

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 244
Judiciary

(Delegate Anderson, *et al.*)

Judicial Proceedings

Maryland Second Chance Act of 2015

This bill authorizes a person to petition a court to shield the person’s court records and police records relating to one or more “shieldable convictions” of the person entered in the circuit court or the District Court in one county no earlier than three years after the person satisfies the sentence imposed for all convictions for which shielding is requested, including parole, probation, or mandatory supervision. This authorization does not apply to a conviction for a domestically related crime. If a person is not eligible for shielding of one conviction in a “unit,” the person is not eligible for shielding of any other conviction in the unit. A person may be granted only one shielding petition over the lifetime of the person, and a court may grant a shielding petition for good cause.

If the person is convicted of a new crime during the applicable time period, the original conviction or convictions are not eligible for shielding unless the new conviction becomes eligible for shielding. A person who is a defendant in a pending criminal proceeding is not eligible for shielding. A shielded conviction may not be considered a conviction for specified expungement provisions.

Fiscal Summary

State Effect: General fund expenditures increase by *at least* \$294,300 in FY 2016 only for the Judiciary and to comply with the bill’s provisions; costs could be significantly higher in FY 2016 and in the out-years to the extent the Judiciary requires additional personnel. Potential significant operational impact on entities that no longer have access to information shielded under the bill. Potential significant increase in general fund revenues if the Judiciary charges a filing fee for shielding petitions.

Local Effect: Minimal increase in local expenditures for local law enforcement to comply with the shielding requirements. Revenues are not affected.

Small Business Effect: Potential meaningful. Some small businesses may no longer be able to conduct a complete background check on prospective employees.

Analysis

Bill Summary: “Shield” means to render a court record and police record relating to a conviction of a crime inaccessible by members of the public. “Shieldable conviction” means a conviction of 1 of a list of 12 specified crimes. A “unit” means two or more convictions that arise from the same incident, transaction, or set of facts.

Continued Access to Shielded Information: A shielded record must remain fully accessible by (1) criminal justice units for legitimate criminal justice purposes; (2) prospective or current employers or government licensing agencies that are subject to a statutory or regulatory requirement or authorization to inquire into the criminal background of an applicant or employee for purposes of carrying out that requirement or authorization; (3) a person that is authorized or required to inquire into an individual’s criminal background under specified provisions relating to child care facilities; (4) the person who is the subject of the shielded record and that person’s attorney; (5) health occupations boards established under the Health Occupations Article; (6) the Natalie M. LaPrade Medical Marijuana Commission established under Title 13, Subtitle 33 of the Health-General Article; (7) a person that uses volunteers who care for or supervise children; (8) a person that attests under penalty of perjury that the person employs or seeks to employ an individual to care for or supervise a minor or vulnerable adult, as defined in § 3-604 of the Criminal Law Article; and (9) a person who is accessing a shielded record on behalf of and with written authorization from an entity described in items (1) through (8).

Petitions to Shield Convictions, Objections to Petitions, and Victim Notification: When a petition to shield a conviction is filed, the court must have a copy of the petition served on the State’s Attorney. Unless the State’s Attorney files an objection to the petition within 30 days after the petition is served, the court may order the shielding of all police and court records relating to the conviction or convictions after taking into consideration any objections or additional information provided by the State’s Attorney or the victim. If the State’s Attorney files a timely objection to the petition, the court must hold a hearing. If the court finds at the hearing that the petitioner is entitled to shielding, the court must order the shielding of all police and court records relating to the conviction or convictions.

The court must send written notice of the proposed action to all listed victims in the case in which the petitioner is seeking shielding at the address listed in the court file. The notice

must advise the victim or victims of the right to offer additional information relevant to the shielding petition to the court.

Prohibited Disclosures and Requests for Information: A person authorized to access a shielded record may not disclose any information from a shielded record to a person who is not authorized to access shielded records.

Except as authorized under the bill, an employer may not require a job applicant to disclose shielded information about criminal charges or discharge or refuse to hire a person solely because of the person's refusal to disclose information about shielded criminal charges.

An educational institution is prohibited from requiring a person who applies for admission to disclose shielded information about criminal charges or expel or refuse to admit a person solely because of the person's refusal to disclose information about shielded criminal charges.

Except as authorized under the bill, a unit, an official, or an employee of the State or a political subdivision of the State may not require a person who applies for a permit, registration, or governmental service to disclose shielded information about criminal charges or deny a relevant application by the person because of the person's refusal to disclose information about shielded criminal charges.

Maryland Judiciary Case Search and Custodians of Records: The Maryland Judiciary Case Search may not in any way refer to the existence of specific records shielded in accordance with the bill. Except for those persons granted continued access, a custodian must deny inspection of criminal records and police records relating to the conviction of a crime that have been shielded.

Current Law: Generally, court records and police records are not eligible for shielding. State law does authorize, under specified circumstances, the shielding of court records pertaining to domestic violence proceedings if the petition has been dismissed and upon the respondent's written request.

A person who has been charged with the commission of a crime may file a petition for expungement listing the relevant facts of a police record, court record, or other record maintained by the State or a political subdivision of the State, under various circumstances listed in the statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, stet of charge, and gubernatorial pardon. Individuals convicted of specified public nuisance crimes are eligible for expungement of the associated criminal records under certain circumstances.

If two or more charges, other than one for a minor traffic violation, arise from the same incident, transaction, or set of facts, they are considered to be a unit. If a person is not entitled to expungement of one charge or conviction in a unit, the person is not entitled to expungement of any other charge in the unit.

Expungement of a court record means removal from public inspection:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and
- if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

A “court record” is the official record of a court that the clerk of a court or other court personnel keeps about a criminal proceeding or any other proceeding, except a juvenile proceeding, concerning a civil offense or infraction enacted under State or local law as a substitute for a criminal charge. A court record includes (1) a record of a violation of the Transportation Article for which a term of imprisonment may be imposed and (2) an index, docket entry, charging document, pleading, memorandum, transcript of a proceeding, electronic recording, order, and judgment.

A “police record” is an official record maintained by a law enforcement unit, booking facility, or the Central Repository about the arrest and detention of, or further proceeding against, a person for (1) a criminal charge; (2) a suspected violation of criminal law; (3) a violation of the Transportation Article for which a term of imprisonment may be imposed; and (4) a civil offense or infraction (except a juvenile offense), enacted under State or local law as a substitute for a criminal charge.

State law requires a criminal history records check for various types of public- and private-sector employment in the State, typically where it is determined that there is a job-related need. Employees and employers in the following facilities must apply for a national and State criminal history records check at any designated law enforcement office in Maryland: (1) a licensed child care center; (2) a registered family day care home; (3) a licensed child care home; (4) a licensed child care institution; (5) a juvenile detention, correction, or treatment facility; (6) a public school; (7) a private or nonpublic school that is required to report to the State Board of Education; (8) a foster care family home or group facility; (9) a government-operated recreation center or program that primarily serves minors; or (10) a day or residential camp that primarily serves minors. Many local jurisdictions also specify requirements in statute regarding criminal background checks for employees, volunteers, or license applicants.

Background: Chapters 625 and 626 of 2009 established a Task Force on Prisoner Reentry. The task force issued a final report of its findings and recommendations in 2011. The shielding of criminal records for nonviolent convictions from public view after an appropriate waiting/proving period was one of the task force's recommendations.

The Judiciary's website includes a link to "CaseSearch." CaseSearch provides public Internet access to information from case records maintained by the Judiciary. Maryland District Court traffic, criminal, and civil case records and circuit court criminal and civil case records are available. Records can remain in CaseSearch indefinitely and are not removed except by a court-ordered expungement.

State Revenues: General fund revenues may increase significantly if the Judiciary charges a filing fee for shielding petitions. The courts currently charge a \$30 fee for expungements. Since the bill does not expressly authorize the courts to charge a fee to file a shielding petition, the impact of such a fee is dependent on whether the Judiciary decides that it has the authority to assess such a fee.

State Expenditures: General fund expenditures increase by *at least* \$294,250 in fiscal 2016 for the Judiciary to comply with the bill's requirements, as discussed below. The increase in general fund expenditures could be significantly higher to the extent the Judiciary requires additional personnel. General fund expenditures may also increase for the Maryland State Archives (MSA) to process additional requests for archived records from the Judiciary and to research and grant/deny requests for access to shielded information. The bill may also have a significant operational impact on the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) and the Department of Budget and Management (DBM).

Judiciary

General fund expenditures for the Judiciary increase by \$294,250 in fiscal 2016 only for computer reprogramming costs. However, in addition to those computer reprogramming costs, the Judiciary may incur additional personnel costs beginning in fiscal 2016, as discussed below. Accordingly, costs for the Judiciary could be significantly higher in fiscal 2016 and continue in future years.

The Judiciary advises that it may not be able to comply with the bill's requirements with its existing computer system, since its current legacy systems cannot assign a consistent unique identifier to parties related to a case that would allow shielded information to remain accessible to specified individuals. Also, the court can only shield an entire case electronically, not specific counts within a case. Thus, the "fully accessible" access to records under the bill can only be provided through the courthouse at this time.

Furthermore, once the Judiciary releases someone's conviction record, it does not have control over what third parties do with the record, even if the record is eventually shielded.

To the extent that electronic compliance is possible, the bill requires 3,900 hours of computer reprogramming at a cost of \$294,250 in fiscal 2016 only. For manual procedures, in order to comply with the bill's provisions, a clerk has to examine court records to determine (1) if the conviction is for an eligible offense; (2) whether the petitioner has satisfied his/her sentence (including, parole, probation, or mandatory supervision); (3) whether the applicable waiting period has passed since the terms of the sentence were satisfied; and (4) whether the individual who is the subject of the record has been convicted of a new crime during the applicable time period or is a defendant in a pending criminal proceeding, which impacts eligibility for shielding. Information eligible for shielding then needs to be redacted from the record.

If an individual requests access to a shielded record, a clerk then has to make a determination as to whether the requestor is allowed access to the records due to the exceptions provided in the bill for criminal justice units and other individuals and entities granted continued access to shielded information. Complying with these procedures may significantly impact District Court operations and may require additional personnel, the extent of which cannot be reliably estimated at this time. The need for additional personnel depends on the volume of petitions filed and the additional workload generated by these petitions.

Without actual experience under the bill, the Judiciary is unable to reliably estimate the number of petitions that may be filed as a result of the bill. However, the Judiciary advises that it may need as many as 20 additional District Court clerks and 6 additional circuit court clerks to process shielding petitions. *For illustrative purposes only*, the cost associated with hiring 26 additional full-time clerks (20 in the District Court and 6 in the circuit courts) is \$1,092,811 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Personnel expenditures associated with these additional positions are \$1,373,900 in fiscal 2017, which reflect a full year of incurred expenditures.

Maryland State Archives

General fund expenditures may increase for MSA to comply with the bill's requirements. MSA is the custodian for records over three years old. Based on the three-year waiting period under the bill, the bill may result in a significant increase in requests for access to archived records by the Judiciary. According to the Judiciary, under the bill, MSA is required to research the validity of requests to inspect records and deny inspection of any shielded records in its possession.

Department of Budget and Management

DBM advises that there are some State positions that, while sensitive in nature, do not require a background check to comply with statutory obligations. These positions are typically considered “positions of trust” and involve the collection of money and access to personal information. While there is a legitimate business need for background checks on applicants for these positions, employers screening these applicants would not be granted “full access” to records under the bill. DBM advises that shielding information in these instances could negatively impact State hiring decisions and expose the State to harm from theft of funds or confidential information, as well as mismanagement of State programs by individuals whose criminal histories are incompatible with certain State positions.

Maryland State Commission on Criminal Sentencing Policy

MSCCSP advises that the bill significantly impacts MSCCSP operations. According to MSCCSP, the commission routinely relies on the Judiciary’s CaseSearch to supplement incomplete information on judicial sentencing worksheets. Also, MSCCSP routinely responds to requests for data from the sentencing guidelines database. According to MSCCSP, the bill requires the commission to retroactively identify and remove information pertaining to shielded records from the data for each request received. Given the staff’s limited resources, this places a substantial burden on MSCCSP resources.

Local Expenditures: Local expenditures may increase for local law enforcement agencies to comply with the bill’s requirements. The extent of any such increase depends on the volume of requests received in the jurisdiction.

The Montgomery County Police Department advises that it needs to spend approximately \$100,000 for computer reprogramming in order to comply with the bill’s requirements.

Harford County advises that it needs to employ one paralegal as a result of the bill, at an annual cost of \$53,865.

Carroll County estimates that labor costs to conduct additional research to comply with the bill amount to \$6,000 to \$8,000 per year.

The Maryland State’s Attorneys’ Association advises that the bill’s effect on prosecutors is unknown at this time.

Additional Comments: The bill limits a person to one granted shielded petition per lifetime. However, the Judiciary advises that once a case is shielded, clerks in the District Court cannot determine if a case has been shielded in a circuit court during the defendant’s lifetime.

Additional Information

Prior Introductions: SB 1056 of 2014, a similar bill, passed the Senate with amendments and was referred to the House Rules and Executive Nominations Committee. No further action was taken on the bill. SB 804 of 2014, another similar bill, was withdrawn after receiving a hearing in the Senate Judicial Proceedings Committee. Its cross file, HB 1166, passed the House and Senate with amendments. However, the chambers were unable to reconcile their versions of the bill. HB 1006 of 2013, a similar bill, passed the House and Senate with amendments. The House adopted the conference committee's report and passed the bill with the conference committee amendments. No further action was taken in the Senate following the appointment of a conference committee. HB 652 of 2012, a similar bill, was withdrawn after receiving a hearing in the House Judiciary Committee. Its cross file, SB 667, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: SB 526 (Senator Raskin, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore, Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Maryland State Commission on Criminal Sentencing Policy; Department of State Police; Department of Budget and Management; Department of Health and Mental Hygiene; Baltimore City Community College; Department of Natural Resources; Maryland Higher Education Commission; University System of Maryland; Department of General Services; Baltimore City; Town of Leonardtown; City of Westminster; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2015
min/kdm Revised - House Third Reader - April 13, 2015

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510