

HOUSE BILL 407

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HB 1344/97 - JUD

1998 Regular Session
8lr0067

By: **Delegates Doory, Menes, Grosfeld, Hecht, Pendergrass, Jones, R. Baker,
Perry, Hurson, Petzold, T. Murphy, Nathan-Pulliam, E. Burns, McHale,
and Opara**

Introduced and read first time: February 2, 1998

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Domestic Violence - Orders for Protection - Surrender of Firearms**

3 FOR the purpose of authorizing a court in a temporary ex parte proceeding for relief
4 from abuse to order the respondent to surrender certain firearms under certain
5 circumstances; authorizing a court in certain domestic violence proceedings to
6 order a respondent not to possess certain firearms and to order a law
7 enforcement officer to search for and seize firearms under certain
8 circumstances; requiring a law enforcement officer serving certain orders in
9 domestic violence cases to search for and seize certain firearms under certain
10 circumstances; requiring a law enforcement officer to provide certain
11 information to a respondent when a firearm is seized and to provide for the safe
12 storage of the firearm; providing for the retaking of seized firearms by the owner
13 under certain circumstances; providing certain penalties for certain violations;
14 and generally relating to orders for protection from domestic violence.

15 BY repealing and reenacting, with amendments,
16 Article - Family Law
17 Section 4-505, 4-506(d)(11) and (12) and (g), 4-509, and 4-511
18 Annotated Code of Maryland
19 (1991 Replacement Volume and 1997 Supplement)

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

22 **Article - Family Law**

23 4-505.

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

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

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

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

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

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

19 (V) IF THE COURT HAS REASONABLE GROUNDS TO BELIEVE THAT
20 THE RESPONDENT OWNS OR POSSESSES ANY FIREARM:

21 1. ORDER THE RESPONDENT TO SURRENDER THE FIREARM;
22 AND

23 2. ORDER THE LAW ENFORCEMENT OFFICER SERVING THE
24 ORDER TO SEARCH THE RESPONDENT AND ANY LOCATION WHERE THE COURT HAS
25 REASONABLE GROUNDS TO BELIEVE THAT A FIREARM OWNED OR POSSESSED BY
26 THE RESPONDENT IS LOCATED, DESCRIBING WITH REASONABLE PARTICULARITY
27 THE SCOPE OF THE SEARCH, AND TO SEIZE ANY FIREARMS LOCATED DURING THE
28 SEARCH;

29 (VI) ORDER THE RESPONDENT NOT TO POSSESS ANY FIREARM FOR
30 THE DURATION OF THE EX PARTE ORDER;

31 [(v)] (VII) order the respondent to remain away from the place of
32 employment, school, or temporary residence of a person eligible for relief or home of
33 other family members; and

34 [(vi)] (VIII) award temporary custody of a minor child of the person
35 eligible for relief and the respondent.

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

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

1 (II) IF THE RESPONDENT IS ORDERED TO SURRENDER FIREARMS
2 UNDER SUBSECTION (A)(2) OF THIS SECTION AND THE COURT ORDERS A SEARCH FOR
3 AND SEIZURE OF FIREARMS, SEARCH FOR ANY FIREARMS OWNED OR POSSESSED BY
4 THE RESPONDENT IN THE MANNER PROVIDED IN THE COURT ORDER AND SEIZE ANY
5 FIREARMS FOUND.

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

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

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

13 (D) (1) IF A FIREARM IS SEIZED FROM A RESPONDENT UNDER THIS
14 SECTION, THE LAW ENFORCEMENT OFFICER SHALL COMPLY WITH THE
15 REQUIREMENTS OF § 4-511 OF THIS SUBTITLE CONCERNING PROVIDING
16 INFORMATION TO THE OWNER ON THE RETURN OF THE FIREARM AND SAFE
17 STORAGE OF THE FIREARM BY THE LAW ENFORCEMENT AGENCY.

18 (2) THE OWNER OF THE FIREARM MAY RETAKE POSSESSION OF THE
19 FIREARM AT THE TERMINATION OF THE EX PARTE ORDER UNLESS:

20 (I) ORDERED TO SURRENDER A FIREARM IN A PROTECTIVE ORDER
21 ISSUED UNDER § 4-506 OF THIS SUBTITLE; OR

22 (II) THE OWNER IS NOT OTHERWISE LEGALLY ENTITLED TO OWN
23 OR POSSESS A FIREARM.

24 4-506.

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

26 (11) order the respondent to surrender to law enforcement authorities any
27 firearm in the respondent's possession for the duration of the protective order; [or]

28 (12) ORDER THE RESPONDENT NOT TO POSSESS A FIREARM FOR THE
29 DURATION OF THE PROTECTIVE ORDER; OR

30 (13) order the respondent to pay filing fees and costs of a proceeding
31 under this subtitle.

32 (g) (1) IF THE COURT ORDERS A RESPONDENT TO SURRENDER OR NOT TO
33 POSSESS A FIREARM DURING THE DURATION OF THE PROTECTIVE ORDER AND HAS
34 REASONABLE GROUNDS TO BELIEVE THAT THE RESPONDENT OWNS OR POSSESSES A
35 FIREARM, THE COURT MAY ORDER A LAW ENFORCEMENT OFFICER TO SEARCH THE
36 RESPONDENT AND ANY LOCATION WHERE THE COURT HAS REASONABLE GROUNDS
37 TO BELIEVE THAT A FIREARM OWNED OR POSSESSED BY THE RESPONDENT IS

1 LOCATED, DESCRIBING WITH REASONABLE PARTICULARITY THE SCOPE OF THE
2 SEARCH, AND TO SEIZE ANY FIREARMS LOCATED DURING THE SEARCH.

3 (2) IF A FIREARM IS SEIZED FROM A RESPONDENT UNDER THIS
4 SECTION, THE LAW ENFORCEMENT OFFICER SHALL COMPLY WITH THE
5 REQUIREMENTS OF § 4-511 OF THIS SUBTITLE CONCERNING PROVIDING
6 INFORMATION TO THE OWNER ON THE RETURN OF THE FIREARM AND SAFE
7 STORAGE OF THE FIREARM BY THE LAW ENFORCEMENT AGENCY.

8 (3) THE OWNER OF THE FIREARM MAY RETAKE POSSESSION OF THE
9 FIREARM AT THE TERMINATION OF THE PROTECTIVE ORDER UNLESS THE OWNER IS
10 NOT OTHERWISE LEGALLY ENTITLED TO OWN OR POSSESS A FIREARM.

11 (H) (1) Except as provided in paragraph (2) of this subsection, all relief
12 granted in a protective order shall be effective for the period stated in the order, not to
13 exceed 12 months.

14 (2) A subsequent circuit court order pertaining to any of the provisions
15 included in the protective order shall supersede those provisions in the protective
16 order.

17 4-509.

18 (a) A person who fails to comply with the relief granted in an ex parte order
19 under § 4-505(a)(2)(i), (ii), (iii), (iv), [or] (v), (VI), OR (VII) of this subtitle or in a
20 protective order under § 4-506(d)(1), (2), (3), (4), [or] (5), (11), OR (12) of this subtitle
21 is guilty of a misdemeanor and on conviction is subject, for each offense, to a fine not
22 exceeding \$500 or imprisonment not exceeding 90 days or both.

23 (b) An officer shall arrest with or without a warrant and take into custody a
24 person whom the officer has probable cause to believe is in violation of an ex parte
25 order or protective order in effect at the time of the violation.

26 4-511.

27 (a) When responding to the scene of an alleged act of domestic violence, as
28 described in this subtitle, a law enforcement officer may remove a firearm from the
29 scene if:

30 (1) the law enforcement officer has probable cause to believe that an act
31 of domestic violence has occurred; and

32 (2) the law enforcement officer has observed the firearm on the scene
33 during the response.

34 (b) If a firearm is removed from the scene under subsection (a) of this section
35 OR IS SEIZED UNDER § 4-505 OR § 4-506 OF THIS SUBTITLE, the law enforcement
36 officer shall:

1 (1) provide to the owner of the firearm information on the process for
2 retaking possession of the firearm; and

3 (2) provide for the safe storage of the firearm during the pendency of any
4 proceeding related to the alleged act of domestic violence.

5 (c) At the conclusion of a proceeding on the alleged act of domestic violence,
6 the owner of the firearm may retake possession of the firearm unless ordered to
7 surrender the firearm under § 4-506 of this subtitle.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 1998.