

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1030 (Delegate Cox)
 Judiciary

Civil Law – Jury Proceedings – Fundamental Rights

This bill establishes that a court may not terminate, limit, or regulate a right of a party that is enumerated in the U.S. Constitution or the Maryland Constitution and recognized by court precedent of the U.S. Supreme Court or the Maryland Court of Appeals without providing the affected party the opportunity for a jury proceeding on the issue. A court may not issue a final protective order or a final extreme risk protective order over the objection of the respondent without first providing the respondent with the opportunity to elect a jury proceeding. A court may not issue a final order terminating a parent’s right to custody or visitation over the objection of a party without first providing the parent the opportunity to elect a jury proceeding. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase by a *minimum* of \$461,700 in FY 2020 to accommodate additional jury trials. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	461,700	428,200	442,400	457,600	473,300
Net Effect	(\$461,700)	(\$428,200)	(\$442,400)	(\$457,600)	(\$473,300)

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

Local Effect: Local expenditures may increase, potentially significantly, to accommodate additional jury trials. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: In a final protective order or extreme risk protective order proceeding, a court must, on the record and by order to the clerk for written notice by certified mail, provide notice to the respondent of the right to obtain a jury proceeding and that the failure to obtain counsel or request a jury proceeding may result in a loss of a fundamental right, including child custody, the right to keep and bear arms, or the opportunity to be employed in the U.S. Armed Forces or law enforcement.

In a proceeding at which the termination of a parent's right to custody or visitation is at issue, the court must, on the record and by order to the clerk for written notice by certified mail, provide notice to the parties of the right to obtain a jury proceeding on the issue.

Current Law/Background:

Domestic Violence Protective Orders

Statutory provisions set forth a process by which, in a domestic violence proceeding, if a judge finds by a preponderance of the 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 respondent must have an opportunity to be heard on the question of whether the judge should issue a final protective order. There are no jury trials in protective order cases.

Among other relief, a final protective order may order 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) remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members; or (5) 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 address issues relating to custody and visitation, use and possession of a home or vehicle, emergency family maintenance, counseling, payment of costs, and temporary possession of a pet. A 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. In fiscal 2018, 9,029 final domestic violence protective orders were issued.

Extreme Risk Protective Orders

Statutory provisions set forth a process by which a judge may issue a final extreme risk protective order. A judge may enter a final extreme risk protective order to prohibit the

respondent from possessing a firearm if the judge finds by clear and convincing evidence that the respondent poses a danger of causing personal injury to the respondent, the petitioner, or another by possessing a firearm. The final extreme risk protective order must order the respondent to surrender to law enforcement authorities any firearm and ammunition in the respondent's possession and prohibit the respondent from purchasing or possessing any firearm for the duration of the order, as specified. There are no jury trials in extreme risk protective order cases. In fiscal 2018, 114 extreme risk protective orders were issued.

Custody and Visitation

In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court must determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party. Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court must deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and physiological, psychological, and emotional well-being of the child. Statutory provisions also set forth procedures by which an individual's parental rights may be terminated. In fiscal 2018, 89 final orders terminating parental rights were issued. There are no jury trials in family law matters.

State Expenditures: General fund expenditures increase significantly to accommodate the ability to facilitate jury trials in additional types of cases. Although the bill does not impact the overall number of cases handled by the Judiciary, jury trials require considerably more time and resources than other proceedings. Furthermore, the District Court, which does not have jury trials, has exclusive jurisdiction over extreme risk protective order proceedings and handles the vast majority of domestic violence protective orders. Procedures will need to be implemented in these cases to allow transfer to the circuit courts if a jury trial is elected, creating a significant operational impact; statutory authority to handle extreme risk protective orders will also need to be granted to the circuit courts. Without actual experience under the bill, it is impossible to reliably predict how many individuals will elect a jury trial in these matters.

In fiscal 2018, the District Court held more than 17,000 protective order hearings. Five jurisdictions (Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's counties) each held more than 1,000 protective order hearings in the District Court; three jurisdictions (Charles, Harford, and Washington counties) each held more than 500 protective order hearings in the District Court. Based exclusively on the volume of those protective orders, it is assumed that *at a minimum*, one additional clerk will be needed in five jurisdictions and a part-time clerk will be needed in

three jurisdictions to facilitate additional cases being transferred from the District Court to the circuit court for jury trials.

Based on this estimate, general fund expenditures increase by at least \$461,694 in fiscal 2020, which accounts for the bill's July 1, 2019 effective date. This estimate reflects the cost of hiring 6.5 clerks. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	6.5
Salaries and Fringe Benefits	\$423,401
Operating Expenses	<u>38,293</u>
Minimum FY 2020 State Expenditures	\$461,694

Future year expenditures reflect annual increases in salaries, employee turnover, and ongoing operating expenses.

In addition to increased expenditures for the clerks' offices, expenditures associated with jurors also increase. To ensure that an adequate number of jurors are available to meet any increased demand for jury trials, circuit courts will likely increase the number of individuals who receive a summons each day for potential jury service. The State is responsible for paying the juror per diem (\$15 for the first five days/\$30 for each day thereafter). The proposed fiscal 2020 budget includes \$4.5 million in funding for juror per diems; *for illustrative purposes only*, if this increases by 5% to accommodate the need to be prepared for additional jury trials, general fund expenditures increase by \$225,000 annually. Jury offices within the circuit courts *may* also require additional staff to accommodate larger jury pools. In the jurisdictions in which jury staff is administratively located within the clerk's office, the State is responsible for associated costs. *For illustrative purposes only*, for every additional jury staff person needed, general fund expenditures increase by at least \$65,000 annually.

Depending on the number of jury trials requested in proceedings in which parental rights may be terminated, general fund expenditures for the Office of the Public Defender (OPD), which includes a parental defense division, may also increase to account for the additional time and resources associated with jury trials. *For illustrative purposes only*, for every additional attorney required, general fund expenditures increase by at least \$100,000 annually.

Local Fiscal Effect: Local expenditures may increase significantly to accommodate additional jury trials. The Judiciary advises that in some jurisdictions, jury staff are administratively housed within the Court Administration Office and are therefore locally funded. To the extent that these jurisdictions need additional jury staff to facilitate additional jury trials and larger jury pools, expenditures increase. Depending on the

jurisdiction, other expenditures associated with jury service, such as reimbursement for parking costs and meals, may also increase.

Additional Comments: Both the Judiciary and Baltimore County have noted the ambiguity of the bill and the potential for broader interpretation. Although the analysis above accounts only for estimated costs associated with jury trials in the matters specifically enumerated within the bill, if the bill is construed to impact other civil proceedings in which there is currently no right to a jury trial, such as violation of probation hearings, the additional impact on the Judiciary and OPD will be significant. In addition, such an interpretation would significantly impact State's Attorneys' offices.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, and Montgomery counties; Maryland Association of Counties; City of Havre de Grace; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Legislative Services

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