

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 126
Judiciary

(Delegate Boschert)

Family Law - Domestic Violence - Penalty

This bill increases the maximum penalties for failing to comply with the relief granted in an ex parte or protective order for relief from domestic violence. A violator is subject to a fine not exceeding \$10,000 or imprisonment not exceeding five years or both. The bill has prospective application.

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 revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Current Law: A person who fails to comply with certain types of relief granted in a temporary ex parte or a protective order is guilty of a misdemeanor. Upon conviction for a first offense, the penalty is a fine not exceeding \$1,000 or imprisonment not exceeding 90 days or both. For a second or subsequent offense, the penalty is a fine not exceeding \$2,500 or imprisonment not exceeding one year or both. The specific types of relief for which violation is a misdemeanor include an order that the respondent:

- refrain from further abuse or threats of abuse of a person eligible for relief;

- refrain from contacting, attempting to contact, or harassing a person eligible for relief;
- refrain from entering the residence of a person eligible for relief;
- vacate the home where the respondent and person eligible for relief reside together; and
- remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members.

Background: Temporary ex parte orders and final protective orders represent two stages of the same process. A person who seeks protection may file a petition with the court for relief. An ex parte hearing takes place and if there are reasonable grounds to believe abuse has occurred, a temporary ex parte order is issued. Within seven days, a protective order hearing takes place and the respondent has a chance to answer the charges. If there is clear and convincing evidence of abuse, a final protective order is granted. The maximum period for 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 the AOC), the following table shows the judicial activity with regard to petitions for protection:

<u>Jurisdiction</u>	<u>Ex Parte Hearings</u>	<u>Ex Parte Orders Granted</u>	<u>Protective Order Hearings</u>	<u>Protective Orders Granted</u>
District Court	18,310	14,402	13,710	7,139
Circuit Court	2,992	2,304	2,134	1,151
Total Actions	21,302	16,706	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.

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

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

Persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,800 per month. This bill alone, however, should not create the need for additional beds, personnel or facilities. The average variable cost of housing a new DOC inmate (food, medical care, etc.), excluding overhead, is \$300 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. 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 jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities 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.

Additional Information

Prior Introductions: A similar bill was introduced as House Bill 23 in the 2001 session. It received an unfavorable report from the Judiciary Committee.

Cross File: None.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Institute for Law and Justice, National Institute of Justice, National Conference of State

Legislatures, Maryland Network Against Domestic Violence, 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