

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 359

(Senator Shank, *et al.*)

Judicial Proceedings

Domestic Violence - Persons Eligible for Relief and Orders to Vacate Home

This bill extends the eligibility to petition for a domestic violence protective order to individuals in specified relationships by altering the definition of a “person eligible for relief.” The bill also alters the circumstances in which the court in a final protective order may order a respondent to vacate and award temporary use and possession of a home to a nonspouse person eligible for relief by authorizing a court to do so if neither the person eligible for relief nor the respondent has lived in the joint residence for at least 90 days.

Fiscal Summary

State Effect: The bill’s changes can be implemented and enforced using existing resources.

Local Effect: The bill’s changes can be implemented and enforced using existing resources.

Small Business Effect: None.

Analysis

Bill Summary: This bill alters the definition of “a person eligible for relief” under provisions of law relating to domestic violence protective orders to include:

- an individual involved in an intimate dating relationship with the respondent that is characterized by the expectation of affectionate involvement, whether or not the relationship is casual, serious, or long-term; and

- an individual who has had a consensual or nonconsensual sexual relationship with the respondent.

Current Law: Only a “person eligible for relief” may file a petition for a protective order under the Family Law Article. A person eligible for relief includes:

- a current or former spouse of the respondent;
- a cohabitant of the respondent;
- a person related to the respondent by blood, marriage, or adoption;
- a parent, stepparent, child, or stepchild of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within one year before the filing of the petition;
- a vulnerable adult; or
- an individual who has a child in common with the respondent.

An individual who does not meet the requirements of a “person eligible for relief” under protective order statutes may file a petition for a peace order with the District Court or the 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.

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;
- (12) pay filing fees and costs of the proceeding; or
- (13) award temporary possession of any pet belonging to the person eligible for relief or the respondent.

The court may only grant an order to vacate and award temporary use and possession of the home to a nonspouse person eligible for relief if the person eligible for relief is listed on the lease or deed to the home or has shared the home with the respondent for a period of at least 90 days within one year before the filing of the petition.

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. 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 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.

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 State Police Uniform Crime Report issued for calendar 2010, 17,931 domestic violence crimes occurred in Maryland, a 3.4% decrease compared to the calendar 2009 total of 18,556. Assault was by far the most frequently reported crime, with 16,513 incidents in calendar 2010. Of reported assaults, simple assaults comprised 12,864 incidents. Aggravated assaults totaled 3,646 or 22% of the reported domestic violence assaults for the same period. In 2010, 18 homicides were attributed to domestic violence incidents.

In fiscal 2010, the circuit courts granted 1,628 final protective orders. The District Court held 15,856 final protective order hearings and granted 7,949 final protective orders in fiscal 2010.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Kent and Worcester counties, Department of Legislative Services

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