

**Department of Legislative Services**  
 Maryland General Assembly  
 2011 Session

**FISCAL AND POLICY NOTE**

Senate Bill 587 (Senator Ramirez)  
 Judicial Proceedings

**Protective Order Violations - Mandatory Mental Health Evaluation**

This bill requires a court to order a person charged with a violation of an interim protective order, a temporary protective order, or a final protective order to undergo a mental health evaluation.

**Fiscal Summary**

**State Effect:** General fund expenditures in the Department of Health and Mental Hygiene (DHMH) increase by \$1.1 million in FY 2012 for the cost of mental health evaluation contracts and additional staff to manage the contracts. Out-years include annualization and inflation. Minimal increase in general fund expenditures for the Judiciary for management of mental health records. No effect on revenues.

(\$ in millions)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1.1	1.5	1.5	1.6	1.6
Net Effect	(\$1.1)	(\$1.5)	(\$1.5)	(\$1.6)	(\$1.6)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**Small Business Effect:** Potential meaningful as additional mental health professionals will be needed to provide evaluations.

**Analysis**

**Current Law:** A person who fails to comply with the relief granted in an interim, temporary, or final protective order is guilty of a misdemeanor and subject to maximum

penalties of 90 days imprisonment and/or a \$1,000 fine for a first offense and one year imprisonment and/or a \$2,500 fine for a second or subsequent offense. An officer must arrest with or without a warrant and take into custody a person who the officer has probable cause to believe has violated an interim, temporary or final protective order in effect at the time of the violation.

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.

**Background:** According to DHMH, the Administrative Office of the Courts has reported that in fiscal 2009, almost 4,400 individuals violated *ex parte*/protection orders.

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.

**State Expenditures:** General fund expenditures in DHMH increase by \$1.1 million in fiscal 2012, accounting for the bill’s October 1, 2011 effective date, for the cost of contracting with providers for court-ordered evaluations on behalf of DHMH and two additional staff members, one social work manager and one administrative manager. The social work manager is required to monitor the evaluations and fulfillment of contracts with the evaluators. An administrative staff person is also needed to process contracts and perform other administrative duties.

The bill is silent on whether the respondent purchases his or her own evaluation, or it is the responsibility of DHMH to provide the evaluations. Depending on the mental health professional who evaluates a client, evaluation costs range from \$300 to \$995 per evaluation. DHMH advises that the Mental Hygiene Administration oversees about 1,700 community evaluations. The administration contracts with evaluators through the Harford County Core Service Agency. This agency receives a fee for administration of the community evaluator program. The Administrative Office of the Courts advises that about 4,400 people violate protective orders annually.

The increase in State expenditures is based on the following assumptions:

- DHMH would contract for and complete all mental health evaluations ordered by courts under the bill;
- approximately 4,400 people will violate protective orders annually;
- no changes in caseload or the contractual fee assessment;
- a licensed clinical social worker performs the required evaluation; and
- DHMH pays \$300 for each evaluation.

Position(s)	2
Salaries and Fringe Benefits	\$135,483
Contractual Mental Health Evaluations	990,000
Operating Expenses	<u>9,210</u>
<b>Total FY 2012 State Expenditures</b>	<b>\$1,134,693</b>

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses.

Actual costs could vary significantly if a respondent is authorized to contract for a private mental health evaluation or if a provider more specialized than a licensed clinical social worker is required to perform some or all evaluations.

Minimal increase in general fund expenditures for the Judiciary for records management due to the confidentiality of mental health records.

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Legislative Services

**Fiscal Note History:** First Reader - February 27, 2011  
ncs/kdm

Analysis by: Karen D. Morgan

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