

HOUSE BILL 349

D4

1lr1724

By: **Delegate Simmons**

Introduced and read first time: February 2, 2011

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: March 1, 2011

CHAPTER _____

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:

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.



1 **Article – Courts and Judicial Proceedings**

2 3–1510.

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

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

6 (ii) “Court record” includes:

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

9 2. Any electronic information about a proceeding on the
10 website maintained by the Maryland Judiciary.

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

13 (4) “Shielding” means:

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

17 (ii) With respect to electronic information about a proceeding on
18 the website maintained by the Maryland Judiciary, removing the information from the
19 public website.

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

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

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

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

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

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

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

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

13 (iii) That none of the following are pending at the time of the
14 hearing:

15 1. An interim or temporary peace order or protective
16 order issued **AGAINST THE RESPONDENT** in a proceeding between the petitioner and
17 the respondent; or

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

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

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

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

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

30 (i) A law enforcement officer;

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

33 (iii) A State's Attorney;

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

2 (v) A victim services provider.

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

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

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

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

15 Article – Family Law

16 4–512.

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

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

20 (ii) “Court record” includes:

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

23 2. any electronic information about a proceeding on the
24 website maintained by the Maryland Judiciary.

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

27 (4) “Shielding” means:

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

1 (ii) with respect to electronic information about a proceeding on
2 the website maintained by the Maryland Judiciary, removing the information from the
3 public website.

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

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

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

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

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

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

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

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

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

30 1. an interim or temporary protective order or peace
31 order issued **AGAINST THE RESPONDENT** in a proceeding between the petitioner and
32 the respondent; or

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

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

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

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

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

11 (i) a law enforcement officer;

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

14 (iii) a State's Attorney;

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

16 (v) a victim services provider.

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

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

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

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

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