

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 381 (Delegate Doory)
Judiciary

Domestic Violence - Temporary Ex Parte Order - Additional Relief

This bill provides that a court, as part of an ex parte order for relief from domestic violence, may order a respondent to surrender any firearms in the respondent's possession and order the respondent to refrain from possessing any firearms for the duration of the ex parte order. The firearms surrender is made to law enforcement authorities under specified circumstances.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Potential minimal increase in expenditures due to the bill's penalty provisions. It is expected that local law enforcement agencies could handle the bill's requirements for storage of seized firearms using existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: As part of a temporary ex parte order to prevent domestic abuse, a court may order a respondent to surrender any firearms in possession and order the respondent to refrain from possessing any firearms while the ex parte order is in effect. If a respondent surrenders firearms pursuant to an ex parte order, the law enforcement officer must provide information on the process for repossessing firearms and provide for the safe storage of firearms. The respondent may retake possession of firearms upon expiration of the ex parte order unless the respondent is ordered to surrender firearms

pursuant to a protective order, or the respondent is not otherwise legally entitled to own or possess firearms. A law enforcement officer has civil immunity for actions taken to facilitate surrender of firearms if the actions were reasonable and in good faith.

If the respondent does not comply with the terms for surrender of firearms, the respondent is guilty of a misdemeanor and is subject to a maximum fine of \$1,000 or imprisonment for up to 90 days or both for a first offense. For a second or subsequent offense, the violator is subject to a maximum fine of \$2,500 or imprisonment up to one year or both.

The bill also provides that when a firearm is removed at the scene of an alleged act of domestic violence, the respondent may retake possession at the conclusion of a proceeding on the alleged domestic violence act unless the respondent is not otherwise legally entitled to own or possess a firearm.

Current Law: Courts are not authorized to require an ex parte order respondent to surrender firearms or refrain from possessing firearms for the order's duration. When responding to the scene of an alleged domestic violence act, a law enforcement officer may remove firearms if the officer has probable cause to believe a domestic violence act has occurred and the officer observed the firearm during the response. As part of a final protective order, a court may order the respondent to surrender any firearms the respondent possesses to law enforcement authorities while the protective order is effective.

Background: For fiscal 2000 (the most recent data available from the Administrative Office of the Courts (AOC)) the following table shows judicial activity with regard to temporary petitions for protection:

<u>Jurisdiction</u>	<u>Ex Parte Hearings</u>	<u>Ex Parte Orders Granted</u>
District Court	18,310	14,402
Circuit Court	2,992	2,304
Total Actions	21,302	16,706

The Institute for Law and Justice and the National Institute of Justice completed a 50 state survey of domestic violence legislation in October 2000 and found that 43 states and the District of Columbia make violation of a court order against domestic violence a separate offense. In 38 states, violation of a protective order is a misdemeanor. In Missouri and Vermont, a second violation of a protective order is a felony. In Montana, Rhode Island, Texas, and Washington, a third violation of a protective order constitutes a felony.

In 2001, the Fifth Circuit Court of Appeals held, in *United States v. Emerson*, that a federal law prohibiting the subjects of orders of protection from possessing guns does not violate the Second Amendment of the Constitution. The *Emerson* case is currently being appealed to the U.S. Supreme Court.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court. The AOC advises that this bill would not affect the manner of hearing or handling cases by the Judiciary.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2003 are estimated to range from \$10 to \$61 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$300 per month.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$20 to \$84 per inmate in fiscal 2003.

Ex parte orders are required to be served on the respondent by a law enforcement officer. Generally, local sheriffs or other local law enforcement officers perform this function. Because a law enforcement officer is on the scene, collecting firearms would not require a second trip. Although the bill would add some complication to the process of serving ex parte orders, and would require storage of seized firearms, it is expected that local law enforcement agencies could handle the bill's requirements using existing budgeted resources.

Additional Information

Prior Introductions: An identical bill was introduced in the 2001 session as HB 990. It was referred the Judiciary Committee, where it received no action. Similar bills were introduced during the 2000, 1999, 1998 and 1997 sessions. HB 595 of 2000 was withdrawn after a hearing before the Judiciary Committee. SB 781 of 2000 and SB 407 of the 1999 session each received an unfavorable report from the Senate Judicial Proceedings Committee. HB 407 of 1998 and HB 1344 of 1997 were not reported form the Judiciary Committee.

Cross File: None.

Information Source(s): Cecil County, Montgomery County, Prince George's County, Judiciary (Administrative Office of the Courts), Department of State Police, Baltimore City, Institute for Law and Justice, National Institute of Justice, Family Violence Prevention Fund, Department of Legislative Services

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Analysis by: Karen D. Morgan

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510