

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

House Bill 359 (Delegate McConkey, *et al.*)
 Judiciary

Public Safety - Handgun Permits - Victims of Domestic Violence

This bill requires the Secretary of State Police to issue a handgun permit to a victim of domestic violence who has been issued a temporary or final protective order, assuming the individual meets other statutory handgun permit requirements. Specifically, the bill adds an individual who has been issued a temporary or final protective order to those individuals who, after meeting other statutory handgun permit requirements, are deemed to have a “good and substantial reason” to wear, carry, or transport a handgun.

Fiscal Summary

State Effect: General fund expenditures increase by \$290,300 and revenues increase by \$130,500 in FY 2010. Future year increases reflect annualization, inflation, and vehicle replacements in FY 2013.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	\$130,500	\$130,500	\$130,500	\$130,500	\$130,500
GF Expenditure	\$290,300	\$240,600	\$250,100	\$306,800	\$270,400
Net Effect	(\$159,800)	(\$110,100)	(\$119,600)	(\$176,300)	(\$139,900)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: To be issued a permit to carry a handgun by the Secretary of State Police, an applicant: (1) must be 18 or older; (2) must not have been convicted of a felony or

misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted, must have been pardoned or been granted relief under federal law; (3) if the person is younger than 30, must not have been committed to a facility for juveniles for longer than one year or adjudicated delinquent for a crime of violence, a felony, or misdemeanor that carries a statutory penalty of more than two years; (4) must not have been convicted of a controlled dangerous substance violation and must not presently be an addict, a habitual user of a controlled dangerous substance, or an alcoholic; (5) must not exhibit a propensity for violence or instability which may reasonably render possession of a handgun a danger to the applicant or another; and (6) must have a good and substantial reason to wear, carry, or transport a handgun. Good and substantial reason includes a finding that the permit is necessary as a reasonable precaution against apprehended danger.

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 for up to 30 days. 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. The maximum duration of a final protective order is generally one year, though the court may be petitioned for a six-month extension. Lifetime orders, though possible, are relatively rare.

The following shows the types of relief that may be provided by a temporary or final protective order.

A temporary or final protective order may order a respondent to:

- refrain from abusing or threatening to abuse any person eligible for relief;
- refrain from contacting, attempting to contact, or harassing any person eligible for relief;

- refrain from entering the residence of any person eligible for relief;
- in certain cases, vacate the home immediately and award temporary use and possession of the home to the person eligible for relief;
- remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members;
- remain away from child care provider of person eligible for relief while child is in provider's care; and
- comply with an award of temporary custody of a child of the person eligible for relief and the respondent.

In addition, a final protective order may provide the following relief:

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

When issuing a final protective order, the court may order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession for the duration of the protective order.

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.

In the mid-Atlantic region, as across the country, the inclusion of statutory provisions regarding the court-ordered surrender of firearms in domestic violence protective orders varies. Courts in Delaware, New Jersey, and Pennsylvania are authorized to order a

respondent to surrender firearms in a temporary domestic violence protective order. 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 the subject of 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. The New York provisions apply to any domestic violence order, whether temporary, *ex parte*, or final. 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
Totals	61,058	10,170	17,427	9,104

The Department of State Police (DSP) receives and investigates about 6,000 handgun permit applications annually, including applications for permit renewals and applications from retired law enforcement personnel. Approximately, 50 applications are denied each year due to issues relating to a background check and another 50 are denied for not meeting the good and substantial reason test. DSP reports that its Licensing Division currently has five investigators handling about 24 application investigations per week, and about 1,200 applications per year/per investigator. The total processing time for issuing a valid permit by the division is about 120 calendar days.

State Fiscal Effect: Because final protective orders are preceded with issuance of a temporary order, it is assumed that the bill might allow about 17,400 people per year to meet the standard for having a good and substantial reason for permit issuance. Many of the 30-day orders may expire before a permit could be issued and many would expire before the investigation by DSP was completed.

In any case, it is unknown how many persons issued a protective order may actually apply for a handgun permit as a result of the bill. Most experts on domestic violence report that victims often want all firearms removed from a residence. It is also unknown

how many of those who would apply would also meet the other criteria for permit issuance.

Assuming that only about 10% of eligible persons would, as a result of the bill, actually apply for a handgun permit, general fund expenditures will increase by \$290,300 in fiscal 2010, which accounts for the bill's October 1, 2009 effective date. This estimate reflects the cost of hiring two additional Trooper First Class investigators for the DSP Licensing Division to handle about 1,700 to 1,800 additional handgun permit applications annually. It includes salaries, fringe benefits, one-time start-up costs, police vehicles, and ongoing operating expenses. Vehicle expenses include purchase, patrol vehicle accessories, insurance, fuel, and maintenance on two vehicles.

Salaries and Fringe Benefits	\$138,470
Vehicle Expenses	124,772
Operating Expenses	<u>27,077</u>
Total FY 2010 State Expenditures	\$290,319

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; 1% annual increases in ongoing operating expenses; and vehicle replacement costs in fiscal 2013.

Handgun permit revenues increase by \$130,500 annually. This is based on the following assumptions:

- \$75 permit fee;
- 1,740 applicants qualify for permit issuance annually; and
- no renewal is granted because the initial two-year license issuance would exceed the duration of either a temporary or final protective order.

DSP has questioned whether, after an order has expired, a handgun permit properly issued under the bill would still be valid. If not, the permit and the weapon might have to be forfeited. Because it takes about 120 days for the actual issuance of a printed permit, and because temporary protective orders can only be issued for 30 days, it would seem likely that those persons not issued a subsequent final order will have had the basis for issuance expire.

It should also be noted that DSP submitted estimates that this bill would necessitate the hiring of 17 additional uniformed and civilian personnel by the Licensing Division and the purchase of additional high definition, encoding printing equipment. However, this estimate was based on an assumption that all 17,400 persons would apply for handgun

permits annually. The total new expenditures attributed to this hiring was about \$2.3 million in fiscal 2010, with estimated annual revenues of about \$1.3 million from permit application fees.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mlm/hlb

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