

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 824
Judiciary

(Delegate Petzold, *et al.*)

Domestic Violence - Protective Orders - Surrender of Firearms

This bill authorizes a District Court commissioner or a judge to order a respondent to surrender firearms to a law enforcement authority for the duration of an interim or temporary protective order that is issued on behalf of an alleged victim of domestic violence.

Fiscal Summary

State Effect: It is expected that the requirements of this bill could be met with existing resources.

Local Effect: Potential minimal increase in expenditures to process and provide for storage of firearms that may be surrendered.

Small Business Effect: None.

Analysis

Bill Summary: This bill provides that an interim or temporary protective order may order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession for the duration of the interim or temporary protective order.

For firearms surrendered in accordance with an interim, temporary, or final protective order, the respondent may file a motion with the court for return of the firearms after the expiration of the protective order. The court is required to schedule a hearing and provide adequate notice to the respondent and the law enforcement agency that has

control of the firearms of the date and time of the hearing. A hearing on the respondent's motion for return of the firearms must be limited to whether the respondent is the owner of the firearms and whether the respondent is subject to any State or federal law, or court order, including any additional protective order, that prohibits the respondent from possessing a firearm. The court must order the law enforcement agency to return the firearms to the respondent if the respondent is the owner of the firearms and the respondent is not subject to any State or federal law or court order that prohibits their possession by the respondent. A law enforcement agency is prohibited from releasing any surrendered firearms without a court order.

If a respondent does not request the return of surrendered firearms within three years from the date of the last protective order, the law enforcement agency with control of the firearms may dispose of or destroy the firearms. A law enforcement agency may charge a reasonable fee that does not exceed actual costs for firearms storage. A law enforcement agency may not be held liable for damage or deterioration to a firearm from storage or transport if the agency exercises due care in the storage and handling of the firearm.

Current Law: A petition for an interim protective order may be filed with a District Court commissioner if the clerk of the circuit court or clerk of the District Court is not open for business. If the commissioner finds there are reasonable grounds to believe that the respondent has abused a person eligible for relief, the commissioner may issue an interim protective order. If, after a hearing on a petition, whether *ex parte* or otherwise, a judge finds that there are reasonable grounds to believe a person eligible for relief has been abused, the judge may issue a temporary protective order.

An interim or temporary protective order may order the respondent to:

- 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 alleged abuse and award temporary use and possession of the home to the petitioner under circumstances specified in statute. In a case alleging abuse of a vulnerable adult, the court must adhere to provisions governing award and temporary use to a non-spouse person eligible for relief; or
- remain away from the place of employment, school, or temporary residence of a person eligible for relief or the home of other family members.

In addition to the orders listed above, an interim protective order may award temporary custody of a minor child of the respondent and a person eligible for relief in a case alleging abuse of a child. An interim protective order may order the respondent to remain away from the residence of any family member of a person eligible for relief. In addition to the orders listed above, a temporary protective order may award temporary use and possession of the home to an adult living in the home in a case where child abuse is alleged. The respondent may be ordered to remain away from a child care provider of a person eligible for relief while the child is in the care of the child care provider and the order may award temporary custody of a minor child of the person eligible for relief and the respondent.

An interim protective or temporary protective order must provide notice and opportunity for hearing to the respondent, as specified in statute. An interim protective order is effective until the earlier of the temporary protective order hearing or the end of the second business day that the office of the clerk of the District Court is open following the order's issuance. A temporary protective order is effective for up to 7 days after service of the order, but the judge may extend the order as needed, up to 30 days, to effectuate service, provide protection, or for other good cause.

The judge may proceed with a final protective order hearing instead of a temporary protective order hearing if the respondent appears at the hearing, the respondent has been served with an interim protective order or the court otherwise has personal jurisdiction over the respondent, and the petitioner and respondent expressly consent to waive the temporary protective order hearing. The maximum duration of a final protective order is one year. A final protective order may require the respondent to surrender firearms to a law enforcement agency.

Background: A protective order may be filed in either the District Court or circuit court. The following table shows judicial activity with regard to protective orders in fiscal 2005.

<u>Jurisdiction</u>	<u>Hearings</u>	<u>Interim Orders Granted</u>	<u>Temporary Orders Granted</u>	<u>Final Orders Granted</u>
District Court	23,627	8,476	14,420	7,454
Circuit Court*	5,804	N/A	1,858	2,338
Total Actions	29,431	8,476	16,278	9,792

*The circuit court data does not include Baltimore City due to reporting problems.

According to the latest information from the Institute for Law and Justice, and the Brady Campaign to Prevent Gun Violence; California, Maine, Pennsylvania, and Rhode Island

are among those states that require those accused of domestic violence to surrender firearms pursuant to a protective order.

According to the 2004 Uniform Crime Report issued by the Maryland State Police, there were 23,013 domestic violence crimes that occurred in Maryland during calendar 2004, including 28 homicides and 21,365 assaults. Twenty-six percent, or 5,518 of the reported assaults were aggravated and 215 of those assaults involved firearms.

State Expenditures: The Department of State Police advises that it is not the assigned agency to serve protective orders in any county. The service of protective orders is primarily assigned to sheriff's departments and some local police departments. Accordingly, the bill would not affect State governmental finances or operations. The Administrative Office of the Courts (AOC) advises that forms would need to be revised to accommodate firearms surrender. However, it is expected that the AOC could accomplish this with existing resources.

Local Expenditures: Expenditures could increase to the extent that local governments would need to allocate more time to retrieve, process and store firearms. Charles, Montgomery, Prince George's and Somerset counties all advise that the bill's provisions would not have a fiscal impact. Baltimore County advises that additional expenditures for the purchase of firearms storage would be required and it would cost about \$65.70 per weapon for processing. Frederick County advises that it expects to attain \$18,000 in fees to cover the cost of firearms storage. Total additional expenditures of \$337,136 would be needed for additional personnel to complete firearms intake, for mileage, packaging, humidifiers, storage, and firearms destruction.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Somerset County, Montgomery County, Prince George's County, Charles County, Baltimore County, Frederick County, Judiciary (Administrative Office of the Courts), Department of State Police, Brady Campaign to Prevent Gun Violence, Institute for Law and Justice, www.gunguys.com, Department of Legislative Services

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