

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 893
Judiciary

(Delegate McComas, *et al.*)

Public Safety - Handgun Permits - Victims of Domestic Violence

This bill authorizes the Secretary of State Police, in determining whether a handgun permit is necessary as a reasonable precaution against apprehended danger, to consider whether the applicant is a person eligible for relief for whose benefit a court has issued a final protective order.

Fiscal Summary

State Effect: None. The bill's changes can be accommodated with the existing budgeted resources of the State Police.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: To be issued a permit to carry a handgun by the Secretary of State Police, an applicant: (1) must be 18 or older; (2) must not have been convicted of a felony or misdemeanor for which a sentence of imprisonment for more than one year has been imposed or, if convicted, must have been pardoned or been granted relief under federal law; (3) if the person is younger than 30, must not have been committed to a facility for juveniles for longer than one year or adjudicated delinquent for a crime of violence, a felony, or misdemeanor that carries a statutory penalty of more than two years; (4) must not have been convicted of a controlled dangerous substance violation and must not presently be an addict, a habitual user of a controlled dangerous substance, or an alcoholic; (5) must not exhibit a propensity for violence or instability which may reasonably render possession of a handgun a danger to the applicant or another; and

(6) must have a good and substantial reason to wear, carry, or transport a handgun. “Good and substantial reason” includes a finding that the permit is necessary as a reasonable precaution against apprehended danger.

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 require the respondent to:

- (1) refrain from abusing or threatening to abuse any person eligible for relief;
- (2) refrain from contacting, attempting to contact, or harassing any person eligible for relief;
- (3) refrain from entering the residence of any person eligible for relief;
- (4) 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;
- (5) remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members;
- (6) remain away from a child care provider of a person eligible for relief while the child 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) provide emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support;
- (10) provide 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) 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; or
- (12) pay filing fees and costs of the proceeding.

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 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.

Background: According to the Administrative Office of the Courts, in fiscal 2009 the circuit courts conducted 3,862 final protective order hearings and granted 1,758 final protective orders. In fiscal 2009, the District Court conducted 15,821 final protective order hearings and granted 9,090 final protective orders.

Domestic violence incidents in Maryland declined from 19,391 reports in 2007 to 18,926 reports in 2008. Related homicides attributed to domestic violence incidents totaled 28 in 2008, compared to 30 in 2007. The majority of the homicide victims were women, and the weapon used in a majority of these homicides was a firearm.

The Department of State Police (DSP) receives and investigates about 6,000 handgun permit applications annually, including applications for permit renewals and applications from retired law enforcement personnel. Approximately 50 applications are denied each year due to issues relating to a background check and another 50 are denied for not meeting the good and substantial reason test. DSP reports that its Licensing Division

currently has five investigators handling about 24 application investigations per week, and about 1,200 applications per year/per investigator. The total processing time for issuing a valid permit by the division is about 120 calendar days.

State Fiscal Effect: The Department of Legislative Services projects that the bill will likely result in few new handgun permit applications and that DSP can handle the new applications with existing budgeted resources. The following considerations are made in making this assessment:

- approximately 9,100 persons are issued a final protective order annually;
- most experts on domestic violence report that victims often want all firearms removed from a residence;
- the bill's language does not fall under Public Safety Article, § 5-306 (a), whereby the Secretary of State Police must issue a permit if the specified findings are made and the bill allows, rather than requires, the Secretary to consider the issuance of a final protective order in making a determination as to the necessity of a handgun as a reasonable precaution against apprehended danger.

It is noted that DSP believes that the bill will require the hiring of nine additional investigators for the DSP Licensing Division at an estimated annual cost of \$1.2 million and will generate \$675,000 in additional handgun permit revenue annually. However, this estimate is based on an assumption that all, rather than few, persons issued a final protective order in the courts will apply for a handgun permit; and that the bill requires the Secretary to consider the issuance of a final protective order in making a determination as to the necessity of a handgun as a reasonable precaution against apprehended danger.

Additional Information

Prior Introductions: HB 359 of 2009 received a favorable with amendments report from the House Judiciary Committee; however, the bill failed on third reading in the House.

Cross File: None.

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

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mlm/hlb

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