

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

Revised

House Bill 1149

(Delegate Carter, *et al.*)

Judiciary

Judicial Proceedings

Denial or Dismissal of Peace Order or Protective Order Petition - Shielding of
Records

This bill authorizes a respondent to file a written request to shield all related court records if a petition for a peace order or protective order was denied or dismissed at any stage of the proceedings. The bill also establishes procedures for the shielding of records.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Judiciary to handle additional hearings allowed by this bill and to comply with the provision to shield court records.

Local Effect: Potential minimal increase in local expenditures for circuit courts to handle additional hearings allowed by this bill and to comply with the provision to shield court records, depending on the number of requests in each jurisdiction.

Small Business Effect: None.

Analysis

Bill Summary: “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 web site maintained by the Maryland Judiciary, removing the information from the public web site.

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 domestic violence protective order or peace 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. The following persons are not prohibited from accessing a shielded record for a legitimate reason: (1) a law enforcement officer; (2) an attorney who represents or has represented the petitioner or the respondent in a proceeding; (3) a State's Attorney; (4) an employee of a local department of social services; or (5) a "victim services provider." A "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 or protective orders to assist victims of abuse. 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.

The bill also requires the court, before granting, denying, or modifying a final protective order, to 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.

A court record is an official record of the court about a proceeding that the clerk of a court or other court personnel keeps. A court record includes: (1) an index, docket entry, petition, memorandum, transcription of proceedings, electronic recording, order, and judgment; and (2) any electronic information about a proceeding on the web site maintained by the Maryland Judiciary.

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. (*See* Maryland Rules 16-1002 and 16-1008.)

Police and court records in criminal cases may be expunged if a person is charged with a crime and:

- the person is acquitted;
- the charge is dismissed;
- a probation before judgment is entered;
- a *nolle prosequi* is entered;
- the trial is indefinitely postponed by marking the charge "stet" on the docket;
- the person is pardoned for a nonviolent crime; or
- the crime is an enumerated "nuisance" crime.

(*See* Criminal Procedure Article § 10-105.)

Background: The domestic violence central repository is a database kept by the Maryland Judiciary that includes all protective and peace orders issued by Maryland District and circuit court judges and District Court commissioners. This secure database is available for use by courts and law enforcement.

The Judiciary's web site 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 Maryland 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.

State and Local Effect: General fund expenditures for the District Court may increase significantly under the provisions of this bill. Since the District Court handles all of the interim protective orders, the majority of the temporary and final protective orders, and all of the peace orders, it is likely that the majority of new shielding hearings will take place in the District Court. Expenses associated with the shielding process will include an increase in judicial and clerical time to handle hearings, staff time associated with the actual shielding process (including removing paper and audio records, packaging and sealing the case file, and notification to the court and the respondent of compliance with the order to shield), and costs to store additional shielded records.

The number of shielding requests that will be generated by the bill's provisions cannot be reliably predicted. However, Legislative Services notes that unlike similar bills regarding the expungement of protective orders that were introduced in prior years, this bill does not require a court to make a finding that the abuse did not occur or that the protective order was filed in bad faith or without substantial justification. The court is only required to find that the order was denied or dismissed; that another order has not been previously issued in a proceeding involving the petitioner and the respondent; and that there is no interim or temporary peace or protective order or criminal charges pending that involve the petitioner and the respondent. Therefore, it is likely that a greater number of individuals may request to have records shielded, particularly with the ease of public access to court records that is afforded by the availability of CaseSearch. The Judiciary advises that in calendar 2009, there were more than 29,000 denials or dismissals in District Court that did not result in a protective order being issued. If 20% of these individuals request to have the records shielded (and file the appropriate waiver due to the shielding request being filed within three years after the denial or dismissal of the petition), the District Court will have to handle another 5,800 hearings, just based on the orders that were denied or dismissed in one calendar year.

Although the majority of protective orders and all of the peace orders are filed in the District Court, local expenditures for the circuit courts may also increase minimally under the provisions of the bill for the reasons stated above, as circuit courts may also have a number of requests to shield court records for domestic violence orders that were denied or dismissed.

Legislative Services advises that the District Court and circuit courts may be particularly impacted within the first year of implementation, as any individual who has ever had a case that resulted in the dismissal or denial of an interim, temporary, or final protective or peace order will have the first opportunity to have the record shielded.

Additional Information

Prior Introductions: SB 467 of 2009, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1181, failed on third reading and was recommitted to the House Judiciary Committee.

Cross File: SB 935 (Senators Zirkin and Stone) - Judicial Proceedings.

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

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