

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 775
Judiciary

(Delegate Dumais, *et al.*)

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:

Protective Orders

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.

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 order 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;
- remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members; or
- remain away from a child care provider of a person eligible for relief while the child is in the provider's care.

A final protective order may also:

- 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;
- award 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;
- award emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support;
- award 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;

- order the respondent to 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);
- order the respondent to 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 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.

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.

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 specified 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. A final peace order can order the respondent to (1) refrain from committing or threatening to commit specified acts; (2) refrain from contacting, attempting to contact, or harassing the petitioner; (3) refrain from entering the residence of the petitioner; or (4) remain away from the place of employment, school, or temporary residence of the petitioner. Final peace orders can also direct the respondent or petitioner to participate in counseling or mediation and order either party to pay filing fees and costs. Relief granted in a final peace order is effective for the period stated in the order, but may not exceed six months.

An individual who fails to comply with specified provisions of an interim, temporary, or final peace order 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 *2012 Uniform Crime Report*, 17,615 domestic violence crimes were reported in Maryland, a 3% decrease compared to the calendar 2011 total of 18,209. Assault was by far the most frequently reported crime, with 16,269 incidents in calendar 2012. Of reported assaults, simple assaults comprised 13,384 incidents. Aggravated assaults totaled 2,881, or 18%, of the reported domestic violence assaults for the same period.

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; the District Court granted 8,135 interim peace orders, 17,699 temporary peace orders, and 6,797 final peace orders.

State/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. Individuals filing for protective orders may do so in circuit courts or the District Court; peace orders may only be filed at the District Court. While the expanded eligibility for protective orders may therefore increase the number of filings in the circuit courts, any increase will not materially impact the workload of the circuit courts. Minimal computer reprogramming costs for the Judiciary in fiscal 2015 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, in any jurisdiction 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. In addition, Baltimore City advises that because the processing time for protective orders is lengthier than that for peace orders, the bill's provisions will necessitate a minimal reallocation of resources within the Sheriff's Office.

Additional Information

Prior Introductions: SB 490 of 2013 passed the Senate as amended and received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, HB 1230, received a hearing in the House Judiciary Committee, but no further action was taken. SB 359 of 2012, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: SB 41 (Senator Shank) - Judicial Proceedings.

Information Source(s): Baltimore, Dorchester, Garrett, Howard, and Montgomery counties; Baltimore City; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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ncs/kdm

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