

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 293
Judiciary

(Delegate Dumais, *et al.*)

Judicial Proceedings

Family Law - Divorce - Domestic Violence Order

This bill repeals provisions of law that prohibit an order or decision in a domestic violence protective order proceeding from being admissible as evidence in a divorce proceeding. It also repeals a provision that prohibits a court from considering compliance with a domestic violence protective order as grounds for granting a decree of limited or absolute divorce.

Fiscal Summary

State Effect: The bill does not materially impact the workload of the Judiciary.

Local Effect: The bill does not materially impact the workload of the circuit courts.

Small Business Effect: None.

Analysis

Current Law: An order or decision in a domestic violence protective order proceeding is inadmissible as evidence in a divorce proceeding. A court may not consider compliance with a domestic violence protective order as grounds for granting a decree of limited or absolute divorce.

Domestic Violence Protective Orders

The Family Law Article sets forth the process by which individuals who meet specified relationship requirements, including spouses, may petition for relief from abuse. In a final domestic violence protective order proceeding, if a judge finds by a preponderance of the 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 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 a person eligible for relief;
- establish temporary visitation with a minor child of the respondent and a 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 to the 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;
- award temporary possession of any pet belonging to the person eligible for relief or the respondent; or
- include any other relief that the judge determines is necessary to protect a person eligible for relief from abuse.

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 in specified circumstances set forth in statute. 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. Statutory provisions set forth circumstances under which a final protective order may be modified, rescinded, or extended.

Limited Divorce

A court may grant a limited divorce on the following grounds:

- cruelty of treatment of the complaining party or a minor child of the complaining party;
- excessively vicious conduct to the complaining party or to a minor child of the complaining party;
- desertion; or
- separation, if the parties are living separate and apart without cohabitation.

A limited divorce does not sever the marriage but does grant the complaining party the right to live separate and apart from the other spouse. A limited divorce can also address issues of custody, visitation, child support, alimony, and use and possession of a family home.

Absolute Divorce

A court may grant an absolute divorce on the following grounds:

- adultery;
- desertion, if the desertion is deliberate and final, has continued for 12 months without interruption, and there is no reasonable expectation of reconciliation;
- conviction of a felony or misdemeanor in any state or federal court, if the defendant has been sentenced to serve at least three years, or an indeterminate sentence, and has served 12 months of the sentence;
- 12-month separation, when the parties have lived separate and apart without cohabitation for 12 months without interruption before the filing of the divorce application;
- insanity, as specified; or
- cruelty of treatment or excessively vicious conduct toward the complaining party or a minor child of the complaining party, if there is no reasonable expectation of reconciliation.

A court may grant an absolute divorce on the ground of mutual consent if specified conditions are met, including if the parties do not have any minor children in common.

Additional Information

Prior Introductions: None.

Cross File: SB 274 (Senator Ramirez) - Judicial Proceedings.

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

Fiscal Note History: First Reader - January 26, 2017
md/kdm Third Reader - March 6, 2017

Analysis by: Jennifer K. Botts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510