

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 289
Judiciary

(Delegate Lehman, *et al.*)

Evidence - Testimony by Spouse - Violation of Protective Order

This bill establishes that the spouse of a person on trial for a violation of a protective order may be compelled to testify as an adverse witness if the spouse was the petitioner in the protective order proceeding and the person on trial is alleged to have violated the protective order by committing or threatening to commit an act of abuse as defined in specified provisions of the Family Law Article. The bill has prospective application only.

Fiscal Summary

State Effect: The bill does not materially affect the workload of the District Court or the Office of the Public Defender.

Local Effect: The bill does not materially affect the workload of the circuit courts or State's Attorneys' Offices.

Small Business Effect: None.

Analysis

Current Law:

Spousal Testimony Privilege

The spouse of a person on trial for a crime may not be compelled to testify against that person unless the charge involves the abuse of a child younger than age 18. The spousal testimony privilege is also unavailable when the charge is assault in any degree in which the spouse is a victim under the following circumstances:

- the person on trial was previously charged with assault in any degree or assault and battery of the spouse;
- the spouse was sworn to testify at the previous trial; and
- the spouse refused to testify at the previous trial by asserting the spousal testimony privilege.

If the spouse of the person on trial for assault in any degree against the spouse refuses to testify on the basis of spousal privilege, the clerk of the court must make and maintain a record of the refusal, including the name of the spouse refusing to testify. When an expungement order is presented to the clerk of the court involving a charge of assault in any degree, the clerk must check the record to determine whether the defendant's spouse refused to testify on the basis of spousal privilege. If the record shows a refusal, the clerk must make and keep a separate record of the refusal, including the defendant's name, the spouse's name, the case file number, a copy of the charging document, and the trial date when the spouse refused to testify. The separate record is not subject to expungement and must be made available only to the court, a State's Attorney's office, and the defendant's attorney.

Definition of "Abuse" and Protective Orders

The Family Law Article sets forth procedures by which individuals meeting specified relationship requirements, including spouses, may seek relief from abuse by filing a petition for a protective order. "Abuse" is defined as:

- an act that causes serious bodily harm;
- an act that places a person eligible for relief in fear of imminent serious bodily harm;
- assault in any degree;
- rape or sexual offense or attempted rape or sexual offense in any degree;
- false imprisonment;
- stalking; or
- revenge porn.

If the person for whom relief is sought is a child, “abuse” may also include abuse of a child, as defined in statute. “Abuse” may also include abuse of a vulnerable adult, as defined in statute, if the person for whom relief is sought is a vulnerable adult.

If granted by the court, a protective order may include various types of relief for the petitioner, including provisions requiring a respondent to refrain from contacting the petitioner and to stay away from the petitioner’s home, school, or place of employment.

A person who violates specified provisions of a protective 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.

Additional Information

Prior Introductions: HB 363 of 2019, a similar bill, received a hearing in the House Judiciary Committee but was subsequently withdrawn. Its cross file, SB 241, received an unfavorable report from the Senate Judicial Proceedings Committee. SB 630 of 2013, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 1037, received an unfavorable report from the House Judiciary Committee.

Designated Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Human Services; Department of Legislative Services

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mr/lgc

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