

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 659  
Judiciary

(Delegates Waldstreicher and Levi)

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Domestic Violence - Temporary Protective Order - Additional Relief

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This bill authorizes a court, when issuing a temporary protective order, to order a respondent to surrender all firearms under the respondent's possession or control and order the respondent to refrain from possessing or controlling any firearms for the duration of the temporary protective order. The court may order the relief, consistent with the Second Amendment to the U.S. Constitution, if the court has probable cause to believe that a domestic violence act with a firearm has occurred or that the respondent made an implicit or explicit threat of domestic violence with a firearm.

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Fiscal Summary

**State Effect:** None. The bill is not expected to significantly impact State governmental finances or operations.

**Local Effect:** Expenditures may increase in some counties to the extent that additional weapons seized under the bill's provisions must be maintained and stored.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** The temporary order may order the respondent to surrender to law enforcement authorities all firearms within the respondent's possession or control and to refrain from possessing or controlling any firearm for the duration of the temporary protective order.

If a respondent surrenders a firearm, the law enforcement officer has to provide information on the process for retaking possession and provide for the safe storage of the firearm for the duration of the temporary protective order. The respondent may retake possession of the firearm when the temporary protective order expires unless the respondent is ordered to surrender the firearm pursuant to a final protective order or the respondent is not otherwise legally entitled to own or possess a firearm. If a firearm is surrendered to a law enforcement officer under this bill, the officer is immune from any and all civil liability if the officer acted in good faith and in a reasonable manner.

A respondent who fails to comply with the relief granted in a temporary protective order relating to the surrender of a firearm is guilty of a misdemeanor. For a first offense, a violator is subject to maximum penalties of 90 days imprisonment and/or a \$1,000 fine. For a second and subsequent offense, a violator is subject to maximum penalties of one year imprisonment and/or a \$2,500 fine.

**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 some of the types of orders that may be imposed, depending on whether the order is interim, temporary, or final.

*A temporary protective order* may order 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.
- award temporary custody of child of person eligible for relief and respondent.

The criminal penalties for noncompliance with the relief granted in a protective order apply to a respondent who does not:

- 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.
- vacate the home immediately where the person eligible for relief and the respondent are residing together at the time of the abuse.
- remain away from the place of employment, school, or temporary residence of a person eligible for relief or the home of other family members.
- for a final protective order only, surrender to law enforcement authorities any firearm in the respondent's possession for the duration of the protective order.

A person who commits any of the offenses listed above is guilty of a misdemeanor. For a first offense, the person is subject to a maximum fine of \$1,000 and/or imprisonment for up to 90 days. For a second or subsequent offense, the person is subject to a maximum fine of \$2,500 and/or imprisonment for up to one year. An officer must arrest, with or without a warrant, a person who the officer has probable cause to believe is in violation of an interim, temporary or final protective order in effect at the time of the violation.

When responding to the scene of an alleged domestic violence act, a law enforcement officer may remove a firearm from the scene if the officer has probable cause to believe that a domestic violence act has occurred and the officer observed the firearm on the scene during the response. If the firearm is removed, the officer has to inform the firearm owner of the process for retaking possession and provide safe storage of the firearm for the duration of any proceeding related to an alleged domestic violence act. At the proceeding's conclusion, the firearm owner may retake possession unless otherwise ordered to surrender the firearm pursuant to a final protective order.

**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 Expenditures:** The Department of State Police advises that it is not the assigned agency to serve protective orders in any county. The service of protective orders is primarily assigned to sheriff's departments and local police departments. Accordingly, the bill would not affect State governmental finances or operations. The Administrative Office of the Courts advises that forms modification required under the bill could be handled with existing resources.

**Local Expenditures:** Expenditures could increase to the extent that local governments would need to allocate more time to retrieve, process, and store firearms. Montgomery and Somerset counties advise that the bill would have no fiscal impact. Prince George's county advises the cost associated to store surrendered firearms would be incurred, however, the bill is not expected to have a significant fiscal impact. Frederick County advises that there is no fiscal impact from the bill as the Sheriff's Department already participates in a similar program. On the other hand, Charles County advises that the bill would have a significant fiscal impact, estimated at \$22,000, associated with the additional seizure of weapons.

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### **Additional Information**

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

**Cross File:** None.

**Information Source(s):** Baltimore County, Charles County, Frederick County, Montgomery County, Prince George's County, Somerset County, Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - February 19, 2008  
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