

HOUSE BILL 1166

E2
HB 1006/13 – JUD

4r2845
CF SB 804

By: **Delegates Anderson, Waldstreicher, Branch, Cardin, Carter, Clippinger, Conaway, Glenn, Gutierrez, Harper, Haynes, Holmes, Ivey, Luedtke, McIntosh, Mizeur, Oaks, Reznik, B. Robinson, Rosenberg, Simmons, Stukes, Swain, Tarrant, F. Turner, Valderrama, A. Washington, and Wilson**

Introduced and read first time: February 7, 2014
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 13, 2014

CHAPTER _____

1 AN ACT concerning

2 **Maryland Second Chance Act of 2014**

3 FOR the purpose of authorizing a person to petition the court to shield certain ~~court~~
4 ~~records and police records~~ information relating to a certain conviction at a
5 certain time; providing that, if a certain person is convicted of a new crime
6 during a certain time period, a certain original conviction is not eligible for
7 shielding unless the new conviction becomes eligible for shielding; providing
8 that a certain person is not ~~entitled to~~ eligible for shielding if the person is a
9 defendant in a pending criminal proceeding; providing that a certain conviction
10 is eligible for shielding at a certain time; providing that if a person is not
11 eligible for shielding of one conviction in a unit, the person is not eligible for
12 shielding of any other conviction in the unit; requiring the court have a copy of a
13 certain petition served on the State's Attorney; authorizing the court to order
14 the shielding of certain records after taking certain objections or information
15 into consideration; requiring the court to hold a hearing ~~and order the shielding~~
16 ~~of certain records~~ under certain circumstances; ~~requiring~~ authorizing the court
17 to deny a certain petition under certain circumstances; ~~prohibiting the~~
18 ~~Maryland Judiciary Case Search from in any way referring to the existence of~~
19 ~~specific records shielded in accordance with this Act~~; ~~providing that a conviction~~
20 ~~that has been shielded in accordance with this Act may not be considered a~~
21 ~~conviction for certain purposes~~; ~~prohibiting a person authorized to access a~~

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.



~~shielded record under this Act from disclosing any information from a shielded record to a person who is not authorized to access shielded records under this Act; prohibiting an employer from requiring a person who applies for employment to disclose certain shielded information at a certain time or discharging or refusing to hire a person solely because the person refused to disclose certain information, with a certain exception; prohibiting an educational institution from requiring a person who applies for admission to the institution to disclose certain shielded information at a certain time or expelling or refusing to admit a person solely because the person refused to disclose certain information; prohibiting a unit, an official, or an employee of the State or a political subdivision of the State from requiring a person who applies for a license, permit, registration, or government service to disclose certain shielded information at a certain time or denying a person's application for a license, permit, registration, or government service solely because the person refused to disclose certain information; requiring a certain custodian to deny inspection of criminal records and police records relating to the conviction of a crime that has been shielded under this Act; requiring the court to send a certain written notice to certain victims; providing that this Act does not apply to a certain conviction; providing that a shielded record shall remain fully accessible by certain persons; establishing penalties for a violation of this Act; clarifying that this Act does not prevent a person from obtaining a certain record of another person from a certain custodian with the consent of the other person; clarifying that this Act does not prevent a person from obtaining a certain record on request from the appropriate custodian of records; defining certain terms; and generally relating to the shielding of court records and police records convictions.~~

BY adding to

Article – Criminal Procedure

Section 10-301 through ~~10-306~~ 10-303 to be under the new subtitle “Subtitle 3. Shielding”

Annotated Code of Maryland

(2008 Replacement Volume and 2013 Supplement)

~~BY adding to~~

~~Article – State Government~~

~~Section 10-616(w)~~

~~Annotated Code of Maryland~~

~~(2009 Replacement Volume and 2013 Supplement)~~

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

Article – Criminal Procedure

SUBTITLE 3. SHIELDING.

1 **10-301.**

2 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 ~~(B) "COURT RECORD" HAS THE MEANING STATED IN § 10-101 OF THIS~~
5 ~~TITLE.~~

6 ~~(C) "CRIMINAL JUSTICE UNIT" HAS THE MEANING STATED IN § 10-201~~
7 ~~OF THIS TITLE.~~

8 ~~(D) "POLICE RECORD" HAS THE MEANING STATED IN § 10-101 OF THIS~~
9 ~~TITLE.~~

10 ~~(E) (B) "SHIELD" MEANS TO RENDER A COURT RECORD OR POLICE~~
11 ~~RECORD INACCESSIBLE TO MEMBERS OF THE PUBLIC COMPLETELY REMOVE~~
12 ~~ALL INFORMATION RELATING TO, AND ALL REFERENCES TO THE EXISTENCE OF,~~
13 ~~A CONVICTION FROM A PUBLIC WEB SITE MAINTAINED BY THE MARYLAND~~
14 ~~JUDICIARY.~~

15 ~~(F) (C) "SHIELDABLE CONVICTION" MEANS A CONVICTION OF ONE OF~~
16 ~~THE FOLLOWING CRIMES:~~

17 (1) DISORDERLY CONDUCT UNDER § 10-201 OF THE CRIMINAL
18 LAW ARTICLE;

19 (2) DISTURBING THE PEACE UNDER § 10-201(C)(4) OF THE
20 CRIMINAL LAW ARTICLE;

21 (3) FAILURE TO OBEY A REASONABLE AND LAWFUL ORDER
22 UNDER § 10-201(C)(3) OF THE CRIMINAL LAW ARTICLE;

23 (4) MALICIOUS DESTRUCTION OF PROPERTY IN THE LESSER
24 DEGREE UNDER § 6-301 OF THE CRIMINAL LAW ARTICLE;

25 (5) TRESPASS ON POSTED PROPERTY UNDER § 6-402 OF THE
26 CRIMINAL LAW ARTICLE;

27 ~~(6) MISDEMEANOR OBTAINING PROPERTY OR SERVICES BY BAD~~
28 ~~CHECK UNDER § 8-103(B) AND § 8-106(C) OF THE CRIMINAL LAW ARTICLE;~~

29 ~~(7) MISDEMEANOR THEFT OF PROPERTY OR SERVICES UNDER §~~
30 ~~7-104(G)(2) OR (3) OF THE CRIMINAL LAW ARTICLE;~~

1 ~~(8)~~ (7) POSSESSING OR ADMINISTERING A CONTROLLED
2 DANGEROUS SUBSTANCE UNDER § 5-601 OF THE CRIMINAL LAW ARTICLE;

3 ~~(9)~~ (8) POSSESSING OR ADMINISTERING A NONCONTROLLED
4 SUBSTANCE UNDER § 5-618(A) OF THE CRIMINAL LAW ARTICLE;

5 ~~(10)~~ (9) USE OF OR POSSESSION WITH INTENT TO USE DRUG
6 PARAPHERNALIA UNDER § 5-619(C)(1) OF THE CRIMINAL LAW ARTICLE;

7 ~~(11)~~ (10) DRIVING WITHOUT A LICENSE UNDER § 16-101 OF THE
8 TRANSPORTATION ARTICLE;

9 ~~(12)~~ (11) DRIVING WHILE PRIVILEGE IS CANCELED, SUSPENDED,
10 REFUSED, OR REVOKED UNDER § 16-303(A), (B), (C), (D), (E), (F), OR (G) OF THE
11 TRANSPORTATION ARTICLE;

12 ~~(13)~~ (12) DRIVING WHILE UNINSURED UNDER § 17-107 OF THE
13 TRANSPORTATION ARTICLE; OR

14 ~~(14)~~ (13) A PROSTITUTION OFFENSE UNDER § 11-306(A)(1) OF
15 THE CRIMINAL LAW ARTICLE IF THE CONVICTION IS FOR PROSTITUTION AND
16 NOT ASSIGNATION.

17 (D) "UNIT" MEANS TWO OR MORE CONVICTIONS THAT ARISE FROM THE
18 SAME INCIDENT, TRANSACTION, OR SET OF FACTS.

19 10-302.

20 (A) THIS SUBTITLE DOES NOT APPLY TO A CONVICTION OF A
21 DOMESTICALLY RELATED CRIME UNDER § 6-233 OF THIS ARTICLE.

22 ~~(B) A SHIELDED RECORD SHALL REMAIN FULLY ACCESSIBLE TO:~~

23 ~~(1) CRIMINAL JUSTICE UNITS FOR LEGITIMATE CRIMINAL~~
24 ~~JUSTICE PURPOSES;~~

25 ~~(2) PROSPECTIVE EMPLOYERS WHO ARE SUBJECT TO A~~
26 ~~STATUTORY OR CONTRACTUAL REQUIREMENT TO INQUIRE INTO AN~~
27 ~~APPLICANT'S CRIMINAL BACKGROUND FOR PURPOSES OF CARRYING OUT THAT~~
28 ~~REQUIREMENT;~~

29 ~~(3) FACILITIES THAT ARE AUTHORIZED TO INQUIRE INTO AN~~
30 ~~INDIVIDUAL'S CRIMINAL BACKGROUND UNDER § 5-561(B), (C), (D), (E), (F), OR~~
31 ~~(G) OF THE FAMILY LAW ARTICLE;~~

1 ~~(4) THE PERSON WHO IS THE SUBJECT OF THE SHIELDED RECORD~~
2 ~~AND THAT PERSON'S ATTORNEY; AND~~

3 ~~(5) HEALTH OCCUPATIONS BOARDS.~~

4 ~~10-303.~~

5 ~~(A) (B)~~ EXCEPT AS OTHERWISE PROVIDED IN ~~SUBSECTIONS (B) AND~~
6 ~~(C)~~ OF THIS SECTION, A PERSON MAY PETITION THE COURT TO SHIELD ~~THE~~
7 ~~PERSON'S COURT AND POLICE RECORDS RELATING TO~~ A SHIELDABLE
8 CONVICTION NO EARLIER THAN 3 YEARS AFTER THE PERSON SATISFIES THE
9 SENTENCE IMPOSED FOR THE CONVICTION, INCLUDING PAROLE, PROBATION,
10 OR MANDATORY SUPERVISION.

11 ~~(B) (C)~~ A CONVICTION FOR THEFT OF PROPERTY OR SERVICES WITH
12 A VALUE OF LESS THAN \$1,000 UNDER § 7-104(G)(2) OF THE CRIMINAL LAW
13 ARTICLE IS ELIGIBLE FOR SHIELDING NO EARLIER THAN ~~5~~ 8 YEARS AFTER THE
14 PERSON SATISFIES THE SENTENCE IMPOSED FOR THE CONVICTION, INCLUDING
15 PAROLE, PROBATION, OR MANDATORY SUPERVISION.

16 ~~(C) (D)~~ (1) IF THE PERSON IS CONVICTED OF A NEW CRIME DURING
17 THE APPLICABLE TIME PERIOD SET FORTH IN SUBSECTION ~~(A) OR (B)~~ (B) OR (C)
18 OF THIS SECTION, THE ORIGINAL CONVICTION IS NOT ELIGIBLE FOR SHIELDING
19 UNLESS THE NEW CONVICTION BECOMES ELIGIBLE FOR SHIELDING.

20 (2) A PERSON IS NOT ~~ENTITLED TO~~ ELIGIBLE FOR SHIELDING IF
21 THE PERSON IS A DEFENDANT IN A PENDING CRIMINAL PROCEEDING.

22 ~~(D) (E)~~ IF A PERSON IS NOT ~~ENTITLED TO~~ ELIGIBLE FOR SHIELDING
23 OF ONE CONVICTION IN A UNIT, THE PERSON IS NOT ~~ENTITLED TO~~ ELIGIBLE FOR
24 SHIELDING OF ANY OTHER CONVICTION IN THE UNIT.

25 ~~(E) (F)~~ (1) THE COURT SHALL HAVE A COPY OF A PETITION FOR
26 SHIELDING SERVED ON THE STATE'S ATTORNEY.

27 (2) UNLESS THE STATE'S ATTORNEY FILES AN OBJECTION TO
28 THE PETITION FOR SHIELDING WITHIN 30 DAYS AFTER THE PETITION IS
29 SERVED, THE COURT ~~SHALL~~ MAY ORDER THE SHIELDING OF ~~ALL POLICE~~
30 ~~RECORDS AND COURT RECORDS RELATING TO THE~~ A CONVICTION AFTER
31 TAKING INTO CONSIDERATION ANY OBJECTIONS OR ADDITIONAL INFORMATION
32 PROVIDED BY THE STATE'S ATTORNEY OR THE VICTIM.

1 ~~(F)~~ (G) (1) IF THE STATE'S ATTORNEY FILES A TIMELY OBJECTION
2 TO THE PETITION, THE COURT SHALL HOLD A HEARING.

3 (2) IF THE COURT, AT THE HEARING, FINDS THAT THE PERSON IS
4 ENTITLED TO SHIELDING, THE COURT ~~SHALL~~ MAY ORDER THE SHIELDING OF
5 ~~ALL POLICE RECORDS AND COURT RECORDS RELATING TO~~ THE CONVICTION.

6 (3) THE COURT MAY DENY A PETITION UNDER THIS SECTION FOR
7 GOOD CAUSE.

8 (H) THE COURT SHALL SEND WRITTEN NOTICE OF THE PROPOSED
9 ACTION TO ALL LISTED VICTIMS IN THE CASE IN WHICH THE PETITIONER IS
10 SEEKING SHIELDING AT THE ADDRESS LISTED IN THE COURT FILE ADVISING
11 THE VICTIM OR VICTIMS OF THE RIGHT TO OFFER TO THE COURT ADDITIONAL
12 INFORMATION RELEVANT TO THE SHIELDING PETITION.

13 ~~10-304.~~

14 ~~THE MARYLAND JUDICIARY CASE SEARCH MAY NOT IN ANY WAY REFER~~
15 ~~TO THE EXISTENCE OF SPECIFIC RECORDS SHIELDED IN ACCORDANCE WITH~~
16 ~~THIS SUBTITLE.~~

17 ~~10-305.~~

18 ~~A CONVICTION THAT HAS BEEN SHIELDED UNDER THIS SUBTITLE MAY~~
19 ~~NOT BE CONSIDERED A CONVICTION FOR PURPOSES OF § 10-105(E)(4)(H)1 OF~~
20 ~~THIS TITLE.~~

21 ~~10-306.~~

22 ~~(A) A PERSON AUTHORIZED TO ACCESS A SHIELDED RECORD UNDER §~~
23 ~~10-302(B) OF THIS SUBTITLE MAY NOT DISCLOSE ANY INFORMATION FROM A~~
24 ~~SHIELDED RECORD TO A PERSON WHO IS NOT AUTHORIZED TO ACCESS~~
25 ~~SHIELDED RECORDS UNDER § 10-302(B) OF THIS SUBTITLE.~~

26 ~~(B) (1) EXCEPT AS PROVIDED IN § 10-302(B)(2) OF THIS SUBTITLE,~~
27 ~~AN EMPLOYER MAY NOT:~~

28 ~~(i) REQUIRE A PERSON WHO APPLIES FOR EMPLOYMENT~~
29 ~~TO DISCLOSE SHIELDED INFORMATION ABOUT CRIMINAL CHARGES IN AN~~
30 ~~APPLICATION, AN INTERVIEW, OR OTHERWISE; OR~~

1 ~~(H) DISCHARGE OR REFUSE TO HIRE A PERSON SOLELY~~
2 ~~BECAUSE THE PERSON REFUSED TO DISCLOSE INFORMATION ABOUT CRIMINAL~~
3 ~~CHARGES THAT HAVE BEEN SHIELDED.~~

4 ~~(2) AN EDUCATIONAL INSTITUTION MAY NOT:~~

5 ~~(I) REQUIRE A PERSON WHO APPLIES FOR ADMISSION TO~~
6 ~~THE INSTITUTION TO DISCLOSE SHIELDED INFORMATION ABOUT CRIMINAL~~
7 ~~CHARGES IN AN APPLICATION, AN INTERVIEW, OR OTHERWISE; OR~~

8 ~~(II) EXPEL OR REFUSE TO ADMIT A PERSON SOLELY~~
9 ~~BECAUSE THE PERSON REFUSED TO DISCLOSE INFORMATION ABOUT CRIMINAL~~
10 ~~CHARGES THAT HAVE BEEN SHIELDED.~~

11 ~~(3) A UNIT, AN OFFICIAL, OR AN EMPLOYEE OF THE STATE OR A~~
12 ~~POLITICAL SUBDIVISION OF THE STATE MAY NOT:~~

13 ~~(I) REQUIRE A PERSON WHO APPLIES FOR A LICENSE,~~
14 ~~PERMIT, REGISTRATION, OR GOVERNMENT SERVICE TO DISCLOSE SHIELDED~~
15 ~~INFORMATION ABOUT CRIMINAL CHARGES IN AN APPLICATION, AN INTERVIEW,~~
16 ~~OR OTHERWISE; OR~~

17 ~~(II) DENY A PERSON'S APPLICATION FOR A LICENSE,~~
18 ~~PERMIT, REGISTRATION, OR GOVERNMENT SERVICE SOLELY BECAUSE THE~~
19 ~~PERSON REFUSED TO DISCLOSE INFORMATION ABOUT CRIMINAL CHARGES~~
20 ~~THAT HAVE BEEN SHIELDED.~~

21 ~~(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A~~
22 ~~MISDEMEANOR AND ON CONVICTION IS SUBJECT TO, FOR EACH VIOLATION, A~~
23 ~~FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR~~
24 ~~BOTH.~~

25 ~~Article — State Government~~

26 ~~10-616.~~

27 ~~(W) A CUSTODIAN SHALL DENY INSPECTION OF CRIMINAL RECORDS~~
28 ~~AND POLICE RECORDS RELATING TO THE CONVICTION OF A CRIME THAT HAVE~~
29 ~~BEEN SHIELDED UNDER TITLE 10, SUBTITLE 3 OF THE CRIMINAL PROCEDURE~~
30 ~~ARTICLE.~~

31 10-303.

32 THIS SUBTITLE DOES NOT PREVENT:

1 **(1) A PERSON FROM OBTAINING THE FULL, SHIELDED OR**
 2 **UNSHIELDED CRIMINAL OR TRAFFIC RECORD OF ANOTHER PERSON FROM THE**
 3 **APPROPRIATE CUSTODIAN OF RECORDS WITH THE CONSENT OF THE OTHER**
 4 **PERSON; OR**

5 **(2) A PERSON FROM OBTAINING THE PERSON’S FULL, SHIELDED**
 6 **OR UNSHIELDED CRIMINAL OR TRAFFIC RECORD ON REQUEST FROM THE**
 7 **APPROPRIATE CUSTODIAN OF RECORDS.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 9 October 1, 2014.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.