

SENATE BILL 267

D4, E4

9lr0208
CF HB 296

By: **The President (By Request - Administration) and Senators Forehand, Frosh, Harrington, Lenett, and Raskin**

Introduced and read first time: January 23, 2009

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 26, 2009

CHAPTER _____

1 AN ACT concerning

2 **Family Law - Protective Orders - Surrender of Firearms**

3 FOR the purpose of ~~making it mandatory, rather than discretionary, for~~ requiring a
4 final protective order to order the respondent to surrender certain firearms to
5 law enforcement authorities and to refrain from possessing any firearm for a
6 certain duration; requiring a law enforcement officer to provide certain
7 information to a respondent when a firearm is surrendered and to transport and
8 store the firearm in a certain manner; providing for the retaking of surrendered
9 firearms by the respondent except under certain circumstances; making certain
10 technical changes; and generally relating to ~~the issuance and contents of~~
11 protective orders and surrender of firearms.

12 BY repealing and reenacting, with amendments,
13 Article - Family Law
14 Section 4-506, 4-507(a), and 4-509(a)
15 Annotated Code of Maryland
16 (2006 Replacement Volume and 2008 Supplement)

17 BY adding to
18 Article - Family Law
19 Section 4-506.1
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2008 Supplement)

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

3 **Article – Family Law**

4 4–506.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 9 1. both parties acted primarily as aggressors; and
10 2. neither party acted primarily in self–defense.

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

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

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

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

18 (4) where the person eligible for relief and the respondent are residing
19 together at the time of the abuse, order the respondent to vacate the home
20 immediately and award temporary use and possession of the home to the person
21 eligible for relief or, in the case of alleged abuse of a child or alleged abuse of a
22 vulnerable adult, award temporary use and possession of the home to an adult living
23 in the home, provided that the court may not grant an order to vacate and award
24 temporary use and possession of the home to a nonspouse person eligible for relief
25 unless the name of the person eligible for relief appears on the lease or deed to the
26 home or the person eligible for relief has shared the home with the respondent for a
27 period of at least 90 days within 1 year before the filing of the petition;

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

31 (6) order the respondent to remain away from a child care provider of
32 a person eligible for relief while a child of the person is in the care of the child care
33 provider;

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

1 (8) establish temporary visitation with a minor child of the respondent
2 and a person eligible for relief on a basis which gives primary consideration to the
3 welfare of the minor child and the safety of any other person eligible for relief. If the
4 court finds that the safety of a person eligible for relief will be jeopardized by
5 unsupervised or unrestricted visitation, the court shall condition or restrict visitation
6 as to time, place, duration, or supervision, or deny visitation entirely, as needed to
7 guard the safety of any person eligible for relief;

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

13 (10) award temporary use and possession of a vehicle jointly owned by
14 the respondent and a person eligible for relief to the person eligible for relief if
15 necessary for the employment of the person eligible for relief or for the care of a minor
16 child of the respondent or a person eligible for relief;

17 (11) direct the respondent or any or all of the persons eligible for relief
18 to participate in professionally supervised counseling or a domestic violence program;

19 **OR**

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

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

24 **(E) THE FINAL PROTECTIVE ORDER SHALL ORDER THE RESPONDENT**
25 **TO SURRENDER TO LAW ENFORCEMENT AUTHORITIES ANY FIREARM IN THE**
26 **RESPONDENT'S POSSESSION, AND TO REFRAIN FROM POSSESSION OF ANY**
27 **FIREARM, FOR THE DURATION OF THE PROTECTIVE ORDER.**

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

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

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

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

1 (3) title to the home;

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

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

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

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

9 [(g)] (H) (1) A copy of the final protective order shall be served on the
10 petitioner, the respondent, any affected person eligible for relief, the appropriate law
11 enforcement agency, and any other person the judge determines is appropriate, in
12 open court or, if the person is not present at the final protective order hearing, by
13 first-class mail to the person's last known address.

14 (2) A copy of the final protective order served on the respondent in
15 accordance with paragraph (1) of this subsection constitutes actual notice to the
16 respondent of the contents of the final protective order. Service is complete upon
17 mailing.

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

21 (2) A subsequent circuit court order pertaining to any of the provisions
22 included in the final protective order shall supersede those provisions in the final
23 protective order.

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

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

28 (ii) the individual was convicted and served a term of
29 imprisonment of at least 5 years under § 2-205, § 2-206, § 3-202, § 3-303, § 3-304, §
30 3-305, § 3-306, § 3-309, § 3-310, § 3-311, or § 3-312 of the Criminal Law Article for
31 the act of abuse that led to the issuance of the final protective order; and

32 (iii) the victim of the abuse who was the person eligible for relief
33 in the original final protective order requests the issuance of a new final protective
34 order.

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

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

6 **4-506.1.**

7 **(A) IF A RESPONDENT SURRENDERS A FIREARM UNDER § 4-506 OF THIS**
8 **SUBTITLE, A LAW ENFORCEMENT OFFICER SHALL:**

9 **(1) PROVIDE TO THE RESPONDENT INFORMATION ON THE**
10 **PROCESS FOR RETAKING POSSESSION OF THE FIREARM; AND**

11 **(2) TRANSPORT AND STORE THE FIREARM IN A PROTECTIVE**
12 **CASE, IF ONE IS AVAILABLE, AND IN A MANNER INTENDED TO PREVENT DAMAGE**
13 **TO THE FIREARM DURING THE TIME THE PROTECTIVE ORDER IS IN EFFECT.**

14 **(B) THE RESPONDENT MAY RETAKE POSSESSION OF THE FIREARM AT**
15 **THE EXPIRATION OF THE FINAL PROTECTIVE ORDER UNLESS:**

16 **(1) THE PROTECTIVE ORDER IS EXTENDED UNDER § 4-507(A)(2)**
17 **OF THIS SUBTITLE; OR**

18 **(2) THE RESPONDENT IS NOT OTHERWISE LEGALLY ENTITLED TO**
19 **OWN OR POSSESS THE FIREARM.**

20 4-507.

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

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

25 (ii) a hearing.

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

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

1 (ii) a hearing.

2 4-509.

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.