

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 788
Human Relations – Protections Against Discrimination –
Criminal Records
DATE: February 7, 2024
(2/20)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 788. This bill revises the State Government Article to add criminal record as a new protected characteristic.

Operationally, the Judiciary as an organization conducts background checks on prospective employees and includes criminal record checks in this review. The bill would appear to limit the use of criminal records checks unless the Judiciary can show that a criminal record check is a bona fide occupational qualification for the specific position. This is problematic as Judiciary employees consist of bailiffs and special police officers who protect those inside the courthouse and hundreds of employees with access to confidential and sensitive information. The Judiciary currently has broad authority to set its own personnel policies and should maintain that authority.

Md. Code Ann., State Pers. & Pens. § 2-201 provides:

Except as otherwise provided by law, an employee in the Judicial, Legislative, or Executive Branch of State government is governed by the laws and personnel policies and procedures applicable in that branch.

In addition, criminal records are used by the Judiciary in a variety of settings, such as in preliminary hearings before Commissioners, bail reviews, and sentencing. It is unclear if the anti-discrimination provisions incorporated against State and local governments would restrict use of criminal records in making such decisions. To the extent they would, it would significantly affect Judiciary operations.

Finally, the exclusion on page 2, line 27 is confusing. Requiring the court to determine which record is not a criminal record will be impossible to implement.

cc. Hon. Tiffany Alston

Judicial Council
Legislative Committee
Kelley O'Connor