

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1179 (Delegate Rosenberg)
Economic Matters

Consumer Protection - Disclosure of Expunged or Shielded Criminal Records -
Prohibition and Penalties

This bill prohibits a person from providing, disseminating, sharing, or otherwise disclosing a criminal record that has been expunged or shielded under Title 10, Subtitles 1 and 3 of the Criminal Procedure Article. The bill applies to a person regularly engaged in the business of collecting, assembling, evaluating, or disseminating criminal records of individuals for a fee. The bill does not apply to a State or federal governmental entity. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations, as discussed below. The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law:

Expungement of Records

In general, §§ 10-105 and 10-110 of the Criminal Procedure Article establish eligibility for the expungement of records pertaining to a criminal charge or conviction. Expungement of a court or police 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.

Accessibility of Expunged Records

A person may not open (or review) an expunged record – or disclose to another person any information from that record – without a court order from (1) the court that ordered the record expunged or (2) the District Court that has venue in the case of a police record expunged when charges are not filed under § 10-103 of the Criminal Procedure Article.

A court may order the opening (or review) of an expunged record, or the disclosure of information from that record (1) after notice to the person whom the record concerns, a hearing, and the showing of good cause or (2) without notice to the person who is the subject of the expunged record, on an *ex parte* order, as specified.

A person who violates these requirements is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$1,000 and/or imprisonment of up to one year. In addition, an official or employee of the State (or a political subdivision of the State) who is convicted of a violation may be removed or dismissed from public service.

Shielding of Records

“Shield” means to render a court record and police record relating to a conviction of a crime inaccessible by members of the public. Also, the Maryland Judiciary Case Search may not in any way refer to the existence of specific records shielded in accordance with the bill. “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. 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.

Accessibility of Shielded Records

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).

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, 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, 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.

The Maryland Judiciary Case Search may not, in any way, refer to the existence of specific shielded records. 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 has been shielded.

Unfair, Abusive, or Deceptive Trade Practices

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

State Expenditures: The Judiciary can ensure with existing resources that the relevant records are not improperly distributed to a person regularly engaged in the business of collecting, assembling, evaluating, or disseminating criminal records of individuals for a fee. The bill does not otherwise apply to State entities. Thus, State operations and finances are not materially affected by the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Calvert, Harford, and Montgomery counties; Maryland Association of Counties; cities of Bowie and Takoma Park; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Department of Public Safety and

Correctional Services; Department of State Police; Maryland State Archives; Department of Legislative Services

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