

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 800
Appropriations

(Delegate Proctor, *et al.*)

State Personnel - Applicants for Employment - Criminal History Records Checks

This bill prohibits any State appointing authority in the Executive, Legislative, or Judicial Branch from inquiring into the criminal record or history of an applicant for employment until the applicant has been given an opportunity for an interview. The bill includes exemptions for the Department of Public Safety and Correctional Services (DPSCS), any position for which an appointing authority is required by law to conduct a criminal history records check, or any position exempted by the Secretary of Budget and Management. Appointing authorities may still notify an applicant that prior criminal convictions may prohibit employment for some positions. The bill does not apply to the State Personnel and Management System (SPMS) until it completes the first phase of its system upgrade. It also includes a related reporting requirement for the Department of Budget and Management (DBM).

The bill takes effect October 1, 2012, and the reporting requirement terminates June 30, 2017.

Fiscal Summary

State Effect: DBM and other State appointing authorities can implement the bill's requirements, including preparing the required reports, with existing budgeted resources. Revenues are not affected.

Local Effect: The bill applies only to State government.

Small Business Effect: None.

Analysis

Current Law/Background: Maryland 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.

Chapters 625 and 626 of 2009 established the Task Force on Prisoner Reentry to, among other responsibilities, analyze the statutory, regulatory, rules-based, and practice-based hurdles to reintegration of adult and juvenile offenders into the community. The task force's final report recommended a "Ban the Box" law that would restrict applications for State employment for nonsensitive positions from asking applicants about their criminal backgrounds until after a credential review and an interview had been conducted.

DBM administers SPMS, which includes most employees in Executive Branch agencies; the Judicial and Legislative branches each have independent personnel systems. An Executive Branch agency may, if expressly authorized in statute, establish an independent personnel management system. The Maryland Department of Transportation (MDOT) and the University System of Maryland (USM) have the two largest independent personnel management systems in the Executive Branch. As of June 30, 2011, there were 42,239 full-time equivalent positions in SPMS, 22,483 in USM, and 5,991 in MDOT.

Chapter 738 of 2009 authorizes (but does not require) the Secretary of Transportation to request, for a specified prospective or current MDOT employee, a State and national criminal history record information (CHRI) check from DPSCS's Criminal Justice Information System (CJIS) Central Repository.

CJIS collects, manages, and disseminates Maryland criminal history record information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes. CJIS is a fingerprint-supported system for positive identification. When a state mandates a national check, the Federal Bureau of Investigation requires that the national check be set in statute. The CJIS Central Repository is authorized by law to collect a fee for providing criminal history record information for purposes other than criminal justice.

DBM advises that many agencies use the CJIS Central Repository at DPSCS to conduct background checks and that standard procedure in the State is to conduct criminal history background checks *after* an applicant has been interviewed. The total cost for each CJIS criminal history records check and fingerprinting is \$54.50, which includes State and national background checks. Of that amount, \$38 covers the cost of fingerprint cards and the State portion of the records checks and \$16.50 covers the national portion.

DBM is in the midst of a complete upgrade of SPMS, with Phase I of the project expected to be completed during fiscal 2013. Although the current application for State employment in SPMS inquires about an applicant's criminal history, the upgraded system will include an online application that inquires about criminal histories only for positions identified by the Secretary of Budget and Management.

Additional Information

Prior Introductions: HB 920 of 2011, a similar bill, received a hearing in the House Appropriations Committee, but no further action was taken on the bill. Its cross file, SB 448, received an unfavorable report from the Senate Finance Committee. HB 749 of 2010, also a similar bill, received an unfavorable report from the House Appropriations Committee. Its cross file, SB 581 of 2010 received a hearing in the Senate Finance Committee, but no further action was taken.

Cross File: SB 671 (Senator Pugh, *et al.*) (By Request - Task Force on Prisoner Reentry) - Finance.

Information Source(s): Department of Budget and Management, Maryland Commission on Civil Rights, Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, University System of Maryland, Department of Legislative Services

Fiscal Note History: First Reader - March 6, 2012
ncs/ljm

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