

SENATE BILL 935

D4

0lr3031
CF HB 1149

By: **Senators Zirkin and Stone**

Introduced and read first time: February 17, 2010

Assigned to: Rules

Re-referred to: Judicial Proceedings, February 26, 2010

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 6, 2010

CHAPTER _____

1 AN ACT concerning

2 **Denial or Dismissal of ~~Domestic Violence~~ Peace Order or Protective Order**
3 **Petition – ~~Expungement~~ Shielding of Records**

4 FOR the purpose of authorizing a respondent in a certain ~~domestic violence~~ peace
5 order or protective order proceeding to file a written request to ~~expunge~~ shield
6 court records relating to the proceeding under certain circumstances; providing
7 that a certain request for ~~expungement~~ shielding may not be filed within a
8 certain time except under certain circumstances; requiring the court to schedule
9 a hearing on a certain request; requiring the court to provide a certain notice of
10 a certain hearing; requiring the court to order the ~~expungement~~ shielding of all
11 court records relating to the proceeding under certain circumstances; providing
12 a certain exception; requiring certain custodians to notify the court and the
13 respondent of compliance with the order; authorizing access by certain persons
14 to certain ~~expunged~~ shielded records under certain circumstances; requiring the
15 court to review certain court records before granting, denying, or modifying a
16 final protective order; establishing that the failure to review certain records
17 does not affect the validity of a final protective order; defining certain terms;
18 and generally relating to ~~domestic violence and the expungement~~ the shielding
19 and review of certain court records.

20 BY adding to

21 Article – Courts and Judicial Proceedings

22 Section 3-1510

23 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(2006 Replacement Volume and 2009 Supplement)

BY renumbering

Article – Family Law

Section 4–506(e) through (j), respectively

to be Section 4–506(f) through (k), respectively

Annotated Code of Maryland

(2006 Replacement Volume and 2009 Supplement)

BY adding to

Article – Family Law

Section 4–506(e) and 4–512

Annotated Code of Maryland

(2006 Replacement Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 4–506(e) through (j), respectively, of Article – Family Law of the Annotated Code of Maryland be renumbered to be Section(s) 4–506(f) through (k), respectively.

SECTION 2. AND BE IT FURTHER ENACTED, 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.

(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 MAINTAINED BY THE MARYLAND JUDICIARY.

(3) “SHIELD” MEANS TO REMOVE INFORMATION FROM PUBLIC INSPECTION IN ACCORDANCE WITH THIS SECTION.

1 (4) “SHIELDING” MEANS:

2 (I) WITH RESPECT TO A RECORD KEPT IN A COURTHOUSE,
3 REMOVING TO A SEPARATE SECURE AREA TO WHICH PERSONS WHO DO NOT
4 HAVE A LEGITIMATE REASON FOR ACCESS ARE DENIED ACCESS; AND

5 (II) WITH RESPECT TO ELECTRONIC INFORMATION ABOUT A
6 PROCEEDING ON THE WEBSITE MAINTAINED BY THE MARYLAND JUDICIARY,
7 REMOVING THE INFORMATION FROM THE PUBLIC WEBSITE.

8 (5) “VICTIM SERVICES PROVIDER” MEANS A NONPROFIT
9 ORGANIZATION THAT HAS BEEN AUTHORIZED BY THE GOVERNOR’S OFFICE OF
10 CRIME CONTROL AND PREVENTION OR THE DEPARTMENT OF HUMAN
11 SERVICES TO HAVE ACCESS TO RECORDS OF SHIELDED PEACE ORDERS IN
12 ORDER TO ASSIST VICTIMS OF ABUSE.

13 (B) IF A PETITION FILED UNDER THIS SUBTITLE IS DENIED OR
14 DISMISSED AT THE INTERIM, TEMPORARY, OR FINAL PEACE ORDER STAGE OF A
15 PROCEEDING UNDER THIS SUBTITLE, THE RESPONDENT MAY FILE A WRITTEN
16 REQUEST TO SHIELD ALL COURT RECORDS RELATING TO THE PROCEEDING.

17 (C) A REQUEST FOR SHIELDING UNDER THIS SECTION MAY NOT BE
18 FILED WITHIN 3 YEARS AFTER THE DENIAL OR DISMISSAL OF THE PETITION
19 UNLESS THE RESPONDENT FILES WITH THE REQUEST A GENERAL WAIVER AND
20 RELEASE OF ALL THE RESPONDENT’S TORT CLAIMS RELATED TO THE
21 PROCEEDING UNDER THIS SUBTITLE.

22 (D) (1) ON THE FILING OF A REQUEST FOR SHIELDING UNDER THIS
23 SECTION, THE COURT SHALL SCHEDULE A HEARING ON THE REQUEST.

24 (2) THE COURT SHALL GIVE NOTICE OF THE HEARING TO THE
25 PETITIONER OR THE PETITIONER’S COUNSEL OF RECORD.

26 (3) EXCEPT AS PROVIDED IN PARAGRAPHS (4) AND (5) OF THIS
27 SUBSECTION, AFTER THE HEARING, THE COURT SHALL ORDER THE SHIELDING
28 OF ALL COURT RECORDS RELATING TO THE PROCEEDING IF THE COURT FINDS:

29 (I) THAT THE PETITION WAS DENIED OR DISMISSED AT THE
30 INTERIM, TEMPORARY, OR FINAL PEACE ORDER STAGE OF THE PROCEEDING;

31 (II) THAT A FINAL PEACE ORDER OR PROTECTIVE ORDER
32 HAS NOT BEEN PREVIOUSLY ISSUED IN A PROCEEDING BETWEEN THE
33 PETITIONER AND THE RESPONDENT; AND

1 (III) THAT NONE OF THE FOLLOWING ARE PENDING AT THE
2 TIME OF THE HEARING:

3 1. AN INTERIM OR TEMPORARY PEACE ORDER OR
4 PROTECTIVE ORDER ISSUED IN A PROCEEDING BETWEEN THE PETITIONER AND
5 THE RESPONDENT; OR

6 2. A CRIMINAL CHARGE AGAINST THE RESPONDENT
7 ARISING FROM AN ALLEGED ACT DESCRIBED IN § 3-1503(A) OF THIS ARTICLE
8 AGAINST THE PETITIONER.

9 (4) (I) IF THE PETITIONER APPEARS AT THE SHIELDING
10 HEARING AND OBJECTS TO THE SHIELDING, THE COURT MAY, FOR GOOD CAUSE,
11 DENY THE SHIELDING.

12 (II) IN DETERMINING WHETHER THERE IS GOOD CAUSE TO
13 GRANT THE REQUEST TO SHIELD COURT RECORDS, THE COURT SHALL BALANCE
14 THE PRIVACY OF THE RESPONDENT AND POTENTIAL DANGER OF ADVERSE
15 CONSEQUENCES TO THE RESPONDENT AGAINST THE POTENTIAL RISK OF
16 FUTURE HARM AND DANGER TO THE PETITIONER AND THE COMMUNITY.

17 (5) INFORMATION ABOUT THE PROCEEDING MAY NOT BE
18 REMOVED FROM THE DOMESTIC VIOLENCE CENTRAL REPOSITORY.

19 (E) (1) THIS SECTION DOES NOT PRECLUDE THE FOLLOWING
20 PERSONS FROM ACCESSING A SHIELDED RECORD FOR A LEGITIMATE REASON:

21 (I) A LAW ENFORCEMENT OFFICER;

22 (II) AN ATTORNEY WHO REPRESENTS OR HAS
23 REPRESENTED THE PETITIONER OR THE RESPONDENT IN A PROCEEDING;

24 (III) A STATE'S ATTORNEY;

25 (IV) AN EMPLOYEE OF A LOCAL DEPARTMENT OF SOCIAL
26 SERVICES; OR

27 (V) A VICTIM SERVICES PROVIDER.

28 (2) (I) A PERSON NOT LISTED IN PARAGRAPH (1) OF THIS
29 SUBSECTION MAY SUBPOENA, OR FILE A MOTION FOR ACCESS TO, A RECORD
30 SHIELDED UNDER THIS SECTION.

31 (II) IF THE COURT FINDS THAT THE PERSON HAS A
32 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) WITHIN 60 DAYS AFTER ENTRY OF AN ORDER UNDER SUBSECTION (D)(3) 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

4–506.

(E) (1) BEFORE GRANTING, DENYING, OR MODIFYING A FINAL PROTECTIVE ORDER UNDER THIS SECTION, THE COURT SHALL REVIEW ALL OPEN AND SHIELDED COURT RECORDS INVOLVING THE PERSON ELIGIBLE FOR RELIEF AND THE RESPONDENT, INCLUDING RECORDS OF PROCEEDINGS UNDER:

(I) THE CRIMINAL LAW ARTICLE;

(II) TITLE 3, SUBTITLE 15 OF THE COURTS ARTICLE; AND

(III) THIS ARTICLE.

(2) THE COURT'S FAILURE TO REVIEW RECORDS UNDER THIS SUBSECTION DOES NOT AFFECT THE VALIDITY OF AN ORDER ISSUED UNDER THIS SECTION.

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 1. AN INDEX, A DOCKET ENTRY, A PETITION, A
2 MEMORANDUM, A TRANSCRIPTION OF PROCEEDINGS, AN ELECTRONIC
3 RECORDING, AN ORDER, AND A JUDGMENT; AND

4 2. ANY ELECTRONIC INFORMATION ABOUT A
5 PROCEEDING ON THE WEBSITE MAINTAINED BY THE MARYLAND JUDICIARY.

6 (3) “~~EXPUNGE~~ SHIELD” MEANS TO REMOVE INFORMATION FROM
7 PUBLIC INSPECTION IN ACCORDANCE WITH THIS SECTION.

8 (4) “~~EXPUNGEMENT~~ SHIELDING” MEANS:

9 (I) WITH RESPECT TO A RECORD KEPT IN A COURTHOUSE,
10 ~~REMOVAL~~ REMOVING TO A SEPARATE SECURE AREA TO WHICH PERSONS WHO
11 DO NOT HAVE A LEGITIMATE REASON FOR ACCESS ARE DENIED ACCESS; AND

12 (II) WITH RESPECT TO ELECTRONIC INFORMATION ABOUT A
13 PROCEEDING ON THE WEBSITE MAINTAINED BY THE MARYLAND JUDICIARY,
14 ~~REMOVAL OF~~ REMOVING THE INFORMATION FROM THE PUBLIC WEBSITE.

15 (5) “VICTIM SERVICES PROVIDER” MEANS A NONPROFIT
16 ORGANIZATION THAT HAS BEEN AUTHORIZED BY THE GOVERNOR’S OFFICE OF
17 CRIME CONTROL AND PREVENTION OR THE DEPARTMENT OF HUMAN
18 SERVICES TO HAVE ACCESS TO RECORDS OF SHIELDED PROTECTIVE ORDERS IN
19 ORDER TO ASSIST VICTIMS OF ABUSE.

20 (B) IF A PETITION FILED UNDER THIS SUBTITLE IS DENIED OR
21 DISMISSED AT THE INTERIM, TEMPORARY, OR FINAL PROTECTIVE ORDER STAGE
22 OF A PROCEEDING UNDER THIS SUBTITLE, THE RESPONDENT MAY FILE A
23 WRITTEN REQUEST TO ~~EXPUNGE~~ SHIELD ALL COURT RECORDS RELATING TO
24 THE PROCEEDING.

25 (C) A REQUEST FOR ~~EXPUNGEMENT~~ SHIELDING UNDER THIS SECTION
26 MAY NOT BE FILED WITHIN 3 YEARS AFTER THE DENIAL OR DISMISSAL OF THE
27 PETITION, UNLESS THE RESPONDENT FILES WITH THE REQUEST A GENERAL
28 WAIVER AND RELEASE OF ALL THE RESPONDENT’S TORT CLAIMS RELATED TO
29 THE PROCEEDING UNDER THIS SUBTITLE.

30 (D) (1) ON THE FILING OF A REQUEST FOR ~~EXPUNGEMENT~~
31 SHIELDING UNDER THIS SECTION, THE COURT SHALL SCHEDULE A HEARING ON
32 THE REQUEST.

33 (2) THE COURT SHALL GIVE NOTICE OF THE HEARING TO THE
34 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 ~~EXPUNGEMENT~~ 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; ~~AND~~

(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 THAT THERE IS NO INTERIM OR TEMPORARY PROTECTIVE ORDER PENDING AGAINST THE RESPONDENT AT THE TIME OF THE HEARING; 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 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 ~~EXPUNGEMENT~~ SHIELDING HEARING AND OBJECTS TO THE ~~EXPUNGEMENT~~ SHIELDING, THE COURT MAY, FOR GOOD CAUSE, DENY THE ~~EXPUNGEMENT~~ SHIELDING.

~~(II) THE COURT MAY NOT DENY AN EXPUNGEMENT IF THE COURT FINDS THAT THE PRIVACY OF THE RESPONDENT OR THE DANGER OF ADVERSE CONSEQUENCES TO THE RESPONDENT OUTWEIGH THE PUBLIC INTEREST IN HAVING THE RECORD REMAIN PUBLIC.~~

(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 A LAW ENFORCEMENT OFFICER, AN OFFICER OF THE COURT, OR A STATE'S ATTORNEY WITH A~~

1 ~~LEGITIMATE PURPOSE FROM HAVING ACCESS TO AN EXPUNGED RECORD~~ THE
2 FOLLOWING PERSONS FROM ACCESSING A SHIELDED RECORD FOR A
3 LEGITIMATE REASON:

4 (I) A LAW ENFORCEMENT OFFICER;

5 (II) AN ATTORNEY WHO REPRESENTS OR HAS REPRESENTED
6 THE PETITIONER OR THE RESPONDENT IN A PROCEEDING;

7 (III) A STATE'S ATTORNEY;

8 (IV) AN EMPLOYEE OF A LOCAL DEPARTMENT; OR

9 (V) A VICTIM SERVICES PROVIDER.

10 (2) (I) A PERSON NOT LISTED IN PARAGRAPH (1) OF THIS
11 SUBSECTION MAY SUBPOENA, OR FILE A MOTION FOR ACCESS TO, A RECORD
12 ~~EXPUNGED~~ SHIELDED UNDER THIS SECTION.

13 (II) IF THE COURT FINDS THAT THE PERSON HAS A
14 LEGITIMATE REASON FOR ACCESS, THE COURT MAY GRANT THE PERSON
15 ACCESS TO THE ~~EXPUNGED~~ SHIELDED RECORD UNDER THE TERMS AND
16 CONDITIONS THAT THE COURT DETERMINES.

17 (III) IN RULING ON A MOTION UNDER THIS PARAGRAPH, THE
18 COURT SHALL BALANCE THE PERSON'S NEED FOR ACCESS TO THE RECORD
19 WITH THE RESPONDENT'S RIGHT TO PRIVACY AND THE POTENTIAL HARM ~~AND~~
20 ~~DANGER~~ OF UNWARRANTED ADVERSE CONSEQUENCES TO THE RESPONDENT
21 THAT THE DISCLOSURE MAY CREATE.

22 (F) WITHIN 60 DAYS AFTER ENTRY OF AN ORDER UNDER SUBSECTION
23 (D)(3) OF THIS SECTION, EACH CUSTODIAN OF COURT RECORDS THAT ARE
24 SUBJECT TO THE ORDER OF ~~EXPUNGEMENT~~ SHIELDING SHALL ADVISE IN
25 WRITING THE COURT AND THE RESPONDENT OF COMPLIANCE WITH THE ORDER.

26 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
27 effect October 1, 2010.