

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 250
 Judiciary

(Delegate Atterbeary)

Judicial Proceedings

Peace Orders and Protective Orders – Extension

This bill specifies that if a motion to extend the term of a final protective order or final peace order is filed during the term of the order, if the hearing on the motion is not held before the original expiration date of the final protective order or final peace order, the order must be automatically extended and the terms of the order remain in full force and effect until the hearing on the motion.

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase by \$64,200 in FY 2021 only for programming changes. Otherwise, the bill does not materially affect the workload of the Judiciary.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	64,200	0	0	0	0
Net Effect	(\$64,200)	\$0	\$0	\$0	\$0

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

Local Effect: The bill does not materially affect the workload of the circuit courts.

Small Business Effect: None.

Analysis

Current Law:

Protective Orders

Statutory provisions set forth a process by which an individual who meets specified relationship requirements may seek relief from abuse by filing a petition for a protective order. 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.

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.

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 in specified circumstances set forth in statute. 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. Statutory provisions set forth circumstances under which a final protective order may be modified or rescinded.

For good cause shown, a judge may extend the term of the final protective order for six months (and up to two years under specified circumstances) after giving notice to the affected parties and a hearing. If, during the term of a final protective order, a petitioner or person eligible for relief files a motion to extend the term of the order, the court must hold a hearing on the motion within 30 days after the motion is filed. If a hearing on the motion is scheduled after the original expiration date of the final protective order, the court must

extend the order and keep the terms of the order in full force and effect until the hearing on the motion.

Peace Orders

An individual who does not meet the specified relationship requirements under the 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 a preponderance of the 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. Among other relief, 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. Relief granted in a final peace order is effective for the period stated in the order but may not exceed six months. Statutory provisions set forth circumstances under which a final peace order may be modified or rescinded.

For good cause shown, a judge may extend the term of the final peace order for six months after giving notice to the affected parties and a hearing. If, during the term of a final peace order, a petitioner files a motion to extend the term of the order, the court must hold a hearing on the motion within 30 days after the motion is filed. If a hearing on the motion is scheduled after the original expiration date of the final peace order, the court must extend the order and keep the terms of the order in full force and effect until the hearing on the motion.

Background: In *La Valle v. La Valle*, 432 Md. 343 (2013), the Court of Appeals held that if a motion to extend a protective order is filed prior to its expiration, but, for any reason, the hearing on the motion is delayed beyond the expiration of the protective order, that order can no longer be extended. In that case, the petitioner filed a motion to extend the protective order she had against her husband. Although the petitioner filed the motion to extend the protective order several weeks before the order was to expire, the hearing on the motion was scheduled for two days after the expiration of the order. Following action in the trial courts, the Court of Appeals granted a *writ of certiorari* to decide whether the extension of a protective order is permitted when the motion to extend the order was timely filed during the term of the order, but the protective order has expired by the time the

hearing is held. The court noted that statutory language clearly required that any modification of a protective order must occur during its term. Because every extension of a protective order necessarily is a modification of that order, the court held that an extension of an expired protective order is not permitted, even when the motion to extend the order was timely filed during the term of the order. As the court stated, “[a]n expired protective order no longer exists, and an untimely hearing cannot revive it.”

Chapter 164 of 2014 addressed the issues in the *La Valle* case by requiring a court to hold a hearing on a motion to extend a final peace order or a final protective order within 30 days after the motion is filed if, during the term of the order, the petitioner or person eligible for relief files a motion for extension. If the hearing on the motion is scheduled after the original expiration date of the final peace order or final protective order, the court must extend the order and keep the terms of the order in full force and effect until the hearing on the motion.

In a recent case in Queen Anne’s County, a petitioner, before the expiration of a final protective order, filed a motion to extend the order. Although a hearing was scheduled within 30 days after the motion was filed, the District Court did not review the motion and did not order the matter to be scheduled for a hearing until after the final protective order had already expired. When scheduling the matter for a hearing, the District Court did not otherwise extend the final protective order. At the hearing, the District Court denied the extension request, and opined that the request was moot since the final protective order had expired. On appeal, the Circuit Court for Queen Anne’s County affirmed, noting that although the District Court failed, before the final protective order expired, to schedule a hearing and to extend the final protective order until the date of the hearing, its failure to do so should not prejudice the respondent. The court noted that the General Assembly did not mandate the extension of the final protective order through the hearing date merely by the filing of a motion. Accordingly, once the final protective order expired, it could not be revived.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 227 (Senator Waldstreicher, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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