

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 640

(Delegate Barnes, *et al.*)

Judiciary

Family Law - Temporary Protective Orders - Surrender of Firearms

This bill authorizes a court, when issuing a temporary protective order, to order the respondent to surrender to law enforcement any firearm in the respondent's possession for the duration of the temporary protective order.

Fiscal Summary

State Effect: The bill's changes could be implemented and enforced with existing resources.

Local Effect: The bill's changes could be implemented and enforced with existing resources.

Small Business Effect: None.

Analysis

Current Law: A petition for an interim protective order may be filed with a District Court commissioner if the clerk of the circuit court or clerk of the District Court is not open for business. If the commissioner finds there are reasonable grounds to believe that the respondent has abused a person eligible for relief, the commissioner may issue an interim protective order. If, after a hearing on a petition, whether *ex parte* or otherwise, a judge finds that there are reasonable grounds to believe a person eligible for relief has been abused, the judge may issue a temporary protective order. The judge may proceed with a final protective order hearing instead of a temporary protective order hearing if the respondent appears at the hearing, the respondent has been served with an interim

protective order, or the court otherwise has personal jurisdiction over the respondent, and the petitioner and respondent expressly consent to waive the temporary protective order hearing.

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. The maximum duration of a final protective order is one year.

The following shows the types of relief that may be provided by a temporary protective order.

A temporary order may order a 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;
- in certain cases, vacate the home immediately and award temporary use and possession of the home to the 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;
- order respondent to remain away from child care provider of person eligible for relief while child is in provider’s care; and
- award temporary custody of child of person eligible for relief and respondent.

When issuing a final protective order the court may order the respondent to surrender to law enforcement authorities any firearm in the respondent’s possession for the duration of the protective order, which could be a maximum of 12 months.

Background: The following table shows judicial activity in fiscal 2006 with regard to protective orders (the latest available).

| <u>Jurisdiction</u> | <u>Hearings</u> | <u>Interim Orders Granted</u> | <u>Temporary Orders Granted</u> | <u>Final Orders Granted</u> |
|---------------------|-----------------|-------------------------------|---------------------------------|-----------------------------|
| Circuit Court | 7,299 | N/A | 2,083 | 1,380 |
| District Court | 52,042 | 9,429 | 14,867 | 7,654 |

According to the State Police *Uniform Crime Report* issued for calendar 2006, 21,965 domestic violence crimes occurred in Maryland a 0.5% decrease compared to the calendar 2005 total of 22,092. Assault was by far the most frequently reported crime, with 20,249 instances in calendar 2006. Of reported assaults, simple assault comprised 15,637 incidents. Aggravated assaults totaled 4,572 or 22.6% of the reported domestic violence assaults for the same period. Of the 4,572 aggravated assaults, 222 involved firearms.

State and Local Fiscal Effect: The Administrative Office of the Courts advises that forms issued in domestic violence cases would have to be changed to reflect the new type of relief proposed in the bill. Legislative Services advises that the Judiciary should be able to implement any required changes with existing resources.

Additional Information

Prior Introductions: This bill is similar to HB 824 of 2006 which received no action after being heard by the House Judiciary Committee.

Cross File: SB 42 (Senator Frosh) – Judicial Proceedings.

Information Source(s): Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2008
mcp/hlb

Analysis by: Karen D. Morgan

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