

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 302
Judiciary

(The Speaker, *et al.*) (By Request - Administration)

Judicial Proceedings

Family Law - Temporary Protective Orders - Surrender of Firearms

This Administration bill authorizes a court, when issuing a temporary protective order, to order the respondent to surrender to law enforcement any firearm in the respondent's possession and to refrain from possession of any firearm for the duration of the temporary protective order if the abuse consisted of (1) the use of a firearm by the respondent against a person eligible for relief; (2) a threat by the respondent to use a firearm against a person eligible for relief; (3) serious bodily harm to a person eligible for relief caused by the respondent; or (4) a threat by the respondent to cause serious bodily harm to a person eligible for relief.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: The majority of counties can handle the bill's requirements with existing budgeted resources. Potential minimal expenditures for some counties to secure additional storage for firearms.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: When a respondent surrenders firearms pursuant to a temporary or final order, a law enforcement officer must give the respondent information on the process for retaking possession of firearms at the expiration of a temporary or final protective order

and transport and store the firearm in a protective case, if one is available, and in a manner intended to prevent damage to the firearm during the time the protective order is in effect. The respondent may retake possession of the firearm at the expiration of the temporary protective order unless the respondent is ordered to surrender the firearm in a protective order or the respondent is not otherwise entitled to own or possess the firearm. The respondent may retake possession of the firearm at the expiration of any final protective order unless the protective order is extended or the respondent is not otherwise legally entitled to own or possess the firearm.

The bill makes it a misdemeanor, (subject to maximum penalties of a fine not exceeding \$1,000 and/or 90 days imprisonment for a first offense or maximum penalties of a fine not exceeding \$2,500 and/or imprisonment for one year for a second or subsequent offense), for a respondent to fail to comply with a provision of a temporary protective order requiring the respondent to surrender firearms.

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 generally one year.

The following shows the types of relief that may be provided by a temporary protective order.

A temporary order may order a 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;
- remain away from child care provider of person eligible for relief while child is in provider's care; and
- comply with an award of temporary custody of a child of the person eligible for relief and the respondent.

When issuing a final protective order, the court may order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession for the duration of the protective order.

Background: Although in 2007 domestic violence incidents in Maryland dropped nearly 12% compared to the previous calendar year, at the same time, homicides attributed to domestic violence incidents totaled 30, an increase of over 15% compared to the calendar 2006 total of 26 homicides. The majority of these homicide victims were women, and the weapon used in a majority of these homicides was a firearm. Of the 4,261 aggravated assaults that occurred in calendar 2007, 172 involved a firearm.

In the mid-Atlantic region, as across the country, the inclusion of statutory provisions regarding the court-ordered surrender of firearms in domestic violence protective orders varies. Courts in Delaware, New Jersey, and Pennsylvania are authorized to order a respondent to surrender firearms in a temporary domestic violence protective order. In New York, a court is authorized to suspend a respondent's firearms license and order the surrender of firearms if the court finds that there is a substantial risk the respondent may threaten to use or has used a firearm against a person who is the subject of a domestic violence order. If the respondent has a prior conviction for specified violent crimes, the court must suspend any firearms license and order the respondent to surrender any and all firearms owned or possessed. The New York provisions apply to any domestic violence order, whether temporary, *ex parte*, or final. Although the District of Columbia and Virginia do not have statutory provisions specifically authorizing or mandating the surrender of firearms, courts may still require those actions under the broad authority of the courts to order relief not specifically provided for in statute (often referred to as a catch-all provision).

In fiscal 2007 (the latest information available), 1,936 temporary protective orders were granted in the circuit courts and 15,491 were granted in the District Court.

State and Local Fiscal Effect: Most protective orders are served and enforced by sheriff's offices and local police departments. Each law enforcement facility has a property room capable of storing firearms; therefore DLS advises the majority of jurisdictions will be able to meet the bill's requirements with existing budgeted resources. For example, both Baltimore City and the Montgomery County Police Department advise the bill will have no fiscal impact. Allegany County estimates any potential expenditures will be minimal. Caroline County advises it will need to purchase a larger safe at a cost of \$4,000 to store additional firearms.

The Montgomery County Sheriff's Office advises that additional expenditures may be necessary to comply with the bill's requirement to store firearms in a manner intended to prevent damage to the firearm. The sheriff's office further advises that they have sometimes seized over 25 weapons and associated ammunition during the service of one protective order.

The Judiciary advises the bill will not have a fiscal impact on the courts.

Additional Information

Prior Introductions: SB 42 of 2008 passed the Senate as amended, but received an unfavorable report from the House Judiciary Committee. Its cross file, HB 640, had a hearing in the Judiciary Committee but was withdrawn. HB 824 of 2006 had a hearing in the Judiciary Committee but no other action was taken.

Cross File: SB 268 (The President, *et al.*) (By Request - Administration) - Judicial Proceedings.

Information Source(s): Allegany County, Caroline County, Montgomery County, Baltimore City, Judiciary (Administrative Office of the Courts), Department of Human Resources, Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2009
mam/kdm Revised - House Third Reader - March 26, 2009

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Family Law – Temporary Protective Orders – Surrender of Firearms

BILL NUMBER: HB 302

PREPARED BY: Governor's Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.