory supervision. 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 person may be granted only one shielding petition over the lifetime of the person, and a court may grant a shielding 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. Also, the Maryland Judiciary Case Search may not in any way refer to the existence of specific records shielded in accordance with the bill. “Shieldable conviction” means a conviction of 1 of a list of 12 specified crimes. 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 or convictions are 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.

A shielded record must remain fully accessible by (1) criminal justice units for legitimate criminal justice purposes; (2) prospective or current employers or government licensing agencies that are subject to a statutory or regulatory requirement or authorization to inquire into the criminal background of an applicant or employee for purposes of carrying out that

requirement or authorization; (3) a person that is authorized or required 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; (5) health occupations boards established under the Health Occupations Article; (6) the Natalie M. LaPrade Medical Marijuana Commission established under Title 13, Subtitle 33 of the Health-General Article; (7) a person that uses volunteers who care for or supervise children; (8) a person that attests under penalty of perjury that the person employs or seeks to employ an individual to care for or supervise a minor or vulnerable adult, as defined in § 3-604 of the Criminal Law Article; and (9) a person who is accessing a shielded record on behalf of and with written authorization from an entity described in items (1) through (8).

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, 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.

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, 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 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.

The Maryland Judiciary Case Search may not, in any way, refer to the existence of specific shielded records. Except for those persons granted continued access, a custodian must deny inspection of criminal records and police records relating to the conviction of a crime that has been shielded.

Background: According to the Judiciary, there were a total of 203,320 civil judgments in the District Court during fiscal 2017. The number of civil judgments for the same period in the circuit courts is not readily available.

State Expenditures: General fund expenditures for the Judiciary increase by at least \$250,877 in fiscal 2019, which reflects the bill's October 1, 2018 effective date. This estimate reflects the cost of hiring four contractual clerks as well as programming costs for

the Judiciary, as discussed below. Additional expenditures may be incurred if additional clerical personnel are needed. The information and assumptions used in calculating this estimate are stated below:

- The Judiciary advises that the bill appears to be retroactive and does not specify the types of civil cases that are subject to shielding, since a judgment is not only a monetary judgment, but the final decision of any civil case. Judgments of restitution in a criminal case also result in a civil case. According to the Judiciary, the level of effort required to locate and shield archived records is substantial. The Judiciary also notes that while the bill shields unsatisfied judgments after 7 years, Maryland Rule 2-625 specifies that a money judgment expires after 12 years, and can be renewed any time before expiration.
- Under the bill, shielding of records is automatic, not the result of a petition as it is with criminal records. Thus, computer reprogramming of the Judicial Information Systems is required to initiate the shielding process, at a cost of \$113,080 in fiscal 2019 only.
- Personnel may be needed for the Judiciary to shield older records and to shield records in jurisdictions that have not converted to the Maryland Electronic Courts system (MDEC). While 70% of the State's courts are on MDEC, several larger jurisdictions (Baltimore City and Baltimore, Montgomery, and Prince George's counties) are not on MDEC. According to the current timeline, all courts will be on MDEC by 2021.
- The Judiciary advises that it needs at least one additional clerk in each of its 12 districts. The Department of Legislative Services advises that while the bill appears to apply retroactively, a significant portion of older records and archived records may not be in demand and it may be possible for the Judiciary to develop a system of shielding records and denying access to older records on an as-needed basis.
- The four (larger) jurisdictions not on MDEC require additional clerical support to assist with shielding records until MDEC is fully deployed in 2021. The cost associated with hiring four contractual clerks is \$137,797, which accounts for the bill's October 1, 2018 effective date and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. These contractual positions are not needed after December 31, 2021; by then, MDEC is expected to be fully implemented statewide.

- All records prior to 1981 are archived. If strict compliance with the bill requires all records maintained in a courthouse to be moved to a separate secure area with limited access, regardless of requests for those records, then expenditures may increase further for the Judiciary to locate and move files and make shielding determinations for files/judgments. The cost associated with hiring one additional contractual clerk is \$34,450 in fiscal 2019 and \$37,830 in fiscal 2020.

Contractual Position(s)	4
Salaries and Fringe Benefits	\$118,922
Programming Costs	113,080
Equipment/Operating Expenses	<u>18,875</u>
Minimum FY 2019 State Expenditures	\$250,877

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses through December 2021.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Local Expenditures: Local expenditures may increase for circuit courts to comply with the bill’s requirements. The magnitude of this increase may vary by county, depending on volume and existing resources. For example, Montgomery County advises that compliance requires \$20,000 in computer reprogramming costs in fiscal 2019.

Small Business Effect: The bill may have a meaningful impact on small businesses that are the subject of shielded records and small businesses that seek access to shielded records.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County; City of Bowie; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 13, 2018
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