

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 853
Judiciary

(Delegate Dumais)

Judicial Proceedings

Family Law - Domestic Violence - Permanent Final Protective Orders

This bill alters the circumstances under which a permanent final protective order must be issued by requiring a court to issue an order against an individual who is *sentenced to serve* a term of imprisonment of at least five years for specified underlying acts of abuse. The bill also adds the crime of second degree assault to the list of crimes, the commission of which subjects an individual to the issuance of a permanent final protective order.

Fiscal Summary

State Effect: The bill's changes can be implemented and enforced using existing resources.

Local Effect: The bill's changes can be implemented and enforced using existing resources.

Small Business Effect: None.

Analysis

Current Law: A victim of abuse who was the person eligible for relief in an original final protective order may request the issuance of a new final protective order. A court must 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 and (2) the individual was convicted and *served* a term of imprisonment of at least five years for 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. The specified crimes must have been the act of abuse that led to the issuance of the original final protective order.

Unless terminated at the request of the victim, a new final protective order issued under these provisions is permanent. A new final protective order may contain only the relief that was granted in the original order that required the respondent to refrain from abusing or threatening to abuse the person eligible for relief or to refrain from contacting, attempting to contact, or harassing the person eligible for relief.

Pursuant to § 3-203 of the Criminal Law Article, a person is prohibited from committing an assault. A violator is subject to imprisonment for up to 10 years and/or a maximum fine of \$2,500. Assault means the crimes of assault, battery, and assault and battery, which are defined through case law. A person commits a felony second degree assault if he/she intentionally causes physical injury to another if the person knows or has reason to know that the other is a law enforcement officer or parole or probation agent engaged in the performance of the officer/agent's official duties. "Physical injury" means any impairment of physical condition, excluding minor injuries. Violators are subject to imprisonment for up to 10 years and/or a maximum fine of \$5,000.

Background: According to the *2011 Uniform Crime Report*, 18,209 domestic violence crimes were reported in Maryland, a 1.5% increase compared to the calendar 2010 total of 17,931. Assault was by far the most frequently reported crime, with 16,846 incidents in calendar 2011. Of reported assaults, simple assaults comprised 13,821 incidents. Aggravated assaults totaled 3,017, or 18%, of the reported domestic violence assaults for the same period.

In fiscal 2011 (the latest information readily available), the circuit courts granted 2,288 temporary protective orders and 1,570 final protective orders. In fiscal 2012, the District Court granted 15,287 temporary protective orders and 7,015 final protective orders. The statute authorizing permanent protective orders became effective on October 1, 2008. As of September 1, 2012, there have been 21 petitions for permanent protective orders filed. Of those, only five were granted, with the remainder being dismissed, denied, or rescinded.

Additional Information

Prior Introductions: None.

Cross File: SB 417 (Senator Forehand, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), *2011 Uniform Crime Report*, Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2013
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