

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 778

(Senator Gladden)

Judicial Proceedings

Criminal Procedure - Conditions of Probation - Protective Orders

This bill provides that if a court places a defendant who has been convicted of a domestic violence crime on probation or probation before judgment, then on motion of the domestic violence victim or someone acting on behalf of the victim, the court may issue a temporary protective order and require the defendant to comply with the order as a condition of probation.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures for additional trial and clerical resources to the extent that temporary protective orders are issued as part of criminal trial proceedings.

Local Effect: Potential minimal increase in expenditures for additional trial and clerical resources to the extent that temporary protective orders are issued as part of criminal trial proceedings.

Small Business Effect: None.

Analysis

Current Law: A court generally has authority to suspend a sentence for a definite time, pass orders, impose costs or other fees, or impose confinement as a condition of a suspended sentence. The court may impose a sentence of imprisonment as a condition of probation. If the defendant violates the terms of probation, any time served by the individual in custodial confinement must be credited against any sentence of incarceration imposed by the court.

If a defendant pleads guilty or *nolo contendere* or is found guilty, the court may stay the entry of judgment, defer further proceedings, and place the defendant on probation subject to reasonable conditions. The court must find that the best interests of the defendant and the public would be served by placing the defendant on probation before judgment and the defendant must give written consent after determination of guilt or acceptance of a *nolo contendere* plea. A condition of probation may include payment of a monetary penalty, however, the defendant is entitled to notice and hearing to determine the amount and method of payment. The court may also order the defendant to participate in a rehabilitation, parks, or voluntary hospital program. The court may also order a defendant into custodial confinement or imprisonment as a condition of probation.

“Abuse” means an act that causes serious bodily harm, places a person eligible for relief in fear of imminent serious bodily harm, an act of assault in any degree, rape or sexual offense or attempted rape or sexual offense in any degree, false imprisonment, or stalking. Abuse may also include the abuse of a child or vulnerable adult, as specified in statute.

A “person eligible for relief” includes a current or former spouse of the respondent, a cohabitant of the respondent, and a person related to the respondent by blood, marriage, or adoption. Included is a parent, stepparent, child, or stepchild who resided with the respondent or person eligible for relief for at least 90 days within one year before the filing of the petition. Also included is a vulnerable adult or an individual who has a child in common with the respondent. A “petitioner” includes a person eligible for relief or may include persons who seek relief on behalf of a minor or vulnerable adult, as specified in statute. A petitioner may seek relief by filing a petition that alleges abuse of any person eligible for relief by the respondent.

A “victim of domestic violence” is an individual who has received deliberate, severe, and demonstrable physical injury or is in fear of imminent, deliberate, severe, and demonstrable physical injury from a current or former spouse or cohabitant.

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* | <u>5,804</u> | <u>N/A</u> | <u>1,858</u> | <u>2,338</u> |
| 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 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, 67 rapes, 507 offenses against families and children, and 21,365 assaults. In 2004, 17,459 women and 5,554 men reported being victims of domestic violence.

The District Court and circuit courts have exercised their authority to require that, as a condition of probation, a criminal defendant “stay away” from a victim of domestic violence. However, the Administrative Office of the Courts does not maintain statistics on the frequency such a condition is imposed.

Additional Information

Prior Introductions: None.

Cross File: HB 1250 (Delegates Anderson and Doory) – Judiciary.

Information Source(s): Maryland State Police, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2006
ncs/jr

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