**Department of Legislative Services**
Maryland General Assembly
2005 Session

# FISCAL AND POLICY NOTE

House Bill 938 (Delegate McComas, *et al.*)
Judiciary

**Domestic Violence - Protective Order - Penalty**

This bill applies the criminal penalties for noncompliance with the relief granted in a final protective order to a respondent who willfully fails to complete counseling or a domestic violence program as ordered by the court.

## 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 incarceration provisions. It is expected that enforcement of protective orders could be handled by local law enforcement agencies using existing budgeted resources.

**Small Business Effect:** None.

## Analysis

**Current Law:** When issuing a final protective order, a court may order the respondent and any or all persons eligible for relief to participate in a professionally supervised counseling or domestic violence program. An 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 protective order in effect at the time of the violation.

An interim, temporary, and final 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 protective order must also state that a violation of the order may result in a finding of criminal contempt.

The specified criminal penalties for noncompliance with the relief granted in a final protective order apply to a respondent who does not:

- refrain from abusing or threatening to abuse any person eligible for relief;
- refrain from contacting, attempting to contact, or harassing any person eligible for relief;
- refrain from entering the residence of any person eligible for relief;
- vacate the home immediately where the person eligible for relief and the respondent are residing together at the time of the abuse;
- remain away from the place of employment, school, or temporary residence of a person eligible for relief or the home of other family members; or
- surrender any firearms that are in the respondent's possession to a law enforcement authority for the duration of the protective order.

A person who commits any of the offenses listed above is guilty of a misdemeanor. For a first offense, the person is subject to a maximum fine of $1,000 and/or imprisonment for up to 90 days. For a second or subsequent offense, the person is subject to a maximum fine of $2,500 and/or imprisonment for up to one year.

**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 2004 (the most recent data available from AOC) the following table shows judicial activity with regard to protective orders.

| **Jurisdiction** | **Protective Order Hearings** | **Protective Orders Granted** |
|---|---|---|
| District Court | 22,934 | 7,395 |
| Circuit Court | 3,023 | 1,254 |
| **Total Actions** | **25,957** | **8,649** |

According to the latest information from the Institute for Law and Justice and the National Institute of Justice, 43 states and the District of Columbia make violation of a protective order against domestic violence a separate criminal offense. In three other states, violation of an order may be subject to a special criminal trespass law. Even in those states where there is no criminal penalty, however, violation of a protective order may be punished by a court finding of criminal contempt, which generally calls for misdemeanor-level penalties. In four states, violation of a protection order is treated as a felony. In other states, a violation is a misdemeanor. In eight states, repeat violations of a court order may constitute a felony.

**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 2006 are estimated to range from $17 to $65 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 $310 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 $33 to $119 per inmate in fiscal 2006.

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, it is expected that local law enforcement agencies could handle the bill's requirements using existing budgeted resources.

## Additional Information

**Prior Introductions:** None.

**Cross File:** SB 434 (Senator Jacobs, *et al.*) – Judicial Proceedings.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Institute for Law and Justice, National Institute of Justice, Department of Legislative Services

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