

SENATE BILL 250

Unofficial Copy
D4
SB 224/00 - JPR

2001 Regular Session
11r1295

By: **Senators Ruben, Forehand, Hoffman, Hughes, McFadden, Mitchell, and Sfikas**

Introduced and read first time: January 25, 2001

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 2000 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:

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

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

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

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

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

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

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

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

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

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

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

8 4-506.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 1. both parties acted primarily as aggressors; and

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

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

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

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

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

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

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

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

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

36 (8) establish temporary visitation with a minor child of the respondent
37 and a person eligible for relief on a basis which gives primary consideration to the

1 welfare of the minor child and the safety of any other person eligible for relief. If the
2 court finds that the safety of a person eligible for relief will be jeopardized by
3 unsupervised or unrestricted visitation, the court shall condition or restrict visitation
4 as to time, place, duration, or supervision, or deny visitation entirely, as needed to
5 guard the safety of any person eligible for relief;

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

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

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

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

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

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

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

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

31 (4) THE LAW ENFORCEMENT AGENCY AND THE LAW ENFORCEMENT
32 OFFICERS ARE IMMUNE FROM LIABILITY FOR THE CONDITION OF THE FIREARM
33 WHEN RETURNED TO THE RESPONDENT.

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

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

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

3 (3) title to the home;

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

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

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

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

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

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

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

22 (2) A subsequent circuit court order pertaining to any of the provisions
23 included in the protective order shall supersede those provisions in the protective
24 order.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2001.