

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 534
Judiciary

(Delegate Waldstreicher, *et al.*)

Judicial Proceedings

Domestic Violence - Protective Order - Extension

This bill authorizes a judge to extend the terms of a final protective order for up to two years if, during the term of a protective order, a judge finds by clear and convincing evidence that the respondent named in the protective order has committed a subsequent act of abuse against a person eligible for relief who was named in the protective order. Prior to extending a final protective order, the court must give notice to the respondent and all affected persons eligible for relief and hold a hearing. In determining the period of extension, the judge must consider the following factors: (1) the nature and severity of the subsequent act of abuse; (2) the history and severity of abuse in the relationship between the respondent and any person eligible for relief named in the protective order; (3) any pending criminal charges against the respondent and the type of charges; and (4) the nature and extent of the injury or risk of injury caused by the respondent.

Fiscal Summary

State Effect: None. The bill does not substantively change State activities or operations.

Local Effect: None. The bill does not substantively change local activities or operations.

Small Business Effect: None.

Analysis

Current Law: 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 final protective order, including the surrender of firearms, 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.

State and Local Fiscal Effect: The District Court and the circuit courts granted 10,848 final protective orders in fiscal 2009. Specific information regarding the number of final protective orders that were extended in fiscal 2009 is not readily available. However, because a court already has the option of extending a final protective order and can only do so after giving notice and holding a hearing, the bill's provisions to allow for a longer period of extension will not substantively alter operations or activities of the Judiciary or the circuit courts. Because the authorization to extend a final protective order already requires a showing of good cause, the specification of factors that a court must consider before granting an extension is also not expected to substantively alter the existing practices of the Judiciary or the circuit courts.

Additional Information

Prior Introductions: None.

Cross File: SB 867 (Senator Muse, *et al.*) - Rules.

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

Fiscal Note History: First Reader - February 16, 2010
mlm/kdm Revised - House Third Reader - March 26, 2010

Analysis by: Jennifer K. Botts

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