

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 333
Judiciary

(Delegate Clippinger, *et al.*)

Peace Orders and Protective Orders - Burden of Proof

This bill alters, from clear and convincing evidence to a preponderance of the evidence, the standard of proof by which a judge must make specified findings before (1) granting a final protective order or mutual protective orders; (2) extending a final protective order under specified circumstances; or (3) issuing a final peace order or mutual peace orders.

Fiscal Summary

State Effect: The bill's changes do not materially impact the workload of the Judiciary.

Local Effect: The bill's changes do not materially impact the workload of the circuit courts. Any potential minimal increase in law enforcement expenditures does not materially impact local government finances.

Small Business Effect: None.

Analysis

Current Law:

Protective Orders

In order to grant a final protective order, a judge must find by clear and convincing evidence that the alleged abuse has occurred, or the respondent must consent to the entry of the order. In cases where both parties file petitions for relief from abuse, the judge may issue mutual protective orders if the judge finds by clear and convincing evidence that abuse has occurred. However, the judge may issue the mutual protective orders only

after a detailed finding of fact that both parties acted primarily as aggressors and neither party acted primarily in self-defense.

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 for 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.

Peace Orders

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.

After a final peace order hearing, if a judge finds by clear and convincing evidence that the respondent has committed, and is likely to commit in the future, one of the previously mentioned acts against the petitioner, or if the respondent consents to the entry of a peace order, the court may issue a final peace order to protect the petitioner. The order must contain only the relief that is minimally necessary to protect the petitioner. In cases in which both parties have filed petitions for peace orders, the judge may issue mutual peace orders if the judge finds by clear and convincing evidence that each party has committed, and is likely to commit in the future, specified acts against the other party. Relief granted in a final peace order is effective for the period stated in the order, but may not exceed six months.

Background: The evidentiary standard known as “preponderance of the evidence” has been described as requiring evidence sufficient to establish that a fact is “more likely true than not true,” “more probable than not,” or that amounts to at least 51% of the evidence. “Preponderance of the evidence” is the standard applicable in most civil cases. “Clear and convincing evidence” is more than a preponderance of the evidence and less than would be required for the standard “beyond a reasonable doubt.”

According to a 2012 report from the Department of Legislative Services, *How States Address Domestic Violence in Selected Areas*, 29 states either specify in statute or have established through case law that the standard used for granting a final protective order is “preponderance of the evidence.” Thirteen states have unspecified standards that allow the use of the court’s discretion to grant protective orders on a case-by-case basis. Statutes in 7 states and the District of Columbia require findings of “reasonable cause,” “sufficient grounds” or “good cause.” According to the report, Maryland is the only state that specifically requires by statute that a petitioner must meet the burden of “clear and convincing evidence” to receive a final protective order.

In fiscal 2012 (the latest information readily available), the circuit courts granted 2,082 temporary protective orders and 1,412 final protective orders. In fiscal 2013, the District Court granted 15,832 temporary protective orders and 7,250 final protective orders. In the same year, 20,547 peace order cases were filed in the District Court; District Court commissioners granted 8,135 interim peace orders, and the District Court granted 17,699 temporary peace orders and 6,797 final peace orders.

State/Local Fiscal Effect: Although the alteration of the evidentiary standard may lead to the issuance of additional protective orders and peace orders, any increase is not expected to materially impact the workload of the Judiciary. While any increase in protective orders and peace orders also impacts the workload of law enforcement agencies, the potential minimal increase in expenditures to process and enforce the additional orders is not likely to materially impact State or local government finances.

Additional Comments: The Administration has introduced legislation identical to this bill (SB 333/HB 307).

Additional Information

Prior Introductions: SB 823 of 2010, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 700, received an unfavorable report from the House Judiciary Committee. HB 415 of 2007 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 505, received an unfavorable report from the Senate Judicial Proceedings Committee.

SB 86 of 2006 passed the Senate and received a hearing in the House Judiciary Committee, but received no further action. SB 260 of 2005 received a favorable with amendments report by the Senate Judicial Proceedings Committee, but was then recommitted to committee. Its cross file, HB 326, received an unfavorable report from the House Judiciary Committee.

Cross File: SB 28 (Senator Frosh) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Baltimore City, Department of Legislative Services

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ncs/kdm

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