

Department of Legislative Services
2014 Session

FISCAL AND POLICY NOTE

House Bill 44 (Delegate Vitale)
Judiciary

**Family Law - Temporary and Final Protective Orders - Emergency Evaluation
for Mental Disorder**

This bill authorizes a judge, when issuing a temporary or final protective order, to require the respondent to undergo an emergency evaluation if the judge finds that the respondent has shown symptoms of a mental disorder or has acted in a manner that presents a danger to the life or safety of the respondent or others. The judge must consider the results of any emergency evaluation in making a determination as to whether to order a respondent to vacate the home.

Fiscal Summary

State Effect: General fund expenditures increase by \$51,400 in FY 2015 for the Judiciary to make programming changes and by a potential minimal additional amount annually beginning in FY 2015 to the extent that the bill’s requirements necessitate lengthier or additional protective order hearings. General fund expenditures for the Department of Health and Mental Hygiene (DHMH) increase beginning in FY 2015 to the extent that additional emergency evaluations are ordered for individuals meeting specified criteria.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	51,400	-	-	-	-
Net Effect	(\$51,400)	\$0	\$0	\$0	\$0

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

Local Effect: The circuit courts can handle the bill’s requirements using existing resources.

Small Business Effect: None.

Analysis

Current Law: 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. In a final protective order hearing, 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 any person eligible for relief from abuse. 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.

The following shows the types of relief that may be ordered, depending on whether the order is temporary or final.

A Temporary or Final Protective Order may:

- order the respondent to refrain from abusing or threatening to abuse any person eligible for relief;
- order the respondent to refrain from contacting, attempting to contact, or harassing any person eligible for relief;
- order the respondent to refrain from entering the residence of any person eligible for relief;
- in certain cases, order the respondent to vacate the home immediately and award temporary use and possession of the home to the person eligible for relief;
- order the respondent to remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members;
- order the respondent to remain away from a child care provider of a person eligible for relief while the child is in the provider's care;
- award temporary custody of a minor child of the respondent and person eligible for relief; or
- award temporary possession of any pet of the person eligible for relief or the respondent.

A Final Protective Order may:

- establish temporary visitation with a minor child of the 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 a vehicle jointly owned by the respondent and a person eligible for relief under certain conditions;
- direct respondent or persons eligible for relief to take part in counseling or a domestic violence program; or
- order the respondent to pay filing fees and proceeding costs.

In addition, a temporary order may order the respondent to surrender any firearms for the duration of the order and refrain from possessing any firearms under specified circumstances. A final protective order *must* order the respondent to surrender any firearms and to refrain from the possession of any firearms for the duration of the order.

In determining whether to order the respondent to vacate the home as part of a temporary or final protective order, the judge must consider (1) the housing needs of any minor child living in the home; (2) the duration of the relationship between the respondent and any person eligible for relief; (3) title to the home; (4) any pending criminal charges against the respondent and the type of those charges; (5) the history and severity of abuse between the respondent and any person eligible for relief; (6) the existence of alternative housing for the respondent and any person eligible for relief; and (7) the financial resources of the respondent and the person eligible for relief.

Petitions for Emergency Evaluation

A petition for emergency evaluation of an individual may be made only if the petitioner has reason to believe that the individual has a mental disorder and presents a danger to the life or safety of the individual or of others. Such a petition must contain specified information, including a description of the behavior and statements of the evaluatee or any other information that led the petitioner to believe that the evaluatee has a mental disorder and presents a danger to the life and safety of the individual or of others.

After review of the petition, the court must endorse the petition if the court finds probable cause to believe that the evaluatee has shown the symptoms of a mental disorder and that the individual presents a danger to the life or safety of the individual or of others. If the court does not find probable cause, the court must indicate that fact on the petition, and no further action may be taken under the petition.

A peace officer must take an evaluatee to the nearest emergency facility if the peace officer has a petition for emergency evaluation that has been endorsed by a court within the previous five days or is signed and submitted by a physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, licensed clinical marriage and family therapist, health officer or designee or a health officer, or peace officer. (“Peace officer” means a sheriff, a deputy sheriff, a State police officer, a county police officer, a municipal or other local police officer, or a Secret Service agent who is a sworn special agent of the U.S. Secret Service or Department of Homeland Security authorized to exercise powers delegated under federal law.)

If a petition is executed properly, the emergency facility must accept the evaluatee. Within six hours after an evaluatee is brought to the facility, a physician must examine the evaluatee to determine whether the individual meets the requirements for involuntary admission. Promptly after the examination, the emergency evaluatee must be released unless the evaluatee asks for voluntary admission or meets specified standards for involuntary admission.

If an emergency evaluatee cannot pay or does not have insurance that covers the charges for emergency services, an initial consultant examination by a physician or nurse practitioner, and transportation to an emergency facility and, for an involuntary admission of the emergency evaluatee, to the admitting facility, the Department of Health and Mental Hygiene (DHMH) must pay the appropriate party the actual cost or a reasonable rate for this service, whichever is lower. Hospitals must be paid at rates approved by the Health Services Cost Review Commission.

Background: 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. Also in fiscal 2013, the District Court received 2,668 petitions for emergency evaluations and granted 2,009 of the petitions.

State Expenditures: General fund expenditures for the Judiciary increase by \$51,385 in fiscal 2015 only for programming changes. Not included in this estimate are any potential expenditures related to an increase in the number of emergency evaluations requested. The number of additional emergency evaluations that may be requested and ordered cannot be reliably predicted. Even though petitioning for an emergency evaluation is an option available under current law, including it within the relief that one may request as part of a temporary or final protective order will likely increase the number of emergency evaluations that are ordered by the court. The Department of Legislative Services (DLS) notes that whether or not evaluations are actually ordered, including them as a form of relief that may be requested will lengthen the hearings for

temporary and final protective orders, as judges will have to hear additional testimony to determine whether or not to order an evaluation. Furthermore, the bill establishes that an emergency evaluation may be ordered as part of a final protective order and that the results of such evaluation must be considered in a determination as to whether to require the respondent to vacate the home. To the extent that emergency evaluations are ordered as part of a final protective order in cases in which the petitioner is also requesting that the respondent vacate the home, an additional hearing will be necessary to fulfill the statutory requirement, as judges will need to have the results of the emergency evaluation to make a determination as to whether the respondent has to vacate the home. As noted above, the District Court already has a large volume of protective order cases. To the extent that protective order hearings become lengthier or more numerous for the reasons outlined above, additional judicial time may need to be devoted to these cases. While it is not anticipated that additional judgeships would be necessary, the Judiciary may need to increase the use of retired judges to absorb the additional workload in some jurisdictions. The fiscal 2014 budget includes approximately \$5.4 million in funding for retired judges. Using the fiscal 2014 estimate, and *for illustrative purposes only*, for every 1% increase in the use of retired judges, general fund expenditures increase by approximately \$54,000.

DLS also notes that under the bill's provisions, a judge may order an emergency evaluation under the Health-General Article if the judge finds that the respondent has shown symptoms of a mental disorder *or* has acted in a manner that presents a danger to the life or safety of the respondent or others. The Health-General Article authorizes emergency evaluations only when an individual has shown symptoms of a mental disorder *and* the individual presents a danger to the life or safety of the individual or others. While it may be likely that judges will generally order the emergency evaluation as only permitted under the Health-General Article (*i.e.*, in cases in which the respondent has shown symptoms of a mental disorder as well as a potential of danger to self or others), it is noted that most protective orders involve respondents who have acted in a manner that presents a danger to the life or safety of others, as that is the nature of domestic violence cases, and this may have an impact on the number of evaluations requested and ordered as a result of the bill.

Department of Health and Mental Hygiene

General fund expenditures for DHMH increase beginning in fiscal 2015 to the extent that additional emergency evaluations are ordered for individuals who cannot pay or do not have insurance that covers the charges. As discussed above, the number of additional emergency evaluations that may be ordered under the bill's provisions cannot be reliably estimated. DHMH advises that in fiscal 2013, it made reimbursements for 1,366 evaluations at a cost of approximately \$428,800. While expanded access to health insurance should decrease the number of evaluations performed on individuals without

health insurance or who otherwise cannot pay, it still remains likely that there will be additional emergency evaluations for which DHMH will be responsible for payment; thus, expenditures increase accordingly. *For illustrative purposes* only, at an average cost of \$314 per evaluation (based on fiscal 2013 reimbursements), for every additional 100 evaluations ordered, general fund expenditures increase by \$31,400.

Local Fiscal Effect: Although the bill's provisions have the potential to impact protective order hearings in circuit courts as well, because the circuit courts preside over a much lower volume of protective order cases than the District Court, DLS estimates that the circuit courts can handle the bill's requirements using existing budgeted resources and that any material impact will be limited to the District Court.

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 Legislative Services

Fiscal Note History: First Reader - January 14, 2014
mlm/kdm

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