

HOUSE BILL 464

D4

9lr2500
CF SB 714

By: **Delegate Dumais**

Introduced and read first time: February 4, 2009

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 2009

CHAPTER _____

1 AN ACT concerning

2 **Domestic Violence – ~~Interim and Temporary~~ Protective Orders – Custody of**
3 **Minor Child**

4 FOR the purpose of authorizing a District Court Commissioner to order a law
5 enforcement officer to use all reasonable and necessary force to enforce a
6 temporary custody provision of an interim protective order; authorizing a judge
7 to order a law enforcement officer to use all reasonable and necessary force to
8 enforce a temporary custody provision of ~~an interim or~~ a temporary protective
9 order; requiring that enforcement of a temporary custody provision of an
10 interim, temporary, or final protective order occur after service of the protective
11 order; and generally relating to domestic violence protective orders.

12 BY repealing and reenacting, with amendments,
13 Article – Family Law
14 Section 4–504.1 ~~and~~, 4–505(a), and 4–506(e)
15 Annotated Code of Maryland
16 (2006 Replacement Volume and 2008 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article – Family Law**

20 4–504.1.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (a) A petition under this subtitle may be filed with a commissioner when
2 neither the office of the clerk of the circuit court nor the Office of the District Court
3 Clerk is open for business.

4 (b) If a petition is filed with a commissioner and the commissioner finds that
5 there are reasonable grounds to believe that the respondent has abused a person
6 eligible for relief, the commissioner may issue an interim protective order to protect a
7 person eligible for relief.

8 (c) An interim protective order may:

9 (1) order the respondent to refrain from further abuse or threats of
10 abuse of a person eligible for relief;

11 (2) order the respondent to refrain from contacting, attempting to
12 contact, or harassing a person eligible for relief;

13 (3) order the respondent to refrain from entering the residence of a
14 person eligible for relief;

15 (4) if a person eligible for relief and the respondent are residing
16 together at the time of the alleged abuse:

17 (i) order the respondent to vacate the home immediately;

18 (ii) award to a person eligible for relief custody of any child of
19 the person eligible for relief and respondent then residing in the home; and

20 (iii) subject to the limits as to a nonspouse specified in §
21 4-505(a)(2)(iv) of this subtitle, award temporary use and possession of the home to the
22 person eligible for relief;

23 (5) in a case alleging abuse of a child, award temporary custody of a
24 minor child of the respondent and a person eligible for relief;

25 (6) in a case alleging abuse of a vulnerable adult, subject to the limits
26 as to a nonspouse specified in § 4-505(a)(2)(iv) of this subtitle, award temporary use
27 and possession of the home to an adult living in the home;

28 (7) order the respondent to remain away from the place of
29 employment, school, or temporary residence of a person eligible for relief; or

30 (8) order the respondent to remain away from the residence of any
31 family member of a person eligible for relief.

32 **(D) IF THE ~~JUDGE~~ COMMISSIONER AWARDS TEMPORARY CUSTODY OF A**
33 **MINOR CHILD UNDER SUBSECTION (C)(4)(II) OR (5) OF THIS SECTION, THE**

1 ~~JUDGE COMMISSIONER~~ MAY ORDER A LAW ENFORCEMENT OFFICER TO USE ALL
2 REASONABLE AND NECESSARY FORCE TO RETURN THE MINOR CHILD TO THE
3 CUSTODIAL PARENT ~~AT THE TIME OF SERVICE OR AS SOON AS POSSIBLE AFTER~~
4 ~~ENTRY~~ SERVICE OF THE INTERIM PROTECTIVE ORDER.

5 [(d)] (E) (1) (i) An interim protective order shall state the date, time,
6 and location for the temporary protective order hearing and a tentative date, time, and
7 location for a final protective order hearing.

8 (ii) A temporary protective order hearing shall be held on the
9 first or second day on which a District Court judge is sitting after issuance of the
10 interim protective order, unless the judge continues the hearing for good cause.

11 (2) An interim protective order shall include in at least 10–point bold
12 type:

13 (i) notice to the respondent that:

14 1. the respondent must give the court written notice of
15 each change of address;

16 2. if the respondent fails to appear at the temporary
17 protective order hearing or any later hearing, the respondent may be served with any
18 orders or notices in the case by first–class mail at the respondent’s last known
19 address;

20 3. the date, time, and location of the final protective
21 order hearing is tentative only, and subject to change; and

22 4. if the respondent does not attend the temporary
23 protective order hearing, the respondent may call the Office of the Clerk of the District
24 Court at the number provided in the order to find out the actual date, time, and
25 location of any final protective order hearing;

26 (ii) a statement of all possible forms and duration of relief that a
27 temporary protective order or final protective order may contain;

28 (iii) notice to the petitioner and respondent that, at the hearing,
29 a judge may issue a temporary protective order that grants any or all of the relief
30 requested in the petition or may deny the petition, whether or not the respondent is in
31 court;

32 (iv) a warning to the respondent that violation of an interim
33 protective order is a crime and that a law enforcement officer shall arrest the
34 respondent, with or without a warrant, and take the respondent into custody if the
35 officer has probable cause to believe that the respondent has violated any provision of
36 the interim protective order; and

1 (v) the phone number of the Office of the District Court Clerk.

2 [(e)] (F) Whenever a commissioner issues an interim protective order, the
3 commissioner shall:

4 (1) immediately forward a copy of the petition and interim protective
5 order to the appropriate law enforcement agency for service on the respondent; and

6 (2) before the hearing scheduled in the interim protective order,
7 transfer the case file and the return of service, if any, to the Office of the District Court
8 Clerk.

9 [(f)] (G) A law enforcement officer shall:

10 (1) immediately on receipt of a petition and interim protective order,
11 serve them on the respondent named in the order; and

12 (2) immediately after service, make a return of service to the
13 commissioner's office or, if the Office of the District Court Clerk is open for business, to
14 the Clerk.

15 [(g)] (H) An interim protective order shall be effective until the earlier of:

16 (1) the temporary protective order hearing under § 4-505 of this
17 subtitle; or

18 (2) the end of the second business day the Office of the Clerk of the
19 District Court is open following the issuance of an interim protective order.

20 [(h)] (I) A decision of a commissioner to grant or deny relief under this
21 section is not binding on, and does not affect any power granted to or duty imposed on,
22 a judge of a circuit court or the District Court under any law, including any power to
23 grant or deny a petition for a temporary protective order or final protective order.

24 4-505.

25 (a) (1) If, after a hearing on a petition, whether ex parte or otherwise, a
26 judge finds that there are reasonable grounds to believe that a person eligible for relief
27 has been abused, the judge may enter a temporary protective order to protect any
28 person eligible for relief from abuse.

29 (2) The temporary protective order may order any or all of the
30 following relief:

31 (i) order the respondent to refrain from further abuse or threats
32 of abuse of a person eligible for relief;

1 (ii) order the respondent to refrain from contacting, attempting
2 to contact, or harassing any person eligible for relief;

3 (iii) order the respondent to refrain from entering the residence
4 of a person eligible for relief;

5 (iv) where the person eligible for relief and the respondent are
6 residing together at the time of the alleged abuse, order the respondent to vacate the
7 home immediately and award temporary use and possession of the home to the person
8 eligible for relief or in the case of alleged abuse of a child or alleged abuse of a
9 vulnerable adult, award temporary use and possession of the home to an adult living
10 in the home, provided that the court may not grant an order to vacate and award
11 temporary use and possession of the home to a nonspouse person eligible for relief
12 unless the name of the person eligible for relief appears on the lease or deed to the
13 home or the person eligible for relief has resided in the home with the respondent for a
14 period of at least 90 days within 1 year before the filing of the petition;

15 (v) order the respondent to remain away from the place of
16 employment, school, or temporary residence of a person eligible for relief or home of
17 other family members;

18 (vi) order the respondent to remain away from a child care
19 provider of a person eligible for relief while a child of the person is in the care of the
20 child care provider; and

21 (vii) award temporary custody of a minor child of the person
22 eligible for relief and the respondent.

23 **(3) IF THE JUDGE AWARDS TEMPORARY CUSTODY OF A MINOR**
24 **CHILD UNDER PARAGRAPH (2)(VII) OF THIS SUBSECTION, THE JUDGE MAY**
25 **ORDER A LAW ENFORCEMENT OFFICER TO USE ALL REASONABLE AND**
26 **NECESSARY FORCE TO RETURN THE MINOR CHILD TO THE CUSTODIAL PARENT**
27 **~~AT THE TIME OF SERVICE OR AS SOON AS POSSIBLE AFTER ENTRY~~ SERVICE OF**
28 **THE TEMPORARY PROTECTIVE ORDER.**

29 4-506.

30 (e) If the judge awards temporary custody of a minor child under subsection
31 (d)(7) of this section, the judge may order a law enforcement officer to use all
32 reasonable and necessary force to return the minor child to the custodial parent [at
33 the time of service or as soon as possible] after [entry] **SERVICE** of the final protective
34 order.

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
36 October 1, 2009.

