SENATE BILL 28

D4 4lr0664
(PRE–FILED) CF 4lr1319

By: **Senator Frosh**
Requested: October 17, 2013
Introduced and read first time: January 8, 2014
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Peace Orders and Protective Orders – Burden of Proof

FOR the purpose of altering the standard of proof by which a judge in certain peace order hearings must make certain findings before the judge may issue a final peace order or mutual peace orders; altering the standard of proof by which a judge in certain protective order hearings must make certain findings before the judge may grant a final protective order or mutual protective orders or extend the term of a protective order; and generally relating to the standard of proof in certain peace order and protective order hearings.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–1505(c)
Annotated Code of Maryland
(2013 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Family Law
Section 4–506(c) and 4–507(a)(3)
Annotated Code of Maryland
(2012 Replacement Volume and 2013 Supplement)

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

Article – Courts and Judicial Proceedings

3–1505.

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

(c) (1) If the respondent appears for the final peace order hearing, has been served with an interim peace order or a temporary peace order, or the court otherwise has personal jurisdiction over the respondent, the judge:

(i) May proceed with the final peace order hearing; and

(ii) If the judge finds by **[**clear and convincing**]** **A PREPONDERANCE OF THE** evidence that the respondent has committed, and is likely to commit in the future, an act specified in § 3–1503(a) of this subtitle against the petitioner, or if the respondent consents to the entry of a peace order, the court may issue a final peace order to protect the petitioner.

(2) A final peace order may be issued only to an individual who has filed a petition under § 3–1503 of this subtitle.

(3) In cases where both parties file a petition under § 3–1503 of this subtitle, the judge may issue mutual peace orders if the judge finds by **[**clear and convincing**]** **A PREPONDERANCE OF THE** evidence that each party has committed, and is likely to commit in the future, an act specified in § 3–1503(a) of this subtitle against the other party.

Article – Family Law

4–506.

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

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

(ii) if the judge finds by **[**clear and convincing**]** **A PREPONDERANCE OF THE** evidence that the alleged abuse has occurred, or if the respondent consents to the entry of a protective order, the judge may grant a final protective order to protect any person eligible for relief from abuse.

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

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

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

1. both parties acted primarily as aggressors; and

2. neither party acted primarily in self–defense.

4–507.

(a) (3) (i) If, during the term of a protective order, a judge finds by **[**clear and convincing**] A PREPONDERANCE OF THE** evidence that the respondent named in the protective order has committed a subsequent act of abuse against a person eligible for relief named in the protective order, the judge may extend the term of the protective order for a period not to exceed 2 years from the date the extension is granted, after:

1. giving notice to all affected persons eligible for relief and the respondent; and

2. a hearing.

(ii) In determining the period of extension of a protective order under subparagraph (i) of this paragraph, the judge shall consider the following factors:

1. the nature and severity of the subsequent act of abuse;

2. the history and severity of abuse in the relationship between the respondent and any person eligible for relief named in the protective order;

3. the pendency and type of criminal charges against the respondent; and

4. the nature and extent of the injury or risk of injury caused by the respondent.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.