

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 415
Judiciary

(Delegate Dumais, *et al.*)

Family Law - Protective Orders - Burden of Persuasion

This bill alters the standard of proof for issuing a final protective order from clear and convincing evidence to a preponderance of the evidence. If a judge finds by a preponderance of the evidence that the alleged abuse has occurred, the judge may grant a final protective order for relief from abuse to any eligible person.

Fiscal Summary

State Effect: None. The bill's requirements could be handled with existing resources.

Local Effect: None. The bill's requirements could be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: The respondent named in a temporary protective order must have the opportunity for a hearing on whether a judge should issue a final protective order. A final protective order hearing must be held no later than seven days after the temporary protective order is served on the respondent.

If the respondent appears before the court at a protective order hearing, or has been served with an interim or temporary protective order, or the court has personal jurisdiction over the respondent, the judge may proceed with the final protective order hearing. If the judge finds by clear and convincing evidence that the alleged abuse has occurred or if the respondent consents to the entry of a protective order, the judge may

issue a final protective order for relief from abuse to the petitioner. In cases where both parties file petitions for relief from abuse, the judge may issue mutual protective orders if the judge finds by clear and convincing evidence that abuse has occurred. However, the judge may issue the mutual protective orders only after a detailed finding of fact that both parties acted primarily as aggressors and neither party acted primarily in self-defense.

All relief granted in a final protective order is effective for the period stated in the order, up to 12 months. A subsequent circuit court order pertaining to any provisions in the final protective order supersedes those provisions in the final protective order.

Background: The evidentiary standard known as “preponderance of the evidence” has been described as requiring evidence sufficient to establish that a fact is “more likely true than not true,” “more probable than not,” or that amounts to at least 51% of the evidence. “Preponderance of the evidence” is the standard applicable in most civil cases. “Clear and convincing evidence” is more than a preponderance of the evidence and less than would be required for the standard “beyond a reasonable doubt.”

The Administrative Office of the Courts advises that in the first four months of fiscal 2007, the circuit courts conducted 1,890 final protective order hearings and granted 453 final protective orders. In the first six months of fiscal 2007, the District Court conducted 1,072 final protective order hearings and granted 491 final protective orders.

State and Local Fiscal Effect: The alteration of the evidentiary standard for final protective orders from “clear and convincing evidence” to “preponderance of the evidence” could lead to the issuance of additional protective orders. It is also possible that the bill could lead to shorter hearings on protective orders, since not as much evidence would be required to justify issuance of a final protective order. It is expected, however, that the Judiciary could meet the bill’s requirements with existing resources.

Additional Information

Prior Introductions: This bill is a reintroduction of SB 86 of 2006, which passed the Senate and was heard in the House Judiciary Committee, but received no further action. This bill is also a reintroduction of SB 260/HB 326 of 2005. SB 260 was favorably reported by the Senate Judicial Proceedings Committee, but was then recommitted. HB 326 received an unfavorable report from the House Judiciary Committee.

Cross File: SB 505 (Senator Forehand, *et al.*) – Judicial Proceedings.

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

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