

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Executive Department
(DLS Control No. 14-286)**

Overview and Legal and Fiscal Impact

These regulations establish a process for a nonprofit or governmental organization to be authorized by the Office of Crime Control and Prevention to have online access to records of otherwise shielded peace orders and protective orders in order to assist victims of abuse.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Executive Department:

Office of Crime Control and Prevention: Online Access to Records of Shielded Peace and Protective Orders: COMAR 01.04.04.01-.06

Legal Analysis

Background

A respondent in a peace order or protective order proceeding is authorized to file a written request to “shield” all court records related to the proceeding if the petition for a peace order or protective order was denied or dismissed. “Shielding” means (1) with respect to a record kept in a courthouse, removing to a separate secure area where persons without a legitimate reason for access are denied access and (2) 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 to the removal of the proceeding.

Chapter 227 of 2014 made the 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, by authorizing the court to shield such records under specified circumstances. Chapter 227 also applied an existing statutory provisions relating to the prohibition against removing information from the Domestic Violence Central Repository and to access to shielded records by victim service providers to cases in which the respondent consents to the entry of an order. The legislation altered the definition of “victim services provider” to mean a nonprofit or governmental organization that has been authorized by the Office of Crime Control and Prevention to have online access to records of shielded peace or protective orders in order to assist victims of abuse.

Summary of Regulations

Under the subtitle for the Office of Crime Control and Prevention (office), the regulations add a new Chapter 04, which establishes guidelines for the process for a nonprofit or governmental organization, otherwise known as a victim services provider, to be authorized to have online access to records of otherwise shielded peace orders and protective orders in order to assist victims of abuse. The regulations conform to the requirements of Chapter 227, which authorized the office to adopt regulations governing online access to shielded records by a victim services provider. The regulations describe the information the office may consider when determining an organization's eligibility, such as the organization's history of providing assistance to victims of domestic violence and the organization's stated reasons for requesting online access to shielded records. Additionally, the regulations describe the application process and provide for administrative review for an organization if the office denies the organization's request to be certified as a victim services provider. The regulations also authorize the office to suspend or revoke a victim services provider's online access under certain circumstances. In that case, the organization may reapply for authorization in one year, or a shorter time period if the office allows.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The office cites § 3-1510 of the Courts and Judicial Proceedings Article and § 4-512 of the Family Law Article as legal authority for the regulations. These sections are identical. Subsection (h) authorizes the office, in consultation with the Maryland Judiciary, to adopt regulations governing online access to shielded records by a victim services provider. This authority is correct and complete. The regulations comply with the legislative intent of the law.

Special Notes and Technical Corrections

The office has agreed to remove a comma that confused the meaning of the phrase "reasonably necessary and appropriate" in section .05B.

The office has declined to clarify the meaning of language that authorizes the office to take "whatever action it deems necessary and appropriate" in response to a victim services provider's failure to cooperate with the office or the Administrative Office of the Courts. While this section specifically refers to a suspension or revocation of the provider's certification under these regulations as examples, it is unclear what other actions the office is authorized to take. The office declined to elaborate on what such actions are, or whether any other legally permissible action exists. Thus, it is unclear what effect, if any, this provision may have in future interactions between the office and victim services providers.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs and notes that the regulations implement certain provisions of Chapters 361 and 362 of 2010 (Senate Bill 935 and House Bill 1149). The fiscal and policy notes for Senate Bill 935 and House Bill 1149 did not indicate any fiscal impact to the Governor's Office of Crime Control and Prevention or other State agencies regarding the provisions pertinent to these regulations.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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