

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1448

(Chair, Judiciary Committee)

(By Request – Departmental – State Police)

Judiciary

Family Law - Final Protective Orders - Surrender of Firearms

This departmental bill requires a final protective order to order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession for the duration of the protective order. Under current law, a final protective order may include this requirement.

Fiscal Summary

State Effect: The provisions of the bill could be implemented and enforced with existing resources.

Local Effect: The provisions of the bill could be implemented and enforced with existing resources.

Small Business Effect: The Department of State Police has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

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.

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. A final protective order may be modified or rescinded during its term after giving notice to all affected persons eligible for relief and the respondent and after holding a hearing. For good cause shown, a judge may extend the term of a protective order for six months beyond the specified period after giving notice to all affected persons eligible for relief and the respondent and after a hearing.

A person who violates specified provisions of a final protective order, including the surrender of firearms is guilty of a misdemeanor and subject to fines and/or imprisonment.

Background: Current federal and State law make it a crime for a respondent to possess a firearm while a protective order is in effect. The Department of State Police advises, however, that a judge has discretion, under Family Law provisions, to order or not order the respondent to surrender all firearms when issuing a protective order. According to the Department of State Police, there have been some cases where the judge ordered the surrender of handguns, but not rifles. In 2007, a respondent under a protective order killed his family with a rifle.

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

<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 *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. In 222 of the aggravated assaults, use of a firearm was a factor, and 26 homicides were attributed to domestic violence incidents.

State and Local Fiscal Effect: The Department of State Police advises that each law enforcement facility has a property room capable of storing firearms, so the bill would not require additional expenditures. Most protective orders are served and enforced by sheriff's offices and local police departments. Firearms would more likely be surrendered to local agencies rather than the Department of State Police. Montgomery County also advises that the bill would not have a fiscal impact on the courts.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - March 17, 2008
mll/hlb

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