

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 1331 (Delegate Waldstreicher)  
Rules and Executive Nominations

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Peace Orders - Surrender of Firearms

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This bill requires a final peace order to order a respondent to surrender any firearm in the respondent's possession and to refrain from possessing any firearm for the duration of the final peace order if the act that is the basis of the final peace order consisted of (1) the use of a firearm by the respondent against the petitioner; (2) a threat by the respondent to use a firearm against the petitioner; (3) serious bodily harm to the petitioner caused by the respondent; or (4) a threat by the respondent to cause serious bodily harm to the petitioner. A temporary peace order may include the same order of relief under the same circumstances. The bill would make the surrender of firearms pursuant to a temporary or final peace order similar to the provisions pertaining to a temporary or final protective order.

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Fiscal Summary

**State Effect:** The bill's requirements can be handled with existing budgeted resources.

**Local Effect:** Potential increase in local expenditures for investigatory workloads and storage equipment depending on jurisdictional resources and the number of firearms surrendered as a result of the bill.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** A law enforcement officer must provide information to the respondent on the process for retaking the firearm. In addition, the officer must transport and store the firearm in a protective case, if one is available, and in a manner intended to prevent

damage to the firearm during the time the protective order is in effect. The respondent is authorized to retake possession of the firearm at the expiration of the temporary peace order unless the respondent is ordered to surrender the firearm in a final peace order or the respondent is not otherwise legally entitled to own or possess the firearm. The respondent may retake possession of the firearm after the expiration of a final peace order unless the respondent is not otherwise legally entitled to own or possess a firearm.

A respondent may transport a firearm if the respondent is carrying a peace order requiring the surrender of the firearm and (1) the firearm is unloaded; (2) the respondent has notified the law enforcement unit, barracks, or station that the firearm is being transported in accordance with the peace order; and (3) the respondent transports the firearm directly to the law enforcement unit, barracks, or station.

**Current Law:** An individual who does not meet the requirements of a “person eligible for relief” under protective order statutes in the Family Law Article may file a petition for a peace order with the District Court or, if the clerk’s office is closed, a 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. The specified acts are: (1) an act that causes serious bodily harm; (2) an act that places the petitioner in fear of imminent serious bodily harm; (3) assault in any degree; (4) rape or sexual offense or attempted rape or sexual offense in any degree; (5) false imprisonment; (6) harassment; (7) stalking; (8) trespass; or (9) malicious destruction of property.

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 may order a respondent to (1) refrain from committing or threatening to commit specified acts; (2) refrain from contacting, attempting to contact, or harassing 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 may 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.

**Background:** Information is not readily available about the incidence of crimes related to the issuance of peace orders, however, enforcement of domestic violence protective orders is a relevant indicator of the issues with enforcement of peace orders. In 2009, there were 18,556 domestic violence crimes reported in the State, including 20 homicides. Of the 4,317 aggravated assaults that occurred in calendar 2009, 183 involved a firearm.

Federal law prohibits anyone who is subject to a domestic violence order of protection or who has been convicted of a misdemeanor crime of domestic violence from possessing, in any way affecting commerce, or from receiving, any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. The federal law does not apply to orders issued *ex parte* (which means the prohibition does not apply to those emergency, interim, or temporary orders that are issued without hearing from the respondent). The federal prohibition also only applies to orders that (1) specifically prohibit the respondent from harassing, stalking, or threatening an intimate partner or a child of the partner or respondent and (2) include a finding that the respondent represents a credible threat to the physical safety of the partner or child or specifically prohibit the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury. (*See* 18 U.S.C. § 922(g).)

In the mid-Atlantic region, as across the country, the inclusion of statutory provisions regarding the court-ordered surrender of firearms in final domestic violence protective orders varies. Courts in Delaware, the District of Columbia, and Pennsylvania are authorized to order a respondent to surrender firearms. In New York, a court is authorized to suspend a respondent's firearms license and order the surrender of firearms if the court finds that there is a substantial risk the respondent may threaten to use or has used a firearm against a person who is subject to a domestic violence order. If the respondent has a prior conviction for specified violent crimes, the court must suspend any firearms license and order the respondent to surrender any and all firearms owned or possessed.

The following table shows judicial activity in fiscal 2009 with regard to peace orders.

<u>Cases Filed</u>	<u>Interim Peace Orders Granted</u>	<u>Temporary Peace Orders Granted</u>	<u>Final Peace Orders Granted</u>
18,280	5,890	15,489	7,195

**State and Local Fiscal Effect:** Most peace orders are served and enforced by sheriff's offices and local police departments. Firearms are more likely to be surrendered to local law enforcement rather than the Department of State Police. Each law enforcement facility has a property room capable of storing firearms. The impact of the bill will vary by jurisdiction, depending on the number of firearms surrendered, staffing levels, and storage space constraints.

The City of Havre de Grace does not anticipate an impact on operations or finances as a result of the bill unless a large volume of firearms need to be stored in excess of current available space. The City of Frederick anticipates additional strains on records specialists, police investigations, and storage locker space.

Frederick County advises that based on its experience with the surrendering of firearms for final protective orders, the bill will have a significant impact on operating expenditures. The county indicates that the protective order legislation enacted in 2009 created additional work for a data entry specialist and deputy sheriff, who now work over their normal hours. Due to the current economic climate, the county did not hire additional staff to absorb the additional workload. In addition, Frederick County advises that its evidence room for firearms is at capacity, and the additional firearms that would be surrendered as a result of this bill would need to be stored in a newly converted room.

Montgomery County advises that its sheriff's office received 1,799 temporary and 1,077 permanent peace orders in fiscal 2010. According to the county, the cumulative process of receiving, recording, storing, and releasing firearms involves an estimated five hours per case. Thus, 200 peace order cases involving weapons would take approximately 1,000 work hours or one-half of a work year. The county estimates that one deputy work year costs approximately \$40,000 plus \$20,000 in leave, training, and fringe benefits. Therefore, one-half of a work year would cost the Montgomery County's Sheriff's Office approximately \$30,000. An estimated cost for storing the weapons would be \$2,000 per year for a total estimate cost of \$32,000 per year. It is unclear at this time if the county would hire additional personnel to accommodate peace order weapons or if the county would reallocate existing personnel and resources.

The Judiciary advises that the fiscal and operational impact of the bill is likely minimal since it mirrors what is already done for protective orders.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 650 (Senator Ramirez, *et al.*) - Judicial Proceedings.

**Information Source(s):** Frederick and Montgomery counties, Cities of Frederick and Havre de Grace, Commission on Criminal Sentencing Policy, Governor's Office of Crime Control and Prevention, Judiciary (Administrative Office of the Courts), Department of State Police, State's Attorneys' Association, Department of Legislative Services

**Fiscal Note History:** First Reader - March 18, 2011  
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