

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 606
 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: General fund expenditures for the Judiciary increase by \$10,000 in FY 2016 only for programming changes. Otherwise, the bill’s changes can be implemented and enforced using existing resources, as discussed below. Revenues are not affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	10,000	0	0	0	0
Net Effect	(\$10,000)	\$0	\$0	\$0	\$0

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

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 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 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 a preponderance of the 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 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. 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: A review of statutes in other states found that 42 states and the District of Columbia specifically include individuals in dating, sexual, personal, and/or intimate relationships within eligibility guidelines for protective orders. In addition, Missouri law authorizes anyone who has been the victim of assault to file for a protective order,

regardless of the relationship between the victim and the offender. Virginia law also allows any individual who has been the victim of any act involving violence, force, or threats that result in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury to petition for a protective order.

Thirty states and the District of Columbia include in their statutes terminology relating to a “dating” relationship. Other states use terminology such as “romantic or sexual” relationships (Arizona, Minnesota), “intimate” relationships (Colorado, Iowa, New York), “a continuing social relationship of a romantic or intimate nature” (Missouri), “sexual or intimate partner” (New Hampshire, Pennsylvania), “personal relationship” (New Mexico, North Carolina), “sexually intimate” (Oregon), and “significant romantic relationship” (South Dakota).

According to the *2013 Uniform Crime Report*, 27,785 domestic violence crimes were reported in Maryland. Assault was by far the most frequently reported crime, with 25,188 incidents in calendar 2013. Of reported assaults, simple assaults comprised 20,422 incidents. Aggravated assaults totaled 4,760, or approximately 19%, of the reported domestic violence assaults for the same period. There were 54 domestic violence homicides. Although the number of domestic violence crimes increased considerably from the 2012 report (in which 17,615 domestic violence crimes were reported), the State Uniform Crime Reporting program expanded the definition of domestic violence to include additional relationships in 2013.

Prior to 2013, the only reported relationships between domestic violence victims and offenders were husbands, wives, and cohabitants. The *2013 Uniform Crime Report* was revised to include statistics for any crime committed by an offender against a victim (1) who is a “person eligible for relief,” as defined in the protective order statutes or (2) who had a sexual relationship with the offender within 12 months before the commission of the crime. Homosexual relationships are also included.

In fiscal 2013 (the latest information readily available), the circuit courts granted 1,919 temporary protective orders and 1,425 final protective orders. In fiscal 2014, the District Court granted 14,983 temporary protective orders and 6,841 final protective orders. In the same year, 19,784 peace order cases were filed in the District Court; the District Court granted 7,518 interim peace orders, 16,644 temporary peace orders, and 6,501 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.

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.

Additional Information

Prior Introductions: SB 41 of 2014 passed the Senate and received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, HB 775, received a hearing in the House Judiciary Committee, but no further action was taken. 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 477 (Senator Ramirez, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Montgomery County, Department of Legislative Services

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Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510