

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 543

(Senator Conway)

Education, Health, and Environmental Affairs

Appropriations

**Higher Education - Admissions Process - Criminal History (Maryland Fair
Access to Education Act of 2017)**

This bill generally prohibits an institution of higher education that receives State funds from using an undergraduate admissions application that contains questions about the criminal history of the applicant. However, an institution may use a third-party admissions application that contains questions about the criminal history of the applicant if the institution posts a notice on its website stating that a criminal history does not disqualify an applicant from admission. A student's criminal history may be inquired into and considered for the purposes of deciding admission and access to campus residency or offering counseling and services. An institution of higher education must develop a process that considers specified issues in denying admission or limiting access to an affected student's campus residency or a specific academic program.

The bill takes effect December 1, 2017.

Fiscal Summary

State Effect: Higher education expenditures for public four-year institutions of higher education and Baltimore City Community College (BCCC) may increase to develop and implement a process to determine admission or specified limitations for a student with a criminal history; any increase in expenditures cannot be reliably estimated as discussed below. It is assumed that public four-year institutions and BCCC can remove any questions about criminal history from their undergraduate application by December 1, 2017, and add the required statement to their websites if they use a third-party admissions application using existing resources. Revenues are not materially affected.

Local Effect: Local community college expenditures may increase to develop and implement a process to determine admission or specified limitations for a student with a

criminal history; however, these expenditures cannot be reliably estimated. It is assumed that local community colleges can remove any questions about criminal history from their undergraduate application and, as necessary, add the required statement to their websites using existing resources. Revenues are not materially affected.

Small Business Effect: None.

Analysis

Bill Summary: In making inquiries or considering information to deny or limit an affected student's admission or access to campus residency, an institution of higher education may not use any information about a student's criminal history to automatically or unreasonably restrict a student's admission based on that student's criminal history.

The process developed for determining whether there is a direct relationship between a student's criminal history and campus residency or a specific academic program must be in writing and must consider the following: (1) the age of the student at the time of any aspect of the student's criminal history; (2) the time that has elapsed since any aspect of the student's criminal history occurred; (3) the nature of the criminal history; and (4) any evidence of rehabilitation or good conduct produced by the student.

An institution of higher education that inquires into or considers information about a student's criminal history, in a manner consistent with the bill, must consider the State's policy to promote the admission of students with criminal records, including formerly incarcerated individuals, to provide these students with the opportunity to obtain the knowledge and skills needed to contribute to the State's economy.

Current Law: Chapter 160 of 2013 prohibited, for most State jobs, inquiring into the criminal record or history of an applicant for employment until the applicant has been given an opportunity for an interview. There are no laws in Maryland related to what may be asked on a college application.

Background: According to a 2015 [Center for Community Alternatives](#) study, asking about an applicant's criminal history deters those with a criminal history from applying to college. At the time of the study, many college entry applications, including the common application used by more than 600 colleges, asked applicants about their criminal history. Not getting a college degree can further limit an individual's ability to find a stable, well-paying job and contribute to the economy.

In a May 9, 2016 [letter](#), the U.S. Secretary of Education urged colleges and universities to remove barriers that can prevent the estimated 70 million citizens with criminal records

from pursuing higher education. In response, the [Common Application](#) reported that the 2016-2017 application will still ask whether an applicant has been found guilty of a misdemeanor or felony, but it will remove the part of the question asking about any other crimes.

Legislation to ban inquiry into an applicant's criminal history on college applications has been introduced in New York and Illinois.

There have also been movements to ban employment applications from asking about an applicant's criminal history. This movement is known as "ban-the-box" since many employment applications require those with a criminal history to check a box on the application. Generally, under employment ban-the-box legislation, employers are banned from asking about criminal history until the applicant has been given an opportunity for an interview. The movement to ban colleges from asking about criminal history is likewise known as the college "ban-the-box" movement.

State Fiscal Effect: Developing and implementing the process required under the bill may increase higher education expenditures. Although the process to evaluate if a student with a criminal history should be admitted and, if admitted, whether the student should be limited in specified ways is not required to be "individualized" under the bill, it is assumed that there may be some additional costs to evaluate the various factors that must be considered under the bill. For example, some analysis may be required to determine the "nature of the criminal history" or "evidence of rehabilitation or good conduct." Thus, if a significant number of students with criminal histories that need to be evaluated *apply* to an institution, higher education expenditures likely increase at those public four-year institutions and BCCC; expenditures may increase further depending on the number of students who are *admitted*. However, these expenditures cannot be reliably estimated. To the extent admitted students' criminal histories require minimal evaluation, costs will be less.

Those institutions that use the common application or other third-party admissions applications will need to add a statement on their websites that criminal history does not disqualify an applicant from admission by December 1, 2017. It is assumed that the statement can be added to their websites using existing resources. The following four public institutions of higher education use the common application: Coppin State University; Salisbury University; University of Maryland Baltimore County; and St. Mary's College of Maryland. It is unknown whether other public institutions use third-party admissions applications.

It is also unknown how many institutions ask about criminal history on their own college applications. Those that ask will need to alter their applications by December 1, 2017. It is assumed that institutions can remove any questions about criminal history from their

undergraduate application using existing resources. The college application cycle generally starts in November, and some applications such as the common application are released in August. Early decision deadlines generally begin in November, while regular decision deadlines are in January through March (although many institutions have rolling deadlines). Thus, despite the December 1, 2017 effective date of the bill, it is assumed that, to avoid any disruptions to the application process due to changing the application, public institutions will remove any questions asking about criminal history prior to the release of the application for students applying for admission beginning in the 2018-2019 academic year.

Local Fiscal Effect: Local community college expenditures may increase, if significant numbers of students with criminal histories apply for admission, to develop and implement a process to determine whether to deny admission; expenditures increase further to determine specified limitations, if any, for admitted students, as discussed above. However, these expenditures cannot be reliably estimated.

It is assumed that institutions can remove any questions about criminal history from their undergraduate application by December 1, 2017, and add the required statement to their websites if they use a third-party admissions application using existing resources.

Additional Comments: In addition to public institutions, the bill affects private, nonprofit, four-year institutions that receive State funding. The Maryland Independent College and University Association (MICUA) advises that 11 of the 13 MICUA institutions that receive State aid use the common application, which asks about an applicant's criminal history. MICUA advises that the bill can generally be implemented using existing resources. The bill is not expected to affect for-profit institutions as they do not receive State funding or student financial aid; private career schools are not included in the definition of institution of higher education.

Additional Information

Prior Introductions: None.

Cross File: HB 694 (Delegates McIntosh and Barron) - Appropriations.

Information Source(s): Maryland Higher Education Commission; Baltimore City Community College; University System of Maryland; St. Mary's College of Maryland; Maryland Independent College and University Association; Center for Community Alternatives; U.S. Department of Education; Department of Legislative Services

Fiscal Note History:
kb/rhh

First Reader - February 13, 2017

Third Reader - April 5, 2017

Revised - Amendment(s) - April 5, 2017

Enrolled - May 9, 2017

Revised - Amendment(s) - May 9, 2017

Analysis by: Caroline L. Boice

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