

The following is a only a draft, subject to revisions and improvements by legislative sponsors and General Assembly committees

HOUSE/SENATE BILL _____

2015 Regular Session

By:

Introduced and read first time:

Assigned to:

A BILL ENTITLED

AN ACT concerning

Maryland Second Chance Act of 2015

FOR the purpose of authorizing a person to petition the court to shield certain court records and police records relating to certain convictions at a certain time; providing that, if a certain person is convicted of a new crime during a certain time period, a certain original conviction is not eligible for shielding unless the new conviction becomes eligible for shielding; providing that a certain person is not entitled to eligible for shielding if the person is a defendant in a pending criminal proceeding; providing that, if a person is not entitled to eligible for shielding of one conviction in a certain unit, the person is not entitled to eligible for shielding of any other conviction in the unit; providing that a certain conviction is eligible for shielding at a certain time; requiring the court to have a copy of a certain petition served on the State's Attorney; authorizing the court to order the shielding of certain records after taking certain objections or information into consideration; requiring the court to hold a hearing and order the shielding of certain records under certain circumstances; requiring authorizing the court to deny a certain petition under certain circumstances for good cause; authorizing a court to grant only one shielding petition to a person over the lifetime of the person; requiring the court to send a certain written notice to certain victims; prohibiting the Maryland Judiciary Case Search from in any way referring to the existence of specific records shielded in accordance with this Act; providing that a conviction that has been shielded in accordance with this Act may not be considered a conviction for certain purposes; prohibiting a person authorized to access a 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, certificate, permit, registration, or government service to disclose certain shielded information at a certain time or denying a person's application for a license, certificate, permit, registration, or government service solely because the person refused to disclose certain information, with a certain exception; 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; 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 a certain provision of this Act; defining certain terms; and generally relating to the shielding of court records and police records.

BY adding to:

Article – Criminal Procedure

Section 10–301 through 10–306 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)

BY adding to:

Article – General Provisions

Section 4–326

Annotated Code of Maryland

(As enacted by Chapter ____ (H.B. 270) of the Acts of the General Assembly of 2014)

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.

10–301.

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

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

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

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

(E) "SHIELD" MEANS TO RENDER A COURT RECORD AND POLICE RECORD RELATING TO A CONVICTION OF A CRIME INACCESSIBLE BY MEMBERS OF THE PUBLIC.

(F) "SHIELDABLE CONVICTION" MEANS A CONVICTION OF ONE OF THE FOLLOWING CRIMES:

(1) DISORDERLY CONDUCT UNDER § 10-201(C)(2) OF THE CRIMINAL LAW ARTICLE;

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

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

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

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

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

(7) POSSESSING OR ADMINISTERING A CONTROLLED DANGEROUS SUBSTANCE UNDER § 5-601 OF THE CRIMINAL LAW ARTICLE;4 SENATE BILL 1056

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

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

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

(11) DRIVING WHILE PRIVILEGE IS CANCELED, SUSPENDED,

REFUSED, OR REVOKED UNDER § 16-303(A), (B), (C), (D), (E), (F), OR (G) OF THE

TRANSPORTATION ARTICLE;

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

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

(G) “UNIT” MEANS TWO OR MORE CONVICTIONS THAT ARISE FROM THE SAME INCIDENT, TRANSACTION, OR SET OF FACTS.

10–302.

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

(B) A SHIELDED RECORD SHALL REMAIN FULLY ACCESSIBLE BY:

(1) CRIMINAL JUSTICE UNITS FOR LEGITIMATE CRIMINAL JUSTICE PURPOSES;

(2) PROSPECTIVE OR CURRENT EMPLOYERS WHO ARE SUBJECT TO A STATUTORY OR CONTRACTUAL REQUIREMENT TO INQUIRE INTO AN APPLICANT’S THE CRIMINAL BACKGROUND OF AN APPLICANT OR EMPLOYEE FOR PURPOSES OF CARRYING OUT THAT REQUIREMENT;

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

(4) THE PERSON WHO IS THE SUBJECT OF THE SHIELDED RECORD AND THAT PERSON’S ATTORNEY; AND

(5) HEALTH OCCUPATIONS BOARDS.

10–303.

(A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) SUBSECTION (B) OF THIS SECTION, A PERSON MAY PETITION THE COURT TO SHIELD THE PERSON’S COURT AND POLICE RECORDS RELATING TO A SHIELDABLE CONVICTION ALL SHIELDABLE CONVICTIONS NO EARLIER THAN 3 YEARS AFTER THE PERSON SATISFIES THE SENTENCE IMPOSED FOR THE CONVICTION ALL CONVICTIONS, INCLUDING PAROLE, PROBATION, OR MANDATORY SUPERVISION.

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

(C) (1) IF THE PERSON IS CONVICTED OF A NEW CRIME DURING

THE APPLICABLE TIME PERIOD SET FORTH IN SUBSECTION (A) OR (B) OF THIS SECTION, THE ORIGINAL CONVICTION IS NOT ELIGIBLE FOR SHIELDING UNLESS THE NEW CONVICTION BECOMES ELIGIBLE FOR SHIELDING.

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

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

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

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

(F) (1) IF THE STATE'S ATTORNEY FILES A TIMELY OBJECTION TO THE PETITION, THE COURT SHALL HOLD A HEARING.⁶

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

(3) IF THE COURT FINDS THAT THE PERSON IS NOT ENTITLED TO SHIELDING, THE COURT SHALL DENY THE PETITION.

(3) THE COURT MAY DENY A PETITION UNDER THIS SUBSECTION FOR GOOD CAUSE.

(4) A COURT MAY GRANT ONLY ONE SHIELDING PETITION TO A PERSON OVER THE LIFETIME OF THE PERSON.

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

10-304.

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

10-305.

A CONVICTION THAT HAS BEEN SHIELDED UNDER THIS SUBTITLE MAY NOT BE CONSIDERED A CONVICTION FOR PURPOSES OF § 10–105(E)(4)(II)1 OF THIS TITLE.

10–306.

(A) A PERSON AUTHORIZED TO ACCESS A SHIELDED RECORD UNDER §10–302(B) OF THIS SUBTITLE MAY NOT DISCLOSE ANY INFORMATION FROM A SHIELDED RECORD TO A PERSON WHO IS NOT AUTHORIZED TO ACCESS SHIELDED RECORDS UNDER § 10–302(B) OF THIS SUBTITLE.

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

(I) REQUIRE A PERSON WHO APPLIES FOR EMPLOYMENT TO DISCLOSE SHIELDED INFORMATION ABOUT CRIMINAL CHARGES IN AN APPLICATION, AN INTERVIEW, OR OTHERWISE; ORSENATE BILL 1056 7

(II) DISCHARGE OR REFUSE TO HIRE A PERSON SOLELY BECAUSE THE PERSON REFUSED TO DISCLOSE INFORMATION ABOUT CRIMINAL CHARGES THAT HAVE BEEN SHIELDED.

(2) AN EDUCATIONAL INSTITUTION MAY NOT:

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

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

(3) A EXCEPT AS PROVIDED IN § 10–302(B)(2) OF THIS SUBTITLE, A UNIT, AN OFFICIAL, OR AN EMPLOYEE OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE MAY NOT:

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

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

(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF AMISDEMEANOR AND ON CONVICTION IS SUBJECT TO, FOR EACH VIOLATION, A FINE CIVIL PENALTY NOT EXCEEDING \$1,000.

Article – State Government General Provisions

10–616. 4–326.

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

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

Last Revision: 11/12/14

DRAFT