

SENATE BILL 804

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4r1943
CF 4r2845

By: **Senators Raskin, Benson, Feldman, Ferguson, Forehand, Frosh, Madaleno, Manno, McFadden, Muse, Pugh, and Ramirez**

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Second Chance Act of 2014**

3 FOR the purpose of authorizing a person to petition the court to shield certain court
4 records and police records relating to a certain conviction at a certain time;
5 providing that, if a certain person is convicted of a new crime during a certain
6 time period, a certain original conviction is not eligible for shielding unless the
7 new conviction becomes eligible for shielding; providing that a certain person is
8 not entitled to shielding if the person is a defendant in a pending criminal
9 proceeding; providing that a certain conviction is eligible for shielding at a
10 certain time; requiring the court to have a copy of a certain petition served on
11 the State's Attorney; requiring the court to hold a hearing and order the
12 shielding of certain records under certain circumstances; requiring the court to
13 deny a certain petition under certain circumstances; prohibiting the Maryland
14 Judiciary Case Search from in any way referring to the existence of specific
15 records shielded in accordance with this Act; providing that a conviction that
16 has been shielded in accordance with this Act may not be considered a
17 conviction for certain purposes; prohibiting a person authorized to access a
18 shielded record under this Act from disclosing any information from a shielded
19 record to a person who is not authorized to access shielded records under this
20 Act; prohibiting an employer from requiring a person who applies for
21 employment to disclose certain shielded information at a certain time or
22 discharging or refusing to hire a person solely because the person refused to
23 disclose certain information, with a certain exception; prohibiting an
24 educational institution from requiring a person who applies for admission to the
25 institution to disclose certain shielded information at a certain time or expelling
26 or refusing to admit a person solely because the person refused to disclose
27 certain information; prohibiting a unit, an official, or an employee of the State
28 or a political subdivision of the State from requiring a person who applies for a
29 license, permit, registration, or government service to disclose certain shielded
30 information at a certain time or denying a person's application for a license,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 permit, registration, or government service solely because the person refused to
 2 disclose certain information; requiring a certain custodian to deny inspection of
 3 criminal records and police records relating to the conviction of a crime that has
 4 been shielded under this Act; providing that this Act does not apply to a certain
 5 conviction; providing that a shielded record shall remain fully accessible by
 6 certain persons; establishing penalties for a violation of this Act; defining
 7 certain terms; and generally relating to the shielding of court records and police
 8 records.

9 BY adding to

10 Article – Criminal Procedure

11 Section 10–301 through 10–306 to be under the new subtitle “Subtitle 3.
 12 Shielding”

13 Annotated Code of Maryland

14 (2008 Replacement Volume and 2013 Supplement)

15 BY adding to

16 Article – State Government

17 Section 10–616(w)

18 Annotated Code of Maryland

19 (2009 Replacement Volume and 2013 Supplement)

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

22 **Article – Criminal Procedure**

23 **SUBTITLE 3. SHIELDING.**

24 **10–301.**

25 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 26 INDICATED.

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

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

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

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

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

4 **(1) DISORDERLY CONDUCT UNDER § 10-201 OF THE CRIMINAL**
5 **LAW ARTICLE;**

6 **(2) DISTURBING THE PEACE UNDER § 10-201(C)(4) OF THE**
7 **CRIMINAL LAW ARTICLE;**

8 **(3) FAILURE TO OBEY A REASONABLE AND LAWFUL ORDER**
9 **UNDER § 10-201(C)(3) OF THE CRIMINAL LAW ARTICLE;**

10 **(4) MALICIOUS DESTRUCTION OF PROPERTY IN THE LESSER**
11 **DEGREE UNDER § 6-301 OF THE CRIMINAL LAW ARTICLE;**

12 **(5) TRESPASS ON POSTED PROPERTY UNDER § 6-402 OF THE**
13 **CRIMINAL LAW ARTICLE;**

14 **(6) MISDEMEANOR OBTAINING PROPERTY OR SERVICES BY BAD**
15 **CHECK UNDER § 8-103(B) AND § 8-106(C) OF THE CRIMINAL LAW ARTICLE;**

16 **(7) MISDEMEANOR THEFT OF PROPERTY OR SERVICES UNDER §**
17 **7-104(G)(2) OR (3) OF THE CRIMINAL LAW ARTICLE;**

18 **(8) POSSESSING OR ADMINISTERING A CONTROLLED DANGEROUS**
19 **SUBSTANCE UNDER § 5-601 OF THE CRIMINAL LAW ARTICLE;**

20 **(9) POSSESSING OR ADMINISTERING A NONCONTROLLED**
21 **SUBSTANCE UNDER § 5-618(A) OF THE CRIMINAL LAW ARTICLE;**

22 **(10) USE OF OR POSSESSION WITH INTENT TO USE DRUG**
23 **PARAPHERNALIA UNDER § 5-619(C)(1) OF THE CRIMINAL LAW ARTICLE;**

24 **(11) DRIVING WITHOUT A LICENSE UNDER § 16-101 OF THE**
25 **TRANSPORTATION ARTICLE;**

26 **(12) DRIVING WHILE PRIVILEGE IS CANCELED, SUSPENDED,**
27 **REFUSED, OR REVOKED UNDER § 16-303(A), (B), (C), (D), (E), (F), OR (G) OF THE**
28 **TRANSPORTATION ARTICLE;**

29 **(13) DRIVING WHILE UNINSURED UNDER § 17-107 OF THE**
30 **TRANSPORTATION ARTICLE; OR**

1 (14) A PROSTITUTION OFFENSE UNDER § 11-306(A)(1) OF THE
2 CRIMINAL LAW ARTICLE IF THE CONVICTION IS FOR PROSTITUTION AND NOT
3 ASSIGNATION.

4 **10-302.**

5 (A) THIS SUBTITLE DOES NOT APPLY TO A CONVICTION OF A
6 DOMESTICALLY RELATED CRIME UNDER § 6-233 OF THIS ARTICLE.

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

8 (1) CRIMINAL JUSTICE UNITS FOR LEGITIMATE CRIMINAL
9 JUSTICE PURPOSES;

10 (2) PROSPECTIVE EMPLOYERS WHO ARE SUBJECT TO A
11 STATUTORY OR CONTRACTUAL REQUIREMENT TO INQUIRE INTO AN
12 APPLICANT'S CRIMINAL BACKGROUND FOR PURPOSES OF CARRYING OUT THAT
13 REQUIREMENT;

14 (3) FACILITIES THAT ARE AUTHORIZED TO INQUIRE INTO AN
15 INDIVIDUAL'S CRIMINAL BACKGROUND UNDER § 5-561(B), (C), (D), (E), (F), OR
16 (G) OF THE FAMILY LAW ARTICLE;

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

19 (5) HEALTH OCCUPATIONS BOARDS.

20 **10-303.**

21 (A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS
22 SECTION, A PERSON MAY PETITION THE COURT TO SHIELD THE PERSON'S
23 COURT AND POLICE RECORDS RELATING TO A SHIELDABLE CONVICTION NO
24 EARLIER THAN 3 YEARS AFTER THE PERSON SATISFIES THE SENTENCE IMPOSED
25 FOR THE CONVICTION, INCLUDING PAROLE, PROBATION, OR MANDATORY
26 SUPERVISION.

27 (B) A CONVICTION FOR THEFT OF PROPERTY OR SERVICES WITH A
28 VALUE OF LESS THAN \$1,000 UNDER § 7-104(G)(2) OF THE CRIMINAL LAW
29 ARTICLE IS ELIGIBLE FOR SHIELDING NO EARLIER THAN 5 YEARS AFTER THE
30 PERSON SATISFIES THE SENTENCE IMPOSED FOR THE CONVICTION, INCLUDING
31 PAROLE, PROBATION, OR MANDATORY SUPERVISION.

1 **(C) (1) IF THE PERSON IS CONVICTED OF A NEW CRIME DURING THE**
2 **APPLICABLE TIME PERIOD SET FORTH IN SUBSECTION (A) OR (B) OF THIS**
3 **SECTION, THE ORIGINAL CONVICTION IS NOT ELIGIBLE FOR SHIELDING UNLESS**
4 **THE NEW CONVICTION BECOMES ELIGIBLE FOR SHIELDING.**

5 **(2) A PERSON IS NOT ENTITLED TO SHIELDING IF THE PERSON IS**
6 **A DEFENDANT IN A PENDING CRIMINAL PROCEEDING.**

7 **(D) (1) THE COURT SHALL HAVE A COPY OF A PETITION FOR**
8 **SHIELDING SERVED ON THE STATE'S ATTORNEY.**

9 **(2) UNLESS THE STATE'S ATTORNEY FILES AN OBJECTION TO**
10 **THE PETITION FOR SHIELDING WITHIN 30 DAYS AFTER THE PETITION IS**
11 **SERVED, THE COURT SHALL ORDER THE SHIELDING OF ALL POLICE RECORDS**
12 **AND COURT RECORDS RELATING TO THE CONVICTION.**

13 **(E) (1) IF THE STATE'S ATTORNEY FILES A TIMELY OBJECTION TO**
14 **THE PETITION, THE COURT SHALL HOLD A HEARING.**

15 **(2) IF THE COURT, AT THE HEARING, FINDS THAT THE PERSON IS**
16 **ENTITLED TO SHIELDING, THE COURT SHALL ORDER THE SHIELDING OF ALL**
17 **POLICE RECORDS AND COURT RECORDS RELATING TO THE CONVICTION.**

18 **10-304.**

19 **THE MARYLAND JUDICIARY CASE SEARCH MAY NOT IN ANY WAY REFER**
20 **TO THE EXISTENCE OF SPECIFIC RECORDS SHIELDED IN ACCORDANCE WITH**
21 **THIS SUBTITLE.**

22 **10-305.**

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

26 **10-306.**

27 **(A) A PERSON AUTHORIZED TO ACCESS A SHIELDED RECORD UNDER §**
28 **10-302(B) OF THIS SUBTITLE MAY NOT DISCLOSE ANY INFORMATION FROM A**
29 **SHIELDED RECORD TO A PERSON WHO IS NOT AUTHORIZED TO ACCESS**
30 **SHIELDED RECORDS UNDER § 10-302(B) OF THIS SUBTITLE.**

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

1 **(I) REQUIRE A PERSON WHO APPLIES FOR EMPLOYMENT**
2 **TO DISCLOSE SHIELDED INFORMATION ABOUT CRIMINAL CHARGES IN AN**
3 **APPLICATION, AN INTERVIEW, OR OTHERWISE; OR**

4 **(II) DISCHARGE OR REFUSE TO HIRE A PERSON SOLELY**
5 **BECAUSE THE PERSON REFUSED TO DISCLOSE INFORMATION ABOUT CRIMINAL**
6 **CHARGES THAT HAVE BEEN SHIELDED.**

7 **(2) AN EDUCATIONAL INSTITUTION MAY NOT:**

8 **(I) REQUIRE A PERSON WHO APPLIES FOR ADMISSION TO**
9 **THE INSTITUTION TO DISCLOSE SHIELDED INFORMATION ABOUT CRIMINAL**
10 **CHARGES IN AN APPLICATION, AN INTERVIEW, OR OTHERWISE; OR**

11 **(II) EXPEL OR REFUSE TO ADMIT A PERSON SOLELY**
12 **BECAUSE THE PERSON REFUSED TO DISCLOSE INFORMATION ABOUT CRIMINAL**
13 **CHARGES THAT HAVE BEEN SHIELDED.**

14 **(3) A UNIT, AN OFFICIAL, OR AN EMPLOYEE OF THE STATE OR A**
15 **POLITICAL SUBDIVISION OF THE STATE MAY NOT:**

16 **(I) REQUIRE A PERSON WHO APPLIES FOR A LICENSE,**
17 **PERMIT, REGISTRATION, OR GOVERNMENT SERVICE TO DISCLOSE SHIELDED**
18 **INFORMATION ABOUT CRIMINAL CHARGES IN AN APPLICATION, AN INTERVIEW,**
19 **OR OTHERWISE; OR**

20 **(II) DENY A PERSON'S APPLICATION FOR A LICENSE,**
21 **PERMIT, REGISTRATION, OR GOVERNMENT SERVICE SOLELY BECAUSE THE**
22 **PERSON REFUSED TO DISCLOSE INFORMATION ABOUT CRIMINAL CHARGES**
23 **THAT HAVE BEEN SHIELDED.**

24 **(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A**
25 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO, FOR EACH VIOLATION, A**
26 **FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR**
27 **BOTH.**

28 **Article – State Government**

29 10–616.

30 **(W) A CUSTODIAN SHALL DENY INSPECTION OF CRIMINAL RECORDS**
31 **AND POLICE RECORDS RELATING TO THE CONVICTION OF A CRIME THAT HAVE**

1 **BEEN SHIELDED UNDER TITLE 10, SUBTITLE 3 OF THE CRIMINAL PROCEDURE**
2 **ARTICLE.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2014.