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By: **Delegates Petzold, Dumais, King, Lawton, Menes, and Stern**

Introduced and read first time: February 8, 2006

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Domestic Violence - Protective Orders - Surrender of Firearms**

3 FOR the purpose of authorizing a District Court commissioner, who issues an interim  
4 protective order to protect a person eligible for relief, to order the respondent to  
5 surrender certain firearms to law enforcement authorities for the duration of  
6 the order; authorizing a judge, who issues a temporary protective order to  
7 protect a person eligible for relief, to order the respondent to surrender certain  
8 firearms to law enforcement authorities for the duration of the order;  
9 authorizing a respondent to file a certain motion for the return of certain  
10 firearms; requiring the court to schedule a certain hearing; limiting a certain  
11 hearing to certain issues; requiring a court to order the return of certain  
12 firearms under certain circumstances; prohibiting a law enforcement agency  
13 from returning certain firearms except under a certain order; authorizing a law  
14 enforcement agency to destroy or dispose of certain firearms under certain  
15 circumstances; authorizing a law enforcement agency to charge a certain fee;  
16 establishing that a law enforcement agency is not liable for certain damages  
17 under certain circumstances; and generally relating to protective orders.

18 BY repealing and reenacting, with amendments,  
19 Article - Family Law  
20 Section 4-504.1 and 4-505  
21 Annotated Code of Maryland  
22 (2004 Replacement Volume and 2005 Supplement)

23 BY adding to  
24 Article - Family Law  
25 Section 4-512  
26 Annotated Code of Maryland  
27 (2004 Replacement Volume and 2005 Supplement)

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

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**Article - Family Law**

2 4-504.1.

3 (a) A petition under this subtitle may be filed with a commissioner when  
4 neither the office of the clerk of the circuit court nor the Office of the District Court  
5 Clerk is open for business.

6 (b) If a petition is filed with a commissioner and the commissioner finds that  
7 there are reasonable grounds to believe that the respondent has abused a person  
8 eligible for relief, the commissioner may issue an interim protective order to protect a  
9 person eligible for relief.

10 (c) An interim protective order may:

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

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

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

17 (4) if a person eligible for relief and the respondent are residing together  
18 at the time of the alleged abuse:

19 (i) order the respondent to vacate the home immediately;

20 (ii) award to a person eligible for relief custody of any child of the  
21 person eligible for relief and respondent then residing in the home; and

22 (iii) subject to the limits as to a nonspouse specified in §  
23 4-505(a)(2)(iv) of this subtitle, award temporary use and possession of the home to  
24 the person eligible for relief;

25 (5) in a case alleging abuse of a child, award temporary custody of a  
26 minor child of the respondent and a person eligible for relief;

27 (6) in a case alleging abuse of a vulnerable adult, subject to the limits as  
28 to a nonspouse specified in § 4-505(a)(2)(iv) of this subtitle, award temporary use and  
29 possession of the home to an adult living in the home;

30 (7) order the respondent to remain away from the place of employment,  
31 school, or temporary residence of a person eligible for relief; [or]

32 (8) order the respondent to remain away from the residence of any  
33 family member of a person eligible for relief; OR

1 (9) ORDER THE RESPONDENT TO SURRENDER TO LAW ENFORCEMENT  
2 AUTHORITIES ANY FIREARM IN THE RESPONDENT'S POSSESSION FOR THE  
3 DURATION OF THE INTERIM PROTECTIVE ORDER.

4 (d) (1) (i) An interim protective order shall state the date, time, and  
5 location for the temporary protective order hearing and a tentative date, time, and  
6 location for a final protective order hearing.

7 (ii) A temporary protective order hearing shall be held on the first  
8 or second day on which a District Court judge is sitting after issuance of the interim  
9 protective order, unless the judge continues the hearing for good cause.

10 (2) An interim protective order shall include in at least 10-point bold  
11 type:

12 (i) notice to the respondent that:

13 1. the respondent must give the court written notice of each  
14 change of address;

15 2. if the respondent fails to appear at the temporary  
16 protective order hearing or any later hearing, the respondent may be served with any  
17 orders or notices in the case by first-class mail at the respondent's last known  
18 address;

19 3. the date, time, and location of the final protective order  
20 hearing is tentative only, and subject to change; and

21 4. if the respondent does not attend the temporary protective  
22 order hearing, the respondent may call the Office of the Clerk of the District Court at  
23 the number provided in the order to find out the actual date, time, and location of any  
24 final protective order hearing;

25 (ii) a statement of all possible forms and duration of relief that a  
26 temporary protective order or final protective order may contain;

27 (iii) notice to the petitioner and respondent that, at the hearing, a  
28 judge may issue a temporary protective order that grants any or all of the relief  
29 requested in the petition or may deny the petition, whether or not the respondent is in  
30 court;

31 (iv) a warning to the respondent that violation of an interim  
32 protective order is a crime and that a law enforcement officer shall arrest the  
33 respondent, with or without a warrant, and take the respondent into custody if the  
34 officer has probable cause to believe that the respondent has violated any provision of  
35 the interim protective order; and

36 (v) the phone number of the Office of the District Court Clerk.

1 (e) Whenever a commissioner issues an interim protective order, the  
2 commissioner shall:

3 (1) immediately forward a copy of the petition and interim protective  
4 order to the appropriate law enforcement agency for service on the respondent; and

5 (2) before the hearing scheduled in the interim protective order, transfer  
6 the case file and the return of service, if any, to the Office of the District Court Clerk.

7 (f) A law enforcement officer shall:

8 (1) immediately on receipt of a petition and interim protective order,  
9 serve them on the respondent named in the order; and

10 (2) immediately after service, make a return of service to the  
11 commissioner's office or, if the Office of the District Court Clerk is open for business,  
12 to the Clerk.

13 (g) An interim protective order shall be effective until the earlier of:

14 (1) the temporary protective order hearing under § 4-505 of this subtitle;  
15 or

16 (2) the end of the second business day the Office of the Clerk of the  
17 District Court is open following the issuance of an interim protective order.

18 (h) A decision of a commissioner to grant or deny relief under this section is  
19 not binding on, and does not affect any power granted to or duty imposed on, a judge  
20 of a circuit court or the District Court under any law, including any power to grant or  
21 deny a petition for a temporary protective order or final protective order.

22 4-505.

23 (a) (1) If, after a hearing on a petition, whether ex parte or otherwise, a  
24 judge finds that there are reasonable grounds to believe that a person eligible for  
25 relief has been abused, the judge may enter a temporary protective order to protect  
26 any person eligible for relief from abuse.

27 (2) The temporary protective order may order any or all of the following  
28 relief:

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

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

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

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

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

14 (vi) order the respondent to remain away from a child care provider  
15 of a person eligible for relief while a child of the person is in the care of the child care  
16 provider; [and]

17 (vii) award temporary custody of a minor child of the person eligible  
18 for relief and the respondent; AND

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

22 (b) (1) Except as provided in paragraph (2) of this subsection, a law  
23 enforcement officer immediately shall serve the temporary protective order on the  
24 alleged abuser under this section.

25 (2) A respondent who has been served with an interim protective order  
26 under § 4-504.1 of this subtitle shall be served with the temporary protective order in  
27 open court or, if the respondent is not present at the temporary protective order  
28 hearing, by first-class mail at the respondent's last known address.

29 (3) There shall be no cost to the petitioner for service of the temporary  
30 protective order.

31 (c) (1) The temporary protective order shall be effective for not more than 7  
32 days after service of the order.

33 (2) The judge may extend the temporary protective order as needed, but  
34 not to exceed 30 days, to effectuate service of the order where necessary to provide  
35 protection or for other good cause.

36 (d) The judge may proceed with a final protective order hearing instead of a  
37 temporary protective order hearing, if:

38 (1) (i) the respondent appears at the hearing;

1 (ii) the respondent has been served with an interim protective  
2 order; or

3 (iii) the court otherwise has personal jurisdiction over the  
4 respondent; and

5 (2) the petitioner and the respondent expressly consent to waive the  
6 temporary protective order hearing.

7 (e) (1) Whenever a judge finds reasonable grounds to believe that abuse of a  
8 child, as defined in Title 5, Subtitle 7 of this article, or abuse of a vulnerable adult, as  
9 defined in Title 14, Subtitle 1 of this article, has occurred, the court shall forward to  
10 the local department a copy of the petition and temporary protective order.

11 (2) Whenever a local department receives a petition and temporary  
12 protective order from a court, the local department shall:

13 (i) investigate the alleged abuse as provided in:

14 1. Title 5, Subtitle 7 of this article; or

15 2. Title 14, Subtitle 3 of this article; and

16 (ii) by the date of the final protective order hearing, send to the  
17 court a copy of the report of the investigation.

18 4-512.

19 (A) THIS SECTION APPLIES TO A FIREARM THAT IS SURRENDERED TO LAW  
20 ENFORCEMENT AUTHORITIES BY A RESPONDENT IN ACCORDANCE WITH:

21 (1) AN INTERIM PROTECTIVE ORDER UNDER § 4-504.1(C)(9) OF THIS  
22 SUBTITLE;

23 (2) A TEMPORARY PROTECTIVE ORDER UNDER § 4-505(A)(2)(VIII) OF THIS  
24 SUBTITLE; OR

25 (3) A FINAL PROTECTIVE ORDER UNDER § 4-506(D)(12) OF THIS  
26 SUBTITLE.

27 (B) AFTER THE EXPIRATION OF A PROTECTIVE ORDER ISSUED UNDER THIS  
28 SUBTITLE, THE RESPONDENT MAY FILE A MOTION WITH THE COURT FOR THE  
29 RETURN OF ANY FIREARMS THAT WERE SURRENDERED TO LAW ENFORCEMENT  
30 AUTHORITIES PURSUANT TO THE PROTECTIVE ORDER.

31 (C) (1) ON RECEIPT OF A MOTION UNDER THIS SECTION, THE COURT SHALL  
32 SCHEDULE A HEARING.

33 (2) THE COURT SHALL PROVIDE NOTICE TO BOTH THE RESPONDENT  
34 AND THE LAW ENFORCEMENT AGENCY THAT HAS CONTROL OF THE FIREARMS OF  
35 THE DATE AND TIME OF THE HEARING.

1 (D) AT A HEARING UNDER THIS SECTION, THE ISSUE SHALL BE LIMITED TO:

2 (1) WHETHER THE RESPONDENT IS THE OWNER OF THE FIREARMS; AND

3 (2) WHETHER THE RESPONDENT IS SUBJECT TO ANY STATE OR  
4 FEDERAL LAW OR COURT ORDER, INCLUDING ANY FURTHER PROTECTIVE ORDERS,  
5 THAT PRECLUDES THE RESPONDENT FROM POSSESSING A FIREARM.

6 (E) THE COURT SHALL ORDER THE LAW ENFORCEMENT AGENCY TO RETURN  
7 THE FIREARMS TO THE RESPONDENT IF:

8 (1) THE RESPONDENT IS THE OWNER OF THE FIREARMS; AND

9 (2) THE RESPONDENT IS NOT SUBJECT TO ANY STATE OR FEDERAL LAW  
10 OR COURT ORDER, INCLUDING ANY FURTHER PROTECTIVE ORDERS, THAT  
11 PRECLUDES THE RESPONDENT FROM POSSESSING A FIREARM.

12 (F) (1) A LAW ENFORCEMENT AGENCY MAY NOT RELEASE ANY FIREARMS  
13 SURRENDERED UNDER THIS SUBTITLE WITHOUT A COURT ORDER.

14 (2) IF A RESPONDENT DOES NOT REQUEST THE RETURN OF FIREARMS  
15 WITHIN 3 YEARS FROM THE DATE OF THE LAST PROTECTIVE ORDER ISSUED AGAINST  
16 THE RESPONDENT, THE LAW ENFORCEMENT AGENCY THAT HAS CONTROL OF THE  
17 FIREARMS MAY DESTROY OR OTHERWISE DISPOSE OF THE FIREARMS.

18 (G) (1) A LAW ENFORCEMENT AGENCY MAY CHARGE A REASONABLE FEE  
19 FOR THE STORAGE OF FIREARMS SURRENDERED UNDER THIS SUBTITLE.

20 (2) A FEE CHARGED MAY NOT EXCEED THE ACTUAL COST INCURRED BY  
21 THE LAW ENFORCEMENT AGENCY FOR THE STORAGE OF THE FIREARM.

22 (H) A LAW ENFORCEMENT AGENCY MAY NOT BE HELD LIABLE FOR ANY  
23 DAMAGE OR DETERIORATION TO A FIREARM RESULTING FROM THE STORAGE OR  
24 TRANSPORTATION OF THE FIREARM IF THE LAW ENFORCEMENT AGENCY EXERCISES  
25 DUE CARE IN THE STORAGE AND HANDLING OF THE FIREARM.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 October 1, 2006.