

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 906
Economic Matters

**Occupational Licensing and Certification - Criminal History - Prohibited
Disclosures and Predetermination Review Process**

This bill makes several alterations to existing statutory provisions that prohibit specified executive departments from denying an occupational license or certificate to an applicant solely on the basis of the criminal history of the applicant. The bill also prohibits a department from requiring an applicant to disclose specified criminal history information and establishes a predetermination review process under which an individual can request a department to review the individual's criminal history to determine whether that criminal history would disqualify the individual from obtaining the occupational license or certificate being sought. A department may charge a fee of up to \$100 to conduct a criminal history review under this process, but the fee must be waived if the individual's income is at or below 300% of the federal poverty level, as determined by the District Court.

Fiscal Summary

State Effect: General fund expenditures increase by *as much as* \$342,700 and special fund expenditures increase by *at least* \$238,400 in FY 2024 for affected agencies to implement the bill. Future years reflect annualization and inflation. General fund and special fund revenues increase minimally from criminal history review and licensing fees.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
GF/SF Rev.	-	-	-	-	-
GF Expenditure	\$342,700	\$404,100	\$422,000	\$440,900	\$464,300
SF Expenditure	\$238,400	\$142,400	\$144,500	\$146,700	\$148,900
Net Effect	(\$581,100)	(\$546,500)	(\$566,600)	(\$587,600)	(\$613,200)

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

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law: Under current law and the bill, “department” means the Department of Agriculture (MDA); the Department of the Environment (MDE); the Maryland Department of Health (MDH); the Department of Human Services (DHS); the Maryland Department of Labor (MDL); or the Department of Public Safety and Correctional Services (DPSCS). “Department” includes any unit of these departments.

Under 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. The bill applies this policy to *all* ex-offenders.

The bill prohibits a department from requiring an applicant for an occupational license or certificate to disclose the following as a part of an application: (1) a deferred adjudication; (2) participation in a diversion program; (3) an arrest not followed by a conviction; (4) a conviction for which no term of imprisonment may be imposed; (5) a conviction that has been sealed, vacated, dismissed, expunged, or pardoned; (6) an adjudication of a delinquent act as a juvenile; (7) a conviction for a misdemeanor that did not involve physical harm to another individual; (8) a conviction for which a period of three years has passed since the applicant completed serving their sentence if the sentence did not include a term of imprisonment; or (9) unless the conviction was for a crime of violence as defined under § 14-101 of the Criminal Law Article, a conviction for which three years have passed since the end of the individual’s term of imprisonment.

Under current law, a department 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, 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.

Under the bill, a department 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, 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 a direct and substantial threat to public safety or specific individuals or property.

Under current law, in making this determination, the department must consider (1) the policy of the State described above; (2) the specific duties and responsibilities required of a licensee or certificate holder; (3) 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; (4) the age of the applicant at the time of the conviction and the amount of time that has elapsed since the conviction; (5) the seriousness of the offense for which the applicant was convicted; (6) other information provided by the applicant or on the applicant's behalf with regard to the applicant's rehabilitation and good conduct; and (7) the legitimate interest of the department in protecting property and the safety and welfare of specific individuals or the general public.

The bill requires a department to also consider (1) the applicant's education, training, and employment history before, during and after the applicant's term of imprisonment and (2) whether the occupational license or certificate requires the applicant to be bonded.

Under current law, the existing statute does not apply to a person who was previously convicted of a crime of violence, as defined in § 14-101 of the Criminal Law Article. Also, with the exception of a crime for which registration on the sex offender registry is required, if at least seven years have passed since an applicant completed serving the sentence for a crime, including all imprisonment, mandatory supervision, probation, and parole, and the applicant has not been charged with another crime other than a minor traffic violation during that time, a department may not deny an occupational license or certificate to the applicant solely on the basis that the applicant was previously convicted of the crime. The bill repeals these provisions.

The bill authorizes an individual to file a request with a department for review of the individual's criminal history to determine whether that criminal history would disqualify the individual from obtaining the occupational license or certificate being sought. This predetermination must be binding on the department unless there is a subsequent direct and material adverse change to the individual's criminal history. If, during this predetermination process, a department determines that an occupational license or certificate would be denied to the individual, the department must, if applicable, advise the individual of actions that may be taken to remedy the disqualification. An individual may submit a revised request for a predetermination to the department that includes the completion of any recommended remedial actions. An individual may submit a revised predetermination request the earlier of one year after the individual received the initial predetermination or on completion of the department's recommended remedial actions.

State Fiscal Effect: General fund expenditures for DPSCS increase *by as much as* \$342,686 in fiscal 2024. Special fund expenditures for MDA increase by \$32,500 in fiscal 2024, and special fund expenditures for MDL increase by \$205,871 in fiscal 2024. Future year expenditures reflect annualization and inflation. General and special fund revenues increase minimally from criminal history review fees and to the extent that the bill generates additional licensing activity.

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS increase by *as much as* \$342,686 in fiscal 2024, which accounts for the bill's October 1, 2023 effective date. This estimate reflects the cost of hiring three background investigators and two administrative employees to address additional workloads generated by the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	5.0
Salaries and Fringe Benefits	\$305,641
Operating Expenses	<u>37,045</u>
DPSCS – FY 2024 GF Expenditures	\$342,686

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

DPSCS's Human Resources Services Division (HRSD) anticipates additional workloads for follow-up background investigations related to reconsideration when an application for certification has been denied by the Police Training and Standards Commission or the Correctional Training Commission. HRSD also estimates a 30% increase in applications, conditional job offers, and candidates moving forward with the pre-employment background investigation and screening processes. DPSCS did not provide additional information regarding how it calculated this projected increase in workload. To the extent the bill generates fewer background investigations than projected, general fund expenditures are less.

Department of Agriculture

Special fund expenditures for the State Board of Veterinary Medical Examiners increase by \$32,500 in fiscal 2024, which reflects the bill's October 1, 2023 effective date. Future year expenditures reflect annualization and inflation. The board advises that based on specific licensing requirements, the bill's criminal history disclosure provisions may require the board to run criminal background checks on all individuals seeking licensure in Maryland, at an estimated cost of \$10,000 annually for the 200 new veterinarians licensed each year. The bill's predetermination process requires \$25,000 in fiscal 2024 to create/upgrade an online portal to allow for an online application and fee collection process.

Department of Labor

Special fund expenditures increase by \$205,871 in fiscal 2024, which accounts for the bill's October 1, 2023 effective date. This estimate reflects the cost of hiring one part-time

contractual employee to manage administrative functions for the predetermination process (including salary, fringe benefits, one-time start-up costs, and ongoing operating expenses associated with the employee), as well as legal fees and one-time computer programming.

Contractual Position	0.5
Salary and Fringe Benefits	\$16,359
Legal Fees	82,500
Computer Programming	100,000
Other Operating Expenses	<u>7,012</u>
MDL – FY 2024 SF Expenditures	\$205,871

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

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.

MDL's Division of Occupational and Professional Licensing processes over 110,000 licenses each year. According to MDL, if 0.5% (550) of applicants request a predetermination review of their criminal history, the costs for legal fees associated with these reviews total \$110,000 annually and a part-time administrative support position will be required to manage administrative functions for the process. The bill's provisions also necessitate an upgrade to MDL's application system, which handles 250 different applications for boards and commissions, at a cost of \$100,000 in fiscal 2024.

Office of Administrative Hearings

The Office of Administrative Hearings (OAH) advises that it conducts several types of hearings related to occupational licenses or certificates. In some cases, administrative law judges (ALJs) review evidence including criminal histories. According to OAH, the bill's predetermination provisions create a new case type for OAH from six State agencies. Although unable to determine the number of additional hearings generated by the bill, OAH does not anticipate a fiscal impact at this time. However, OAH advises that it needs to train its ALJs on the substantive areas of the bill, which can be accomplished with existing budgeted resources.

Other Agencies

MDE and DHS advise that the bill has no fiscal impact on their agencies. MDH did not respond to a request for information on the fiscal impact of the bill; any potential impact

on special fund expenditures/revenues for the department has not been accounted for in this analysis.

Small Business Effect: The bill may have a meaningful effect on small business employers that are able to find licensed or certified employees as a result of the bill.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of the Environment; Department of Human Services; Maryland Department of Labor; Department of Public Safety and Correctional Services; Office of Administrative Hearings; Department of Legislative Services

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