

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 805
Judiciary

(Delegate Alston, *et al.*)

Domestic Violence - Timely Reporting

This bill establishes a time limit for the filing of a petition seeking relief from domestic violence abuse. A petitioner may file such a petition with a court or a District Court Commissioner, if the abuse occurred within 30 days before the filing of the petition. The time limit established by the bill conforms to the time limit for filing a petition to obtain a peace order.

Fiscal Summary

State Effect: It is expected that the bill's requirements can be implemented with existing resources.

Local Effect: It is expected that the bill's requirements can be implemented with existing resources.

Small Business Effect: None.

Analysis

Current Law: State law does not impose a time limit, based on when abuse occurred, for the filing of a petition seeking relief from domestic violence abuse.

A petitioner may seek relief from abuse by filing with a court a petition that alleges abuse of any person eligible for relief. 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.

The petition must be under oath and include, among other things, specified identifying information, information about previous and pending actions between the parties, and information about the nature and extent of abuse. Address information for the petitioner may be withheld if disclosure would put the petitioner or a person eligible for relief at risk of further abuse. The petitioner may not be required to pay a filing fee or costs for the issuance or service of an interim, temporary or protective order or a witness subpoena.

A law enforcement officer is required to electronically notify the Department of Public Safety and Correctional Services (DPSCS) of the service of an interim or temporary protective order on the respondent within two hours after the service. If the petitioner has requested notification of the service of a protective order, DPSCS must (1) notify the petitioner of the service on the respondent of an interim or a temporary protective order within one hour after a law enforcement officer electronically notifies DPSCS of the service; and (2) notify the petitioner of the service on the respondent of a final protective order within one hour after knowledge of service of the order on the respondent. These notification requirements terminate effective December 31, 2011.

If a District Court 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. The maximum duration of a final protective order is generally one year. A final protective order may be issued for up to two years if it is issued against a respondent for an act of abuse committed within one year after the date that a prior final protective order issued against the same respondent on behalf of the same person eligible for relief expired, if the prior final protective order was issued for a period of at least six months. 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.

An individual who does not meet the requirements of a “person eligible for relief” under protective order statutes in the Family Law Article may file a petition for a peace order with the District Court or, if the clerk’s office is closed, a District Court Commissioner, that alleges the commission of specified acts against the petitioner by the respondent, if the act occurred within 30 days before the filing of the petition. The specified acts are: (1) an act that causes serious bodily harm; (2) an act that places the petitioner in fear of imminent serious bodily harm; (3) assault in any degree; (4) rape or sexual offense or attempted rape or sexual offense in any degree; (5) false imprisonment; (6) harassment; (7) stalking; (8) trespass; or (9) malicious destruction of property.

Background: It is unknown how many states have established a similar statutory time limit for the filing of petitions that allege domestic violence. Legislative Services reviewed the statutes of the District of Columbia and the nearby states of Delaware, New Jersey, New York, Pennsylvania, and Virginia.

Virginia law establishes that, “[u]pon the filing of a petition establishing that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order...” Accordingly, in Virginia, a petitioner must state on the protective order petition that the violence occurred within “a reasonable period of time.” During the hearing on the preliminary protective order, the judge would determine whether the reasonableness threshold was met.

The other five states and the District of Columbia do not appear to have enacted laws that specify that injuries must have occurred within a certain time limit. Accordingly, they do not limit the eligibility for filing of a protective order to only those petitioners that can make such an allegation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of State Police, District of Columbia Statutes, Delaware Code, New Jersey Code Annotated, McKinney’s Consolidated Laws of New York, Pennsylvania Consolidated Statutes Annotated, Annotated Code of Virginia, American Bar Association, *womenslaw.org*, National Coalition Against Domestic Violence, Maryland Network Against Domestic Violence, Department of Legislative Services

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