

SENATE BILL 210

D4, E4
HB 1448/08 – JUD

9lr1675

By: **Senator Lenett**

Introduced and read first time: January 23, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Final Protective Orders – Surrender of Firearms**

3 FOR the purpose of making it mandatory, rather than discretionary, for a final
4 protective order to order the respondent to surrender certain firearms to law
5 enforcement authorities and to refrain from possessing any firearm for a certain
6 duration; making certain technical changes; and generally relating to the
7 issuance and contents of protective orders.

8 BY repealing and reenacting, with amendments,
9 Article – Family Law
10 Section 4–506, 4–507(a), and 4–509(a)
11 Annotated Code of Maryland
12 (2006 Replacement Volume and 2008 Supplement)

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

15 **Article – Family Law**

16 4–506.

17 (a) A respondent under § 4–505 of this subtitle shall have an opportunity to
18 be heard on the question of whether the judge should issue a final protective order.

19 (b) (1) (i) The temporary protective order shall state the date and time
20 of the final protective order hearing.

21 (ii) Unless continued for good cause, the final protective order
22 hearing shall be held no later than 7 days after the temporary protective order is
23 served on the respondent.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) The temporary protective order shall include notice to the
2 respondent:

3 (i) in at least 10–point bold type, that if the respondent fails to
4 appear at the final protective order hearing, the respondent may be served by
5 first–class mail at the respondent’s last known address with the final protective order
6 and all other notices concerning the final protective order;

7 (ii) specifying all the possible forms of relief under subsection
8 (d) of this section that the final protective order may contain;

9 (iii) that the final protective order shall be effective for the
10 period stated in the order, not to exceed 12 months, unless the judge extends the term
11 of the order, under § 4–507(a)(2) of this subtitle or the court issues a permanent order
12 under subsection (i) of this section; and

13 (iv) in at least 10–point bold type, that the respondent must
14 notify the court in writing of any change of address.

15 (c) (1) If the respondent appears before the court at a protective order
16 hearing or has been served with an interim or temporary protective order, or the court
17 otherwise has personal jurisdiction over the respondent, the judge:

18 (i) may proceed with the final protective order hearing; and

19 (ii) if the judge finds by clear and convincing evidence that the
20 alleged abuse has occurred, or if the respondent consents to the entry of a protective
21 order, the judge may grant a final protective order to protect any person eligible for
22 relief from abuse.

23 (2) A final protective order may be issued only to a person who has
24 filed a petition under § 4–504 of this subtitle.

25 (3) (i) Subject to the provisions of subparagraph (ii) of this
26 paragraph, in cases where both parties file a petition under § 4–504 of this subtitle,
27 the judge may issue mutual protective orders if the judge finds by clear and convincing
28 evidence that mutual abuse has occurred.

29 (ii) The judge may issue mutual final protective orders only if
30 the judge makes a detailed finding of fact that:

31 1. both parties acted primarily as aggressors; and

32 2. neither party acted primarily in self–defense.

33 (d) The final protective order may include any or all of the following relief:

1 (1) order the respondent to refrain from abusing or threatening to
2 abuse any person eligible for relief;

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

5 (3) order the respondent to refrain from entering the residence of any
6 person eligible for relief;

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

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

20 (6) order the respondent to remain away from a child care provider of
21 a person eligible for relief while a child of the person is in the care of the child care
22 provider;

23 (7) award temporary custody of a minor child of the respondent and a
24 person eligible for relief;

25 (8) establish temporary visitation with a minor child of the respondent
26 and a person eligible for relief on a basis which gives primary consideration to the
27 welfare of the minor child and the safety of any other person eligible for relief. If the
28 court finds that the safety of a person eligible for relief will be jeopardized by
29 unsupervised or unrestricted visitation, the court shall condition or restrict visitation
30 as to time, place, duration, or supervision, or deny visitation entirely, as needed to
31 guard the safety of any person eligible for relief;

32 (9) award emergency family maintenance as necessary to support any
33 person eligible for relief to whom the respondent has a duty of support under this
34 article, including an immediate and continuing withholding order on all earnings of
35 the respondent in the amount of the ordered emergency family maintenance in
36 accordance with the procedures specified in Title 10, Subtitle 1, Part III of this article;

37 (10) award temporary use and possession of a vehicle jointly owned by
38 the respondent and a person eligible for relief to the person eligible for relief if

1 necessary for the employment of the person eligible for relief or for the care of a minor
2 child of the respondent or a person eligible for relief;

3 (11) direct the respondent or any or all of the persons eligible for relief
4 to participate in professionally supervised counseling or a domestic violence program;
5 **OR**

6 (12) [order the respondent to surrender to law enforcement authorities
7 any firearm in the respondent's possession for the duration of the protective order; or

8 (13)] order the respondent to pay filing fees and costs of a proceeding
9 under this subtitle.

10 **(E) THE FINAL PROTECTIVE ORDER SHALL ORDER THE RESPONDENT**
11 **TO SURRENDER TO LAW ENFORCEMENT AUTHORITIES ANY FIREARM IN THE**
12 **RESPONDENT'S POSSESSION, AND TO REFRAIN FROM POSSESSION OF ANY**
13 **FIREARM, FOR THE DURATION OF THE PROTECTIVE ORDER.**

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

18 [(f)] **(G)** In determining whether to order the respondent to vacate the
19 home under § 4-505(a)(2)(iv) of this subtitle or subsection (d)(4) of this section, the
20 judge shall consider the following factors:

21 (1) the housing needs of any minor child living in the home;

22 (2) the duration of the relationship between the respondent and any
23 person eligible for relief;

24 (3) title to the home;

25 (4) pendency and type of criminal charges against the respondent;

26 (5) the history and severity of abuse in the relationship between the
27 respondent and any person eligible for relief;

28 (6) the existence of alternative housing for the respondent and any
29 person eligible for relief; and

30 (7) the financial resources of the respondent and the person eligible for
31 relief.

32 [(g)] **(H)** (1) A copy of the final protective order shall be served on the
33 petitioner, the respondent, any affected person eligible for relief, the appropriate law

1 enforcement agency, and any other person the judge determines is appropriate, in
2 open court or, if the person is not present at the final protective order hearing, by
3 first-class mail to the person's last known address.

4 (2) A copy of the final protective order served on the respondent in
5 accordance with paragraph (1) of this subsection constitutes actual notice to the
6 respondent of the contents of the final protective order. Service is complete upon
7 mailing.

8 [(h)] (I) (1) Except as provided in paragraph (2) of this subsection, all
9 relief granted in a final protective order shall be effective for the period stated in the
10 order, not to exceed 12 months.

11 (2) A subsequent circuit court order pertaining to any of the provisions
12 included in the final protective order shall supersede those provisions in the final
13 protective order.

14 [(i)] (J) (1) Notwithstanding any other provision of this section, the
15 court shall issue a new final protective order against an individual if:

16 (i) the individual was previously a respondent under this
17 subtitle against whom a final protective order was issued;

18 (ii) the individual was convicted and served a term of
19 imprisonment of at least 5 years under § 2-205, § 2-206, § 3-202, § 3-303, § 3-304, §
20 3-305, § 3-306, § 3-309, § 3-310, § 3-311, or § 3-312 of the Criminal Law Article for
21 the act of abuse that led to the issuance of the final protective order; and

22 (iii) the victim of the abuse who was the person eligible for relief
23 in the original final protective order requests the issuance of a new final protective
24 order.

25 (2) In a final protective order issued under this subsection, the court
26 may grant only the relief that was granted in the original protective order under
27 subsection (d)(1) or (2) of this section.

28 (3) Unless terminated at the request of the victim, a final protective
29 order issued under this subsection shall be permanent.

30 4-507.

31 (a) (1) A protective order may be modified or rescinded during the term of
32 the protective order after:

33 (i) giving notice to all affected persons eligible for relief and the
34 respondent; and

1 (ii) a hearing.

2 (2) For good cause shown, a judge may extend the term of the
3 protective order for 6 months beyond the period specified in § [4-506(h)] **4-506(I)** of
4 this subtitle, after:

5 (i) giving notice to all affected persons eligible for relief and the
6 respondent; and

7 (ii) a hearing.

8 4-509.

9 (a) A person who fails to comply with the relief granted in an interim
10 protective order under § 4-504.1(c)(1), (2), (3), (4)(i), (7), or (8) of this subtitle, a
11 temporary protective order under § 4-505(a)(2)(i), (ii), (iii), (iv), or (v) of this subtitle,
12 or a final protective order under § 4-506(d)(1), (2), (3), (4), **OR** (5), or [(12)] **(E)** of this
13 subtitle is guilty of a misdemeanor and on conviction is subject, for each offense, to:

14 (1) for a first offense, a fine not exceeding \$1,000 or imprisonment not
15 exceeding 90 days or both; and

16 (2) for a second or subsequent offense, a fine not exceeding \$2,500 or
17 imprisonment not exceeding 1 year or both.

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