
By: **Senators Ruben, Forehand, Hoffman, McFadden, Mitchell, and Hughes**
Introduced and read first time: January 26, 2000
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Domestic Violence - Possession of Firearms**

3 FOR the purpose of requiring the surrender to law enforcement authorities of
4 firearms in a respondent's possession on issuance of an ex parte order and on
5 issuance of a protective order in a proceeding for relief from abuse; requiring law
6 enforcement authorities to take certain actions upon the issuance of an ex parte
7 order and a protective order; requiring a law enforcement officer to take certain
8 actions upon the expiration of an ex parte order and a protective order;
9 providing immunity from liability related to storage of the firearm by law
10 enforcement authorities; and generally relating to the possession of firearms by
11 a respondent on issuance of an ex parte order or a protective order.

12 BY repealing and reenacting, with amendments,
13 Article - Family Law
14 Section 4-505 and 4-506
15 Annotated Code of Maryland
16 (1999 Replacement Volume and 1999 Supplement)

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

19 **Article - Family Law**

20 4-505.

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

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

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

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

15 (v) order the respondent to remain away from the place of
16 employment, school, or temporary residence of a person eligible for relief or home of
17 other family members;

18 (vi) order the respondent to remain away from a child care provider
19 of a person eligible for relief while a child of the person is in the care of the child care
20 provider; and

21 (vii) award temporary custody of a minor child of the person eligible
22 for relief and the respondent.

23 (3) (I) THE TEMPORARY EX PARTE ORDER SHALL ORDER THE
24 RESPONDENT TO SURRENDER TO LAW ENFORCEMENT AUTHORITIES ANY FIREARM
25 IN THE RESPONDENT'S POSSESSION FOR THE DURATION OF THE EX PARTE ORDER.

26 (II) LAW ENFORCEMENT AUTHORITIES SHALL COLLECT ANY
27 FIREARMS IN THE RESPONDENT'S POSSESSION AND PROVIDE FOR THEIR SECURED
28 STORAGE.

29 (III) LAW ENFORCEMENT AUTHORITIES SHALL MAKE THE FIREARM
30 AVAILABLE TO THE RESPONDENT AT THE EXPIRATION OF THE EX PARTE ORDER OR,
31 IF A PROTECTIVE ORDER IS LATER ISSUED, AT THE EXPIRATION OF THE PROTECTIVE
32 ORDER.

33 (IV) THE LAW ENFORCEMENT AGENCY AND THE LAW
34 ENFORCEMENT OFFICERS ARE IMMUNE FROM LIABILITY FOR THE CONDITION OF
35 THE FIREARM WHEN RETURNED TO THE RESPONDENT.

36 (b) (1) A law enforcement officer immediately shall serve the temporary ex
37 parte order on the alleged abuser under this section.

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

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

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

6 4-506.

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

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

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

14 (2) The temporary ex parte order shall include notice to the respondent:

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

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

21 (iii) that the protective order shall be effective for the period stated
22 in the order, not to exceed 12 months, unless the court extends the term of the order,
23 under § 4-507(a)(2) of this subtitle; and

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

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

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

30 (ii) if the court 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 court may grant a protective order to protect any person eligible for relief
33 from abuse.

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

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

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

7 1. both parties acted primarily as aggressors; and

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

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

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

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

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

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

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

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

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

34 (8) establish temporary visitation with a minor child of the respondent
35 and a person eligible for relief on a basis which gives primary consideration to the
36 welfare of the minor child and the safety of any other person eligible for relief. If the
37 court finds that the safety of a person eligible for relief will be jeopardized by
38 unsupervised or unrestricted visitation, the court shall condition or restrict visitation

1 as to time, place, duration, or supervision, or deny visitation entirely, as needed to
2 guard the safety of any person eligible for relief;

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

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

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

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

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

19 (E) (1) THE PROTECTIVE ORDER SHALL ORDER THE RESPONDENT TO
20 SURRENDER TO LAW ENFORCEMENT AUTHORITIES ANY FIREARM IN THE
21 RESPONDENT'S POSSESSION FOR THE DURATION OF THE PROTECTIVE ORDER.

22 (2) LAW ENFORCEMENT AUTHORITIES SHALL COLLECT ANY FIREARMS
23 IN THE RESPONDENT'S POSSESSION AND PROVIDE FOR THEIR SECURED STORAGE
24 AND SHALL CONTINUE TO PROVIDE FOR THE SECURED STORAGE OF ANY FIREARM
25 OBTAINED AS A RESULT OF THE PRECEDING EX PARTE ORDER.

26 (3) LAW ENFORCEMENT AUTHORITIES SHALL MAKE THE FIREARM
27 AVAILABLE TO THE RESPONDENT AT THE EXPIRATION OF THE PROTECTIVE ORDER.

28 (4) THE LAW ENFORCEMENT AGENCY AND THE LAW ENFORCEMENT
29 OFFICERS ARE IMMUNE FROM LIABILITY FOR THE CONDITION OF THE FIREARM
30 WHEN RETURNED TO THE RESPONDENT.

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

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

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

37 (3) title to the home;

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

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

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

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

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

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

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

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2000.