

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

Senate Bill 210

(Senator Waldstreicher, *et al.*)

Judicial Proceedings

Judiciary

Protective Orders - Relief Eligibility - Rape and Sexual Offenses

This bill expands eligibility for a domestic violence protective order by altering the definition of a “person eligible for relief” to include an individual who alleges the commission, within six months before the filing of the petition, of rape or a sexual offense, as specified, or attempted rape or sexual offense in any degree. It also removes these offenses from the list of offenses for which an individual may seek relief under provisions of law regarding peace orders.

Fiscal Summary

State Effect: General fund expenditures for the Judiciary increase by \$74,900 in FY 2021 only for programming changes. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	74,900	0	0	0	0
Net Effect	(\$74,900)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

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

Small Business Effect: None.

Analysis

Current Law:

Protective Orders

Only a “person eligible for relief” may file a petition for a protective order under the Family Law Article. A “person eligible for relief” includes:

- a current or former spouse of the respondent;
- a cohabitant of the respondent;
- a person related to the respondent by blood, marriage, or adoption;
- a parent, stepparent, child, or stepchild of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within one year before the filing of the petition;
- a vulnerable adult;
- an individual who has a child in common with the respondent; or
- an individual who has had a sexual relationship with the respondent within one year before the filing of the petition.

In a domestic violence 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.

Among other relief, a final protective order may order 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) remain away from the place of employment, school, or temporary residence of a person eligible for relief or home of other family members; or (5) 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 address issues relating to custody and visitation, use and possession of a home or vehicle, emergency family maintenance, counseling, payment of costs, and temporary possession of a pet. A 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.

A person who violates specified provisions of a 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.

Peace Orders

An individual who does not meet the requirements of a "person eligible for relief" under protective order statutes may file a petition for a peace order with the District Court or the District Court commissioner that alleges the commission of specified acts against the petitioner by the respondent, if the act occurred within 30 days before the filing of the petition. Such acts include rape and sexual offenses, as specified, or an attempted rape or sexual offense in any degree.

After a final peace order hearing, if a judge finds by a preponderance of the evidence that the respondent has committed, and is likely to commit in the future, one of the specified acts against the petitioner, or if the respondent consents to the entry of a peace order, the court may issue a final peace order to protect the petitioner. The order must contain only the relief that is minimally necessary to protect the petitioner. A final peace order can order the respondent to (1) refrain from committing or threatening to commit specified acts; (2) refrain from contacting, attempting to contact, or harassing the petitioner; (3) refrain from entering the residence of the petitioner; or (4) remain away from the place of employment, school, or temporary residence of the petitioner. Final peace orders can also direct the respondent or petitioner to participate in counseling or mediation and order either party to pay filing fees and costs. Relief granted in a final peace order is effective for the period stated in the order but may not exceed six months. Statutory provisions set forth circumstances under which a final peace order may be modified, rescinded, or extended.

An individual who fails to comply with specified provisions of an interim, temporary, or final peace order 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: In fiscal 2018 (the latest information readily available), the circuit courts granted 4,113 temporary protective orders and 1,859 final protective orders. In fiscal 2019, the District Court granted 14,383 interim protective orders, 19,083 temporary protective orders, and 8,764 final protective orders. In the same year, the District Court granted 6,524 interim peace orders, 15,512 temporary peace orders, and 5,415 final peace orders.

State/Local Fiscal Effect: General fund expenditures increase by \$74,934 in fiscal 2021 only for the Judiciary to make necessary programming changes. Otherwise, although the bill expands eligibility for protective orders, the provisions do not materially impact the overall caseload of the Judiciary, as some individuals who qualify for a protective order as a result of this bill may qualify under current law for a peace order (depending on when the underlying act occurred). Accordingly, while there may be increased filings for protective orders, this is partially offset by a corresponding decrease in the number of peace orders. Individuals filing for protective orders may do so in circuit courts or the District Court; peace orders may only be filed at the District Court. While the expanded eligibility for protective orders may therefore increase the number of filings in the circuit courts, any increase will not materially impact the workload of the circuit courts.

The bill does not materially increase the overall number of peace and protective orders that are served or enforced by local law enforcement.

Additional Information

Prior Introductions: SB 209 of 2019, a similar bill, passed the Senate and House, as amended. Its cross file, HB 122, also passed the House and Senate, as amended. Although conference committees were appointed for both bills, differences were not fully reconciled prior to the end of the legislative session.

Designated Cross File: HB 248 (Delegate Atterbeary, *et al.*) - Judiciary.

Information Source(s): Anne Arundel, Baltimore, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of State Police; Department of Legislative Services

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