

SENATE BILL 407

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HB 407/98 - JUD

1999 Regular Session
9r1824
CF 9r0476

By: **Senators Forehand and Conway**
Introduced and read first time: February 5, 1999
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Domestic Violence - Orders for Protection - Additional Relief**

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 (1999 Replacement Volume)

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.

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

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

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

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

7 (iv) where the person eligible for relief and the respondent are
8 residing together at the time of the alleged abuse, order the respondent to vacate the
9 home 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 resided in the home with the respondent for
16 a period of at least 90 days within 1 year before the filing of the petition;

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

19 1. ORDER THE RESPONDENT TO SURRENDER THE FIREARM;

20 2. ORDER THE LAW ENFORCEMENT OFFICER SERVING THE
21 ORDER TO SEARCH FOR AND SEIZE ANY FIREARM OWNED OR POSSESSED BY THE
22 RESPONDENT AT ANY LOCATION, INCLUDING ON THE RESPONDENT, WHERE THE
23 COURT HAS REASONABLE GROUNDS TO BELIEVE THAT A FIREARM IS LOCATED; AND

24 3. THE COURT SHALL STATE WITH REASONABLE
25 PARTICULARITY THE LOCATION OR PERSON TO BE SEARCHED AND SHALL STATE
26 WITH SPECIFICITY THE REASONS FOR AND THE SCOPE OF THE SEARCH AND SEIZURE
27 AUTHORIZED BY ITS ORDER;

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

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

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

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

36 (I) serve the temporary ex parte order on the alleged abuser under
37 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:

15 (I) PROVIDE TO THE OWNER OF THE FIREARM INFORMATION ON
16 THE PROCESS FOR RETAKING POSSESSION OF THE FIREARM; AND

17 (II) PROVIDE FOR THE SAFE STORAGE OF THE FIREARM DURING
18 THE PENDENCY OF ANY PROCEEDING RELATED TO THE ALLEGED DOMESTIC
19 VIOLENCE.

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

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

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

26 4-506.

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

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

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

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

34 (g) (1) IF THE COURT ORDERS A RESPONDENT TO SURRENDER FIREARMS
35 OR NOT TO POSSESS A FIREARM DURING THE DURATION OF THE PROTECTIVE ORDER

1 AND HAS REASONABLE GROUNDS TO BELIEVE THAT THE RESPONDENT OWNS OR
2 POSSESSES A FIREARM, THE COURT:

3 (I) MAY ORDER A LAW ENFORCEMENT OFFICER TO SEARCH FOR
4 AND SEIZE ANY FIREARM OWNED OR POSSESSED BY THE RESPONDENT AT ANY
5 LOCATION, INCLUDING ON THE RESPONDENT, WHERE THE COURT HAS REASONABLE
6 GROUNDS TO BELIEVE THAT A FIREARM IS LOCATED;

7 (II) SHALL STATE WITH REASONABLE PARTICULARITY THE
8 LOCATION OR PERSON TO BE SEARCHED AND SHALL STATE WITH SPECIFICITY THE
9 REASONS FOR AND THE SCOPE OF THE SEARCH AND SEIZURE AUTHORIZED BY ITS
10 ORDER; AND

11 (III) SHALL ORDER THAT ANY SEARCH AND SEIZURE ORDERED
12 PURSUANT TO THIS SUBSECTION, OR ANY SUBSEQUENT RELATED ORDER
13 AUTHORIZING SEARCH AND SEIZURE, BE EXECUTED BY LAW ENFORCEMENT
14 OFFICERS WITHIN 48 HOURS AFTER ISSUANCE OF A PROTECTIVE ORDER.

15 (2) IF A FIREARM IS SEIZED FROM A RESPONDENT UNDER THIS
16 SECTION, THE LAW ENFORCEMENT OFFICER SHALL:

17 (I) PROVIDE TO THE OWNER OF THE FIREARM INFORMATION ON
18 THE PROCESS OF RETAKING POSSESSION OF THE FIREARM; AND

19 (II) PROVIDE FOR THE SAFE STORAGE OF THE FIREARM DURING
20 THE PENDENCY OF ANY PROCEEDING RELATED TO THE ALLEGED DOMESTIC
21 VIOLENCE.

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

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

28 (2) A subsequent circuit court order pertaining to any of the provisions
29 included in the protective order shall supersede those provisions in the protective
30 order.

31 4-509.

32 (a) A person who fails to comply with the relief granted in an ex parte order
33 under § 4-505(a)(2)(i), (ii), (iii), (iv), [or] (v), (VI), OR (VII) of this subtitle or in a
34 protective order under § 4-506(d)(1), (2), (3), (4), [or] (5), (11), OR (12) of this subtitle is
35 guilty of a misdemeanor and on conviction is subject, for each offense, to:

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

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

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

6 4-511.

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

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

12 (2) the law enforcement officer has observed the firearm on the scene
13 during the response.

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

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

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

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

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 1999.