

**Department of Legislative Services**  
Maryland General Assembly  
2021 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

House Bill 23

(Delegate Stein)

Judiciary and Environment and  
Transportation

Judicial Proceedings

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**Personal Information - State and Local Agencies - Restrictions on Access**  
**(Maryland Driver Privacy Act)**

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This bill modifies Maryland’s Public Information Act (PIA) to require an officer, an employee, an agent, or a contractor of the State or a political subdivision to deny inspection of specified records, and deny inspection using facial recognition searches, by any federal agency seeking access for the purpose of enforcing federal immigration law unless provided with a valid warrant. In addition, a person who receives specified personal information under PIA may not disclose the information to a federal agent or federal agency for the purpose of federal immigration enforcement unless presented with a valid warrant. The Motor Vehicle Administration (MVA), the Department of State Police (DSP), and the Department of Public Safety and Correctional Services (DPSCS) must submit a specified annual report to the General Assembly on records requests from federal agencies seeking access for immigration enforcement purposes. Finally, the bill restricts access to databases operated by State and local law enforcement agencies.

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**Fiscal Summary**

**State Effect:** The bill’s requirements can likely be handled with existing resources, as discussed below. However, the bill’s operational effect is somewhat unclear, as discussed in the Additional Comments section below.

**Local Effect:** See above.

**Small Business Effect:** None.

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## Analysis

### **Bill Summary:**

#### *Required Denial of Specified Records and Searches under the Public Information Act*

Notwithstanding any other provision of PIA, an officer, employee, agent, or contractor of the State or a political subdivision must deny inspection of a part of a public record that contains personal information or a photograph of an individual by any federal agency seeking access for the purpose of enforcing federal immigration law unless provided with a valid warrant.

In addition, an officer, employee, agent, or contractor of the State or a political subdivision must deny inspection using a facial recognition search of a digital photographic image or actual stored data of a digital photographic image by any federal agency seeking access for the purposes of enforcing federal immigration law unless provided with a valid warrant. “Facial recognition,” as defined under the bill, means a biometric software application that identifies or verifies a person by comparing and analyzing patterns based on a person’s facial contours.

#### *Mandatory Reporting on Records and Search Requests*

By June 1, 2023, and annually thereafter, MVA, DSP, and DPSCS must submit a report to the General Assembly on PIA requests from federal agencies seeking access to personal information, a photograph of an individual, or a facial recognition search for the purpose of federal immigration enforcement, whether or not the request was initiated through a State or local law enforcement agency. The report must include specified information relating to the number of requests received, the number of facial recognition searches completed, and the number of individuals whose personal information or photograph was provided to a federal agency.

#### *Requirements for Databases Operated by Law Enforcement Agencies*

The bill sets forth various requirements for databases operated by State and local law enforcement agencies. “Database,” as defined under the bill, means any database operated by State and local law enforcement agencies, including databases maintained for a law enforcement agency by a private vendor. “Law enforcement agency” is defined as a federal, State, or local agency authorized to enforce criminal laws. “Law enforcement agency” includes DPSCS but does not include the U.S. Immigration and Customs Enforcement Agency.

An entity operating such a database must limit access to the database to individuals acting on behalf of a law enforcement agency or the Maryland Judiciary. In addition, the entity must require an individual accessing the database to provide (1) the individual's name and contact information; (2) a statement on whether the individual is acting on behalf of the Maryland Judiciary or a law enforcement agency and, if acting on behalf of a law enforcement agency, which law enforcement agency the individual is acting on behalf of; and (3) a statement, under penalty of perjury, that the individual is accessing the database for a legitimate law enforcement purpose. If an individual is accessing a database for the purpose of enforcing federal immigration law, the entity operating the database must deny access to the database unless provided with a valid warrant.

**Current Law:** Under PIA, a custodian of a public record must deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. PIA also requires denial of inspection for personal and confidential records, including, for example, hospital and medical records, financial records, certain police and related criminal records, and licensing records.

#### *Motor Vehicle Administration Records*

Except under specified circumstances, such as when required to disclose information under federal law, a custodian may not knowingly disclose a public record of the Motor Vehicle Administration that contains personal information. With respect to requests for an individual motor vehicle record, an individual may not disclose personal information without written consent from the person in interest. In addition, a custodian may not disclose personal information for surveys, marketing, and solicitations without written consent from the person in interest. The person in interest may withdraw consent to disclose personal information at any time by notifying the custodian.

However, a custodian must disclose personal information for various purposes, including for use by a federal, state, or local government, including a law enforcement agency, or a court in carrying out its functions. It must also disclose personal information for use in connection with a civil, administrative, arbitral, or criminal proceeding in a federal, state, or local court, as specified.

“Personal information,” means information that identifies an individual, including an individual's name, address, driver's license or other identification number, medical or disability information, photograph or computer-generated image, Social Security number, and telephone number. “Person in interest,” as it applies to PIA, means (1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit; (2) if the person has a legal disability, the parent or legal representative of the person; or (3) as to requests for correction of certificates of death under State law,

the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased, as specified.

### *Procedure for Denial*

A custodian who denies inspection of a public record must, within 10 working days, provide a written statement to the applicant that gives (1) the reason for denial; (2) if denying a part of a record on a discretionary basis, a brief explanation of why the denial is necessary and why redacting information would not address the reasons for the denial; (3) the legal authority for the denial; (4) a brief description of the undisclosed record (without disclosing the protected information); and (5) notice of the available statutory remedies.

**State/Local Fiscal Effect:** The bill specifies various requirements and restrictions that apply to databases operated by State and local law enforcement agencies. “Law enforcement agency,” as it applies to these provisions, includes DPSCS. Thus, the bill affects the criminal justice databases administered by DPSCS’s Information Technology and Communications Division.

DPSCS advises that it can make necessary modifications to the criminal justice databases administered by the department with existing budgeted resources. According to DPSCS, individuals currently must register and be issued a user identification in order to access systems hosted by the department; the department collects basic identifying information from individuals when they register. While the department will likely need to make system modifications in order to require users to provide specified statements when accessing databases hosted by the department, as required under the bill, DPSCS advises that this can be accomplished with existing resources.

The bill is not otherwise expected to directly affect State or local finances. It is assumed that State and local agencies can comply with the bill’s PIA requirements with existing resources. In addition, DPSCS, DSP, and MVA advise that they can comply with the bill’s annual reporting requirement with existing budgeted resources.

**Additional Comments:** The bill requires an entity that operates a database (as defined under the bill) to limit access to the database to individuals acting on behalf of a law enforcement agency or the Maryland Judiciary, and specifies that an entity operating a database must require an individual accessing the database to provide a specified statement that the individual is accessing the database for a legitimate law enforcement purpose.

However, it is unclear what may be considered a “legitimate law enforcement purpose” under the bill. The Criminal Justice Information System administered by DPSCS, for example, is accessed for a number of purposes under current State law that, absent a clear

standard, may not qualify as being directly related to law enforcement, such as State criminal history records checks for licensing and employment purposes.

Additionally, the extent to which the bill affects access to State criminal justice information services by currently authorized users among government agencies and the general public is unclear. For example, the State's online sex offender registry, administered by DPSCS, is a publicly available information service; it is unclear whether the bill restricts access to the registry only to law enforcement agencies and the Judiciary (and thus excludes members of the general public).

Finally, this fiscal and policy note assumes that the bill's PIA provisions related to requests for records inspections by federal agencies apply only to requests for inspection submitted under PIA and do not apply when federal agencies utilize channels other than PIA to access specified records or conduct specified searches.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 234 (Senator Lam) - Judicial Proceedings.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Baltimore City Community College; University System of Maryland; Military Department; Morgan State University; Maryland Department of Health; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Baltimore City; Caroline, Cecil, Howard, Montgomery, and Prince George's counties; City of Bowie; Anne Arundel County Public Schools; Charles County Public Schools; Wicomico County Public Schools; St. Mary's County Public Schools; Talbot County Public Schools; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

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