

HOUSE BILL 146

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HB 606/00 - JUD

2001 Regular Session
11r0530

By: **Delegates Doory, Healey, Zirkin, Hecht, Rawlings, R. Baker, Menes, Griffith, Valderrama, Hutchins, Morhaim, Hubers, Finifter, Pitkin, Stern, Sophocleus, Rosenberg, Rosso, Montague, Brown, Howard, Petzold, Love, Kopp, McIntosh, Goldwater, Bobo, Pendergrass, Shriver, Dobson, Cryor, V. Jones, Frush, Kagan, Barkley, Grosfeld, Clagett, Harrison, Burns, Hubbard, Boschert, and Cole**

Introduced and read first time: January 17, 2001

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Domestic Violence - Protective Order - Additional Relief**

3 FOR the purpose of altering a provision of law providing for the surrender of firearms
4 by a respondent in a protective order proceeding for relief from abuse; requiring
5 a court, at each protective order hearing, to determine whether there is probable
6 cause to believe that a respondent owns or possesses any firearms; requiring a
7 law enforcement agency to make reasonable efforts to ensure that a respondent
8 complies with a certain provision of a protective order under certain
9 circumstances; requiring a law enforcement agency to proceed in a certain
10 manner if a respondent violates a certain provision of a protective order;
11 requiring a law enforcement agency to provide certain information to a
12 respondent when a firearm is surrendered and to provide for the safe storage of
13 the firearm; providing for the retaking of a surrendered firearm by a respondent
14 under certain circumstances; providing penalties for failure to comply with
15 certain relief granted in a protective order; providing certain immunity to a law
16 enforcement officer under certain circumstances; and generally relating to
17 domestic violence.

18 BY repealing and reenacting, with amendments,
19 Article - Family Law
20 Section 4-506(d)(12), (e), (f), and (g) and 4-509
21 Annotated Code of Maryland
22 (1999 Replacement Volume and 2000 Supplement)

23 BY adding to
24 Article - Family Law
25 Section 4-506(e) and (h)
26 Annotated Code of Maryland
27 (1999 Replacement Volume and 2000 Supplement)

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

3 **Article - Family Law**

4 4-506.

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

6 (12) UPON A FINDING OF PROBABLE CAUSE TO BELIEVE THAT THE
7 RESPONDENT OWNS OR POSSESSES ANY FIREARMS, order the respondent, FOR THE
8 DURATION OF THE PROTECTIVE ORDER, to surrender [to law enforcement authorities
9 any firearm in the respondent's possession for the duration of the protective order]
10 ANY FIREARMS THAT THE RESPONDENT OWNS OR POSSESSES TO A SPECIFIED LAW
11 ENFORCEMENT AGENCY BY A SPECIFIED TIME AS STATED IN THE PROTECTIVE
12 ORDER; or

13 (E) AT EACH PROTECTIVE ORDER HEARING, THE COURT SHALL DETERMINE
14 WHETHER THERE IS PROBABLE CAUSE TO BELIEVE THAT THE RESPONDENT OWNS
15 OR POSSESSES ANY FIREARMS.

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

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

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

22 (3) title to the home;

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

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

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

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

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

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

4 (H) (1) WHEN A LAW ENFORCEMENT AGENCY RECEIVES A COPY OF A
5 PROTECTIVE ORDER CONTAINING A PROVISION THAT ORDERS THE RESPONDENT TO
6 SURRENDER FIREARMS UNDER SUBSECTION (D)(12) OF THIS SECTION, THE LAW
7 ENFORCEMENT AGENCY SHALL MAKE REASONABLE EFFORTS TO ENSURE THAT THE
8 RESPONDENT COMPLIES WITH THAT PROVISION OF THE PROTECTIVE ORDER.

9 (2) IF A RESPONDENT VIOLATES THE PROVISION OF A PROTECTIVE
10 ORDER THAT ORDERS THE RESPONDENT TO SURRENDER FIREARMS, THE LAW
11 ENFORCEMENT AGENCY SHALL PROCEED UNDER § 4-509(B) OF THIS SUBTITLE.

12 (3) (I) IF A FIREARM IS SURRENDERED BY A RESPONDENT UNDER
13 THIS SECTION, THE LAW ENFORCEMENT AGENCY SHALL:

14 1. PROVIDE INFORMATION TO THE RESPONDENT ON THE
15 PROCESS FOR RETAKING POSSESSION OF THE FIREARM; AND

16 2. PROVIDE FOR THE SAFE STORAGE OF THE FIREARM
17 DURING THE TIME THE PROTECTIVE ORDER IS IN EFFECT.

18 (II) THE RESPONDENT MAY RETAKE POSSESSION OF THE FIREARM
19 AT THE EXPIRATION OF THE PROTECTIVE ORDER UNLESS THE RESPONDENT IS NOT
20 OTHERWISE LEGALLY ENTITLED TO OWN OR POSSESS THE FIREARM.

21 (4) IF A FIREARM IS SURRENDERED UNDER THIS SECTION, A LAW
22 ENFORCEMENT OFFICER SHALL BE IMMUNE FROM CIVIL LIABILITY IN COMPLYING
23 WITH THIS SUBSECTION IF THE LAW ENFORCEMENT OFFICER ACTED IN GOOD FAITH
24 AND IN A REASONABLE MANNER.

25 [(g)] (I) (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) of this subtitle or in a protective order under
34 § 4-506(d)(1), (2), (3), (4), [or] (5), OR (12) of this subtitle is guilty of a misdemeanor
35 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 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2001.