

**Department of Legislative Services**  
 Maryland General Assembly  
 2018 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 1302  
 Judiciary

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

**Family Violence - Seizure of Lethal Weapons - Lethal Violence Protective Order**

This bill sets forth a process by which a petitioner may seek a court order to restrict another individual’s access to firearms or ammunition under specified conditions.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by a minimum of \$126,500 in FY 2019 only for programming costs, as discussed below. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	126,500	0	0	0	0
Net Effect	(\$126,500)	\$0	\$0	\$0	\$0

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

**Local Effect:** Minimal increase in county revenues and expenditures.

**Small Business Effect:** None.

**Analysis**

**Bill Summary:**

*Ex Parte Lethal Violence Protective Order*

An ex parte lethal violence protective order (LVPO) is an order prohibiting the respondent from having in the respondent’s custody or control or from owning, purchasing, possessing, or receiving any firearms or ammunition until a scheduled hearing for a one-year LVPO.

A petitioner may seek an ex parte LVPO by filing a petition with the court that alleges, based on personal knowledge, that the respondent poses an immediate and present danger of causing injury to himself or herself or to others by having in the respondent's custody or control or by owning, purchasing, possessing, or receiving a firearm or ammunition. A petitioner is a law enforcement officer or a "family member." In addition to any person related to the respondent by blood, marriage, or adoption, a "family member" includes (1) a current dating partner of the respondent; (2) a former dating partner of the respondent separated by one year or less; (3) any person who resides with the respondent; (4) any person who has resided with the respondent within one year before the filing of a petition under this subtitle; or (5) a current or former legal guardian for the respondent.

The petition must set forth the grounds for issuance of the order and describe the number, types, and locations of any firearms or ammunition believed by the petitioner to be currently possessed or controlled by the respondent. All health records and other health information provided in a petition or considered as evidence in a related proceeding must be protected from public disclosure to the extent that the information identifies a respondent or petitioner.

A court must issue or deny a petition for an ex parte LVPO on the same day that the petition is filed. In determining whether to issue an ex parte LVPO, the court must consider all relevant evidence presented by the petitioner, and may also consider evidence pertaining to the respondent's (1) unlawful, reckless, or negligent use, display, storage, possession, or brandishing of a firearm; (2) act or threat of violence against himself or herself or against another, whether or not the threat of violence involved a firearm; (3) violation of any other protective order; (4) abuse of controlled substances or alcohol or any conviction for a related criminal offense; and (5) recent acquisition of a firearm, ammunition, or another deadly weapon. The court must also consider the time that has elapsed since any of these events have occurred.

If the court finds reasonable cause to believe that the respondent poses an immediate and present danger of causing injury to himself or herself or to another by having specified access to a firearm or ammunition, the court must issue an ex parte LVPO. An ex parte LVPO must include specified items, including (1) a statement that the respondent may not have in the respondent's custody or control or own, purchase, possess, receive, or attempt to purchase or receive a firearm or ammunition while the order is in effect; (2) a description of the requirements for relinquishment of firearms and ammunition; (3) a statement of the grounds asserted for the order; (4) a notice of the hearing required to determine whether to issue a one-year LVPO; and (5) a statement that the respondent may seek the advice of an attorney as to any matter related to the order, as specified.

A court must set a hearing on a one-year LVPO lethal violence protective order within 14 days after receipt of a petition, regardless of whether the court issues an ex parte LVPO.

If the court issues an ex parte LVPO, notice of the hearing must be served on the respondent at the same time as the ex parte order. An ex parte LVPO and/or notice of the hearing must be personally served on the respondent by a law enforcement officer or, if personal service by a law enforcement officer is not practicable, in accordance with the Maryland Rules. A respondent may seek to reschedule the hearing on a date not later than 30 days after the initial scheduled hearing.

#### *One-year Lethal Violence Protective Orders*

At a hearing to determine whether to issue a one-year LVPO, the court must consider all relevant evidence presented by the petitioner and may also consider other relevant evidence, including the factors specified above related to an ex parte LVPO. If the court finds by clear and convincing evidence that the respondent poses a significant danger of injury to himself or herself or to others by having in the respondent's custody or control or by owning, purchasing, possessing, or receiving a firearm or ammunition, the court must issue a one-year LVPO. A one-year LVPO must include specified information, including the information required for ex parte LVPOs, as specified above, and the date and time the order expires.

#### *Surrender of Firearms and Ammunition*

On the issuance of an ex parte or one-year LVPO, the court must order the respondent to surrender to the local law enforcement agency all firearms and ammunition owned or possessed by the respondent or in the respondent's custody or control. A law enforcement officer serving an LVPO must request that all firearms and ammunition owned or possessed by the respondent or in the respondent's custody or control be immediately surrendered and must take possession of all firearms and ammunition, as specified. If personal service by a law enforcement officer is not practicable, the respondent must surrender the firearms and ammunition in a safe manner to the control of a local law enforcement officer within 48 hours after service of the order.

A law enforcement officer taking possession of a firearm or ammunition in accordance with an LVPO must issue a receipt identifying all firearms and ammunition that have been surrendered or seized and provide a copy of the receipt to the respondent. A law enforcement agency may charge the respondent a fee not to exceed the reasonable and actual costs incurred by the law enforcement agency for storing a firearm or ammunition surrendered or seized under the bill's provisions.

A court with probable cause to believe a respondent to an LVPO has in the respondent's custody or control or owns or possesses firearms or ammunition that the respondent has failed to surrender, or has received or purchased a firearm or ammunition while subject to the order must issue a warrant and authorize a search, as specified.

### *Terminations and Extensions*

The bill establishes provisions by which a respondent to a one-year LVPO may submit one written request within the first six months after the order's effective date for a hearing to terminate the order. On receipt of the request for termination, the court must set a date for a hearing. At the hearing, if the court finds by clear and convincing evidence that the respondent does not pose a significant danger of causing injury to himself or herself or to others, as specified, the court must terminate the order. The respondent bears the burden of proving that the respondent does not pose a danger.

The bill also establishes provisions by which a petitioner may request an extension of a one-year LVPO at any time within three months before the expiration date of the order.

If an LVPO is terminated or expires and is not extended, a law enforcement agency holding any firearm or ammunition that has been surrendered or seized in accordance with the order must notify the respondent that the respondent may request the return of the firearm or ammunition. A law enforcement agency must return any surrendered or seized firearm or ammunition requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition and that the respondent has paid the full amount of any storage fees charged.

### *Miscellaneous Provisions*

The bill also establishes provisions by which a respondent who has surrendered any firearm or ammunition to a law enforcement agency and who does not wish to have the firearm or ammunition returned or who is no longer eligible to own or possess firearms or ammunition may (1) sell or transfer title of the firearm or ammunition to a licensed firearms dealer or (2) request the destruction of the firearms or ammunition. It also establishes provisions for unclaimed firearms.

A person who files a petition for an LVPO, knowing the information in the petition to be materially false or with an intent to harass the respondent, is guilty of a misdemeanor. A person who has in the person's custody or control or who owns, purchases, possesses, or receives a firearm or ammunition with knowledge that the person is prohibited from doing so by an LVPO is guilty of a misdemeanor and on conviction, is prohibited from having in the person's custody or control or owning, purchasing, possessing, receiving, or attempting to purchase or receive a firearm or ammunition for a period of five years from the date of conviction.

The bill may not be construed to affect the authority of a law enforcement officer to remove firearms or ammunition from any person in accordance with any other law. It may also not

be construed to impose criminal or civil liability on any person who does not petition for an LVPO.

**Current Law:** There is no LVPO in the State. Statutory provisions set forth a process by which 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.

**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 for the Judiciary increase by a minimum of \$126,460 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 LVPOs 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.

**Local Fiscal Effect:** While the bill's requirements likely increase expenditures of local law enforcement units, such costs may be offset by the bill's authorization to charge a reasonable fee to offset costs related to the storage of firearms. For example, Frederick

County advises that most of the bill is cost-neutral; Anne Arundel County and Charles County advise there is no significant impact. Local law enforcement expenditures may also increase depending on the number of LVPOs required to be served. Montgomery County advises that additional costs may be incurred as multiple officers will be required to serve the orders and execute any potential additional search warrants.

The bill is not anticipated to materially impact the workload of the circuit courts.

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### **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

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Analysis by: Jennifer K. Botts

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