

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 661

(Delegate Barnes)

Judiciary

Judicial Proceedings

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Criminal Procedure - Arrest - Violation of Protective Order

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This bill places language from the Family Law Article into the Criminal Procedure Article that requires a police officer to arrest, with or without a warrant, a person who violates an interim, temporary, or final protective order.

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Fiscal Summary

**State Effect:** None. Law enforcement agencies are required to make warranted or warrantless arrests under these circumstances.

**Local Effect:** None. Local law enforcement officers are required to make warranted or warrantless arrests under these circumstances.

**Small Business Effect:** None.

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Analysis

**Current Law:** An officer is required to arrest, with or without a warrant, and take into custody any person the officer has probable cause to believe is in violation of an interim, temporary, or final protective order in effect at the time of the violation. This requirement extends to protective orders that were issued by a court of another state or Native American tribe if the order is in effect at the time of the violation and (1) the person seeking the assistance of law enforcement has filed a copy of the order with the District Court or circuit court for the jurisdiction in which the person seeks assistance or (2) the person shows the law enforcement officer a copy of the order that appears valid on its face.

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. 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, 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 require the respondent to:

- (1) refrain from abusing or threatening to abuse any person eligible for relief;
- (2) refrain from contacting, attempting to contact, or harassing any person eligible for relief;
- (3) refrain from entering the residence of any person eligible for relief;
- (4) in certain cases, order the respondent to vacate the home immediately and award temporary use and possession of the home to the person eligible for relief;
- (5) remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members;
- (6) remain away from a child care provider of a person eligible for relief while the child 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) provide emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support;
- (10) provide 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) participate in professionally supervised counseling or a domestic violence program, such order may also apply to any or all of the persons eligible for relief; or
- (12) pay filing fees and costs of the proceeding.

The final protective order must require the respondent to surrender to law enforcement authorities any firearm in the respondent's possession and to refrain from possession of any firearm, for the duration of the protective order.

All relief granted in a final protective order is effective for the period stated in the order, generally up to a maximum of 12 months. A final protective order may be issued for up to two years if it is issued against a respondent for an act of abuse committed within one year after the date that a prior final protective order issued against the same respondent on behalf of the same person eligible for relief expired, if the prior final protective order was issued for a period of at least six months. In limited circumstances specified by statute, the court may issue a permanent protective order that requires the respondent to refrain from abusing or threatening to abuse the person eligible for relief or refrain from contacting, attempting to contact, or harassing the person eligible for relief.

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 protective order is guilty of a misdemeanor and subject to maximum penalties of a \$1,000 fine and/or 90 days imprisonment for a first offense and a \$2,500 fine and/or one year imprisonment for a second or subsequent offense.

**Background:** According to the State Police Uniform Crime Report issued for calendar 2008, 18,926 domestic violence crimes occurred in Maryland, a 2.4 % decrease compared to the calendar 2007 total of 19,391. Assault was by far the most frequently reported crime, with 17,634 incidents in calendar 2008. Of reported assaults, simple assaults comprised 13,484 incidents. Aggravated assaults totaled 4,144 or 24% of the reported domestic violence assaults for the same period. In 2008, 28 homicides were attributed to domestic violence incidents.

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### **Additional Information**

**Prior Introductions:** SB 677 of 2009, a similar bill, received a hearing in the Senate Judicial Proceedings Committee but no further action was taken. Its cross file, HB 912, received a hearing in the House Judiciary Committee but no further action was taken.

**Cross File:** None.

**Information Source(s):** Garrett, Howard, and Montgomery counties; Department of State Police; Department of Legislative Services

**Fiscal Note History:** First Reader - February 16, 2010  
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