

SENATE BILL 804

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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

AN ACT concerning

Maryland Second Chance Act of 2014

FOR the purpose of authorizing a person to petition the court to shield certain court records and police records relating to a certain conviction at a certain time; providing that, if a certain person is convicted of a new crime during a certain time period, a certain original conviction is not eligible for shielding unless the new conviction becomes eligible for shielding; providing that a certain person is not entitled to shielding if the person is a defendant in a pending criminal proceeding; providing that a certain conviction is eligible for shielding at a certain time; requiring the court to have a copy of a certain petition served on the State's Attorney; requiring the court to hold a hearing and order the shielding of certain records under certain circumstances; requiring the court to deny a certain petition under certain circumstances; prohibiting the Maryland Judiciary Case Search from in any way referring to the existence of specific records shielded in accordance with this Act; providing that a conviction that has been shielded in accordance with this Act may not be considered a conviction for certain purposes; prohibiting a person authorized to access a shielded record under this Act from disclosing any information from a shielded record to a person who is not authorized to access shielded records under this Act; prohibiting an employer from requiring a person who applies for employment to disclose certain shielded information at a certain time or discharging or refusing to hire a person solely because the person refused to disclose certain information, with a certain exception; prohibiting an educational institution from requiring a person who applies for admission to the institution to disclose certain shielded information at a certain time or expelling or refusing to admit a person solely because the person refused to disclose certain information; prohibiting a unit, an official, or an employee of the State or a political subdivision of the State from requiring a person who applies for a license, permit, registration, or government service to disclose certain shielded 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.



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

BY adding to

Article – Criminal Procedure

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

Annotated Code of Maryland

(2008 Replacement Volume and 2013 Supplement)

BY adding to

Article – State Government

Section 10–616(w)

Annotated Code of Maryland

(2009 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 – Criminal Procedure

SUBTITLE 3. SHIELDING.

10–301.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10-302.

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

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

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

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

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

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

(5) HEALTH OCCUPATIONS BOARDS.

10-303.

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

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

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

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

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

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

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

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

10-304.

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

10-305.

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

10-306.

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

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

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

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

(2) AN EDUCATIONAL INSTITUTION MAY NOT:

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

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

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

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

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

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

Article – State Government

10-616.

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

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

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