

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1123

(Delegate Levi, *et al.*)

Judiciary

**Criminal Procedure - Occupational Licenses or Certificates - Issuance of a
Certificate of Relief from Disabilities**

This bill provides for the issuance of a “Certificate of Relief from Disabilities” (CRD) by a circuit court, a “review panel,” or the Parole Commission, which would provide permanent or provisional removal of a bar to an occupational license or certification issued by one of seven specified Executive Branch departments. If an applicant for a license or certificate presents a CRD to a covered department, the department must follow the procedure set forth under this bill.

Fiscal Summary

State Effect: While this bill could increase the number of applications for occupational licenses or certifications, it is not expected to have a significant impact on the overall operations or finances of issuing departments. Without knowing how many applications for a CRD would occur annually, it is assumed that application processes could be handled with the existing budgeted resources of the Judiciary and the Parole Commission. The monetary penalty provision is not expected to significantly affect State finances.

Local Effect: Minimal. Without knowing how many applications for a CRD would occur annually, it is assumed that application processes could be handled with the existing budgeted resources of the circuit courts. The incarceration penalty provision is not expected to significantly affect local correctional costs.

Small Business Effect: None.

Analysis

Bill Summary: The bill asserts that it is the policy of the State to encourage the employment of nonviolent ex-offenders and, toward that end, to provide a process through which nonviolent ex-offenders may demonstrate fitness for occupational licenses or certifications required by the State.

The bill provides for the issuance of a CRD by a circuit court or a review panel to an “eligible offender” at or after sentencing or a review of sentence. The Parole Commission may issue a CRD to an offender committed to the Division of Correction (DOC) upon or after a parole release or a mandatory supervision release, including a qualified out-of-state convicted offender now under the supervision of the commission and residing in Maryland.

An “eligible offender” is any offender whose crime was not a crime of violence. The bill authorizes investigations, reports, and recommendations by the Division of Parole and Probation as to whether a CRD should be issued.

The bill specifies the procedures and manner of issuance of a CRD. A CRD may not be issued unless the relief granted is consistent with the rehabilitation of the eligible offender and the public interest. The scope of the CRD may be limited or expanded, as specified. The bill provides the circumstances under which a CRD may be revoked and the procedures to be followed for a revocation.

A CRD issued by the Parole Commission is temporary until discharged from parole or mandatory supervision release and it may be revoked, after a hearing, for a violation of the conditions of parole or mandatory supervision release.

An eligible offender who knowingly uses or attempts to use a revoked CRD is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 90 days and/or a fine of \$500.

When the eligible offender has been convicted of a felony or misdemeanor under federal or State law, the bill specifies the circumstances under which a covered department may not deny an occupational license or certificate to an eligible offender presenting a CRD. The bill enumerates the factors that must be considered by a department making a denial, including the policy of the State declared in this bill. A department must provide reasonable notice and the opportunity for a hearing if an application for a license or certificate is denied to an eligible offender presenting a CRD.

The bill's provisions do not affect the right of a defendant to attack collaterally the defendant's conviction for an offense. The existence of a CRD may not limit or prevent the introduction of evidence of a prior conviction for purposes of impeachment of a witness in any proceeding.

A valid CRD makes the underlying conviction for a nonviolent offense inadmissible in an action alleging that a department, a departmental employee, or a private party was negligent or otherwise at fault in licensing, certifying, hiring, or retaining an individual, provided that there was knowledge of the CRD at the time of the alleged negligence or fault. A valid CRD is admissible as evidence of due care by any person who had knowledge of the CRD when deciding to license, certify, hire, or retain an individual.

Current Law: Generally, applications for occupational licenses and certificates are issued, denied, suspended, or revoked on a discretionary basis by the applicable governing occupational boards in Maryland, based on existing and varied statutory and/or regulatory standards. 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. In many instances, a licensee is barred from hiring an employee (such as assisted living program staff) with a criminal record.

Under provisions of the Criminal Law Article, if an individual is convicted of a drug crime, the court is required to determine at sentencing whether the individual holds an occupational license and, if so, obtain the licensing information and make a *prima facie* finding of fact as to whether a relationship exists between the conviction and the license, including (1) a determination of the individual's ability to perform the tasks authorized by the license; (2) a finding of whether the public will be protected if the individual continues to perform the tasks authorized by the license; (3) a finding of whether the nature and circumstances of the drug crime merit referral to the licensing authority; and (4) a finding of any other facts that the court considers relevant.

Under specified circumstances relating to a crime committed on or after January 1, 1991, upon conviction of a licensee, the clerk of the court must certify and report the conviction and the licensing information to the licensing authority. If the court makes a *prima facie* finding of fact that a relationship between the conviction and the license does not exist, the clerk may not certify or report to a licensing authority the conviction or the licensing information.

State Fiscal Effect: The number of convicted, eligible persons who (at sentencing, sentencing review, or parole consideration) may seek a CRD is unknown. However, because there are other qualifications and considerations for all occupational licenses and certifications in Maryland, it is assumed that the number of applicants for a CRD would

not typically be large in any given year. Specific minimum education and training qualifications alone would tend to dampen the number of potential CRD applicants. In addition, the bill provides for consideration of CRD applications during an existing proceeding such as a sentencing hearing or a parole review hearing.

Accordingly, while this bill could increase the workload for the courts or the Parole Commission while considering a sentence or parole, it is assumed that this increase could be accommodated with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: SB 698 (Senator Gladden) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene (Health Boards and Commissions, Board of Physicians, Board of Pharmacy); Department of Labor, Licensing, and Regulation (Commissioner of Financial Regulation); Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2008
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