

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

Senate Bill 490

(Senator Shank, *et al.*)

Judicial Proceedings

Judiciary

Domestic Violence - Persons Eligible for Relief

This bill expands eligibility for a domestic violence protective order by altering the definition of a “person eligible for relief” to include an individual who has had a consensual or nonconsensual sexual relationship with the respondent.

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

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:

- 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;
- in certain cases, vacate the home immediately and award temporary use and possession of the home to the person eligible for relief;
- remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members;
- remain away from a child care provider of a person eligible for relief while the child is in the provider’s care;
- relinquish temporary custody of a minor child of the respondent and a person eligible for relief;
- establish temporary visitation with a minor child of the respondent and a person eligible for relief under certain conditions;
- provide emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support;

- 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;
- 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);
- pay filing fees and costs of the proceeding; or
- 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 2011, 18,209 domestic violence crimes were reported in Maryland, a 1.5% increase compared to the calendar 2010 total of 17,931. Assault was by far the most frequently reported crime, with 16,846 incidents in calendar 2011. Of reported assaults, simple assaults comprised 13,821 incidents. Aggravated assaults totaled 3,017, or 18%, of the reported domestic violence assaults for the same period. In 2011, 23 homicides were attributed to domestic violence incidents.

In fiscal 2011 (the latest information readily available), the circuit courts granted 2,288 temporary protective orders and 1,570 final protective orders. In fiscal 2012, the District Court granted 15,287 temporary protective orders and 7,015 final protective orders. In the same year, 20,202 peace order cases were filed in the District Court. District Court commissioners granted 7,615 interim orders, and the District Court granted 16,843 temporary orders and 6,913 final orders. The circuit courts heard 116 peace order cases on appeal in fiscal 2012.

State and Local Fiscal Effect: Although the bill expands eligibility for protective orders, the provisions do not impact the overall caseload of the Judiciary, as most individuals who qualify for a protective order as a result of this bill qualify under current law for a peace order. Accordingly, while there may be increased filings for protective orders, this is offset by a corresponding decrease in the number of peace orders. Minimal computer reprogramming costs for the Judiciary in fiscal 2014 only can be absorbed within existing budgeted resources.

The bill does not materially increase the overall number of peace and protective orders that are served by local law enforcement. However, for jurisdictions in which one law enforcement agency is responsible for the service of protective orders and another is responsible for the service of peace orders, the bill's provisions may necessitate a minimal reallocation of resources. For example, Baltimore City advises that in fiscal 2012, its police department served 8,891 protective orders, while the sheriff's office served 2,898 peace orders. Accordingly, expanded eligibility for protective orders may lead to an increase in the workload for the police department with a corresponding decrease in the workload for the sheriff's office. The Baltimore City Police Department further advises that it takes approximately 24 minutes to process a protective order once it is received from the District Court and over two hours per service attempt.

Additional Information

Prior Introductions: SB 359 of 2012, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: HB 1230 (Delegate Dumais, *et al.*) – Judiciary.

Information Source(s): Harford and Montgomery counties, Baltimore City, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Legislative Services

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