Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 392   (Senator Forehand, *et al.*)

Judicial Proceedings   Judiciary

Domestic Violence - Enforcement of Protective Order

This bill authorizes a judge to order a law enforcement officer to use all reasonable and necessary force to return a minor child to the custodial parent at the time a final protective order is served or as soon as possible after entry of the final protective order.

Fiscal Summary

State Effect: None. The bill's requirements could be met with existing resources.

Local Effect: None. The bill's requirements could be met with existing resources.

Small Business Effect: None.

Analysis

Current Law: In a domestic violence proceeding, if a judge finds by clear and convincing evidence that abuse has occurred, or if the respondent consents to the entry of a protective order, the judge may grant a final protective order to protect any person eligible for relief from abuse.

A final protective order may include any or all of the following relief:

(1)   order the respondent to refrain from abusing or threatening to abuse any person eligible for relief;

(2)   order the respondent to refrain from contacting, attempting to contact, or harassing any person eligible for relief;

(3)   order the respondent to refrain from entering the residence of any person eligible for relief;

(4)   in certain cases where the person eligible for relief and the respondent are residing together at the time of the abuse, order the respondent to vacate the home immediately and award temporary use and possession of the home to the person eligible for relief;

(5)   order the respondent to remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members;

(6)   order the respondent to remain away from a child care provider of a person eligible for relief while a child of the person is in the provider's care;

(7)   award temporary custody of a minor child of the respondent and a person eligible for relief;

(8)   establish temporary visitation with a minor child of the respondent and a person eligible for relief under certain conditions;

(9)   award emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support;

(10)   award temporary use and possession of a vehicle jointly owned by the respondent and a person eligible for relief to the person eligible for relief under certain conditions;

(11)   direct the respondent or any or all of the persons eligible for relief to participate in professionally supervised counseling or a domestic violence program;

(12)   order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession for the duration of the protective order; or

(13)   order the respondent to pay filing fees and costs of the proceeding.

All relief granted in a final protective order is effective for the period stated in the order, up to a maximum of 12 months. A subsequent circuit court order pertaining to any of the

provisions in the final protective order supersedes those provisions in the final protective order.

Background: This bill specifies that courts have the authority to direct law enforcement authorities to use all reasonable and necessary force to return a minor child to the custodial parent at the time a final protective order is served or as soon as possible after entry of the order.

In 1998, the Office of the Attorney General issued an opinion on the meaning of the phrase "reasonable and necessary force" that is used on the standard protective order form when a judge awards temporary custody of a minor child pursuant to a protective order. *(See 83 Op. Att'y Gen. 80 (1998))* The Attorney General did not address the meaning of reasonable and necessary force. Instead, the Attorney General concluded that the direction to law enforcement to use reasonable and necessary force was not authorized by the domestic violence statutes.

A year later, the Attorney General issued another opinion on the same question, *(see 84 Op Att'y Gen. 105 (1999))* and stated that the earlier opinion did not account for whether the court's inherent equitable powers could authorize such a direction to law enforcement. The Attorney General then concluded that the courts may have the requisite common law authority given the courts broad grant of powers generally, the authority to act in a child's best interests, and the creation of a process to carry out its orders, among other things. The Attorney General suggested that an amendment to the domestic violence protective order statutes specifically conferring this authority would resolve any questions of a court's authority to issue an order to use reasonable and necessary force to enforce a custody award and the authority of law enforcement to execute such an order.

The following table shows judicial activity in fiscal 2006 (the latest information available) with regard to protective orders:

Jurisdiction	Hearings	Interim Orders Granted	Temporary Orders Granted	Final Orders Granted
Circuit Court	7,209	N/A	22,083	1,380
District Court	52,042	9,429	14,867	7,654

According to the State Police *Uniform Crime Report* issued for calendar 2006, 21,965 domestic violence crimes occurred in Maryland, a 0.5% decrease compared to the calendar 2005 total of 22,092. Assault was by far the most frequently reported crime, with 20,249 instances in calendar 2006. Of reported assaults, simple assault comprised 15,637 incidents. Aggravated assaults totaled 4,572 or 22.6% of the reported domestic

violence assaults for the same period. The number of offenses against family and children totaled 747.

Additional Information

Prior Introductions: None.

Cross File: HB 183 (Delegate Dumais, *et al.*) – Judiciary.

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

Fiscal Note History: First Reader - February 19, 2008
mll/hlb

Analysis by: Karen D. Morgan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510