

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 48 (Delegate Smigiel)
Judiciary

Domestic Violence - Requirement to Advise Respondent of Consequences of Final Protective Order

This bill requires that, before a respondent can consent to waive a temporary protective order hearing or consent to the entry of a final protective order, a judge must advise the respondent of certain consequences resulting from the issuance of a final protective order. The bill also specifies that at any time before a final protective order is entered, the respondent may withdraw consent and the court must proceed with a final protective order hearing.

Fiscal Summary

State Effect: The Judiciary can handle the bill's requirements with existing budgeted resources.

Local Effect: The circuit courts can handle the bill's requirements with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: Before the respondent may consent to waive a temporary protective order hearing or consent to the entry of a final protective order, the judge must advise the respondent in open court and on the record:

(1) of all of the possible forms of relief specified in statute that a final protective order may contain and the maximum duration of a final protective order;

- (2) that a final protective order must order the respondent to surrender any firearm in the respondent's possession to law enforcement authorities, and to refrain from possession of any firearm, for the duration of the protective order;
- (3) that a violation of a final protective order may result in criminal prosecution, resulting in imprisonment and/or a fine;
- (4) that a final protective order violation may result in a finding of contempt;
- (5) that a final protective order may be admissible evidence in a criminal prosecution;
- (6) that a final protective order may be admissible in an action involving divorce, child support, or child custody or visitation;
- (7) that a final protective order cannot be expunged as it is a permanent public record of the circuit court;
- (8) that the court may consider any prior protective order issued against the respondent in any subsequent protective order proceeding involving the same petitioner and respondent;
- (9) that the respondent may be requested to divulge whether a final protective order has been issued against the respondent when applying for employment, a professional license, a government position, or admission to an academic institution;
- (10) that the current employer of the respondent has access to the public record of a final protective order issued against the respondent;
- (11) that if entered into by consent, there is no right to appeal a final protective order;
- (12) that if the respondent is not a citizen of the United States, the respondent may be deported, detained, or determined to be ineligible for citizenship as a result of a final protective order issued against the respondent; and
- (13) of any other consequences resulting from the issuance of a final protective order that the court considers appropriate.

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. 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 order 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 order 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.

Background: According to the Judiciary, approximately 55% of the final protective orders in the Domestic Violence Central Repository were issued as consent orders. Information is not readily available as to the number of temporary protective order

hearings which were waived (after an interim protective order was served), in order to proceed with a final protective order hearing.

State and Local Fiscal Effect: The District Court and the circuit courts granted over 18,000 temporary protective orders in fiscal 2009. Although advising a respondent of the consequences of a final protective order may slightly increase the amount of time spent during final protective order hearings and during temporary protective order hearings at which the respondent is present and elects to proceed directly to a final protective order hearing, the bill's requirements can be met without any fiscal or significant operational impact. Any increase in the number of contested final protective order hearings or any decrease in the number of respondents who elect to waive a temporary protective order hearing is likewise not expected to significantly impact the District Court or circuit courts.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - January 19, 2010
mpc/kdm

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