

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 714

(Senator Forehand)

Judicial Proceedings

Judiciary

Domestic Violence - Protective Orders - Custody of Minor Child

This bill authorizes a commissioner, in an interim protective order, and a judge, in a temporary protective order, to order a law enforcement officer to use all reasonable and necessary force to return a minor child to the custodial parent after service of the interim or temporary order. Enforcement of a temporary custody provision of an interim, temporary, or final protective order must occur after service of the protective order.

Fiscal Summary

State Effect: None. The bill's requirements can be handled with existing budgeted resources.

Local Effect: None. The bill's requirements can be handled with existing budgeted resources.

Small Business Effect: None.

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.

An interim order may:

- order a respondent to refrain from abusing or threatening to abuse any person eligible for relief;
- order a respondent to refrain from contacting, attempting to contact, or harassing any person eligible for relief;
- order a respondent to refrain from entering the residence of any person eligible for relief;
- if a person eligible for relief and the respondent are residing together at the time of the alleged abuse (1) order the respondent to vacate the home immediately; (2) award temporary custody of any child of the person eligible for relief and respondent then residing in the home; and (3) subject to certain conditions, award temporary use and possession of the home to the person eligible for relief;
- in a case alleging child abuse, award temporary custody of a minor child of the respondent and a person eligible for relief;
- order a respondent to remain away from the place of employment, school, or temporary residence of a person eligible for relief or the home of other family members.

A temporary protective order hearing must be held on the first or second day on which a District Court judge is sitting after issuance of the interim protective order, unless the judge continues the hearing for good cause.

If a judge finds at a temporary protective order hearing, whether *ex parte* or otherwise, that there are reasonable grounds to believe a person eligible for relief has been abused, the judge may issue a temporary protective order. In addition to the relief that is available in an interim protective order, a temporary protective order may 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 care of the child care provider. A judge in a temporary protective order may award temporary custody of a minor child of the person eligible for relief and the respondent even if the parties are not living together at the time.

Background: Chapters 395 and 396 of 2008 authorized a judge who awards temporary custody of a minor child in a *final* protective order 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 the final protective order is served or as soon as possible after entry of the order. This bill extends that authority to interim and temporary protective orders that have been served on the respondent.

In 1998, the Office of the Attorney General issued an opinion on 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 2007 (the last information available) with regard to protective orders.

<u>Jurisdiction</u>	<u>Hearings</u>	<u>Interim Protective Orders Granted</u>	<u>Temporary Orders Granted</u>	<u>Final Protective Orders Granted</u>
Circuit Court	7,106	n/a	1,936	1,290
District Court	53,952	10,170	15,491	7,814

According to the State Police Uniform Crime Report issued for calendar 2007, 19,391 domestic violence crimes occurred in Maryland, a 12% decrease compared to the calendar 2006 total of 21,965. Assault was by far the most frequently reported crime, with 17,995 incidents in calendar 2007. Of reported assaults, simple assaults comprised 13,728 incidents. Aggravated assaults totaled 4,261 or 23.7% of the reported domestic violence assaults for the same period. In 2007, 30 homicides were attributed to domestic violence incidents.

Additional Information

Prior Introductions: None.

Cross File: HB 464 (Delegate Dumais) - Judiciary.

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

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