

SENATE BILL 701

E2

3lr2521

By: **Senators Jones–Rodwell, Frosh, Currie, Forehand, McFadden, Muse, and Pugh**

Introduced and read first time: February 1, 2013

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 30, 2013

CHAPTER _____

1 AN ACT concerning

2 **Criminal Records – Shielding – Nonviolent Misdemeanor Convictions**

3 FOR the purpose of authorizing a person to ~~request that~~ petition the court to shield
4 certain court records and police records relating to a certain conviction ~~be~~
5 ~~shielded~~ at a certain time; providing that, if a certain person is convicted of a
6 new crime during a certain time period, a certain original conviction is not
7 eligible for shielding unless the new conviction becomes eligible for shielding;
8 providing that a person may shield only one stand-alone conviction or unit of
9 convictions per lifetime; requiring the Court of Appeals, by rule, to establish
10 procedures relating to the filing of a certain request for shielding; prohibiting
11 the Maryland Judiciary Case Search from in any way referring to the existence
12 of specific records shielded in accordance with this Act; providing that a
13 conviction that has been shielded in accordance with this Act may not be
14 considered a conviction for certain purposes; prohibiting a person authorized to
15 access a shielded record under this Act from disclosing any information from a
16 shielded record to a person who is not authorized to access shielded records
17 under this Act; ~~prohibiting an employer from requiring a person who applies for~~
18 ~~employment to disclose certain shielded information at a certain time or~~
19 ~~discharging or refusing to hire a person solely because the person refused to~~
20 ~~disclose certain information, with a certain exception~~; prohibiting an
21 educational institution from requiring a person who applies for admission to the
22 institution to disclose certain shielded information at a certain time or expelling
23 or refusing to admit a person solely because the person refused to disclose
24 certain information; prohibiting a unit, an official, or an employee of the State

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 or a political subdivision of the State from requiring a person who applies for a
 2 license, permit, registration, or governmental service to disclose certain shielded
 3 information at a certain time or denying a person's application for a license,
 4 permit, registration, or governmental service solely because the person refused
 5 to disclose certain information; ~~establishing penalties for a violation of this Act;~~
 6 requiring a certain custodian to deny inspection of criminal records and police
 7 records relating to the conviction of a crime that has been shielded under this
 8 Act; providing that this Act does not apply to ~~a conviction of a felony or any~~
 9 ~~misdemeanor requiring registration as a sex offender under certain provisions~~
 10 ~~of law~~ a certain conviction; providing that a shielded record shall remain fully
 11 accessible by certain persons; defining certain terms; and generally relating to
 12 the shielding of court records and police records.

13 BY adding to
 14 Article – Criminal Procedure
 15 Section 10–301 through 10–306 to be under the new subtitle “Subtitle 3.
 16 Shielding”
 17 Annotated Code of Maryland
 18 (2008 Replacement Volume and 2012 Supplement)

19 BY adding to
 20 Article – State Government
 21 Section 10–616(v)
 22 Annotated Code of Maryland
 23 (2009 Replacement Volume and 2012 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article – Criminal Procedure**

27 **SUBTITLE 3. SHIELDING.**

28 **10–301.**

29 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 30 INDICATED.

31 (B) “COURT RECORD” HAS THE MEANING STATED IN § 10–101 OF THIS
 32 TITLE.

33 (C) “CRIMINAL JUSTICE UNIT” HAS THE MEANING STATED IN § 10–201
 34 OF THIS TITLE.

35 (D) “POLICE RECORD” HAS THE MEANING STATED IN § 10–101 OF THIS
 36 TITLE.

1 (E) “SHIELD” MEANS TO RENDER A COURT RECORD OR POLICE RECORD
2 INACCESSIBLE TO MEMBERS OF THE PUBLIC.

3 (F) “SHIELDABLE CONVICTION” MEANS A CONVICTION OF ONE OF THE
4 FOLLOWING CRIMES, COMMITTED BY AN INDIVIDUAL UNDER THE AGE OF 26
5 YEARS:

6 (1) POSSESSION OF MARIJUANA UNDER § 5-601 OF THE
7 CRIMINAL LAW ARTICLE;

8 (2) USE OF OR POSSESSION WITH INTENT TO USE DRUG
9 PARAPHERNALIA UNDER § 5-619(C)(1) OF THE CRIMINAL LAW ARTICLE;

10 (3) DISTURBING THE PEACE UNDER § 10-201(C)(4) OF THE
11 CRIMINAL LAW ARTICLE;

12 (4) THEFT UNDER \$100 UNDER § 7-104(G)(3) OF THE CRIMINAL
13 LAW ARTICLE;

14 (5) TRESPASS ON POSTED PROPERTY UNDER § 6-402 OF THE
15 CRIMINAL LAW ARTICLE;

16 (6) MALICIOUS DESTRUCTION OF PROPERTY CAUSING DAMAGE
17 OF LESS THAN \$500 UNDER § 6-301 OF THE CRIMINAL LAW ARTICLE;

18 (7) FAILURE TO APPEAR IN RESPONSE TO A CITATION UNDER §
19 5-212 OF THIS ARTICLE;

20 (8) PUBLIC INTOXICATION UNDER ARTICLE 2B, § 19-101 OF THE
21 CODE;

22 (9) A PROSTITUTION OFFENSE UNDER § 11-306 OF THE
23 CRIMINAL LAW ARTICLE;

24 (10) LITTERING IN AN AMOUNT NOT EXCEEDING 100 POUNDS
25 UNDER § 10-110 OF THE CRIMINAL LAW ARTICLE;

26 (11) POSSESSION OF AN ALCOHOLIC BEVERAGE IN AN OPEN
27 CONTAINER UNDER ARTICLE 2B, § 19-301 OF THE CODE;

28 (12) DRINKING ON PUBLIC PROPERTY UNDER ARTICLE 2B, §
29 19-202 OF THE CODE;

1 ~~(13) CONFINEMENT OF AN UNATTENDED CHILD UNDER § 5-801 OF~~
 2 ~~THE FAMILY LAW ARTICLE;~~

3 ~~(14)~~ (13) OBTAINING PROPERTY OR SERVICES WITH A VALUE OF
 4 LESS THAN \$100 BY BAD CHECK UNDER § 8-103(B) OF THE CRIMINAL LAW
 5 ARTICLE;

6 ~~(15)~~ (14) OBTAINING PROPERTY WITH A VALUE OF LESS THAN
 7 \$100 WITH A STOLEN OR COUNTERFEIT CREDIT CARD UNDER § 8-206(A) OF THE
 8 CRIMINAL LAW ARTICLE;

9 ~~(16)~~ (15) A TICKET SCALPING OFFENSE UNDER ANY STATE OR
 10 LOCAL LAW; OR

11 ~~(17)~~ (16) FAILURE TO COMPLY WITH A LAWFUL ORDER OF A
 12 NATURAL RESOURCES POLICE OFFICER UNDER § 1-206 OF THE NATURAL
 13 RESOURCES ARTICLE.

14 (G) “UNIT” MEANS TWO OR MORE CONVICTIONS THAT ARISE FROM THE
 15 SAME INCIDENT, TRANSACTION, OR SET OF FACTS.

16 10-302.

17 (A) THIS SUBTITLE DOES NOT APPLY TO A CONVICTION OF:

18 ~~(1) A FELONY;~~

19 ~~(2) A MISDEMEANOR REQUIRING REGISTRATION AS A SEX~~
 20 ~~OFFENDER UNDER TITLE 11, SUBTITLE 7 OF THIS ARTICLE; OR~~

21 ~~(3) A DOMESTICALLY RELATED CRIME UNDER § 6-233 OF THIS~~
 22 ~~ARTICLE.~~

23 (B) A SHIELDED RECORD SHALL REMAIN FULLY ACCESSIBLE TO:

24 (1) CRIMINAL JUSTICE UNITS FOR LEGITIMATE CRIMINAL
 25 JUSTICE PURPOSES;

26 (2) PROSPECTIVE EMPLOYERS WHO ARE SUBJECT TO A
 27 STATUTORY OR CONTRACTUAL REQUIREMENT TO INQUIRE INTO AN
 28 APPLICANT’S CRIMINAL BACKGROUND FOR PURPOSES OF CARRYING OUT THAT
 29 ~~STATUTORY~~ REQUIREMENT;

1 (3) FACILITIES THAT ARE REQUIRED TO INQUIRE INTO AN
2 ~~EMPLOYEE'S OR EMPLOYER'S~~ INDIVIDUAL'S CRIMINAL BACKGROUND UNDER §
3 ~~5-561(B), (C), (D), (E), (F), OR (G) OF THE FAMILY LAW ARTICLE; AND~~

4 (4) THE PERSON WHO IS THE SUBJECT OF THE SHIELDED RECORD
5 AND THAT PERSON'S ATTORNEY; AND

6 (5) HEALTH OCCUPATIONS BOARDS.

7 **10-303.**

8 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A
9 PERSON MAY ~~REQUEST THAT COURT RECORDS AND POLICE RECORDS RELATING~~
10 ~~TO A CONVICTION OF THE PERSON BE SHIELDED~~ PETITION THE COURT TO
11 SHIELD THE PERSON'S COURT AND POLICE RECORDS RELATING TO A
12 SHIELDABLE CONVICTION NO EARLIER THAN 3 5 YEARS AFTER THE PERSON
13 SATISFIES THE SENTENCE IMPOSED FOR THE CONVICTION, INCLUDING PAROLE,
14 PROBATION, OR MANDATORY SUPERVISION.

15 (B) IF THE PERSON IS CONVICTED OF A NEW CRIME DURING THE
16 APPLICABLE TIME PERIOD SET FORTH IN SUBSECTION (A) OF THIS SECTION,
17 THE ORIGINAL CONVICTION IS NOT ELIGIBLE FOR SHIELDING UNLESS THE NEW
18 CONVICTION BECOMES ELIGIBLE FOR SHIELDING.

19 (C) (1) A PERSON MAY SHIELD ONLY ONE STAND-ALONE CONVICTION
20 OR ONE UNIT OF CONVICTIONS PER LIFETIME.

21 (2) IF A PERSON IS NOT ENTITLED TO SHIELDING OF ONE
22 CONVICTION IN A UNIT, THE PERSON IS NOT ENTITLED TO SHIELDING OF ANY
23 OTHER CONVICTION IN THE UNIT.

24 ~~(D)~~ (D) THE COURT OF APPEALS, BY RULE, SHALL ESTABLISH
25 PROCEDURES RELATING TO THE FILING OF A REQUEST FOR SHIELDING IN
26 ACCORDANCE WITH THIS SUBTITLE.

27 **10-304.**

28 THE MARYLAND JUDICIARY CASE SEARCH MAY NOT IN ANY WAY REFER
29 TO THE EXISTENCE OF SPECIFIC RECORDS SHIELDED IN ACCORDANCE WITH
30 THIS SUBTITLE.

31 **10-305.**

1 A CONVICTION THAT HAS BEEN SHIELDED UNDER THIS SUBTITLE MAY
2 NOT BE CONSIDERED A CONVICTION FOR PURPOSES OF § 10-105(E)(4)(II)1 OF
3 THIS TITLE.

4 **10-306.**

5 (A) A PERSON AUTHORIZED TO ACCESS A SHIELDED RECORD UNDER §
6 10-302(B) OF THIS SUBTITLE MAY NOT DISCLOSE ANY INFORMATION FROM A
7 SHIELDED RECORD TO A PERSON WHO IS NOT AUTHORIZED TO ACCESS
8 SHIELDED RECORDS UNDER § 10-302(B).

9 (B) (1) ~~EXCEPT AS PROVIDED IN § 10-302(B)(2) OF THIS SUBTITLE,~~
10 ~~AN EMPLOYER MAY NOT:~~

11 ~~(I) REQUIRE A PERSON WHO APPLIES FOR EMPLOYMENT~~
12 ~~TO DISCLOSE SHIELDED INFORMATION ABOUT CRIMINAL CHARGES IN AN~~
13 ~~APPLICATION, AN INTERVIEW, OR OTHERWISE; OR~~

14 ~~(II) DISCHARGE OR REFUSE TO HIRE A PERSON SOLELY~~
15 ~~BECAUSE THE PERSON REFUSED TO DISCLOSE INFORMATION ABOUT CRIMINAL~~
16 ~~CHARGES THAT HAVE BEEN SHIELDED.~~

17 ~~(2)~~ AN EDUCATIONAL INSTITUTION MAY NOT:

18 (I) REQUIRE A PERSON WHO APPLIES FOR ADMISSION TO
19 THE INSTITUTION TO DISCLOSE SHIELDED INFORMATION ABOUT CRIMINAL
20 CHARGES IN AN APPLICATION, AN INTERVIEW, OR OTHERWISE; OR

21 (II) EXPEL OR REFUSE TO ADMIT A PERSON SOLELY
22 BECAUSE THE PERSON REFUSED TO DISCLOSE INFORMATION ABOUT CRIMINAL
23 CHARGES THAT HAVE BEEN SHIELDED.

24 ~~(3)~~ (2) A EXCEPT AS PROVIDED IN § 10-302(B) OF THIS
25 SUBTITLE, A UNIT, AN OFFICIAL, OR AN EMPLOYEE OF THE STATE OR A
26 POLITICAL SUBDIVISION OF THE STATE MAY NOT:

27 (I) REQUIRE A PERSON WHO APPLIES FOR A LICENSE,
28 PERMIT, REGISTRATION, OR GOVERNMENTAL SERVICE TO DISCLOSE SHIELDED
29 INFORMATION ABOUT CRIMINAL CHARGES IN AN APPLICATION, AN INTERVIEW,
30 OR OTHERWISE; OR

31 (II) DENY A PERSON'S APPLICATION FOR A LICENSE,
32 PERMIT, REGISTRATION, OR GOVERNMENTAL SERVICE SOLELY BECAUSE THE

1 PERSON REFUSED TO DISCLOSE INFORMATION ABOUT CRIMINAL CHARGES
2 THAT HAVE BEEN SHIELDED.

3 ~~(c) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A~~
4 ~~MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING~~
5 ~~\$1,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH FOR EACH~~
6 ~~VIOLATION.~~

7 ~~(2) IN ADDITION TO THE PENALTIES PROVIDED IN PARAGRAPH~~
8 ~~(1) OF THIS SUBSECTION, AN OFFICIAL OR EMPLOYEE OF THE STATE OR A~~
9 ~~POLITICAL SUBDIVISION OF THE STATE WHO IS CONVICTED UNDER THIS~~
10 ~~SECTION MAY BE REMOVED OR DISMISSED FROM PUBLIC SERVICE.~~

11 Article - State Government

12 10-616.

13 (v) A CUSTODIAN SHALL DENY INSPECTION OF CRIMINAL RECORDS
14 AND POLICE RECORDS RELATING TO THE CONVICTION OF A CRIME THAT HAVE
15 BEEN SHIELDED UNDER TITLE 10, SUBTITLE 3 OF THE CRIMINAL PROCEDURE
16 ARTICLE.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2013.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.