

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 823
Judicial Proceedings

(Senator Forehand)

Family Law - Protective Orders - Burden of Proof

This bill alters the standard of proof for issuing a final protective order from clear and convincing evidence to a preponderance of the evidence. If a judge finds by a preponderance of the evidence that the alleged abuse has occurred, the judge may grant a final protective order for relief from abuse to any eligible person.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Current Law: The respondent named in a temporary protective order must have the opportunity for a hearing on whether a judge should issue a final protective order. A final protective order hearing must be held no later than seven days after the temporary protective order is served on the respondent.

If the respondent appears before the court at a protective order hearing, or has been served with an interim or temporary protective order, or the court has personal jurisdiction over the respondent, the judge may proceed with the final protective order hearing. If the judge finds by clear and convincing evidence that the alleged abuse has occurred or if the respondent consents to the entry of a protective order, the judge may issue a final protective order for relief from abuse to the petitioner. In cases where both

parties file petitions for relief from abuse, the judge may issue mutual protective orders if the judge finds by clear and convincing evidence that abuse has occurred. However, the judge may issue the mutual protective orders only after a detailed finding of fact that both parties acted primarily as aggressors and neither party acted primarily in self-defense.

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.

Background: The evidentiary standard known as “preponderance of the evidence” has been described as requiring evidence sufficient to establish that a fact is “more likely true than not true,” “more probable than not,” or that amounts to at least 51% of the evidence. “Preponderance of the evidence” is the standard applicable in most civil cases. “Clear and convincing evidence” is more than a preponderance of the evidence and less than would be required for the standard “beyond a reasonable doubt.”

Exhibit 1 shows the burden of proof allocated to a petitioner for a domestic violence order of protection (DVOP) in the mid-Atlantic region.

Exhibit 1
Burden of Proof for DVOP

<u>State/Jurisdiction</u>	<u>Preponderance of Evidence Standard for DVOP Issuance</u>	<u>Clear and Convincing Evidence for DVOP Issuance</u>	<u>Other Burden</u>
Delaware	X		
District of Columbia			X (for good cause shown)
Maryland		X	
New Jersey	X		
New York	X		
Pennsylvania	X		
Virginia	X		

Source: *District of Columbia Official Code; Delaware Code Annotated; Maryland Code Annotated; New Jersey Permanent Statutes; McKinney's Consolidated Laws of New York; Purdon's Pennsylvania Statutes and Consolidated Statutes; Annotated Code of Virginia*

As seen in the exhibit, most states in the mid-Atlantic region impose the burden of proof of preponderance of the evidence for the issuance of a domestic violence order. The only other jurisdiction with a standard that differs from preponderance of the evidence is the District of Columbia, where judges may issue a final protective order for good cause shown. This standard accords a great deal of discretion to the court when deciding on a DVOP. It could be argued that this standard may require even less of a burden than the preponderance standard since the petitioner could meet the burden by merely offering a good reason for the DVOP issuance. The good cause standard does not, in and of itself, require the court to weigh or compare any proffered evidence from the respondent. However, a court could certainly engage in that kind of comparison under this standard. Even if that kind of comparison took place, it would still not require the level of persuasive evidence needed to meet Maryland's clear and convincing evidence standard.

According to the Administrative Office of Courts, in fiscal 2009 the circuit courts conducted 3,862 final protective order hearings and granted 1,758 final protective orders. In fiscal 2009 the District Court conducted 15,821 final protective order hearings and granted 9,090 final protective orders.

State and Local Fiscal Effect: The alteration of the evidentiary standard for final protective orders from "clear and convincing evidence" to "preponderance of the evidence" could lead to the issuance of additional protective orders. It is also possible

that the bill could lead to shorter hearings on protective orders, since not as much evidence would be required to justify issuance of a final protective order. It is expected, however, that the Judiciary can meet the bill's requirements with existing resources.

Additional Information

Prior Introductions: HB 415 of 2007 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 505, received an unfavorable report from the Senate Judicial Proceedings Committee. SB 86 of 2006 passed the Senate and was heard in Judiciary, but received no further action. SB 260 of 2005 received a favorable with amendments report by Judicial Proceedings, but was then recommitted. Its cross file, HB 326, received an unfavorable report from Judiciary.

Cross File: HB 700 (Delegate Hecht, *et al.*) - Judiciary.

Information Source(s): Department of Human Resources, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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ncs/kdm

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