

Department of Legislative Services
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 397

(Delegate Simmons, *et al.*)

Judiciary

Judicial Proceedings

Peace Orders and Protective Orders - Consent Orders - Shielding

This bill extends eligibility to file a written request to shield court records relating to a peace order or protective order proceeding to petitioners in those proceedings. The bill also makes provisions of law concerning the shielding of peace orders and protective orders applicable to cases in which the respondent has consented to the entry of the orders, under specified circumstances.

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase by \$30,300 in FY 2015 only for programming changes to the Judiciary’s computer system. Any potential minimal increase in expenditures to accommodate additional shielding requests is not anticipated to materially impact the District Court, as discussed below.

| (in dollars) | FY 2015 | FY 2016 | FY 2017 | FY 2018 | FY 2019 |
|----------------|------------|---------|---------|---------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 30,300 | 0 | 0 | 0 | 0 |
| Net Effect | (\$30,300) | \$0 | \$0 | \$0 | \$0 |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The circuit courts can handle any additional shielding requests with existing resources, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: If the respondent consents to the entry of a peace order or a protective order, the petitioner or the respondent may file a written request for shielding at any time after the expiration of the order. On the filing of a request for shielding, the court must schedule a hearing on the request and give notice to the other party or the other party’s

counsel of record. The court may order the shielding of all court records relating to the proceeding if the court finds (1) for cases in which the respondent requests shielding, that the petitioner consents to the shielding; (2) that the respondent did not violate the order during its term; (3) that a final peace order or protective order has not been previously issued against the respondent in a proceeding between the petitioner and the respondent; and (4) that the respondent has not been found guilty of a crime arising from acts of abuse against the petitioner. The court must also find that none of the following are pending at the time of the hearing: (1) an interim or temporary peace order or protective order issued against the respondent; or (2) a criminal charge against the respondent for alleged acts of abuse.

If the respondent consents to the entry of the order but the petitioner did not consent, the respondent may refile a written request for shielding after one year from the date of the prior hearing regarding shielding. The court must schedule a hearing and give notice. After the hearing, the court may order the shielding of all court records relating to the proceeding if the court finds that the factors considered in the original shielding hearing as specified above apply. However, as to the factor regarding the consent of the petitioner, the court must either find that the petitioner consents to the shielding or that it is unlikely that the respondent will commit future abuse against the petitioner, as specified.

In determining whether the records should be shielded, the court must balance the privacy of the petitioner or the respondent and potential danger of adverse consequences to the petitioner or the respondent against the potential risk of future harm and danger to the petitioner and the community.

The bill applies existing statutory provisions relating to the prohibition against removing information from the Domestic Violence Central Repository and access to shielded records by victim service providers to cases in which the respondent consents to the entry of an order. The bill alters the definition of “victim services provider” to mean a nonprofit or governmental organization that has been authorized by the Governor’s Office of Crime Control and Prevention (GOCCP) to have online access to records of shielded peace or protective orders in order to assist victims of abuse. GOCCP, in consultation with the Judiciary, may adopt regulations governing online access to shielded records by a victim services provider.

The bill also alters the findings that must be made prior to an order for the shielding of records when a petition has been denied or dismissed at the interim, temporary, or final stage by requiring a court to find that the respondent has not been found guilty of a crime arising from acts of abuse against the petitioner.

Current Law: Court records, including those relating to a peace order or protective order proceeding that are maintained by a court, are presumed to be open to the public for inspection. Generally, a custodian of a court record must permit a person, upon personal appearance in the custodian’s office during normal business hours, to inspect the record. Subject to certain exceptions, a court record that is kept in electronic form is open to inspection to the same extent that a record in paper form is open to inspection. However, a respondent in a peace order or protective order proceeding is authorized to file a written request to “shield” all court related records if a petition for a peace order or protective order was denied or dismissed at any stage of the proceedings.

“Shield” is defined as removing information from public inspection. “Shielding” means:

- with respect to a record kept in a courthouse, removing to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and
- with respect to electronic information about a proceeding on the website maintained by the Maryland Judiciary, completely removing all information concerning the proceeding from the public website, including the names of the parties, case numbers, and any reference to the proceeding or any reference to the removal of the proceeding from the public website.

A request for shielding may not be filed within three years after the denial or dismissal of the petition, unless the respondent files a general waiver and release of all the respondent’s tort claims related to the proceedings. The court must schedule a hearing on the shielding request and provide notice of the hearing to the petitioner or the petitioner’s attorney of record.

After the hearing, the court must order the shielding of court records relating to peace order or protective order proceedings if the court finds (1) that the petition was denied or dismissed at the interim, temporary, or final order stage of a protective order or peace order proceeding; (2) that a final protective order or peace order has not been previously issued against the respondent in a proceeding between the petitioner and the respondent; (3) that there is not a pending interim or temporary protective order or peace order issued against the respondent for a proceeding between the petitioner and the respondent; or (4) there is not a pending criminal charge against the respondent arising from alleged abuse against the petitioner.

However, the court may, for good cause, deny the shielding if the petitioner appears at the hearing and objects to the shielding. In determining whether there is good cause to grant the request to shield court records, the court must balance the privacy of the respondent and potential danger of adverse consequences to the respondent against the potential risk of future harm and danger to the petitioner and the community.

Information about the proceeding may not be removed from the domestic violence central repository. However, attorneys of record, law enforcement and social services personnel, and others specified are not prohibited from accessing a shielded record for a legitimate reason. Other individuals may subpoena or file a motion for access to a shielded record. If the court finds that the individual has a legitimate reason for access, the court may grant access to the shielded record and determine how access may be obtained. The court must balance the person's need for access with the respondent's right to privacy and the potential harm of unwarranted adverse consequences to the respondent that disclosure may create.

Within 60 days after entry of a shielding order, each custodian of court records subject to the order of shielding must advise the court and the respondent of compliance with the order in writing.

Before granting, denying, or modifying a final protective order, a court must review all open and shielded court records involving the person eligible for relief and the respondent, including records involving criminal matters and domestic violence and peace order proceedings. However, the court's failure to review records does not affect the validity of a protective order that is issued.

Background: The Judiciary's website includes a link to "CaseSearch." CaseSearch provides public Internet access to information from case records maintained by the Judiciary. Maryland District Court traffic, criminal, and civil case records and circuit court criminal and civil case records are available. Records can remain in CaseSearch indefinitely and are not removed except by a court-ordered expungement.

The Judiciary advises that in fiscal 2013, 3,995 protective orders were granted by consent. In the same year, 3,189 peace orders were granted by consent. According to the Judiciary, between October 1, 2010 (the effective date for Chapters 361 and 362 of 2010 which established the shielding provisions) and January 15, 2014, 3,076 requests for shielding were filed in the District Court and 258 requests were filed in the circuit courts. During that time, the circuit courts granted 119 shielding requests and denied 40 requests. The District Court granted 2,156 requests and denied 816 requests.

State/Local Fiscal Effect: The number of shielding requests that will be generated by the bill's provisions cannot be reliably predicted. However, as noted above, only 3,334 requests for shielding have been filed since October 1, 2010, resulting in fewer than 1,200 additional hearings per year that were divided among all of the District Court and circuit court locations. While it is possible that individuals who consent to an order may be more likely to request to have their records sealed, based on the number of requests for shielding that have been filed under existing provisions, the Department of Legislative Services anticipates that any *potential* minimal increase in expenditures to accommodate additional shielding requests does not materially impact the District Court.

The circuit courts, which preside over a much lower volume of protective order cases, can handle the bill's requirements using existing resources.

Any potential minimal increase in expenditures to accommodate additional shielding requests generated by petitioners is likewise not anticipated to materially impact the District Court.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Governor's Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Baltimore, Carroll, Montgomery, Queen Anne's, and St. Mary's counties; Department of Legislative Services

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