

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

House Bill 349

(Delegate Simmons)

Judiciary

Judicial Proceedings

Peace Orders and Protective Orders - Shielding of Records - Orders Issued Against Respondent

This bill limits the circumstances under which a court is required to order shielding of records related to a peace order or domestic violence protective order proceeding by specifying that the requirement applies if (1) a final peace order or protective order has not been previously issued against the respondent in a proceeding between the petitioner and the respondent; and (2) an interim or temporary peace order or protective order against the respondent is not pending at the time of the hearing on the shielding request.

Fiscal Summary

State Effect: The bill's provisions can be implemented with existing resources.

Local Effect: The bill's provisions can be implemented with existing resources.

Small Business Effect: None.

Analysis

Current Law: Court records, including those relating to a domestic violence proceeding that are maintained by a court, are presumed to be open to the public for inspection. Generally, a custodian of a court record must permit a person, upon personal appearance in the custodian's office during normal business hours, to inspect the record. Subject to certain exceptions, a court record that is kept in electronic form is open to inspection to the same extent that a record in paper form is open to inspection. However, a respondent in a peace order or protective order proceeding is authorized to file a written request to "shield" all court related records if a petition for a peace order or protective order was denied or dismissed at any stage of the proceedings.

“Shield” is defined as removing information from public inspection. “Shielding” means:

- with respect to a record kept in a court house, removing to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and
- with respect to electronic information about a proceeding on the website maintained by the Maryland Judiciary, removing the information from the public website.

A request for shielding may not be filed within three years after the denial or dismissal of the petition, unless the respondent files a general waiver and release of all the respondent’s tort claims related to the proceedings. The court must schedule a hearing on the shielding request and provide notice of the hearing to the petitioner or the petitioner’s attorney of record.

After the hearing, the court must order the shielding of court records relating to peace order or domestic violence protective order proceedings if the court finds (1) that the petition was denied or dismissed at the interim, temporary, or final order stage of a protective order or peace order proceeding; (2) that a final protective order or peace order has not been previously issued in a proceeding between the petitioner and the respondent; (3) that there is not a pending interim or temporary protective order or peace order for a proceeding between the petitioner and the respondent; or (4) there is not a pending criminal charge against the respondent arising from alleged abuse against the petitioner.

However, the court may, for good cause, deny the shielding if the petitioner appears at the hearing and objects to the shielding. In determining whether there is good cause to grant the request to shield court records, the court must 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.

Information about the proceeding may not be removed from the domestic violence central repository. However, attorneys of record, law enforcement and social services personnel, and others specified are not prohibited from accessing a shielded record for a legitimate reason. Other individuals may subpoena or file a motion for access to a shielded record. If the court finds that the individual has a legitimate reason for access, the court may grant access to the shielded record and determine how access may be obtained. The court must balance the person’s need for access with the respondent’s right to privacy and the potential harm of unwarranted adverse consequences to the respondent that disclosure may create.

Within 60 days after entry of a shielding order, each custodian of court records subject to the order of shielding must advise the court and the respondent of compliance with the order in writing.

Before granting, denying, or modifying a final protective order, a court must review all open and shielded court records involving the person eligible for relief and the respondent, including records involving criminal matters and domestic violence and peace order proceedings. However, the court's failure to review records does not affect the validity of a protective order that is issued.

Background: The bill is intended to address a situation in which a respondent would be precluded from having records in the domestic violence central registry shielded, even if a prior protective order or peace order was issued on his or her behalf in an earlier proceeding between the parties. The domestic violence central repository is a database kept by the Maryland Judiciary that includes all protective and peace orders issued by Maryland District Court judges, circuit court judges and District Court commissioners. This secure database is available for use by courts and law enforcement.

The Judiciary's website includes a link to "CaseSearch." CaseSearch provides public Internet access to information from case records maintained by the Judiciary. Maryland District Court traffic, criminal and civil case records and circuit court criminal and civil case records are available. Records can remain in CaseSearch indefinitely and are not removed except by a court-ordered expungement.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

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mlm/kdm

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