

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 393

(Senator Forehand, *et al.*)

Judicial Proceedings

Judiciary

Domestic Violence - Permanent Protective Order After Conviction and
Imprisonment

This bill provides for the issuance of a permanent protective order against an individual against whom a final protective order was previously issued if the individual was convicted and served a term of imprisonment of at least five years for specified underlying acts of abuse.

Fiscal Summary

State Effect: None. The bill's requirements could be handled with existing resources.

Local Effect: None. The bill's requirements could be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: This bill requires the court to issue a new final protective order against an individual if: (1) the individual was previously a respondent against whom a final protective order was issued; (2) the individual was convicted and served a term of imprisonment of at least five years for any of the following acts of abuse that led to the issuance of the final protective order: • attempted murder in the first or second degrees; • first degree assault; • first or second degree rape; • first or second degree sexual offense; or • attempted rape or sexual offense in the first or second degree; and (3) the victim of the abuse who was the person eligible for relief in the original protective order requests the issuance of a new final protective order.

A new final protective order may contain only the relief that was granted in the original order requiring 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.

Unless terminated at the request of the victim, a final protective order issued under the bill is permanent.

Current Law: For the offenses of attempted murder in the first or second degrees, first degree assault, rape or sexual offense in the first or second degrees and attempted rape or sexual offense in the first or second degrees, the maximum incarceration penalties range from 20 years imprisonment to life imprisonment. Aggravating circumstances could subject a violator to life imprisonment without the possibility of parole for the crimes of attempted murder in the first degree, rape or sexual offense in the first degree, or attempted rape or sexual offense in the first degree.

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.

A final protective order may include any or all of the following relief:

- (1) order the respondent to refrain from abusing or threatening to abuse any person eligible for relief;
- (2) order the respondent to refrain from contacting, attempting to contact, or harassing any person eligible for relief;
- (3) order the respondent to refrain from entering the residence of any person eligible for relief;
- (4) in certain cases where the person eligible for relief and the respondent are residing together at the time of the abuse, order the respondent to vacate the home immediately and award temporary use and possession of the home to the person eligible for relief;
- (5) order the respondent to remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members;

- (6) order the respondent to remain away from a child care provider of a person eligible for relief while a child of the person is in the provider's care;
- (7) award temporary custody of a minor child of the respondent and a person eligible for relief;
- (8) establish temporary visitation with a minor child of the respondent and a person eligible for relief under certain conditions;
- (9) award emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support;
- (10) 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;
- (11) direct the respondent or any or all of the persons eligible for relief to participate in professionally supervised counseling or a domestic violence program;
- (12) order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession for the duration of the protective order; or
- (13) order the respondent to pay filing fees and costs of the proceeding.

All relief granted in a final protective order is effective for the period stated in the order, up to a maximum of 12 months. 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.

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

<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. In 2006, 26 homicides were attributed to domestic violence incidents.

Additional Information

Prior Introductions: None.

Cross File: HB 182 (Delegate Dumais, *et al.*) – Judiciary.

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

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