

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 267

(The President, *et al.*) (By Request - Administration)

Judicial Proceedings

Judiciary

Family Law - Protective Orders - Surrender of Firearms

This Administration bill *requires* rather than authorizes a final protective order to order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession and to refrain from possession of any firearm for the duration of the protective order.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: The majority of counties can handle the bill's requirements with existing budgeted resources.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: A law enforcement officer must provide information to the respondent on the process for retaking the firearm. In addition, the officer must transport and store the firearm in a protective case, if one is available, and in a manner intended to prevent damage to the firearm during the time the protective order is in effect. The respondent is authorized to retake possession of the firearm at the expiration of the final protective order unless the protective order is extended or the respondent is not otherwise legally entitled to own or possess the firearm.

Current Law: A petition for an interim protective order may be filed with a District Court commissioner if the clerk of the circuit court or clerk of the District Court is not open for business. If the commissioner finds there are reasonable grounds to believe that the respondent has abused a person eligible for relief, the commissioner may issue an interim protective order. If, after a hearing on a petition, whether *ex parte* or otherwise, a judge finds that there are reasonable grounds to believe a person eligible for relief has been abused, the judge may issue a temporary protective order. The judge may proceed with a final protective order hearing instead of a temporary protective order hearing if the respondent appears at the hearing, the respondent has been served with an interim protective order, or the court otherwise has personal jurisdiction over the respondent, and the petitioner and respondent expressly consent to waive the temporary protective order hearing.

In a domestic violence proceeding, if a judge finds by clear and convincing evidence that abuse has occurred, or if the respondent consents to the entry of a protective order, the judge may grant a final protective order to protect any person eligible for relief from abuse.

A final protective order may include any or all of the following relief:

- (1) order the respondent to refrain from abusing or threatening to abuse any person eligible for relief;
- (2) order the respondent to refrain from contacting, attempting to contact, or harassing any person eligible for relief;
- (3) order the respondent to refrain from entering the residence of any person eligible for relief;
- (4) in certain cases where the person eligible for relief and the respondent are residing together at the time of the abuse, order the respondent to vacate the home immediately and award temporary use and possession of the home to the person eligible for relief;
- (5) order the respondent to remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members;
- (6) order the respondent to remain away from a child care provider of a person eligible for relief while a child of the person is in the provider's care;

- (7) award temporary custody of a minor child of the respondent and a person eligible for relief;
- (8) establish temporary visitation with a minor child of the respondent and a person eligible for relief under certain conditions;
- (9) award emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support;
- (10) award temporary use and possession of a vehicle jointly owned by the respondent and a person eligible for relief to the person eligible for relief under certain conditions;
- (11) direct the respondent or any or all of the persons eligible for relief to participate in professionally supervised counseling or a domestic violence program;
- (12) order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession for the duration of the protective order; or
- (13) order the respondent to pay filing fees and costs of the proceeding.

All relief granted in a final protective order is effective for the period stated in the order, generally up to a maximum of 12 months. A subsequent circuit court order pertaining to any of the provisions in the final protective order supersedes those provisions in the final protective order. A final protective order may be modified or rescinded during its term after giving notice to all affected persons eligible for relief and the respondent and after holding a hearing. For good cause shown, a judge may extend the term of a protective order for six months beyond the specified period after giving notice to all affected persons eligible for relief and the respondent and after a hearing. In limited circumstances specified by statute, the court may issue a permanent protective order that requires the respondent to refrain from abusing or threatening to abuse the person eligible for relief or refrain from contacting, attempting to contact, or harassing the person eligible for relief.

A person who violates specified provisions of a final protective order, including the surrender of firearms is guilty of a misdemeanor and subject to maximum penalties of a \$1,000 fine and/or 90 days imprisonment for a first offense and a \$2,500 fine and/or one-year imprisonment for a second or subsequent offense.

Background: Although in 2007 domestic violence incidents in Maryland dropped nearly 12% compared to the previous calendar year, at the same time, homicides attributed to domestic violence incidents totaled 30, an increase of over 15% compared to the calendar

2006 total of 26 homicides. The majority of these homicide victims were women, and the weapon used in a majority of these homicides was a firearm. Of the 4,261 aggravated assaults that occurred in calendar 2007, 172 involved a firearm.

Federal law prohibits anyone who is subject to a domestic violence order of protection or who has been convicted of a misdemeanor crime of domestic violence from possessing, in any way affecting commerce, or from receiving, any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. The federal law does not apply to orders issued *ex parte* (which means the prohibition does not apply to those emergency, interim, or temporary orders that are issued without hearing from the respondent). The federal prohibition also only applies to orders that: (1) specifically prohibit the respondent from harassing, stalking, or threatening an intimate partner or a child of the partner or respondent and (2) include a finding that the respondent represents a credible threat to the physical safety of the partner or child or specifically prohibit the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury. (*See* 18 U.S.C. § 922(g).)

In the mid-Atlantic region, as across the country, the inclusion of statutory provisions regarding the court-ordered surrender of firearms in final domestic violence protective orders varies. Courts in Delaware and Pennsylvania are authorized to order a respondent to surrender firearms. In New Jersey, it is mandatory in a final order for a court to order the respondent to refrain from purchasing, possessing, owning, controlling, or receiving a firearm for two years or for the duration of the order, whichever is greater. In New York, a court is authorized to suspend a respondent’s firearms license and order the surrender of firearms if the court finds that there is a substantial risk the respondent may threaten to use or has used a firearm against a person who is subject to a domestic violence order. If the respondent has a prior conviction for specified violent crimes, the court must suspend any firearms license and order the respondent to surrender any and all firearms owned or possessed. Although the District of Columbia and Virginia do not have statutory provisions specifically authorizing or mandating the surrender of firearms, courts may still require those actions under the broad authority of the courts to order relief not specifically provided for in statute (often referred to as a catch-all provision).

The following table shows judicial activity in fiscal 2007 (the last information available) with regard to protective orders:

<u>Jurisdiction</u>	<u>Hearings</u>	<u>Interim Protective Orders Granted</u>	<u>Temporary Orders Granted</u>	<u>Final Protective Orders Granted</u>
Circuit Court	7,106	n/a	1,936	1,290
District Court	53,952	10,170	15,491	7,814

State and Local Fiscal Effect: Most protective orders are served and enforced by sheriff's offices and local police departments. Firearms are more likely to be surrendered to local law enforcement rather than the Department of State Police. Each law enforcement facility has a property room capable of storing firearms. Cecil and Harford counties and the Montgomery County Police Department all advise that there will be no fiscal impact on local law enforcement. The Montgomery County Sheriff's Office advises, however, that additional expenditures may be necessary to comply with the bill's requirement to store firearms in a manner intended to prevent damage to the firearm. Carroll County advises that the bill will have a minimal fiscal impact in regards to deputy time and the storage of firearms.

The Judiciary advises that although the docket may be impacted due to changes in courtroom procedure to notify respondents and determine compliance with the order, the bill does not have a fiscal impact on the courts. Montgomery County also advises that the bill does not have a fiscal impact on the circuit courts.

Additional Information

Prior Introductions: HB 1448 of 2008 received an unfavorable report from the House Judiciary Committee.

Cross File: HB 296 (The Speaker, *et al.*) (By Request - Administration) - Judiciary.

Information Source(s): Cecil County, Carroll County, Harford County, Montgomery County, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2009
mcp/kdm Revised - Senate Third Reader - March 31, 2009

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Family Law – Protective Orders – Surrender of Firearms

BILL NUMBER: SB 267

PREPARED BY: Governor's Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.