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Domestic Violence Law Poses Challenges for the Courts

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Analysis

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by Judith Wolfer and
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On May 5, 1992, the state of Maryland entered the modern age of legal protections for victims of domestic violence when Governor William Donald Schaefer signed into law Senate Bill 282, this year's domestic violence legislation. The bill, which takes effect Oct. 1, expands the availability of civil protection for victims of domestic violence by amending key provisions of the current law at Fam. Law 4-501, *et seq.* See synopsis at 5 Md. Fam. L.M. 18 (1992)

The need for legislative reform in the state's civil protection order had been urged by domestic violence advocates for years. This need was highlighted most recently in the final report and recommendations of the Attorney General's Advisory Council on the Family Law Legal Needs for Low Income Persons, "Increasing Access to Justice for Maryland's Families" (March 1992). In its survey of civil protection order laws throughout the country, the Advisory Council's Domestic Violence Subcommittee discovered that Maryland's current protection order law held the unenviable position of being the weakest law of its kind in the country with respect to eligibility and the relief available to victims.

The final language of SB 282 (now enrolled as Chapter 65, Laws of 1992) reflects the compromises reached between the amended Senate and House bills. While compromises were necessary to pass the bill, the final result is a law that is vague in many of its key provisions. This lack of clarity, particularly in the context of the volatile emotions that one frequently encounters in domestic violence cases, literally invites litigation.

Duration of the order. Concerns have already been expressed by members of the bench and the bar that the increased duration of the protection order, from the current 30 days to a maximum of 200 days, might prompt judges to require victims to show serious injury before awarding a protective order for the full 200 days. This thinking runs counter to the major purpose of the legislation and all social science research on effective domestic violence intervention. Research demonstrates that domestic violence rarely consists of a single incident. We know that victims usually seek help only after many abusive incidents have occurred. Victims may then request court protection in anticipation of an impending assault. Recognizing these circumstances, the legislature included in the definition of abuse acts that place an eligible person in fear of abuse. If the interventive and preventative goals of this law are to be implemented, judges have a duty to inquire into the history of abuse and award the maximum amount of relief if a threat of further abuse exists, regardless of the level of injury. This is essential to give victims time to recover from the abuse and marshall their resources, and batterers time to obtain meaningful treatment.

Monetary Support. Chief District Court Judge Robert Sweeney was among the many witnesses who testified in support of this bill before the legislature. He expressed the concerns of some of the district court administrative judges, however, about language in the bill permitting the court to award emergency child support based upon the child support guidelines. The drafters of the bill included this provision because they recognized that short term financial relief can be critical to provide emergency help to victims of abuse who are extricating themselves from violent relationships. In an attempt to accommodate the concerns of the district court judges and still maintain a financial relief provision, the House Judiciary Committee amended the bill. It now provides for "emergency family maintenance as necessary to support any person eligible for relief . . ." based upon "the financial resources of the respondent and the person eligible for relief." Fam. Law 4-506. This vague language will remind domestic practitioners and circuit court judges of days prior to the implementation of the child support guidelines when lengthy child support hearings and unpredictable awards were the norm.

District court judges might avoid both the protracted hearings and appellate challenges which may result from this vague standard by awarding "emergency family maintenance" based upon the child support guidelines contained in Fam. Law 12-201, *et. seq.* These guidelines have already taken into account the financial needs of the person eligible for relief (the child) and the resources of the parents. An award of a monthly rent or mortgage payment may also provide a means of streamlining the inquiry into financial needs and resource availability.

Modification and enforcement. Currently the district and circuit courts have concurrent jurisdiction and the full powers of a court in equity when hearing protection order petitions. In practice, however, most of the protection orders awarded in the state are issued by the district court, with most circuit courts referring applicants to the district court. The original language of SB 282 recognized both the potential increased burden on the district court and the fact that investigative and enforcement mechanisms for custody, visitation and support issues currently exist only in the circuit court. Consequently, the bill originally provided for modification and enforcement of child custody, support or visitation provisions of protection orders to lie exclusively in the circuit court. The House Judiciary Committee amended the bill to provide for plaintiff election of either the district or circuit court in which to pursue his or her modification or enforcement action.

A concern surrounding the litigant's selection of the forum is that the district courts, fearing lengthy custody modification or enforcement proceedings, may decline to award the critically important remedy of custody to victims. Most district court judges are keenly aware of the great threat that child snatching poses for victims of domestic violence and their children and will reject the temptation to refuse this remedy. The courts, however, might want to begin statewide discussions of the impact of forum selection in protection order cases over the next year.

With the enactment of this new law, the General Assembly has made real progress toward creating a statute which is broad enough in its coverage to protect those who need it and responsive enough in its remedies to provide the "safe place" needed for victims of abuse. Both the judges implementing this statute and those interpreting it on review should be guided by these critically important goals.

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