

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 Enrolled - Revised

House Bill 1302
 Judiciary

(Delegate Valentino-Smith, *et al.*)

Judicial Proceedings

Public Safety – Extreme Risk Protective Orders

This bill establishes an “extreme risk protective order” and sets forth a process by which a petitioner may seek a court order to prevent a respondent from purchasing or possessing any firearm or ammunition for the duration of the order under specified conditions. A petitioner includes specified health professionals, a law enforcement officer, or individuals who meet specified relationship requirements.

Fiscal Summary

State Effect: General fund expenditures increase by a minimum of \$284,900 in FY 2019 only for programming costs, as discussed below. Revenues are not materially affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	284,900	0	0	0	0
Net Effect	(\$284,900)	\$0	\$0	\$0	\$0

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

Local Effect: Law enforcement expenditures may increase to comply with the bill’s requirements. Revenues are not materially affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Petition Process

A petition may be filed with the District Court, or, when the Court is not open for business, a District Court commissioner. A petition for an extreme risk protective order must contain specified information, including any information known to the petitioner that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm. A petition must set forth specific facts in support of such information and explain the basis for the petitioner's knowledge of the facts, as specified. Among other requirements, a petition must also (1) describe the number, types, and location of any known firearms believed to be possessed by the respondent; (2) include supporting documents or information, as specified, such as those regarding any act or threat of violence the respondent made against the respondent or another, whether or not the threat involved a firearm; and (3) be signed and sworn to by the petitioner under penalty of perjury.

A petition may include, to the extent disclosure is not otherwise prohibited, health records or other health information concerning the respondent. The bill establishes exceptions to the general patient privilege for the records and testimony of psychiatrists, licensed psychologists, psychiatric mental health nursing specialists, professional counselors, and licensed certified social workers if the disclosure is necessary to obtain relief, as specified. The bill may not be interpreted to require a health care provider to disclose health records or other health information concerning a respondent except in accordance with a subpoena or by order of the court.

A petitioner who, in good faith, files a petition for an extreme risk protective order is not civilly or criminally liable for filing the petition.

In addition to law enforcement officers or specified health professionals, a petitioner includes (1) a spouse or cohabitant of the respondent; (2) a person related to the respondent by blood, marriage, or adoption; (3) an individual who has a child in common with the respondent; (4) a current dating or intimate partner of the respondent; or (5) a current or former legal guardian for the respondent.

Interim Extreme Risk Protective Order

A commissioner may enter an interim extreme risk protective order to prohibit the respondent from possessing a firearm if the commissioner finds that there are *reasonable grounds* to believe that the respondent poses an immediate and present danger of causing

personal injury to the respondent, the petitioner, or another by possessing a firearm. In determining whether to enter an order, the commissioner must consider all relevant evidence presented by the petitioner and the amount of time that has elapsed since any of the events described in the petition. An interim extreme risk protective order must order the respondent to surrender to law enforcement authorities any firearm and ammunition in the respondent's possession and prohibit the respondent from purchasing or possessing any firearm or ammunition for the duration of the interim extreme risk protective order. If, based on the petition, the commissioner finds probable cause to believe that the respondent meets specified requirements for an emergency evaluation, the commissioner must refer the respondent to law enforcement for a determination of whether the respondent should be taken for such an evaluation.

An interim extreme risk protective order must state the date, time, and location for a temporary extreme risk protective order hearing and a tentative date, time, and location for a final extreme risk protective order hearing. Generally, or unless the judge continues the hearing for good cause, a temporary extreme risk protective order hearing must be held on the first or second day on which a District Court judge is sitting after issuance of the interim extreme risk protective order. An interim extreme risk protective order must include specified notice to the respondent, including that a judge may issue a temporary extreme risk protective order, whether or not the respondent attends a hearing. Whenever a commissioner issues an interim extreme risk protective order, the commissioner must immediately forward a copy of the petition and interim extreme risk protective order to the appropriate law enforcement agency for service on the respondent. A law enforcement officer is required to immediately serve the interim extreme risk protective order on the respondent and must notify the Department of Public Safety and Correctional Services (DPSCS) within two hours after service of the order.

An interim extreme risk protective order is generally effective until the earlier of the temporary extreme risk protective order hearing or the end of the second business day the Office of the District Court Clerk is open following the issuance of the interim order.

Temporary Extreme Risk Protective Order

After a hearing on a petition, whether *ex parte* or otherwise, a judge may enter a temporary extreme risk protective order to prohibit the respondent from possessing a firearm if the judge finds that there are *reasonable grounds* to believe that the respondent poses an immediate and present danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm. In determining whether to enter an order, the judge must consider all relevant evidence presented by the petitioner and the amount of time that has elapsed since any of the events described in the petition. The temporary extreme risk protective order must order the respondent to surrender to law enforcement authorities any firearm and ammunition in the respondent's possession and prohibit the respondent from

purchasing or possessing any firearm or ammunition for the duration of the order. A temporary order must also contain specified notice to the respondent. A law enforcement officer must immediately serve the temporary extreme risk protective order on the respondent and notify DPSCS of the service, as specified. The bill sets forth specified temporary order service requirements for a respondent who has been served with an interim extreme risk protective order. There is no cost to the petitioner for service of the temporary extreme risk protective order. If the judge finds probable cause to believe that the respondent meets specified requirements for an emergency evaluation, the judge *must* refer the respondent for an emergency evaluation.

A temporary extreme risk protective order is generally effective for not more than seven days after service of the order. The judge may extend the temporary order as needed, not to exceed six months, to effectuate service of the order where necessary to provide protection or for other good cause. The bill includes provisions allowing a judge to proceed with a final extreme risk protective order hearing instead of a temporary extreme risk protective order hearing under specified conditions, including if the petitioner and the respondent expressly consent to waive the temporary extreme risk protective order hearing.

Final Extreme Risk Protective Order

Subject to specified exceptions, a final extreme risk protective order hearing must be held no later than seven days after the temporary extreme risk protective order is served on the respondent.

A respondent must have an opportunity to be heard on the question of whether the judge should issue a final extreme risk protective order. A judge may proceed with a final extreme risk protective order hearing if (1) the respondent appears at a final extreme risk protective order hearing; (2) the respondent has been served with an interim or temporary extreme risk protective order; or (3) the court otherwise has personal jurisdiction over the respondent. A judge may enter a final extreme risk protective order to prohibit the respondent from possessing a firearm if the judge finds by *clear and convincing* evidence that the respondent poses a danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm. The judge must consider all relevant evidence presented by the petitioner and the respondent and the amount of time that has elapsed since any of the events described in the petition. The final extreme risk protective order must order the respondent to surrender to law enforcement authorities any firearm and ammunition in the respondent's possession and prohibit the respondent from purchasing or possessing any firearm for the duration of the order, as specified. If the judge finds probable cause to believe that the respondent meets requirements for emergency evaluation, the judge *may* refer the respondent for an emergency evaluation.

Before granting, denying, or modifying a final extreme risk protective order, the court may review all open and shielded court records involving the petitioner and the respondent, including records of proceedings under specified provisions of law relating to criminal actions, peace order and protective orders, and admissions of individuals to mental health facilities. However, the court's failure to review such records does not affect the validity of an extreme risk protective order.

A copy of the final extreme risk protective order must be served, as specified, on the petitioner, the respondent, the appropriate law enforcement agency, and any other person the judge determines is appropriate. A copy of the final extreme risk protective order served on the respondent, as specified, constitutes actual notice to the respondent of the contents of the final extreme risk protective order.

All relief granted in a final extreme risk protective order is effective for the period stated in the order, not to exceed one year. A subsequent circuit court order pertaining to any of the provisions included in the final extreme risk protective order supersedes those provisions.

Surrender of Firearms – Procedures

A law enforcement officer who takes possession of a firearm or ammunition in accordance with an extreme risk protective order must (1) comply with specified procedures regarding a receipt of the items surrendered or seized; (2) provide to the respondent information on the process for retaking possession of the firearm and ammunition; and (3) 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 extreme risk protective order is in effect. A law enforcement agency may not place any mark on a seized or surrendered firearm for identification or other purposes.

The bill sets forth procedures and requirements for the return of firearms and ammunition after the expiration or termination of extreme risk orders, as specified. It also establishes procedures and requirements for situations in which (1) a respondent does not wish to recover a firearm or ammunition that has been seized or surrendered in accordance with an extreme risk protective order or is otherwise prohibited from possessing firearms or ammunition; (2) an individual other than the respondent claims ownership of seized or surrendered firearms or ammunition; or (3) firearms or ammunition are not reclaimed.

A State's Attorney or a law enforcement officer with probable cause to believe that a respondent who is subject to an extreme risk protective order possesses a firearm and failed to surrender the firearm in accordance with the order may apply for, and a court may issue, a search warrant for the removal of the firearm at any location identified in the application for the warrant, as specified.

Modification/Extension of Orders

A final extreme risk protective order may be modified or rescinded during the term of the order, as specified. For good cause shown, a judge may extend the term of a final extreme risk protective order for six months after giving notice to all affected persons and the respondent and holding a hearing, as specified.

Miscellaneous Provisions

The bill sets forth an appeal process from the grant or denial of an extreme risk protective order petition to the circuit court, as specified.

An interim, temporary, and final extreme risk protective order must state that a violation of the order may result in criminal prosecution and imprisonment and/or a fine. A temporary and final extreme risk protective order must state that a violation of the order may result in a finding of contempt.

All health records and other health information provided in a petition or considered as evidence in a proceeding pursuant to the bill's provisions are confidential and the contents may not be divulged, by subpoena or otherwise, except by order of the court on good cause shown. This provision does not prohibit review of a court record relating to a petition by specified individuals, including personnel of the court or law enforcement agencies.

The bill's provisions are severable, therefore, if any provision of the bill or its application is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application that can be given effect without the invalid provision or application.

Penalties

A person who fails to comply with the provisions of an interim, temporary, or final extreme risk protective order is guilty of a misdemeanor and subject to maximum penalties of (1) a \$1,000 fine and/or 90 days imprisonment for a first offense and (2) for a second or subsequent offense, a \$2,500 fine and/or one year imprisonment.

A law enforcement officer must arrest with or without a warrant and take into custody a person who the officer has probable cause to believe is in violation of an interim, temporary, or final extreme risk protective order in effect at the time of the violation.

Current Law: There is no extreme risk protective order in the State. The bill is modeled on statutory provisions that set forth a process by which an individual may seek relief from abuse by filing a petition for a domestic violence protective order. Pursuant to that process,

an individual may seek relief from abuse by filing a petition for a domestic violence protective order. Among other provisions, a temporary protective order may order a 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 temporary protective order if the abuse consisted of (1) the use of a firearm by the respondent against a person eligible for relief; (2) a threat by the respondent to use a firearm against a person eligible for relief; (3) serious bodily harm to a person eligible for relief caused by the respondent; or (4) a threat by the respondent to cause serious bodily harm to a person eligible for relief.

If a final protective order is issued, such order must require 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.

Statutory provisions set forth a process by which specified health professionals and other interested parties may petition for an emergency evaluation of an individual, which may result in the involuntary admission of the individual to a mental disorder treatment facility, if the petitioner has reason to believe that the individual (1) has a mental disorder and (2) presents a danger to the life or safety of the individual or of others.

Background: According to the New York County District Attorney's Office, as of April 2017 (the latest information readily available), extreme risk protection orders, which focus on individuals who are exhibiting dangerous behavior, have been enacted in various forms in four states. Proponents argue that they may serve as a method of temporarily preventing people in crisis from having access to guns, by allowing family members and loved ones to petition for intervention.

In 2014, California became the first state to enact a law empowering family members as well as law enforcement to request that a judge issue an order based on evidence that a person is at risk of harming himself or herself, or others. In 2016, Washington State enacted a similar measure through ballot initiative. Similar authority for law enforcement officers to seek a court order has been available for years in Indiana and Connecticut.

State Fiscal Effect: General fund expenditures increase by a minimum of \$284,880 in fiscal 2019 only for programming costs for the Judiciary and DPSCS, as discussed below. The bill's penalty provisions are not anticipated to materially affect State finances.

Judiciary

General fund expenditures for the Judiciary increase by a minimum of \$234,880 in fiscal 2019 only for necessary computer reprogramming costs. Expenditures *may* minimally increase further in the first year for costs associated with creating necessary

forms and implementing the new process for extreme risk protective orders in the courts. Although the bill will result in additional hearings, which must be held in an expedited manner, it is nevertheless anticipated that hearings can be accommodated without materially impacting the workload or finances of the Judiciary.

DPSCS

Pursuant to the Family Law Article, 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. The bill does not specifically require DPSCS to notify a petitioner once an extreme risk protective order has been served. However, because it does require law enforcement to notify DPSCS once an order is served, for purposes of this fiscal and policy note, it is assumed that DPSCS will notify a petitioner who has requested notification. Accordingly, general fund expenditures increase by an estimated \$50,000 in fiscal 2019 only for programming costs.

Local Fiscal Effect: Depending on the number of petitions for extreme risk protective orders each jurisdiction receives, local law enforcement expenditures may increase for costs associated with storing additional firearms and executing additional search warrants.

The bill is not anticipated to materially impact the workload of the circuit courts. The bill's penalty provisions are not anticipated to materially affect local finances.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Charles, Frederick, and Montgomery counties; Judiciary (Administrative Office of the Courts); *New York Times*; New York County District Attorney's Office; Department of Legislative Services

Fiscal Note History:
mag/kdm

First Reader - February 28, 2018

Third Reader - March 23, 2018

Revised - Amendment(s) - March 23, 2018

Enrolled - May 3, 2018

Revised - Amendment(s) - May 3, 2018

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