

**Department of Legislative Services**  
 Maryland General Assembly  
 2019 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 974 (Senator McCray)  
 Judicial Proceedings

**Occupational Licenses or Certificates - Application Determinations - Use of Criminal History**

This bill prohibits specified governmental units from denying an application for an occupational license or certificate for reasons associated with an applicant’s prior nonviolent conviction in which certain conditions are met. The bill repeals existing statutory provisions pertaining to denial of an occupational license or certificate solely on the basis of an applicant’s prior criminal conviction. The bill authorizes an individual, at any time, to petition the appropriate specified governmental unit to make a determination if the individual’s prior convention would disqualify them from an occupational license or certificate. The bill also requires specified governmental units to list on each application for an occupational license or certificate specific criminal convictions that would disqualify an applicant from being granted the occupational license or certificate.

**Fiscal Summary**

**State Effect:** General fund expenditures for the Department of Labor, Licensing, and Regulation (DLLR) increase by \$100,000 in FY 2020 for one-time programming expenses. Out-year expenditures reflect ongoing programming updates. The bill can be implemented with existing budgeted resources for other agencies but may present operational challenges. The bill is not expected to materially affect State revenues.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	100,000	2,500	2,500	2,500	2,500
Net Effect	(\$100,000)	(\$2,500)	(\$2,500)	(\$2,500)	(\$2,500)

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

**Local Effect:** The bill is not anticipated to have a material fiscal or operational impact on county finances or operations.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** The bill applies to the Maryland Department of Agriculture; the Maryland Department of the Environment; the Maryland Department of Health (MDH); the Department of Human Services; DLLR; the Department of Public Safety and Correctional Services (DPSCS); each unit in those departments; and local county or municipal licensing authorities that are authorized by law to issue occupational licenses or certificates for a county or municipality.

Under the bill, the specified governmental units may not deny an occupational license or certificate to an applicant with a prior criminal conviction of a nonviolent crime if a period of five years or more has passed since the applicant's conviction, unless the department determines that (1) there is a direct relationship between the applicant's previous conviction and the specific occupational license or certificate sought or (2) the issuance of the license or certificate would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. "Nonviolent crime" is not defined by the bill.

When determining whether there is a direct relationship between the previous conviction and the credential sought, the department must consider the specific duties and responsibilities required of a licensee or certificate holder and whether the applicant's previous conviction has any impact on the applicant's fitness or ability to perform the duties and responsibilities authorized by the license or certificate. The bill repeals a set of factors that a department must consider when determining whether to deny an application. The bill's provisions do not apply to an individual who is on parole or probation at the time of application for a license or certificate or who is the subject of pending criminal charges. The bill further repeals an exception that excludes individuals previously convicted of specified crimes of violence from the law.

**Current Law:** It is the policy of the State to encourage the employment of nonviolent ex-offenders and remove barriers to their ability to demonstrate fitness for occupational licenses or certifications required by the State. Unless an applicant has been previously convicted of a "crime of violence" (as defined in the Criminal Law Article) the specified departments and each unit in the departments may not deny an occupational license or certificate to an applicant solely on the basis that the applicant has previously been convicted of a crime. This generally applies except for a departmental determination that:

- there is a direct relationship between the applicant's previous conviction and the specific occupational license or certificate sought; or
- the issuance of the license or certificate would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

In making the determination above, the department must consider:

- the policy of the State regarding employment of nonviolent ex-offenders;
- the specific duties and responsibilities required of a licensee or certificate holder;
- whether the applicant's previous conviction has any impact on the applicant's fitness or ability to perform the duties and responsibilities authorized by the license or certificate;
- the age of the applicant at the time of the conviction and the amount of time that has elapsed since the conviction;
- the seriousness of the offense for which the applicant was convicted;
- other information provided by the applicant or on the applicant's behalf with regard to the applicant's rehabilitation and good conduct; and
- the legitimate interest of the department in protecting property and the safety and welfare of specific individuals or the general public.

Section 14-101(a) of the Criminal Law Article defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of certain sexual conduct with a child; (18) assault in the first degree; and (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

**Background:** Chapter 796 of 2018 required the aforementioned executive departments to report on the following information for the preceding five years by October 1, 2018:

- how many applications for an occupational license or certificate were received;
- how many applicants had a criminal record that would be applicable under the provisions of § 1-209 of the Criminal Procedure Article related to occupational license or certificate denials for nonviolent crimes;
- of the applicants with applicable criminal records, how much time had passed since the criminal conviction, and how many applications were denied on the basis that the applicant had previously been convicted of a crime; and
- of the applications denied on the basis of a previous conviction, under which exemption in current law the application was denied.

**Exhibit 1** contains a summary of the information submitted in response to Chapter 796.

**Exhibit 1**  
**Information Submitted in Compliance with the Requirements of**  
**Chapter 796 of 2018\***

<b>Department/Unit</b>	<b>Applications Received – Preceding 5 Years</b>	<b>Criminal Records under § 1-209 – Past 5 Years</b>	<b>Time Elapsed Since Conviction</b>	<b>Number of Applications Denied Based on Previous Conviction</b>	<b>Exemption under 1-209(d) Applicable to Denial</b>
<b>MDA</b>					
Board of Veterinary Medical Examiners	926 veterinary licenses were issued between 2014 and 2018. Information is not available on the total number of applications received or the total number of applicants with a criminal history during that time period. No applicants have been denied a license based on a criminal record.				
<b>MDH</b>					
Acupuncture	452	0	0	0	N/A
Audiologists	2,087	0	0	0	N/A
Residential Child Care	1,642	150	All over 5 years	0	N/A
Chiropractic Examiners	749	1	1 year	1	(d)(1)
Dietetic Practice	1,000	0	0	0	N/A
Environmental Health Specialists	530	0	0	0	N/A
Massage Therapy	1,802	3	Less than 1 year (2) and 5 years (1)	3	2 – (d)(1) 1 – (d)(2)
Morticians and Funeral Directors	325	37	All over 1 year	5	(d)(1)
Nursing Home Administrators	177	2	Both over 10 years	0	N/A
Occupational Therapy	1,908	4	1 year, 5 years, 12 years, and 17 years	0	N/A
Optometry	291	N/A	N/A	0	N/A
Physical Therapy	4,227	At least 1	7 years	1	(d)(2)
Podiatric Medical Examiners	129	0	0	0	N/A
Professional Counselors and Therapists	3,467	0	0	0	N/A
Psychology	1,840	0	0	0	N/A
Social Work	7,875	10	All over 5 years	2	(d)(2)

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<b>DHS</b>	N/A	N/A	N/A	N/A	N/A
<b>DLLR</b>					
Occupational and Professional Licensing	613,034	803	N/A	N/A	N/A
Racing Commission	37,253 applications received during the preceding 5 years; 567 applicants were fingerprinted; none of the fingerprinted applicants were denied a license because of a criminal background.				
Financial Regulation	70,861	606	N/A	0**	N/A
<b>DPSCS</b>					
Division of Parole and Probation – 7 applications for Certificates of Rehabilitation; 6 completed investigations; 1 pending investigation; 3 certificates issued; 1 certificate denied for prior conviction for a crime of violence; 2 applications denied for failure to pay restitution, fines, and fees (applicants may reapply once paid).					

DHS: Department of Human Services

DLLR: Department of Labor, Licensing, and Regulation

DPSCS: Department of Public Safety and Correctional Services

MDA: Maryland Department of Agriculture

MDH: Maryland Department of Health

N/A: not applicable

\*The Department of Legislative Services did not receive any information submitted by the Maryland Department of the Environment in response to Chapter 796 of 2018.

\*\*According to the Office of the Commissioner of Financial Regulation, there was one denial of a license that was related to criminal history. However, the office advises that the applicant was denied a license because of falsification of documents/material misstatements/misrepresentation of charges, rather than the underlying conviction.

Source: Maryland Department of Agriculture; Maryland Department of Health; Department of Human Services; Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Department of Legislative Services

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County governments and local municipalities also regulate a variety of occupational licenses and certificates. Licenses vary by county or municipality and one license type may not be applicable or monitored by a neighboring jurisdiction. For example, the Frederick County Department of Permits and Inspections monitors the following occupational licenses and permits: electricians, plumbers, and gaming distributors. The Anne Arundel County Division of Licensing issues and monitors the following occupational licenses and

certificates: auctioneers, electricians, gasfitters, hucksters, liquid waste haulers, mechanical contractors, mobile home dealers, pawnbrokers, plumbers, roadside vendors, secondhand dealers, taxicabs, and towing companies.

**State Fiscal Effect:** While the bill can generally be implemented with existing budgeted resources, it may produce some operational difficulties or challenges for the specified agencies.

*DLLR:* According to DLLR, the bill conflicts with legal restrictions on licensing set out under State and federal law for certain licensing types. For example, under § 11-605 of the Financial Institutions Article and federal law, the Commissioner of Financial Regulation must deny a mortgage loan officer license to anyone who has been convicted of or pled guilty or *nolo contendere* to a felony crime that involved an act of fraud, dishonesty, a breach of trust, or money laundering regardless of how long it has been since the conviction occurred. Additionally, under § 11-506(c) of the Financial Institutions Article, the commissioner must deny a mortgage lender license to anyone who has been convicted of a felony crime in the 10 preceding years before the application date or any time preceding the application date if the felony involved an act of fraud, theft, or forgery.

DLLR also advises that it currently considers the complete facts and circumstances of all criminal convictions reported on an applicant's background check and considers, among other things, the passage of time between the conviction and the present time, the age and other circumstances of the applicant at the time of the conviction and at the present time, and the actions and activities of the applicant between the time of the conviction and the present time.

The Occupational and Professional Licensing Division within DLLR advises that all boards and commissions within the division are required by applicable statutes to review and assess both felony and misdemeanor convictions using the criteria set forth in the statutes, some of which may conflict with the provisions of the bill.

DLLR also advises that the Occupational and Professional Licensing Division is responsible for approximately 200 different applications for licensing and certification. The bill's requirement that all specific criminal convictions that would disqualify an applicant from receiving an occupational license or certificate be listed on the application would require significant programming costs to both update existing applications in addition to ensuring relevant changes are made as new disqualifying convictions are considered.

Therefore, DLLR general fund expenditures increase by \$100,000 in fiscal 2020, which reflects one-time programming costs to upgrade existing application systems to fulfill the bill's requirements regarding the listing of disqualifying criminal offences on occupational

licenses and certificates. Out-year expenditures of \$2,500 reflect ongoing monitoring and updating relevant occupational applications, licenses, and certificates as needed.

*DPSCS:* The Division of Parole and Probation (DPP) advises that the only certificate process it administers is the certificate of rehabilitation under § 7-104 of the Correctional Services Article, which was established under Chapter 515 of 2016, also known as the Justice Reinvestment Act. A licensing board may not deny an occupational license or certificate to an applicant who has been issued a certificate of rehabilitation solely on the basis that the applicant has previously been convicted of the crime that is the subject of the certificate of rehabilitation, unless the licensing board makes specified determinations after consideration of specified factors. The determinations and factors under § 7-104 of the Correctional Services Article are virtually identical to those under § 1-209 of the Criminal Procedure Article, which the bill proposes to amend.

Under § 7-104 of the Correctional Services Article, a certificate of rehabilitation may not be administered to an individual who has been convicted of a crime of violence under § 14-101 of the Criminal Law Article or convicted of a registerable sexual offense. Under existing statute, the restrictions on denial of an occupational license or certificate solely on the basis of the applicant's prior conviction do not apply if the applicant was previously convicted of a crime of violence; the bill repeals this exception.

Also, DPP may not issue a certificate of rehabilitation unless a qualifying applicant is no longer under the jurisdiction of DPSCS and has completed all general and special conditions of supervision, including payment of fines, costs, and restitution. Thus, the bill conflicts with existing statutory requirements for the issuance of a certificate of rehabilitation under § 7-104.

The Police and Correctional Training Commissions (PCTC) advises that to be certified as a police or correctional officer in Maryland, each applicant must comply with the criteria established in the Police Training Act (Title 3, Subtitle 2 of the Public Safety Article) and the Correctional Training Act (Title 8, Subtitle 2 of the Correctional Services Article). Those statutes establish the requirements for a criminal record check and each of the commissions (the Maryland Police Training and Standards Commission and PCTC) has established standards for hiring that include a review of an applicant's criminal record.

*MDH:* MDH advises the bill conflicts with legal restrictions relating to the issuance of nursing licenses. Under § 8-316(a)(4) of the Health Occupations Article, the Board of Nursing may deny, among other specified provisions, a nursing license to anyone who has been convicted of or pled guilty or *nolo contendere* to a felony crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

**Additional Comment:** As noted above, the bill prohibits specified governmental units from denying an occupational license or certificate to an applicant with a prior criminal conviction of a nonviolent crime if a period of five years or more has passed since the applicant's conviction, *unless* the department determines that (1) there is a direct relationship between the applicant's previous conviction and the specific occupational license or certificate sought or (2) the issuance of the license or certificate would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

Given this language, it is not clear whether governmental units may deny occupational licenses or certificates to the specified ex-offenders for reasons other than their prior criminal conviction (for instance, for committing fraud on the application for licensure or certification). Most licensing statutes allow for the denial of licensure or certification for a variety of reasons other than prior criminal convictions. It is not clear if this provision overrides those allowable denials.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Anne Arundel, Frederick, and Montgomery counties; Department of Agriculture; Department of the Environment; Department of Health; Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Maryland Municipal League; Department of Public Safety and Correctional Services; Department of Legislative Services

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