

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 662
Judiciary

(Delegate Barnes)

Peace Orders and Protective Orders - Violations - Expedited Trial

This bill requires a court that has jurisdiction over a defendant charged with a violation of a peace order or protective order to schedule the trial to occur within 30 days after the defendant is charged.

Fiscal Summary

State Effect: The Office of the Public Defender (OPD) and the District Court can handle the bill's requirements using existing resources.

Local Effect: Circuit courts and State's Attorneys can handle the bill's requirements using existing resources.

Small Business Effect: None.

Analysis

Current Law: Only a "person eligible for relief" may file a petition for a protective order under the Family Law Article. A person eligible for relief includes:

- a current or former spouse of the respondent;
- a cohabitant of the respondent;
- a person related to the respondent by blood, marriage, or adoption;
- a parent, stepparent, child, or stepchild of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within one year before the filing of the petition;

- a vulnerable adult; or
- an individual who has a child in common with the respondent.

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 an interim, temporary, or final 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.

An individual who does not meet the requirements of a “person eligible for relief” under protective order statutes may file a petition for a peace order with the District Court or the District Court commissioner that alleges the commission of specified acts against the petitioner by the respondent, if the act occurred within 30 days before the filing of the petition.

If after a hearing on a petition, a judge finds that there are reasonable grounds to believe that the respondent has committed, and is likely to commit in the future, one of the specified acts against the petitioner, the judge may issue a temporary peace order to protect the petitioner. The order must contain only the relief that is minimally necessary to protect the petitioner. A temporary peace order can order respondent to (1) refrain from certain behavior and conduct; (2) refrain from contacting, attempting to contact, harassing, or approaching the petitioner; or (3) stay away from specific locations. Temporary peace orders are effective for not more than 7 days after service of the order, but may be extended for up to 30 days. The temporary peace order must state the date and time of the final peace order hearing.

After a final peace order hearing, if a judge finds by clear and convincing evidence that the respondent has committed, and is likely to commit in the future, one of the previously mentioned acts against the petitioner, or if the respondent consents to the entry of a peace order, the court may issue a final peace order to protect the petitioner. The order must contain only the relief that is minimally necessary to protect the petitioner. Final peace orders can direct the respondent or petitioner to participate in counseling or mediation, as well as the forms of relief available under a temporary peace order. Relief granted in a final peace order is effective for the period stated in the order, but may not exceed six months.

An individual who fails to comply with specified provisions of an interim, temporary, or final peace 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. Although the District Court hears most misdemeanor cases, the jurisdiction of the District Court is concurrent with that of the circuit court for cases in which a penalty includes a fine of \$2,500 or more.

Background: Information regarding the number of cases involving the violation of an interim, temporary, or final protective or peace order is not readily available. The

following table illustrates the total number of interim, temporary, and final peace and protective orders issued in fiscal 2009.

<u>Interim Peace Orders</u>	<u>Temporary Peace Orders</u>	<u>Final Peace Orders</u>	<u>Interim Protective Orders</u>	<u>Temporary Protective Orders</u>	<u>Final Protective Orders</u>
5,890	15,489	7,195	10,745	18,525	10,848

State and Local Fiscal Effect: Although the bill's provisions will not increase the number of hearings that are required, they do impose a new scheduling mandate. Accordingly, daily dockets in the District Court (which hears the majority of these cases) will have to be expanded as necessary to accommodate the scheduling of these particular cases within 30 days. Any operational impact associated with this requirement can be handled with existing resources.

OPD advises that it has enough time to open files and prepare cases within 30 days. The State's Attorneys' Association also advised that there is no fiscal impact as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

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Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510