

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 647

(Delegate Waldstreicher, *et al.*)

Judiciary

Judicial Proceedings

Peace Orders and Protective Orders - Extensions

This bill requires a court to hold a hearing on a motion to extend a final peace order or a final protective order within 30 days after the motion is filed if, during the term of the order, the petitioner or person eligible for relief files a motion for extension. If the hearing on the motion is scheduled after the original expiration date of the final peace order or final protective order, the court must extend the order and keep the terms of the order in full force and effect until the hearing on the motion.

Fiscal Summary

State Effect: The Judiciary can handle the bill's requirements using existing resources.

Local Effect: The circuit courts can handle the bill's requirements using existing resources.

Small Business Effect: None.

Analysis

Current Law:

Protective Orders

In order to grant a final protective order, a judge must find by clear and convincing evidence that the alleged abuse has occurred, or the respondent must consent to the entry of the order.

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 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.

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 A final protective order may be modified or rescinded during its term after giving notice to all affected persons eligible for relief and the respondent and after holding a hearing.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. A final protective order may also be extended for two years if, under specified circumstances, the court finds by clear and convincing evidence that the respondent named in the protective order committed a subsequent act of abuse against a person eligible for relief who was named in the protective order.

Peace Orders

An individual who does not meet the requirements of a “person eligible for relief” under protective order statutes may file a petition for a peace order with the District Court or 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.

After a final peace order hearing, if a judge finds by clear and convincing evidence that the respondent has committed, and is likely to commit in the future, one of the specified acts against the petitioner, or if the respondent consents to the entry of a peace order, the court may issue a final peace order to protect the petitioner. The order must contain only the relief that is minimally necessary to protect the petitioner. Relief granted in a final peace order is effective for the period stated in the order, but may not exceed six months. A peace order may be modified or rescinded during its term after giving notice to the petitioner and the respondent and after holding a hearing. For good cause shown, a judge may extend the term of the peace order for six months, after giving notice to the petitioner and the respondent and a hearing.

Background: In *La Valle v. La Valle*, 432 Md. 343 (2013), the Court of Appeals held that if a motion to extend a protective order is filed prior to its expiration, but, for any reason, the hearing on the motion is delayed beyond the expiration of the protective order, that order can no longer be extended. In that case, the petitioner filed a motion to extend the protective order she had against her husband. Although the petitioner filed the motion to extend the protective order several weeks before the order was to expire, the hearing on the motion was scheduled for two days after the expiration of the order.

The respondent opposed the motion to extend the protective order, arguing in part that statutory provisions permit extension of the order only during the term of the original order. The District Court rejected the arguments and extended the protective order; on appeal, the circuit court affirmed the decision. The Court of Appeals granted a *writ of certiorari* to decide whether the extension of a protective order is permitted when the motion to extend the order was timely filed during the term of the order, but the protective order has expired by the time the hearing is held. The court noted that statutory language clearly requires that any modification of a protective order must occur during its term. Because every extension of a protective order necessarily is a modification of that order, the court held that an extension of an expired protective order is not permitted, even when the motion to extend the order was timely filed during the term of the order. As the court stated, “[a]n expired protective order no longer exists, and an untimely hearing cannot revive it.”

Additional Information

Prior Introductions: None.

Cross File: SB 434 (Senator Frosh, *et al.*) - Judicial Proceedings.

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

Fiscal Note History: First Reader - February 11, 2014
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