

HOUSE BILL 282

D4

4lr1523

By: **Delegate Costa**

Introduced and read first time: January 20, 2014

Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Family Law – Peace Orders and Protective Orders – Shielding

FOR the purpose of requiring a court to order the shielding of certain court records related to a certain peace order proceeding within a certain period of time under certain circumstances; requiring a court to order the shielding of certain court records related to a certain protective order proceeding within a certain period of time under certain circumstances; repealing certain provisions of law concerning the filing of a request to shield certain court records related to peace order or protective order proceedings; and generally relating to peace orders and protective orders.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–1510
Annotated Code of Maryland
(2013 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Family Law
Section 4–512
Annotated Code of Maryland
(2012 Replacement Volume and 2013 Supplement)

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

Article – Courts and Judicial Proceedings

3–1510.

(a) (1) In this section the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2) (i) “Court record” means an official record of a court about a proceeding that the clerk of a court or other court personnel keeps.

(ii) “Court record” includes:

1. An index, a docket entry, a petition, a memorandum, a transcription of proceedings, an electronic recording, an order, and a judgment; and

2. Any electronic information about a proceeding on the Web site maintained by the Maryland Judiciary.

(3) “Shield” means to remove information from public inspection in accordance with this section.

(4) “Shielding” means:

(i) With respect to a record kept in a courthouse, removing the record to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and

(ii) With respect to electronic information about a proceeding on the Web site maintained by the Maryland Judiciary, completely removing all information concerning the proceeding from the public Web site, 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 Web site.

(5) “Victim services provider” means a nonprofit organization that has been authorized by the Governor’s Office of Crime Control and Prevention or the Department of Human Resources to have access to records of shielded peace orders in order to assist victims of abuse.

(b) If a petition filed under this subtitle is denied or dismissed at the interim, temporary, or final peace order stage of a proceeding under this subtitle, [the respondent may file a written request to shield] **THE COURT SHALL ORDER THE SHIELDING OF** all court records relating to the proceeding **WITHIN 5 BUSINESS DAYS AFTER THE DENIAL OR DISMISSAL.**

(c) [A request for shielding under this section may not be filed within 3 years after the denial or dismissal of the petition unless the respondent files with the request a general waiver and release of all the respondent’s tort claims related to the proceeding under this subtitle.

(d) (1) On the filing of a request for shielding under this section, the court shall schedule a hearing on the request.

(2) The court shall give notice of the hearing to the petitioner or the petitioner's counsel of record.

(3) Except as provided in paragraphs (4) and (5) of this subsection, after the hearing, the court shall order the shielding of all court records relating to the proceeding if the court finds:

(i) That the petition was denied or dismissed at the interim, temporary, or final peace order stage of the proceeding;

(ii) 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

(iii) 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 in a proceeding between the petitioner and the respondent; or

2. A criminal charge against the respondent arising from an alleged act described in § 3-1503(a) of this subtitle against the petitioner.

(4) (i) If the petitioner appears at the shielding hearing and objects to the shielding, the court may, for good cause, deny the shielding.

(ii) In determining whether there is good cause to grant the request to shield court records, the court shall 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.

(5) Information about the proceeding may not be removed from the Domestic Violence Central Repository.

(e)] (1) This section does not preclude the following persons from accessing a shielded record for a legitimate reason:

(i) A law enforcement officer;

(ii) An attorney who represents or has represented the petitioner or the respondent in a proceeding;

(iii) A State's Attorney;

(iv) An employee of a local department of social services; or

(v) A victim services provider.

(2) (i) A person not listed in paragraph (1) of this subsection may subpoena, or file a motion for access to, a record shielded under this section.

(ii) If the court finds that the person has a legitimate reason for access, the court may grant the person access to the shielded record under the terms and conditions that the court determines.

(iii) In ruling on a motion under this paragraph, the court shall balance the person's need for access to the record with the respondent's right to privacy and the potential harm of unwarranted adverse consequences to the respondent that the disclosure may create.

[(f) (D)] Within 60 days after entry of an order under subsection **[(d)(3)] (B)** of this section, each custodian of court records that are subject to the order of shielding shall advise in writing the court and the respondent of compliance with the order.

Article – Family Law

4–512.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) “Court record” means an official record of a court about a proceeding that the clerk of a court or other court personnel keeps.

(ii) “Court record” includes:

1. an index, a docket entry, a petition, a memorandum, a transcription of proceedings, an electronic recording, an order, and a judgment; and

2. any electronic information about a proceeding on the **[website] WEB SITE** maintained by the Maryland Judiciary.

(3) “Shield” means to remove information from public inspection in accordance with this section.

(4) “Shielding” means:

(i) with respect to a record kept in a courthouse, removing the record to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and

(ii) with respect to electronic information about a proceeding on the **[website] WEB SITE** maintained by the Maryland Judiciary, completely removing all information concerning the proceeding from the public Web site, 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 Web site.

(5) “Victim services provider” means a nonprofit organization that has been authorized by the Governor’s Office of Crime Control and Prevention or the Department of Human Resources to have access to records of shielded protective orders in order to assist victims of abuse.

(b) If a petition filed under this subtitle is denied or dismissed at the interim, temporary, or final protective order stage of a proceeding under this subtitle, [the respondent may file a written request to shield] **THE COURT SHALL ORDER THE SHIELDING OF** all court records relating to the proceeding **WITHIN 5 BUSINESS DAYS AFTER THE DENIAL OR DISMISSAL.**

(c) [A request for shielding under this section may not be filed within 3 years after the denial or dismissal of the petition, unless the respondent files with the request a general waiver and release of all the respondent’s tort claims related to the proceeding under this subtitle.

(d) (1) On the filing of a request for shielding under this section, the court shall schedule a hearing on the request.

(2) The court shall give notice of the hearing to the petitioner or the petitioner’s counsel of record.

(3) Except as provided in paragraphs (4) and (5) of this subsection, after the hearing, the court shall order the shielding of all court records relating to the proceeding if the court finds:

(i) that the petition was denied or dismissed at the interim, temporary, or final protective order stage of the proceeding;

(ii) 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; and

(iii) that none of the following are pending at the time of the hearing:

1. an interim or temporary protective order or peace order issued against the respondent in a proceeding between the petitioner and the respondent; or

2. a criminal charge against the respondent arising from alleged abuse against the petitioner.

(4) (i) If the petitioner appears at the shielding hearing and objects to the shielding, the court may, for good cause, deny the shielding.

(ii) In determining whether there is good cause to grant the request to shield court records, the court shall 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.

(5) Information about the proceeding may not be removed from the Domestic Violence Central Repository.

(e)] (1) This section does not preclude the following persons from accessing a shielded record for a legitimate reason:

(i) a law enforcement officer;

(ii) an attorney who represents or has represented the petitioner or the respondent in a proceeding;

(iii) a State's Attorney;

(iv) an employee of a local department; or

(v) a victim services provider.

(2) (i) A person not listed in paragraph (1) of this subsection may subpoena, or file a motion for access to, a record shielded under this section.

(ii) If the court finds that the person has a legitimate reason for access, the court may grant the person access to the shielded record under the terms and conditions that the court determines.

(iii) In ruling on a motion under this paragraph, the court shall balance the person's need for access to the record with the respondent's right to privacy and the potential harm of unwarranted adverse consequences to the respondent that the disclosure may create.

[(f)] (D) Within 60 days after entry of an order under subsection **[(d)(3)] (B)** of this section, each custodian of court records that are subject to the order of shielding shall advise in writing the court and the respondent of compliance with the order.

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