

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 872  
Judiciary

(Delegates Simmons and Kramer)

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Family Law - Final Protective Order - Global Positioning Satellite Tracking

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This bill expands the relief available in a final protective order by authorizing a judge to order a respondent to be monitored through global positioning satellite (GPS) tracking or similar technology if the judge finds by clear and convincing evidence that the respondent presents a risk of abuse to any person eligible for relief.

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Fiscal Summary

**State Effect:** Significant increase in general fund expenditures to implement and maintain the GPS tracking for respondents. Assuming 5% of final protective orders contain a GPS monitoring requirement, State expenditures may increase by approximately \$1.0 million annually. The State will incur additional personnel and operating expenses to implement a GPS monitoring unit, which could total approximately \$600,000 annually. Revenues are not affected.

**Local Effect:** Potential significant increase in local expenditures for enforcement of monitoring requirements. If circuit courts are required to implement and administer the GPS tracking of residents, local expenditures will increase by a significant amount as discussed above.

**Small Business Effect:** Potential meaningful to the extent that additional vendors are asked to provide GPS monitoring units and associated services.

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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, 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) relinquish 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. A final protective order may also be extended to two years if, under specified circumstances, the court finds by clear and convincing evidence that the respondent named in the protective order committed a subsequent act of abuse against a person eligible for relief who was named in the protective order. 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 information compiled by the Department of Legislative Services (DLS) in 2009, the following states authorized electronic monitoring in domestic violence cases either when a protective order is issued, as a condition of pretrial release, in lieu of incarceration, or on release: Hawaii, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Oklahoma, Utah, and Washington. The following states include an additional requirement that the electronic monitoring system alert the victim of any breach of proximity limitations: Illinois, Louisiana, Massachusetts, and Michigan. Three states (Colorado, Florida, and New Hampshire) allow for the use of electronic monitoring in general and not specifically in association with domestic violence cases. Alaska specifically prohibits electronic monitoring in lieu of incarceration for a crime involving domestic abuse.

According to the State Police Uniform Crime Report issued for calendar 2009, 18,556 domestic violence crimes occurred in Maryland, a 1.9% decrease compared to the calendar 2008 total of 18,926. Assault was by far the most frequently reported crime, with 17,343 incidents in calendar 2009. Of reported assaults, simple assaults comprised 13,022 incidents. Aggravated assaults totaled 4,317 or 23.3% of the reported domestic violence assaults for the same period. In 2009, 20 homicides were attributed to domestic violence incidents.

In fiscal 2009, the circuit courts held 4,122 protective order hearings and granted 1,758 final protective orders. The District Court held 25,054 protective order hearings and granted 9,090 final protective orders.

**State and Local Fiscal Effect:** Significant increase in general fund expenditures to pay for the cost of GPS monitoring, depending on how a court order is implemented. GPS monitoring systems use data obtained from multiple satellites to determine the location of an object or person at any given time. The Division of Parole and Probation (DPP) currently monitors approximately 220 offenders through “passive” GPS monitoring. According to DPP, passive GPS monitoring, which indicates where an individual has been, costs about \$6 per offender per day (\$2,200 per year); whereas, active/constant monitoring, which provide “real time” tracking, costs about \$9 per offender per day (\$3,300 per year). These costs do not reflect expenses relating to additional personnel that would be required to actively monitor and track respondents.

*For illustrative purposes only*, assuming 5% of final protective orders contain a GPS monitoring requirement, State expenditures may increase by approximately \$1.0 million annually. This estimate is based on 450 respondents being monitored through a “passive” GPS monitoring system. In addition, the State will incur additional personnel and ongoing operating cost to implement a GPS monitoring unit. Under HB 331 of 2010, a similar bill considered by the General Assembly, the Maryland State Police indicated that a five-member unit comprised of four troopers and one supervisor would be needed to coordinate and implement a GPS monitoring system. The five-member unit would cost approximately \$600,000 annually.

The additional costs could accrue to the District Court, the Department of State Police, and/or the Division of Parole and Probation within the Department of Public Safety and Correctional Services. If the costs accrue to the circuit courts, local government finances would be significantly affected.

The bill is silent on who pays for GPS tracking. The bill is also silent on how a court order would be implemented – that is whether the Department of State Police, local law enforcement, or the Division of Parole and Probation would be responsible for

monitoring those respondents who are subject to GPS tracking ensuring that they acquire units in a timely manner and that they are working correctly.

The Administrative Office of the Courts advises that, under the provisions of this bill, the respondent would be required to pay the costs of monitoring. Legislative Services advises that there is no specific provision in the bill that requires respondents to pay for the cost of GPS tracking. Nor is there a specific provision that requires the State or local governments to pay for monitoring.

Also, even if a case could be made that the respondent is required to pay the cost for GPS implementation and monitoring, a government agency would still be required to undertake the cost of GPS tracking for those respondents who cannot afford the cost of GPS tracking or who are indigent and would otherwise qualify for waivers from fees the court might assess. To the extent that the court orders GPS tracking for respondents who cannot afford to pay for implementation of the order, general fund and local government expenditures could increase potentially significantly.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Cecil, Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Public Safety and Correctional Services; Department of Legislative Services

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