

Department of Legislative Services
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FISCAL AND POLICY NOTE

House Bill 235
Judiciary

(Delegate Stukes, *et al.*)

Criminal Justice Information System - Prohibited Dissemination

This bill prohibits the dissemination of criminal history record information to a person other than a criminal justice unit if the information in the record relates to a charge or conviction for a nonviolent crime allegedly committed more than 10 years prior. This provision may not be abrogated by waiver or consent.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$385,000 in FY 2013 due to computer modification costs at the Department of Public Safety and Correctional Services (DPSCS) and the Administrative Office of the Courts. Potential significant decrease in special fund revenues due to a decline in requests for criminal history records checks. State agencies reliant on criminal history records checks for hiring or licensing purposes will experience operational difficulties.

Local Effect: Local governments that are reliant on criminal history records checks for hiring or licensing purposes will experience operational difficulties.

Small Business Effect: Minimal.

Analysis

Current Law: Criminal history record information may be shared with federal criminal justice units and criminal justice units of other states and countries, as long as the sharing is consistent with State law and procedures developed by the Secretary of Public Safety and Correctional Services and the Chief Judge of the Court of Appeals.

Except in accordance with applicable federal law and regulations, a criminal justice unit and the State's Criminal Justice Information System (CJIS) Central Repository may not disseminate criminal history record information. The central repository must disseminate on a monthly basis information concerning a child charged as an adult to the Maryland Justice Analysis Center (MJIC) of the Institute of Criminal Justice and Criminology of the University of Maryland. In addition to any reportable event, as defined in statute, the central repository must include in its dissemination of information to MJIC the age, race, and gender of the child. The central repository may disseminate to MJIC unique identifiers relating to the child, including the name of the child, fingerprint identification numbers, and record or file numbers. This disseminated information must be used only for the purposes of research, evaluation, and statistical analysis. Except as otherwise required by law, MJIC may not disseminate criminal history record information received from the central repository.

A criminal justice unit and the central repository may not maintain or disseminate criminal history record information in a way that is inconsistent with provisions of the Courts and Judicial Proceedings Article pertaining to the confidentiality of juvenile records. Required criminal history record information on a child and a record of the fingerprinting of a child need not be maintained separate from such records on adults.

A person or a person's attorney having satisfactory identification and written authorization from the person may inspect criminal history record information on the person that is maintained by a criminal justice unit. A person with the right to inspect criminal history record information under this section may make notes of the information. This does not require a criminal justice unit to copy any criminal history record information, or allow a person to remove a document for copying.

Under provisions of the Financial Institutions Article, a mortgage loan originator applicant cannot have had a felony conviction for an act of fraud, dishonesty, a breach of trust, or money laundering at any time preceding the application. The Commissioner of Financial Regulation may not license anyone who has ever been convicted of these nonviolent crimes.

Background: The CJIS Central Repository is established under the Criminal Procedure Article within DPSCS to collect, manage, and disseminate Maryland Criminal History Record Information (CHRI) for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes. It is a fingerprint-supported system for positive identification. One fingerprint card is required for a Maryland-only CHRI check; two fingerprint cards (Maryland/FBI) are needed for a State and national CHRI check.

State Fiscal Effect: The CJIS Central Repository is the only agency authorized to disseminate criminal history record information to a noncriminal justice agency or an individual. In response to requests of the dissemination of criminal history record information to persons or agencies other than a criminal justice unit, CJIS provides criminal history background reports with data derived from a report of arrest (RAP) sheet for an individual, which contains a chronological history of an individual's arrests, convictions, and sentences. It is designed to provide a complete picture of an individual's involvement within the criminal justice system. If an individual is arrested, the arrest and charges associated with that arrest are forwarded to CJIS for entry. The dispositions from that arrest are then received by CJIS from the courts and subsequently displayed on the RAP sheet along with any sentences ordered by a court.

In order for a "crime of violence only" criminal history record background check to be produced, the "nonviolent" crimes would have to be identified, which under the bill are those crimes not listed as one of the enumerated crimes of violence in the Criminal Law Article. Additional computer programming for the CJIS system would be required to (1) distinguish crimes of violence charges and convictions that may be accompanied by charges and convictions for nonviolent crimes; and (2) distinguish between the date of a charge and the subsequent date of a conviction. According to DPSCS, the current system and processes would need to be reevaluated and redesigned at a one-time cost of \$150,000 in order to implement the provisions of the bill.

DPSCS also indicates that, if employers and licensing agencies are not able to obtain an individual's entire criminal history, the limited background checks provided from CJIS may be deemed of minimal value and may result in the employment and licensing agencies resorting to name-based background checks. Name-based checks, as opposed to fingerprint-based checks, are regarded as less reliable. Such a shift by employment and licensing agencies may result in a loss of special fund revenue over the course of time for CJIS. DPSCS indicates that this service is one of the core business functions of the agency. CJIS typically conducts over 160,000 criminal history records checks for employment and licensing purposes, such as taxi driving, adoption, adult dependent care, and child care. The corresponding special fund revenues total about \$9 million.

The Administrative Office of the Courts (AOC) Judicial Information Systems estimates that the bill will require a minimum of about \$235,000 for programming modifications to the legacy criminal system in use by the District Court Criminal and the three systems in use by the circuit courts (the Unified Court System, as well as the separate systems for Montgomery and Prince George's counties). There would also be a minor operational impact to procedures followed by court clerks statewide. AOC also reports that the few documents that are kept from a case file after completion of the case are currently sent to be stored at the Maryland Archives. Once in the control of Maryland Archives, public requests for information must be submitted to the Archives and not the courts. According

to AOC, the Archives' procedures for the distribution of records will have to be modified to be compliant with the bill.

For a similar bill in 2011, the Department of Budget and Management (DBM) advised that the bill will also have an operational impact on the State Personnel Management System. Some State positions require a full criminal history background check without a time limit on previous arrests and convictions. The bill's limitation that restricts access to information on nonviolent crimes does not satisfy the State's needs with regard to complete criminal history background checks. In particular, the Department of Juvenile Services, the Department of Health and Mental Hygiene, and the Maryland State Department of Education may be placed in the position of hiring someone that had been previously convicted of child endangerment or neglect, nonviolent crimes. Additionally, there are nonviolent crimes involving moral turpitude that would call into question someone's fitness to hold a position responsible for financial matters or valuable State property. DBM advises that situations such as these would put the State and the public at an unknown potential risk. These situations cannot be readily predicted or quantified, but may also create potential fiscal impacts through lawsuits against the State or simply through loss of State funds or property.

The Commissioner of Financial Regulation licenses individuals who originate mortgage loans under the Financial Institutions Article. The commissioner regularly and routinely, obtains, reviews, and makes a licensing decision based on an individual's criminal background. The commissioner is required to deny a license to anyone who was ever convicted of the crimes of fraud, dishonesty, breach of trust, or money laundering. These crimes all fit within the definition of nonviolent crimes under the bill. The commissioner advises that this bill creates a conflict with State and federal law regarding the licensing of mortgage loan originators.

Additional Information

Prior Introductions: HB 458 of 2011 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore City; Howard and Montgomery counties; Town of Bel Air; City of Salisbury; Office of the Attorney General; Department of Budget and Management; Department of Human Resources; Maryland State Department of Education; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of Labor, Licensing, and Regulation; Department of State Police; Office of the Public Defender; Department of

Public Safety and Correctional Services; State's Attorneys' Association; Department of
Legislative Services

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