

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**

House Bill 382 (Delegate Doory)  
Judiciary

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**Domestic Violence - Protective Order - Additional Relief**

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This bill provides that, under certain circumstances, a protective order for relief from domestic violence may order the respondent to surrender firearms.

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**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 the bill's requirements could be handled by local law enforcement agencies using existing budgeted resources.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** This bill provides that, upon a finding of probable cause to believe that the respondent owns or possesses any firearms, a protective order for relief from domestic violence may order the respondent, for the duration of the protective order, to surrender any firearms that the respondent owns or possesses to a specified law enforcement agency by a specified time as stated in the protective order. A court must determine whether there is probable cause to believe that the respondent owns or possesses any firearms at each protective order hearing. The law enforcement agency must make reasonable efforts to ensure that the respondent complies with the arms surrender provision.

If a respondent violates a protective order provision to surrender firearms, the law enforcement officer who serves the protective order must arrest the respondent. Such a 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.

If a firearm is surrendered, the law enforcement officer is immune from civil liability for complying with the court order if the officer acted in good faith and in a reasonable manner. The law enforcement agency must provide information to the respondent on the process for retaking possession of the firearm and provide for the safe storage of the firearm during the time the protective order is in effect.

**Current Law:** A court may require a protective order respondent to surrender any firearms in the respondent’s possession. 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 saw the firearm during the response.

**Background:** A protective order may be filed in either the District Court or circuit court. The maximum duration of a final protective order is one year. According to the Administrative Office of the Courts (AOC), most final protective orders are issued for a period of one year.

For fiscal 2000 (the most recent data available from AOC) the following table shows judicial activity with regard to protective orders:

<u>Jurisdiction</u>	<u>Protective Order Hearings</u>	<u>Protective Orders Granted</u>
District Court	13,710	7,139
Circuit Court	2,134	1,151
Total Actions	15,844	8,290

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.

**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.

Protective orders are required to be served on the respondent in open court or, if the respondent is not present at the protective order hearing, by first class mail. Although the bill would add some complication to enforcement of protective 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 146. It received an unfavorable report from the Judiciary Committee. Similar bills were introduced during the 2000, 1999, 1998, and 1997 sessions. HB 606 of 2000 was withdrawn, while SB 675 received an unfavorable report from the Senate Judicial Proceedings Committee. SB 407 of 1999 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 407 of 1998 and HB 1344 of 1997 were not reported from the House Judiciary Committee.

**Cross File:** None.

**Information Source(s):** Montgomery County, Prince George's County, Caroline County, Calvert County, Howard 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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