

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1257

(Delegate McComas, *et al.*)

Judiciary

Stalking and Domestic Violence - Cruelty Toward a Pet or Service Animal

This bill authorizes a court, when issuing an interim, temporary, or final protective order, to order relief relating to the pet or service animal of the person eligible for relief or a family member. The bill also expands the crime of stalking to include a malicious course of conduct towards the pet or service animal of another person.

Fiscal Summary

State Effect: The bill's changes could be implemented and enforced with existing resources.

Local Effect: The bill's changes could be implemented and enforced with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: A court may order the respondent to remain away from the pet or service animal of the person eligible for relief or of a family member. The court may also order the respondent to refrain from cruelty or aggravated cruelty towards the pet or service animal. If the respondent has possession of the pet or service animal, the court may order the respondent to give the pet or service animal to the person eligible for relief, a family member, or a suitable third party.

The definition of “stalking” is expanded to include a malicious course of conduct that includes approaching or pursuing another person where the pursuer intends to place or knows or should have known that the conduct would place the pursued person in reasonable fear that a pet or service animal of the person being pursued or a third person likely will suffer cruelty or aggravated cruelty.

A “service animal” means a guide or signal dog or other animal individually trained to do work or perform tasks for an individual with a disability including • guiding individuals with impaired vision; • alerting individuals with impaired hearing; • providing minimal protection or rescue work; • pulling a wheel chair; or • fetching dropped items.

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. 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.

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. The maximum duration of a final protective order is one year.

The following shows the types of orders that may be imposed, depending on whether the order is interim, temporary, or final.

Interim, Temporary, or Final Protective Order May order 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.
- in certain cases, vacate the home immediately and award temporary use and possession of the home to the person eligible for relief.

- remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members.

Interim Protective Order May:

- if child abuse alleged, award temporary custody of minor child of respondent and person eligible for relief.
- if vulnerable adult abuse alleged, award temporary use and possession of home to other adult.
- order respondent to remain away from residence of any family member of person eligible for relief.

Temporary or Final Protective Order May:

- order respondent to remain away from child care provider of person eligible for relief while child is in provider's care.
- award temporary custody of child of person eligible for relief and respondent.

Final Protective Order May:

- establish temporary visitation with child of respondent and person eligible for relief, under certain conditions.
- award emergency family maintenance to any person eligible for relief.
- award temporary use and possession of vehicle jointly owned by respondent and eligible person to eligible person.
- direct respondent or persons eligible for relief to take part in counseling or domestic violence program.
- order respondent to surrender any firearms for duration of final order.
- order respondent to pay filing fees and proceeding costs.

A person who fails to comply with specified relief granted in an interim, temporary, or final protective order is guilty of a misdemeanor. A first offense subjects the violator to maximum penalties of imprisonment for 90 days and/or a \$1,000 fine. A second or subsequent offense subjects the violator to maximum penalties of imprisonment for one year and/or a \$2,500 fine.

“Stalking” means a malicious course of conduct that includes approaching or pursuing another where the pursuer intends to place or knows or reasonably should have known

that the conduct would place another in reasonable fear of serious bodily injury, of assault in any degree, of rape or sexual offense or attempted rape or sexual offense in any degree, of false imprisonment, death, or that a third person is likely to suffer any of these acts.

The stalking provisions do not apply to conduct that is performed to ensure compliance with a court order, conduct to carry out a specific lawful commercial purpose, or is authorized, required, or protected by law. A person who violates the stalking provisions is guilty of a misdemeanor and is subject to maximum penalties of five years imprisonment and/or a \$5,000 fine. A sentence for stalking may be imposed separate from and consecutive to, or concurrent with, a sentence for any other crime based on the underlying conduct.

A “pet” is a domesticated animal and does not include livestock.

A person is prohibited from overdriving or overloading an animal, depriving an animal of necessary sustenance, inflicting unnecessary suffering or pain on an animal, or causing, procuring, or authorizing such an act. If a person has custody or charge of an animal, as an owner or otherwise, that person is prohibited from unnecessarily failing to provide sufficient nutrition, necessary veterinary care, proper drink, air, space, shelter, or protection from the elements. A person who violates this provision is guilty of a misdemeanor and is subject to maximum penalties of 90 days imprisonment and/or a \$1,000 fine. As a condition of sentencing, the court may order a convicted defendant to participate in and pay for psychological counseling.

A person may not intentionally mutilate, torture, cruelly beat, or kill an animal or cause or procure such an act. Except in the case of self-defense, a person may not intentionally inflict bodily harm, permanent disability, or death on an animal owned or used by a law enforcement unit. A person who violates these provisions is guilty of the felony of aggravated cruelty to animals and is subject to maximum penalties of three years imprisonment and/or a \$5,000 fine. As a condition of sentencing, the court may order a person convicted of this crime to participate in and pay for psychological counseling.

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

<u>Jurisdiction</u>	<u>Hearings</u>	<u>Interim Orders Granted</u>	<u>Temporary Orders Granted</u>	<u>Final Orders Granted</u>
Circuit Court	7,299	N/A	2,083	1,380
District Court	52,042	9,429	14,867	7,654

According to the State Police *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 and incidents of malicious destruction of property totaled 152. The number of incidents involving pets is unknown.

According to the Maryland State Bar Association, two states, Maine and Vermont, have enacted legislation that provides protection to pets that may be possessed by a domestic violence victim or a child of the victim. The Maryland State Bar Association's Section on Animal Law has found that domestic violence victims will return to an abuser if the victim believes that an abuser could harm a child or animal in the abuser's custody in an attempt to intimidate the victim.

State and Local Fiscal Effect: The Administrative Office of the Courts advises that forms issued in domestic violence cases would have to be changed to reflect the new type of order proposed in the bill. Legislative Services advises that the Judiciary should be able to implement any required changes with existing resources.

Additional Information

Prior Introductions: Similar bills, SB 965/HB 1376 of 2007, received no action after being heard by the Senate Judicial Proceedings and House Judiciary committees, respectively.

Cross File: SB 615 (Senator Raskin, *et al.*) – Judicial Proceedings.

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

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mll/jr

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