

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 900 (Senator Smith)
Judicial Proceedings

Criminal Records - Disclosure of Information - Prohibited Acts

This bill alters prohibitions under § 10-109 of the Criminal Procedure Article regarding the disclosure of information concerning expunged criminal charges. The bill (1) expands application of the existing prohibitions to a conviction pardoned by the Governor, whether or not it has been expunged; (2) establishes that refusal by a person to disclose information about a pardoned conviction or expunged criminal charges may not be the sole reason for an educational institution to refuse the person's admission; and (3) prohibits a private entity from disclosing information relating to a pardoned conviction or records expunged under State law.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: Minimal.

Analysis

Current Law: The following individuals/entities are prohibited from requiring a person to disclose expunged information about criminal charges in an application, interview, or other means: (1) an employer or educational institution when the person applies for employment or admission; and (2) a unit, official, or employee of the State or a political subdivision of the State when the person applies for a license, permit, registration, or governmental service (governmental application).

A person is not required to refer to or give information concerning an expunged charge when answering a question about a criminal charge that did not result in a conviction or a conviction that the Governor pardoned. A person's refusal to disclose information about expunged criminal charges may not be the sole reason for discharging the person from employment, refusing to hire the person, or denying the person's governmental application. Violators are guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a fine of up to \$1,000 for each violation. A governmental official or employee who is convicted may also be removed or dismissed from public service.

The granting of a pardon for an individual's criminal conviction does not automatically expunge the record of the conviction. A person who is convicted of only one criminal act, other than a crime of violence, and is granted a full and unconditional pardon by the Governor is eligible to file a petition for expungement under § 10-105 of the Criminal Procedure Article. The petition must be filed within 10 years after the pardon is signed by the Governor. Statute authorizes the expungement of convictions meeting specified criteria, whether or not the conviction has been pardoned. According to a 1986 opinion by the Office of the Attorney General, State agencies may inquire into prospective employees' criminal convictions which have not been expunged when past criminal activity has a bearing on fitness for the particular position applied for; in addition, applicants for positions that require the carrying of firearms should be asked for information about past criminal activity for which the court and police records have been expunged. *71 Op. Att'y Gen.*, 242 (1986).

Pursuant to the State Personnel and Pensions Article, a State appointing authority in the Executive, Legislative, or Judicial Branch is prohibited from inquiring into the criminal record or history of an applicant for employment until the applicant has been given an opportunity for an interview. However, the restrictions do not apply to (1) the Department of Public Safety and Correctional Services; (2) any position for which an appointing authority is required by law to conduct a criminal history records check; (3) any position in the sheriff's office of any county; or (4) any position within the State Personnel Management System for which the Secretary of Budget and Management has determined that the specific duties and responsibilities require the appointing authority to know an applicant's criminal history. An appointing authority may still notify an applicant that prior criminal convictions may prohibit employment for some positions.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 244 (Delegate Moon, *et al.*) - Judiciary.

Information Source(s): Kent, Montgomery, and Worcester counties; City of Laurel; Governor's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; Maryland State Archives; University System of Maryland; Department of Legislative Services

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