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 Introduced and read first time: January 25, 1996
 Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Domestic Violence - Temporary Ex Parte Orders and Protective Orders - Available**
3 **Relief - Surrender of Firearms**

4 FOR the purpose of authorizing a court that enters a temporary ex parte order or
5 protective order to protect certain persons from abuse to order the respondent to
6 surrender certain firearms under certain circumstances; requiring a law
7 enforcement officer serving a temporary ex parte order to search for and seize
8 certain firearms under certain circumstances; and generally relating to the relief
9 available to certain persons seeking relief from abuse under certain provisions of
10 law.

11 BY repealing and reenacting, with amendments,
12 Article - Family Law
13 Section 4-505 and 4-506
14 Annotated Code of Maryland
15 (1991 Replacement Volume and 1995 Supplement)

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

18 **Article - Family Law**

19 4-505.

20 (a) (1) If a petition is filed under this subtitle and the court finds that there are
21 reasonable grounds to believe that a person eligible for relief has been abused, the court,
22 in an ex parte proceeding, may enter a temporary order to protect any person eligible for
23 relief from abuse.

24 (2) The temporary ex parte order may order any or all of the following
25 relief:

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

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

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

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

15 (V) IF THE COURT HAS REASONABLE GROUNDS TO BELIEVE THAT
16 THE RESPONDENT OWNS OR POSSESSES ANY FIREARMS, ORDER THE RESPONDENT
17 TO SURRENDER THE FIREARMS;

18 [(v)] (VI) order the respondent to remain away from the place of
19 employment, school, or temporary residence of a person eligible for relief or home of
20 other family members; and

21 [(vi)] (VII) award temporary custody of a minor child of the person
22 eligible for relief and the respondent.

23 (b) (1) A law enforcement officer immediately shall:

24 (I) serve the temporary ex parte order on the alleged abuser under
25 this section; AND

26 (II) IF THE RESPONDENT IS ORDERED TO SURRENDER FIREARMS
27 UNDER SUBSECTION (A)(2) OF THIS SECTION, SEARCH FOR ANY FIREARMS OWNED
28 OR POSSESSED BY THE RESPONDENT AND SEIZE ANY FIREARMS FOUND UNTIL
29 FURTHER ORDER OF COURT.

30 (2) There shall be no cost to the petitioner for service of the temporary ex
31 parte order.

32 (c) (1) The temporary ex parte order shall be effective for not more than 7 days
33 after service of the order.

34 (2) The court may extend the temporary ex parte order as needed, but not
35 to exceed 30 days, to effectuate service of the order where necessary to provide protection
36 or for other good cause.

37 4-506.

38 (a) A respondent under § 4-505 of this subtitle shall have an opportunity to be
39 heard on the question of whether the court should issue a protective order.

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1 (b) (1) The temporary ex parte order shall state the date and time of the
2 protective order hearing.

3 (2) Unless continued for good cause, the protective order hearing shall be
4 held no later than 7 days after the temporary ex parte order is served on the respondent.

5 (c) (1) If the respondent appears for the protective order hearing, has been
6 served with the temporary ex parte order, or the court otherwise has personal jurisdiction
7 over the respondent, the court:

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

9 (ii) if the court finds by clear and convincing evidence that the alleged
10 abuse has occurred, or if the respondent consents to the entry of a protective order, the
11 court may grant a protective order to protect any person eligible for relief from abuse.

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

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

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

20 1. both parties acted primarily as aggressors; and

21 2. neither party acted primarily in self-defense.

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

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

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

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

29 (4) where the person eligible for relief and the respondent are residing
30 together at the time of the abuse, order the respondent to vacate the home immediately
31 and award temporary use and possession of the home to the person eligible for relief or,
32 in the case of alleged abuse of a child or alleged abuse of a vulnerable adult, award
33 temporary use and possession of the home to an adult living in the home, provided that
34 the court may not grant an order to vacate and award temporary use and possession of the
35 home to a nonspouse person eligible for relief unless the name of the person eligible for
36 relief appears on the lease or deed to the home or the person eligible for relief has shared
37 the home with the respondent for a period of at least 90 days within 1 year before the
38 filing of the petition;

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1 (5) ORDER THE RESPONDENT TO SURRENDER ANY FIREARMS OWNED
2 OR POSSESSED BY THE RESPONDENT IF THE COURT HAS REASONABLE GROUNDS TO
3 BELIEVE THAT THE RESPONDENT OWNS OR POSSESSES ANY FIREARMS;

4 [(5)] (6) order the respondent to remain away from the place of
5 employment, school, or temporary residence of a person eligible for relief or home of
6 other family members;

7 [(6)] (7) award temporary custody of a minor child of the respondent and a
8 person eligible for relief;

9 [(7)] (8) establish temporary visitation with a minor child of the respondent
10 and a person eligible for relief on a basis which gives primary consideration to the welfare
11 of the minor child and the safety of any other person eligible for relief. If the court finds
12 that the safety of a person eligible for relief will be jeopardized by unsupervised or
13 unrestricted visitation, the court shall condition or restrict visitation as to time, place,
14 duration, or supervision, or deny visitation entirely, as needed to guard the safety of any
15 person eligible for relief;

16 [(8)] (9) award emergency family maintenance as necessary to support any
17 person eligible for relief to whom the respondent has a duty of support under this article,
18 including an immediate and continuing withholding order on all earnings of the
19 respondent in the amount of the ordered emergency family maintenance in accordance
20 with the procedures specified in Title 10, Subtitle 1, Part III of this article;

21 [(9)] (10) award temporary use and possession of a vehicle jointly owned by
22 the respondent and a person eligible for relief to the person eligible for relief if necessary
23 for the employment of the person eligible for relief or for the care of a minor child of the
24 respondent or a person eligible for relief;

25 [(10)] (11) direct the respondent or any or all of the persons eligible for
26 relief to participate in professionally supervised counseling or a domestic violence
27 program; or

28 [(11)] (12) order the respondent to pay filing fees and costs of a proceeding
29 under this subtitle.

30 (e) In determining whether to order the respondent to vacate the home under §
31 4-505(a)(2)(iv) of this subtitle or subsection (d)(4) of this section, the court shall consider
32 the following factors:

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

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

36 (3) title to the home;

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

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

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

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

5 (f) (1) A copy of the protective order shall be served on the petitioner, any
6 affected person eligible for relief, the appropriate law enforcement agency, and any other
7 person the court determines is appropriate, in open court or by first class mail.

8 (2) (i) A copy of the protective order shall be served on the respondent in
9 open court or by a law enforcement officer, constable, or sheriff.

10 (ii) A copy of the protective order shall also be sent to the last known
11 address of the respondent by first class mail.

12 (3) If the respondent is served by a law enforcement officer, constable, or
13 sheriff, a return of service shall be filed with the court.

14 (g) All relief granted in a protective order shall be effective for the period stated
15 in the order, not to exceed 200 days.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 1996.