

**Department of Legislative Services**  
2011 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 407

(Delegate McComas, *et al.*)

Judiciary

Judicial Proceedings

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**Domestic Violence - Additional Relief - Award of Temporary Possession of Pet**

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This bill authorizes a District Court Commissioner, when issuing an interim protective order, or a court, when issuing a temporary or final protective order, to award temporary possession of any pet of a person eligible for relief or a respondent.

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**Fiscal Summary**

**State Effect:** The bill's changes can be implemented and enforced with existing resources.

**Local Effect:** The bill's changes can be implemented and enforced with existing resources.

**Small Business Effect:** None.

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**Analysis**

**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. 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. The maximum duration of a final protective order is generally one year. 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.

The following shows the types of orders that may be imposed, depending on whether the order is interim, temporary, or final.

*Interim, Temporary, or Final Protective Order* may order respondent to:

- refrain from abusing or threatening to abuse any person eligible for relief;
- refrain from contacting, attempting to contact, or harassing any person eligible for relief;
- refrain from entering the residence of any person eligible for relief;
- vacate the home immediately and, in certain cases, award temporary use and possession of the home to the person eligible for relief; or
- remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members.

*Interim Protective Order* may:

- if child abuse is alleged, award temporary custody of minor child of respondent and person eligible for relief;
- if a person eligible for relief and the respondent are residing together at the time of the alleged abuse, award temporary custody of any child of the person eligible for relief and respondent then residing in the home; or
- if vulnerable adult abuse is alleged, award temporary use and possession of home to other adult.

*Temporary or Final Protective Order* may:

- order respondent to remain away from child care provider of person eligible for relief while child is in provider's care;
- award temporary custody of a child of the person eligible for relief and the respondent.

In addition, a temporary order may order respondent to surrender any firearms for the duration of the order and refrain from possessing any firearm under specified circumstances.

*Final Protective Order* may:

- establish temporary visitation with child of respondent and person eligible for relief, under certain conditions;
- award emergency family maintenance to any person eligible for relief;
- award temporary use and possession of vehicle jointly owned by respondent and eligible person to eligible person;
- direct respondent or persons eligible for relief to take part in counseling or domestic violence program;
- order respondent to surrender any firearms for duration of final order; or
- order respondent to pay filing fees and proceeding costs.

In addition, a final protective order *must* order respondent to surrender any firearm and to refrain from possession of any firearm for the duration of the order.

A person who fails to comply with specified relief granted in an interim, temporary, or final protective order is guilty of a misdemeanor. A first offense subjects the violator to maximum penalties of imprisonment for 90 days and/or a \$1,000 fine. A second or subsequent offense subjects the violator to maximum penalties of imprisonment for one year and/or a \$2,500 fine.

A person is prohibited from overdriving or overloading an animal, depriving an animal of necessary sustenance; inflicting unnecessary suffering or pain on an animal; or causing, procuring, or authorizing such an act. If a person has custody or charge of an animal, as an owner or otherwise, that person is prohibited from unnecessarily failing to provide sufficient nutrition; necessary veterinary care; proper drink, air, space, shelter, or protection from the elements. A person who violates this provision is guilty of a misdemeanor and is subject to maximum penalties of 90 days imprisonment and/or a \$1,000 fine. As a

condition of sentencing, the court may order a convicted defendant to participate in and pay for psychological counseling.

A person may not intentionally mutilate, torture, cruelly beat, or kill an animal or cause or procure such an act. Except in the case of self-defense, a person may not intentionally inflict bodily harm, permanent disability, or death on an animal owned or used by a law enforcement unit. A person who violates these provisions is guilty of the felony of aggravated cruelty to animals and is subject to maximum penalties of three years imprisonment and/or a \$5,000 fine. As a condition of sentencing, the court may order a person convicted of this crime to participate in and pay for psychological counseling.

**Background:** The following table shows judicial activity in fiscal 2009 with regard to protective orders (the latest available).

<u>Jurisdiction</u>	<u>Hearings</u>	<u>Interim Orders Granted</u>	<u>Temporary Orders Granted</u>	<u>Final Orders Granted</u>
Circuit Court	4,122	N/A	2,483	1,758
District Court	25,054	10,745	16,042	9,090

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. The number of offenses against family and children totaled 514 and incidents of malicious destruction of property totaled 118. The number of incidents involving pets is unknown.

More than 71 million households in the United States include a pet. According to the Animal Legal and Historical Center, 17 states (Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Maine, Minnesota, Nevada, New York, North Carolina, Oklahoma, Tennessee, Vermont, Washington, and West Virginia) and the District of Columbia have enacted legislation that provides protection to pets that may be possessed by a domestic violence victim or a child of the victim. According to the American Humane Association, up to 71% of battered women report that their pet was threatened, harmed, or killed by their partners and 25% to 40% of women delay leaving a dangerous domestic situation due to fear that their partners will harm or kill the family pet. Many domestic violence shelters, including some in Maryland, now offer “safe havens” for pets of domestic violence victims.

**State and Local Fiscal Effect:** The Administrative Office of the Courts advises that forms issued in domestic violence cases require revision to reflect the new relief proposed in the bill. Legislative Services advises that the Judiciary can implement any required changes with existing resources.

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### **Additional Information**

**Prior Introductions:** SB 736 of 2009 passed the Senate and was heard by the House Judiciary Committee but received no further action. Its cross file, HB 901 of 2009, was heard in the House Judiciary Committee but received no further action. SB 615 of 2008 passed the Senate as amended and received a hearing in the House Judiciary Committee but no further action was taken. Its cross file, HB 1257, received a hearing in the House Judiciary Committee, but no further action was taken. SB 965 and HB 1376 of 2007 received no action after being heard by the Senate Judicial Proceedings and House Judiciary committees, respectively.

**Cross File:** SB 747 (Senator Stone) - Judicial Proceedings.

**Information Source(s):** Baltimore City, Montgomery County, Judiciary (Administrative Office of the Courts), Department of State Police, American Humane Association, Animal Legal and Historical Center, *Wikipedia*, Department of Legislative Services

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