



RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND ▪ GENERAL ▪ ASSEMBLY

2023 Session
HB0906

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

Bill Summary

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.

Racial Equity Impact Statement

The bill includes several provisions that would lessen impediments for individuals with previous convictions or other contacts with the criminal justice system when those individuals apply for occupational licensing and certification. In particular, the bill's provisions expanding eligibility for licensing and certification to include most ex-offenders will potentially benefit Black or African American individuals who were previously incarcerated to the greatest extent. There is no data currently available to estimate the extent of the impacts. The magnitude of the bill's impacts on all individuals with a criminal history would depend on the level of increased applicant activity and implementation of the bill by the applicable departments.

Analysis

The bill generally modifies State policy to encourage the employment of ex-offenders by removing barriers to obtaining occupational licenses or certifications required by the State. The bill applies to the Maryland Department of Agriculture; Maryland Department of the Environment; Maryland Department of Health (MDH); Department of Human Services; Maryland Department of Labor (MDL); Department of Public Safety and Correctional Services (DPSCS); and each unit in the departments. These departments issue an array of occupational and professional licenses across a wide spectrum of industries – from home improvement contractors to nurses to well drillers. Generally, applications for occupational licenses and certificates are issued, denied, suspended, or revoked on a discretionary basis by the applicable governing occupational boards, commissions, and administrative units in Maryland, based on existing and varied statutory and/or regulatory standards. Many licensing boards and commissions may deny, suspend, or revoke a license or certificate based upon knowledge of a felony conviction or a misdemeanor conviction directly related to the occupation. Specifically, the bill:

- requires departments to consider most *violent* ex-offenders for licenses and certifications whereas existing State policy encourages licensing and certification for *nonviolent* offenders;
- removes the authority for departments to require disclosure on an application for a license or certificate that documents some previous contact with the criminal justice system that did not result in a conviction, such as arrests, deferred adjudications, and participation in diversionary programs. In addition, some convictions that have been expunged or that were for misdemeanors, and several other minor contacts would no longer need to be disclosed;
- no longer requires the disclosure of prior convictions or incarcerations for which a three-year period has passed since completing the sentence or term of incarceration;
- narrows the circumstances under which a department may deny an applicant based on a previous conviction to allow denial only if it finds that issuing the license or certificate would involve a *direct and substantial threat* to public safety or specific individuals or property;
- requires a department to consider additional factors, such as education, training, and employment history, when making a determination to approve or deny an applicant with a previous conviction; and
- 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.

Groups Affected by the Bill

The bill impacts individuals with previous criminal records, including those who were not sentenced to incarceration and those who were previously incarcerated and are in various stages

of reentry into society. The bill also covers those convicted of violent offenses (*i.e.*, murder, rape, carjacking, and abduction) as part of the group of applicants who may apply and be considered for licenses. DPSCS reports that in 2022, 84% of incarcerated individuals were convicted of crimes of violence and 4,297 inmates were released from incarceration; as a result, the bill could impact a substantial number of these individuals. There is no reliable data available on the number of individuals with convictions, delayed adjudication, or other minor contacts who were not incarcerated.

Nature of the Impact

The bill's provisions will expand eligibility to apply for occupational licenses and certificates to a greater number of applicants from those individuals with minor criminal contacts to violent offenders looking to establish reentry into society. A significant challenge for these individuals is securing employment. A 2016 report conducted by the Governor's Office of Crime Prevention, Youth, and Victim Services (formerly named the Governor's Office of Crime Control and Prevention) finds that there are notable collateral consequences to having a criminal record that often exacerbate the challenges of social reintegration following imprisonment. Even individuals convicted of criminal charges that do not face imprisonment may still see significant adverse effects as a result of having a criminal record. These adverse effects include reduced access to housing, public services, voting, holding public office, employment opportunities, and professional licensure. The U.S. Bureau of Labor Statistics reports that in 2022 roughly 25% of civilian workers had employment which required professional certification or licensure. Accordingly, those denied these licenses and certification due to the disclosure of their criminal history may face significant barriers to factors that aid in successful social reentry and deter against recidivism.

Existing patterns of racial disparity and disproportionality in the State's inmate population indicate the bill may have a significant impact on those who were previously incarcerated. In particular, Black or African American individuals would likely be impacted to the greatest extent given their overrepresentation in the State's incarcerated population. DPSCS reports that for fiscal 2022, Black or African American individuals made up 71% of Maryland's prison population contrasted with their 29% share of the State's overall population.

Licensing and Certification Data Regarding Individuals with Criminal Records

Data on the applicant pools for licensing and certification is limited. Chapter 796 of 2018 required the departments covered under this bill to report to the Governor and the General Assembly information related to the denial of licenses or certificates for the preceding five years based on an applicant's criminal history. While some of the departments covered under Chapter 796 reported little to no data, MDL and MDH reported that less than 1% of the applicants for various licenses were individuals with criminal histories.

Conclusion

There is no way to reliably measure the impact of the bill without demographic data for applicants to the departments covered by the bill and prospective data on those individuals who would be

newly eligible to apply for licensure and certification under the bill. The bill's provisions narrowing the disclosure requirements to exclude minor offenses and other contacts with law enforcement and provisions for predetermination of eligibility will likely increase the number of applicants generally, since many with criminal records or other contacts may decline to apply for licensure or certification in the first place.

Black or African American individuals could likely benefit the most from the bill due to their overrepresentation in the incarcerated population in the State as they would also comprise a significant portion of those released from incarceration each year. To the extent that these individuals successfully apply for occupational licenses and/or certificates, the bill would increase the likelihood of successful reentry into the general population.

Information Sources: Governor's Office of Crime Prevention, Youth, and Victim Services; U.S. Bureau of Labor Statistics; Department of Public Safety and Correctional Services; Council of State Governments Justice Center; Maryland Department of the Environment; Department of Human Services; Maryland Department of Agriculture; Maryland Department of Labor; Department of Legislative Services

Analysis by: Dr. Mikaela Zimmerman

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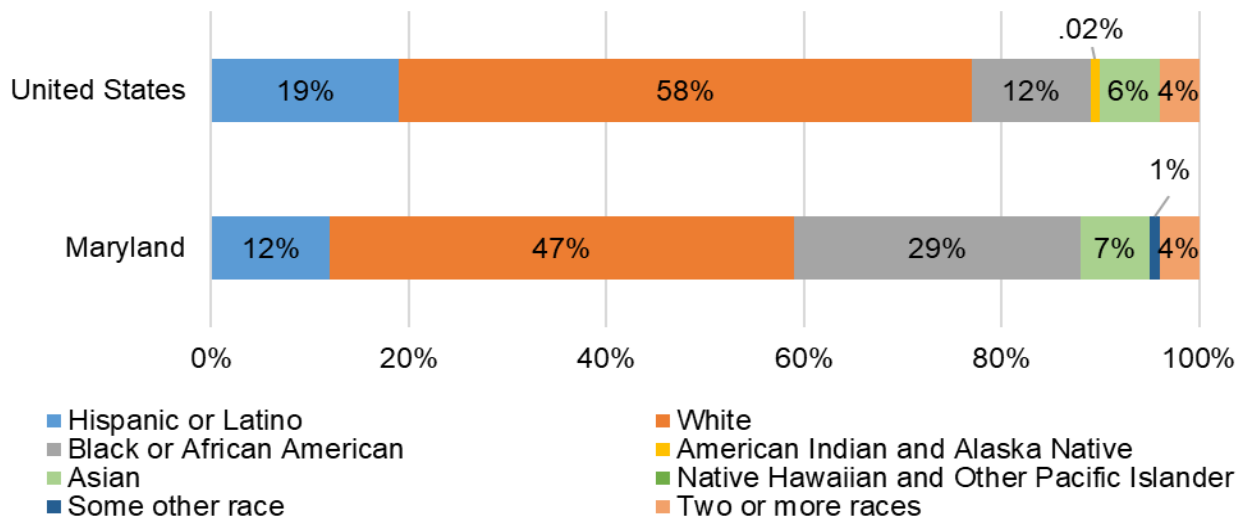
Appendix – Maryland Demographics

Race and Ethnicity of the Maryland Population

Maryland’s 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. In addition to an increase in population, Maryland’s racial demographics have become more diverse. Maryland is now a state in which racial minorities make up a majority of its total population. Notable changes relevant to this shift are the increase in groups who identify as “other” and “multiracial” (*i.e.*, two or more racial identities), which total 5% of the State’s population. Additionally, the change in demographics is due to the decrease in the number of individuals who only report “white” as their racial group. Despite this decrease, non-Hispanic whites remain the largest single race demographic group in the State of Maryland comprising 47% of the State’s population.

Compared to the U.S. population overall, Maryland’s population of individuals who identify as a single race is more diverse. Maryland is ranked as the fourth most diverse state by the U.S. Census Bureau’s [Diversity Index](#). As shown in **Exhibit 1**, in Maryland, 47% identify as white alone compared to 58% of the national population. Similarly, 51% of the population identify as non-white or multi-racial compared to 38% of the national population. In both the State and national population, the largest shares of the non-white population are individuals who are Black or African American, with 29% of the State population identifying only as Black or African American and another 2.5% identifying as Black in combination with some other race. Maryland’s Asian population is 7%, which is slightly higher than the Asian share of the national population of 6%. The State’s overall population by ethnicity, however, is slightly less diverse than the U.S. population; 12% of the State’s population identified as Hispanic or Latino compared to 19% of the U.S. population.

Exhibit 1
U.S. and Maryland Population by Race and Ethnicity
2020



Source: U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171), Table ID P2, HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE.