

Department of Legislative Services  
2014 Session

FISCAL AND POLICY NOTE

House Bill 1278  
Judiciary

(Delegate McComas, *et al.*)

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Family Law - Protective Order Proceedings - Jurisdiction - Custody of Minor  
Child

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This bill requires a petition for a protective order to be filed with a circuit court or with a District Court Commissioner if the relief sought within the petition includes custody of a minor child. If the commissioner issues an interim protective order and the relief sought within the petition includes custody of a minor child, the commissioner must transfer the case file and any return of service to the office of the clerk of the circuit court.

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Fiscal Summary

**State Effect:** Potential significant increase in general fund expenditures for the Judiciary to handle additional protective order hearings in the circuit courts.

**Local Effect:** Potential increase in circuit court expenditures for some jurisdictions. Revenues are not affected.

**Small Business Effect:** None.

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Analysis

**Current Law:** Although the circuit courts generally have jurisdiction over custody cases, the District Court and circuit courts have concurrent jurisdiction over domestic violence protective order cases, including cases in which custody of a minor child is sought as a form of relief within the protective order. Accordingly, a petition for a temporary protective order may be filed in either a District or circuit court.

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. An interim protective order must state the date, time, and location for the temporary protective order hearing and a tentative date, time, and location for a final protective order hearing. In general, a temporary protective order hearing is held on the first or second day on which a District Court is sitting after issuance of the interim protective order. Prior to the hearing scheduled in the interim protective order, the commissioner must transfer the case file and any return of service to the office of the District Court clerk.

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. In a final protective order hearing, 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 any person eligible for relief from abuse.

A final protective order may order the 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;
- remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members; or
- remain away from a child care provider of a person eligible for relief while the child is in the provider's care.

A final protective order may also:

- 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;
- award temporary custody of a minor child of the respondent and person eligible for relief;
- establish temporary visitation with a minor child of the respondent and person eligible for relief, under certain conditions;
- award emergency family maintenance as necessary to support any person eligible for relief to whom the respondent has a duty of support;
- award temporary use and possession of a vehicle jointly owned by the respondent and a person eligible for relief under certain conditions;

- order the respondent to 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);
- order the respondent to pay filing fees and costs of the proceeding; or
- award temporary possession of any pet of the person eligible for relief or the respondent.

In addition, a final protective order *must* order the respondent to surrender any firearms and to refrain from the possession of any firearms for the duration of the 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.

**Background:** In fiscal 2012 (the latest information readily available), the circuit courts granted 2,082 temporary protective orders and 1,412 final protective orders. In that same year, the District court granted 15,287 temporary protective orders and 7,015 final protective orders. In fiscal 2013, the District Court granted 15,832 temporary protective orders and 7,250 final protective orders. District Court Commissioners granted 11,969 interim protective orders in fiscal 2013.

**State/Local Fiscal Effect:** Although the bill does not impact the overall number of protective orders that are handled by the Judiciary, it shifts some unknown number of protective orders from the District Court to the circuit courts. As illustrated in the statistics above, of the 17,369 temporary orders granted in fiscal 2012, approximately 88% were granted in the District Court. Information regarding the specific number of cases that could potentially be impacted by the bill's provisions is not readily available. However, according to domestic violence monthly summary reports prepared by the Judiciary, and *for illustrative purposes only*, from November 2013 through January 2014, of the 2,119 granted final protective orders for which data was provided, custody was included as a form of relief in 736 orders. This does not include orders for which custody was requested as a form of relief but was not ultimately granted by the judge. Based on this information, the Department of Legislative Services advises that the number of cases shifted from the District Court to the circuit courts under the bill is likely to be significant. As a result, the District Court's workload related to protective orders decreases and the circuit courts' workload correspondingly increases. Although the State  
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is responsible for the salaries of judges and court clerks at both the circuit and District Court levels, it is anticipated that the bill's provisions cannot be met by merely reallocating resources between the two courts. For example, it is assumed that the decrease in workload from a lower volume of protective orders in the District Court does not materially impact expenditures, as judges and clerks will simply be reallocated within the District Court to handle other nonprotective order cases. On the other hand, circuit court expenditures may increase to the extent that additional resources are needed to accommodate a larger volume of protective order cases.

*For illustrative purposes only*, if an additional judgeship is needed, general fund expenditures increase by approximately \$370,000 annually. These costs would include salaries and fringe benefits for a judge, a law clerk, and a court clerk. Even if additional judgeships are not needed, the Judiciary may be required to supplement current judicial resources through increased use of retired judges in the circuit courts. The proposed fiscal 2015 budget includes approximately \$5,240,000 in funding for retired judges. *For illustrative purposes only*, for every 1% increase in the use of retired judges, general fund expenditures increase by approximately \$52,400. On the other hand, any increase in expenditures for the circuit courts may be partially offset to the extent that the District Court is able to rely less on the use of retired judges to manage its caseload due to fewer protective order filings. Any increase in protective order cases also impacts the workload of the court clerks. In some jurisdictions, an additional clerk may be required to handle additional protective order filings. To the extent that an additional clerk is required in any circuit court, general fund expenditures increase by approximately \$42,000 annually.

Because local governments are responsible for providing support staff, supplies, and equipment for circuit court judges, as well as capital and operating expenses for courtrooms and office facilities used by the circuit court judges and the staff, expenditures increase for the impacted jurisdiction if additional judges are needed in any circuit court.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 12, 2014  
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