

Protective orders rise under law

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By Melissa Boughton

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WINCHESTER- The number of protective orders issued for local residents has risen dramatically since a new provision of state law making it easier for non-family members to obtain them took effect.

The new law took affect July 1.

According to numbers from the Virginia Supreme Court, Winchester General District Court saw a 1,700 percent increase in the number of orders processed in the period from July to December 2011 compared to the same months from the year before.

Frederick County General District Court saw a 914 percent increase for the same time frame.

Winchester and Frederick County General District Court Clerk Brenda L. Vance said the increase has been a strain on an already overburdened court.

She said that in January and February alone, her office processed 68 protective orders.

"All protective orders are very time consuming to process when you have an overloaded docket every day," she said. "It's difficult at best to keep things afloat and meet deadlines."

The provision to the state law mirrors what was already in place for residents seeking a protective order against a "family or household member."

That means any person who the resident seeking an order against is or was married to, any parent, stepparent, child, stepchild, brother, sister, half-brother, half-sister, grandparent or grandchild, anyone who lives in the same house who is a mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law-or sister-in-law, any person with whom the resident has a child with, or any person the resident cohabitates with currently or in the last 12 months.

The new provision allows residents to seek a protective order against anyone, no matter their relationship, as long as that person can show that there was an act of violence, force or threat from the accused.

Anyone seeking a protective order under the new provision must file paperwork in general district court, whereas those seeking an order against a family or household member would be directed to juvenile and domestic relations court.

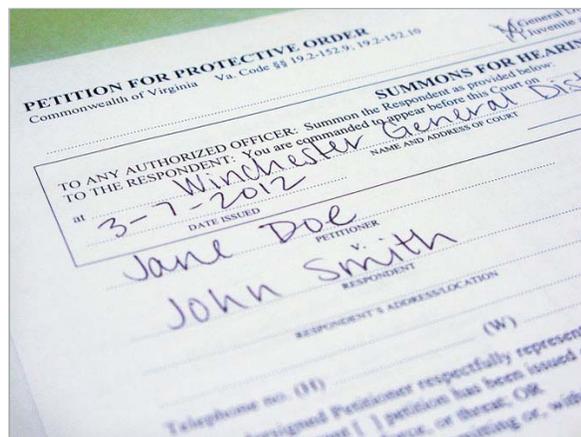
There are three types of protective orders - an emergency protective order, which expires three days following issuance or the next day court is in session; a preliminary protective order, which lasts 15 days or until a full hearing; and one that may last up to two years.

Protective orders can usually be obtained quickly.

"Often they come in and we're walking them up to court the same day," Vance said.

The protective order takes effect once the person it is filed against is served by law enforcement.

Vance said the spike in orders processed affects everyone from commonwealth's attorneys to local law enforcement.



The number of protective orders issued in Winchester, and Frederick and Clarke counties has skyrocketed since July when the state changed the law so that orders can be written against anyone who has threatened force or committed violence. Orders are no longer limited to family members.

She added that court often runs over schedule because of the long dockets.

The heaviest criticism of the new provision has come from those who believe residents are taking advantage of the system by seeking orders simply to keep bothersome people at a distance.

Nora Mohoney, domestic violence attorney at Blue Ridge Legal Services, said she believes the law, overall, is a good thing.

"The problem is, in my opinion, that there is a lot of misinformation given to the community," she said, pointing out that there is a burden of proof to obtain a protective order.

She said that ultimately the judges hear the cases and it is on the person who is seeking an order to prove that there is an act of violence, force or threat. There has to be physical harm or reasonable fear of physical harm for an order to be issued, in theory, she said.

"It's not about somebody being annoying," Mohoney said. "It's about 'I might get hurt, I might die, I might end up in the hospital if I don't get [a protective order].'"

"All of this hinges on fear, and maybe part of the problem is that people are overlooking that piece."

Donna Hogan, criminal justice coordinator with the Laurel Center in Winchester, said the people they see are the ones who truly need a protective order - that is, people in violent dating relationships who don't live together or have a child together, or acquaintance sexual assault victims.

She said for them, the expansion of the protective order law is often a needed lifeline.

"It's been proposed for many years that people in situations like that were left out of protective orders, that there was nothing they could do," she said.

"It's not nearly as hard [now] for those people who have fallen through the cracks [of the old law]."

Previously, non-family members would have to file criminal charges in order to even be heard for a protective order, Mahoney said.

"They don't [necessarily] want to get anyone in trouble, they just want them to stay away," Mahoney said, referring to the fact that many people don't want to file criminal charges.

Vance said despite the extra work the law has created for the courts, she sees the upside to the expanded law.

"There are people who need protective orders," she said. "Those victims have better access to get into the courts [now]."

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