

HOUSE BILL 282

D4

4lr1523

By: **Delegate Costa**

Introduced and read first time: January 20, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Peace Orders and Protective Orders – Shielding**

3 FOR the purpose of requiring a court to order the shielding of certain court records
4 related to a certain peace order proceeding within a certain period of time under
5 certain circumstances; requiring a court to order the shielding of certain court
6 records related to a certain protective order proceeding within a certain period
7 of time under certain circumstances; repealing certain provisions of law
8 concerning the filing of a request to shield certain court records related to peace
9 order or protective order proceedings; and generally relating to peace orders and
10 protective orders.

11 BY repealing and reenacting, with amendments,
12 Article – Courts and Judicial Proceedings
13 Section 3–1510
14 Annotated Code of Maryland
15 (2013 Replacement Volume and 2013 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Family Law
18 Section 4–512
19 Annotated Code of Maryland
20 (2012 Replacement Volume and 2013 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 Web site 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 the
12 record to a separate secure area to which persons who do not have a legitimate reason
13 for access are denied access; and

14 (ii) With respect to electronic information about a proceeding on
15 the Web site maintained by the Maryland Judiciary, completely removing all
16 information concerning the proceeding from the public Web site, including the names
17 of the parties, case numbers, and any reference to the proceeding or any reference to
18 the removal of the proceeding from the public Web site.

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

23 (b) If a petition filed under this subtitle is denied or dismissed at the interim,
24 temporary, or final peace order stage of a proceeding under this subtitle, [the
25 respondent may file a written request to shield] **THE COURT SHALL ORDER THE**
26 **SHIELDING OF** all court records relating to the proceeding **WITHIN 5 BUSINESS DAYS**
27 **AFTER THE DENIAL OR DISMISSAL.**

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.**

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

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

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

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

8 (ii) That a final peace order or protective order has not been
9 previously issued against the respondent in a proceeding between the petitioner and
10 the respondent; and

11 (iii) That none of the following are pending at the time of the
12 hearing:

13 1. An interim or temporary peace order or protective
14 order issued against the respondent in a proceeding between the petitioner and the
15 respondent; or

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

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

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

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

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

28 (i) A law enforcement officer;

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

31 (iii) A State's Attorney;

32 (iv) An employee of a local department of social services; or

1 (v) A victim services provider.

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

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

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

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

14 **Article – Family Law**

15 4–512.

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

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

19 (ii) “Court record” includes:

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

22 2. any electronic information about a proceeding on the
23 **[website] WEB SITE** maintained by the Maryland Judiciary.

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

26 (4) “Shielding” means:

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

30 (ii) with respect to electronic information about a proceeding on
31 the **[website] WEB SITE** maintained by the Maryland Judiciary, completely removing
32 all information concerning the proceeding from the public Web site, including the

1 names of the parties, case numbers, and any reference to the proceeding or any
2 reference to the removal of the proceeding from the public Web site.

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

7 (b) If a petition filed under this subtitle is denied or dismissed at the interim,
8 temporary, or final protective order stage of a proceeding under this subtitle, [the
9 respondent may file a written request to shield] **THE COURT SHALL ORDER THE**
10 **SHIELDING OF** all court records relating to the proceeding **WITHIN 5 BUSINESS DAYS**
11 **AFTER THE DENIAL OR DISMISSAL.**

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 and
27 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 the
32 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)] (D) Within 60 days after entry of an order under subsection [(d)(3)] (B)
27 of this section, each custodian of court records that are subject to the order of shielding
28 shall 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, 2014.