Department of Legislative Services
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 92   (Delegates Simmons and Dumais)

Judiciary   Judicial Proceedings

Peace and Protective Orders - Shielding - Complete Removal of Information from Public Web Site

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This bill clarifies the definition of "shielding" in provisions of law relating to the removal of information regarding peace orders and protective orders from the public website maintained by the Judiciary. The bill specifies that "shielding" means to completely remove all information concerning the proceeding, including the names of the parties, case numbers, and any reference to the proceeding or any reference to the removal of the proceeding, from the public website.

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 peace order or protective order 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 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 against the respondent in a proceeding between the petitioner and the respondent; (3) that there is not a pending interim or temporary protective order or peace order issued against the respondent 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 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.

The Judiciary advises that a person attempting to use CaseSearch to access a shielded case is still able to see that a case existed, along with the following statement: "No electronic record exists or case not subject to electronic inspection." This bill is intended to ensure that an individual searching for a case which has been shielded would find no entry for it.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - January 31, 2012
ncs/kdm   Revised - House Third Reader - March 19, 2012

Analysis by: Jennifer K. Botts   Direct Inquiries to:
                                                    (410) 946-5510
                                                    (301) 970-5510