

HOUSE BILL 349

D4

1lr1724

By: **Delegate Simmons**

Introduced and read first time: February 2, 2011

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Peace Orders and Protective Orders – Shielding of Records – Orders Issued**
3 **Against Respondent**

4 FOR the purpose of limiting a condition under which the court is required to shield all
5 court records relating to a peace order or protective order proceeding by
6 requiring, as a prerequisite of shielding, the absence of a previously issued final
7 peace order or protective order against the respondent or a pending interim or
8 temporary peace order or protective order against the respondent; and generally
9 relating to the shielding of certain court records relating to peace order and
10 protective order proceedings.

11 BY repealing and reenacting, with amendments,
12 Article – Courts and Judicial Proceedings
13 Section 3–1510
14 Annotated Code of Maryland
15 (2006 Replacement Volume and 2010 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Family Law
18 Section 4–512
19 Annotated Code of Maryland
20 (2006 Replacement Volume and 2010 Supplement)

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

23 **Article – Courts and Judicial Proceedings**

24 3–1510.

25 (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.



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

3 (ii) “Court record” includes:

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

6 2. Any electronic information about a proceeding on the
7 website maintained by the Maryland Judiciary.

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

10 (4) “Shielding” means:

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

14 (ii) With respect to electronic information about a proceeding on
15 the website maintained by the Maryland Judiciary, removing the information from the
16 public website.

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

21 (b) If a petition filed under this subtitle is denied or dismissed at the interim,
22 temporary, or final peace order stage of a proceeding under this subtitle, the
23 respondent may file a written request to shield all court records relating to the
24 proceeding.

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

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

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

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

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

6 (ii) That a final peace order or protective order has not been
7 previously issued **AGAINST THE RESPONDENT** in a proceeding between the petitioner
8 and the respondent; and

9 (iii) That none of the following are pending at the time of the
10 hearing:

11 1. An interim or temporary peace order or protective
12 order issued **AGAINST THE RESPONDENT** in a proceeding between the petitioner and
13 the respondent; or

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

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

18 (ii) In determining whether there is good cause to grant the
19 request to shield court records, the court shall balance the privacy of the respondent
20 and potential danger of adverse consequences to the respondent against the potential
21 risk of future harm and danger to the petitioner and the community.

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

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

26 (i) A law enforcement officer;

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

29 (iii) A State's Attorney;

30 (iv) An employee of a local Department of Social Services; or

31 (v) A victim services provider.

1 Department of Human Services to have access to records of shielded protective orders
2 in order to assist victims of abuse.

3 (b) If a petition filed under this subtitle is denied or dismissed at the interim,
4 temporary, or final protective order stage of a proceeding under this subtitle, the
5 respondent may file a written request to shield all court records relating to the
6 proceeding.

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

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

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

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

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

20 (ii) that a final protective order or peace order has not been
21 previously issued **AGAINST THE RESPONDENT** in a proceeding between the petitioner
22 and the respondent; and

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

25 1. an interim or temporary protective order or peace
26 order issued **AGAINST THE RESPONDENT** in a proceeding between the petitioner and
27 the respondent; or

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

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

32 (ii) In determining whether there is good cause to grant the
33 request to shield court records, the court shall balance the privacy of the respondent
34 and potential danger of adverse consequences to the respondent against the potential
35 risk of future harm and danger to the petitioner and the community.

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

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

5 (i) a law enforcement officer;

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

8 (iii) a State's Attorney;

9 (iv) an employee of a local department; or

10 (v) a victim services provider.

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

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

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

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2011.