

SB0935/358178/2

BY: Judicial Proceedings Committee

SUBSTITUTE AMENDMENTS TO SENATE BILL 935
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Domestic Violence” and substitute “Peace Order or Protective Order”; in the same line, strike “Expungement” and substitute “Shielding”; in line 3, strike “domestic violence” and substitute “peace order or protective order”; in line 4, strike “expunge” and substitute “shield”; in lines 5 and 9, in each instance, strike “expungement” and substitute “shielding”; in line 12, strike “expunged” and substitute “shielded”; in line 13, after “circumstances;” insert “requiring the court to review certain court records before granting, denying, or modifying a final protective order; establishing that the failure to review certain records does not affect the validity of a final protective order;”; strike beginning with “domestic” in line 13 down through “expungement” in line 14 and substitute “the shielding and review”; after line 14, insert:

“BY adding to

Article - Courts and Judicial Proceedings

Section 3-1510

Annotated Code of Maryland

(2006 Replacement Volume and 2009 Supplement)

BY renumbering

Article - Family Law

Section 4-506(e) through (j), respectively

to be Section 4-506(f) through (k), respectively

Annotated Code of Maryland

(2006 Replacement Volume and 2009 Supplement)”;

and in line 17, after “Section” insert “4-506(e) and”.

(Over)

AMENDMENT NO. 2

On page 1, after line 21, insert:

“Article – Courts and Judicial Proceedings

3-1510.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) “COURT RECORD” MEANS AN OFFICIAL RECORD OF A COURT ABOUT A PROCEEDING THAT THE CLERK OF A COURT OR OTHER COURT PERSONNEL KEEPS.

(II) “COURT RECORD” INCLUDES:

1. AN INDEX, A DOCKET ENTRY, A PETITION, A MEMORANDUM, A TRANSCRIPTION OF PROCEEDINGS, AN ELECTRONIC RECORDING, AN ORDER, AND A JUDGMENT; AND

2. ANY ELECTRONIC INFORMATION ABOUT A PROCEEDING ON THE WEBSITE MAINTAINED BY THE MARYLAND JUDICIARY.

(3) “SHIELD” MEANS TO REMOVE INFORMATION FROM PUBLIC INSPECTION IN ACCORDANCE WITH THIS SECTION.

(4) “SHIELDING” MEANS:

(I) WITH RESPECT TO A RECORD KEPT IN A COURTHOUSE, REMOVING TO A SEPARATE SECURE AREA TO WHICH PERSONS WHO DO NOT HAVE A LEGITIMATE REASON FOR ACCESS ARE DENIED ACCESS; AND

(II) WITH RESPECT TO ELECTRONIC INFORMATION ABOUT A PROCEEDING ON THE WEBSITE MAINTAINED BY THE MARYLAND JUDICIARY, REMOVING THE INFORMATION FROM THE PUBLIC WEBSITE.

(5) "VICTIM SERVICES PROVIDER" MEANS A NONPROFIT ORGANIZATION THAT HAS BEEN AUTHORIZED BY THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION OR THE DEPARTMENT OF HUMAN SERVICES TO HAVE ACCESS TO RECORDS OF SHIELDED PEACE ORDERS IN ORDER TO ASSIST VICTIMS OF ABUSE.

(B) IF A PETITION FILED UNDER THIS SUBTITLE IS DENIED OR DISMISSED AT THE INTERIM, TEMPORARY, OR FINAL PEACE ORDER STAGE OF A PROCEEDING UNDER THIS SUBTITLE, THE RESPONDENT MAY FILE A WRITTEN REQUEST TO SHIELD ALL COURT RECORDS RELATING TO THE PROCEEDING.

(C) A REQUEST FOR SHIELDING UNDER THIS SECTION MAY NOT BE FILED WITHIN 3 YEARS AFTER THE DENIAL OR DISMISSAL OF THE PETITION UNLESS THE RESPONDENT FILES WITH THE REQUEST A GENERAL WAIVER AND RELEASE OF ALL THE RESPONDENT'S TORT CLAIMS RELATED TO THE PROCEEDING UNDER THIS SUBTITLE.

(D) (1) ON THE FILING OF A REQUEST FOR SHIELDING UNDER THIS SECTION, THE COURT SHALL SCHEDULE A HEARING ON THE REQUEST.

(2) THE COURT SHALL GIVE NOTICE OF THE HEARING TO THE PETITIONER OR THE PETITIONER'S COUNSEL OF RECORD.

(3) EXCEPT AS PROVIDED IN PARAGRAPHS (4) AND (5) OF THIS SUBSECTION, AFTER THE HEARING, THE COURT SHALL ORDER THE SHIELDING OF ALL COURT RECORDS RELATING TO THE PROCEEDING IF THE COURT FINDS:

(I) THAT THE PETITION WAS DENIED OR DISMISSED AT THE INTERIM, TEMPORARY, OR FINAL PEACE ORDER STAGE OF THE PROCEEDING;

(II) THAT A FINAL PEACE ORDER OR PROTECTIVE ORDER HAS NOT BEEN PREVIOUSLY ISSUED IN A PROCEEDING BETWEEN THE PETITIONER AND THE RESPONDENT; AND

(III) THAT NONE OF THE FOLLOWING ARE PENDING AT THE TIME OF THE HEARING:

1. AN INTERIM OR TEMPORARY PEACE ORDER OR PROTECTIVE ORDER ISSUED IN A PROCEEDING BETWEEN THE PETITIONER AND THE RESPONDENT; OR

2. A CRIMINAL CHARGE AGAINST THE RESPONDENT ARISING FROM AN ALLEGED ACT DESCRIBED IN § 3-1503(A) OF THIS ARTICLE AGAINST THE PETITIONER.

(4) (I) IF THE PETITIONER APPEARS AT THE SHIELDING HEARING AND OBJECTS TO THE SHIELDING, THE COURT MAY, FOR GOOD CAUSE, DENY THE SHIELDING.

(II) IN DETERMINING WHETHER THERE IS GOOD CAUSE TO GRANT THE REQUEST TO SHIELD COURT RECORDS, THE COURT SHALL 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.

(5) INFORMATION ABOUT THE PROCEEDING MAY NOT BE REMOVED FROM THE DOMESTIC VIOLENCE CENTRAL REPOSITORY.

(E) (1) THIS SECTION DOES NOT PRECLUDE THE FOLLOWING PERSONS FROM ACCESSING A SHIELDED RECORD FOR A LEGITIMATE REASON:

(I) A LAW ENFORCEMENT OFFICER;

(II) AN ATTORNEY WHO REPRESENTS OR HAS REPRESENTED THE PETITIONER OR THE RESPONDENT IN A PROCEEDING;

(III) A STATE'S ATTORNEY;

(IV) AN EMPLOYEE OF A LOCAL DEPARTMENT OF SOCIAL SERVICES; OR

(V) A VICTIM SERVICES PROVIDER.

(2) (I) A PERSON NOT LISTED IN PARAGRAPH (1) OF THIS SUBSECTION MAY SUBPOENA, OR FILE A MOTION FOR ACCESS TO, A RECORD SHIELDED UNDER THIS SECTION.

(II) IF THE COURT FINDS THAT THE PERSON HAS A LEGITIMATE REASON FOR ACCESS, THE COURT MAY GRANT THE PERSON ACCESS TO THE SHIELDED RECORD UNDER THE TERMS AND CONDITIONS THAT THE COURT DETERMINES.

(III) IN RULING ON A MOTION UNDER THIS PARAGRAPH, THE COURT SHALL BALANCE THE PERSON’S NEED FOR ACCESS TO THE RECORD WITH THE RESPONDENT’S RIGHT TO PRIVACY AND THE POTENTIAL HARM OF UNWARRANTED ADVERSE CONSEQUENCES TO THE RESPONDENT THAT THE DISCLOSURE MAY CREATE.

(F) WITHIN 60 DAYS AFTER ENTRY OF AN ORDER UNDER SUBSECTION (D)(3) OF THIS SECTION, EACH CUSTODIAN OF COURT RECORDS THAT ARE SUBJECT TO THE ORDER OF SHIELDING SHALL ADVISE IN WRITING THE COURT AND THE RESPONDENT OF COMPLIANCE WITH THE ORDER.”.

AMENDMENT NO. 3

On page 1, after line 22, insert:

“4-506.

(E) (1) BEFORE GRANTING, DENYING, OR MODIFYING A FINAL PROTECTIVE ORDER UNDER THIS SECTION, THE COURT SHALL REVIEW ALL OPEN AND SHIELDED COURT RECORDS INVOLVING THE PERSON ELIGIBLE FOR RELIEF AND THE RESPONDENT, INCLUDING RECORDS OF PROCEEDINGS UNDER:

(I) THE CRIMINAL LAW ARTICLE;

(II) TITLE 3, SUBTITLE 15 OF THE COURTS ARTICLE; AND

(III) THIS ARTICLE.

(2) THE COURT’S FAILURE TO REVIEW RECORDS UNDER THIS SUBSECTION DOES NOT AFFECT THE VALIDITY OF AN ORDER ISSUED UNDER THIS SECTION.

AMENDMENT NO. 4

On page 2, in line 10, strike “**EXPUNGE**” and substitute “**SHIELD**”; in line 12, strike “**EXPUNGEMENT**” and substitute “**SHIELDING**”; in line 22, strike “**EXPUNGE**” and substitute “**SHIELD**”; in lines 24 and 29, in each instance, strike “**EXPUNGEMENT**” and substitute “**SHIELDING**”; in line 14, strike “**REMOVAL**” and substitute “**REMOVING**”; in line 18, strike “**REMOVAL OF**” and substitute “**REMOVING**”; and in the same line, after the second “**THE**” insert “**PUBLIC**”.

On page 3, in lines 3, 12, 13, and 14, in each instance, strike “**EXPUNGEMENT**” and substitute “**SHIELDING**”; and in lines 25 and 29, in each instance, strike “**EXPUNGED**” and substitute “**SHIELDED**”.

On page 4, in line 3, strike “**EXPUNGEMENT**” and substitute “**SHIELDING**”.

AMENDMENT NO. 5

On page 2, after line 18, insert:

“(5) “VICTIM SERVICES PROVIDER” MEANS A NONPROFIT ORGANIZATION THAT HAS BEEN AUTHORIZED BY THE GOVERNOR’S OFFICE OF CRIME CONTROL AND PREVENTION OR THE DEPARTMENT OF HUMAN SERVICES TO HAVE ACCESS TO RECORDS OF SHIELDED PROTECTIVE ORDERS IN ORDER TO ASSIST VICTIMS OF ABUSE.”

On page 3, strike beginning with “A” in line 21 down through “RECORD” in line 23 and substitute “THE FOLLOWING PERSONS FROM ACCESSING A SHIELDED RECORD FOR A LEGITIMATE REASON:”

(I) A LAW ENFORCEMENT OFFICER;

(II) AN ATTORNEY WHO REPRESENTS OR HAS REPRESENTED THE PETITIONER OR THE RESPONDENT IN A PROCEEDING;

(III) A STATE’S ATTORNEY;

(IV) AN EMPLOYEE OF A LOCAL DEPARTMENT; OR

(V) A VICTIM SERVICES PROVIDER”;

in line 25, after “MAY” insert “SUBPOENA, OR”; in the same line, after “TO” insert a comma; and strike beginning with the second “AND” in line 33 down through “DANGER” in line 34.

AMENDMENT NO. 6

On page 3, in line 7, strike “AND”; in line 8, after “ORDER” insert “OR PEACE ORDER”; in line 9, strike “AGAINST THE RESPONDENT” and substitute “IN A PROCEEDING BETWEEN THE PETITIONER AND THE RESPONDENT”; strike beginning with “AND” in line 9 down through “HEARING” in line 11 and substitute “;
AND”

(III) THAT NONE OF THE FOLLOWING ARE PENDING AT THE TIME OF THE HEARING:

1. AN INTERIM OR TEMPORARY PROTECTIVE ORDER OR PEACE ORDER ISSUED IN A PROCEEDING BETWEEN THE PETITIONER AND THE RESPONDENT; OR

2. A CRIMINAL CHARGE AGAINST THE RESPONDENT ARISING FROM ALLEGED ABUSE AGAINST THE PETITIONER”;

and strike in their entirety lines 15 through 18, inclusive, and substitute:

“(II) IN DETERMINING WHETHER THERE IS GOOD CAUSE TO GRANT THE REQUEST TO SHIELD COURT RECORDS, THE COURT SHALL 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.”

AMENDMENT NO. 7

On page 1, in line 21, after “That” insert “Section(s) 4-506(e) through (j), respectively, of Article – Family Law of the Annotated Code of Maryland be renumbered to be Section(s) 4-506(f) through (k), respectively.”

SECTION 2. AND BE IT FURTHER ENACTED, That”.

On page 4, in line 5, strike “2.” and substitute “3.”