

HOUSE BILL 182

D4

8lr0754

By: **Delegates Dumais, Barve, Bobo, Doory, Eckardt, Feldman, Frick, Glenn, Gutierrez, Healey, Hecht, Hixson, Jones, Krebs, Krysiak, Kullen, Lee, Love, McComas, McIntosh, Mizeur, Montgomery, Pendergrass, Shank, Stein, F. Turner, Valderrama, and Waldstreicher**

Introduced and read first time: January 21, 2008

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Domestic Violence – Permanent Protective Order After Conviction and**
3 **Imprisonment**

4 FOR the purpose of providing that a protective order is permanent if a respondent is
5 convicted and sentenced to imprisonment for a certain act of abuse; and
6 generally relating to protective orders.

7 BY repealing and reenacting, with amendments,
8 Article – Family Law
9 Section 4–506
10 Annotated Code of Maryland
11 (2006 Replacement Volume and 2007 Supplement)

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

14 **Article – Family Law**

15 4–506.

16 (a) A respondent under § 4–505 of this subtitle shall have an opportunity to
17 be heard on the question of whether the judge should issue a final protective order.

18 (b) (1) (i) The temporary protective order shall state the date and time
19 of the final protective order hearing.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) Unless continued for good cause, the final protective order
2 hearing shall be held no later than 7 days after the temporary protective order is
3 served on the respondent.

4 (2) The temporary protective order shall include notice to the
5 respondent:

6 (i) in at least 10–point bold type, that if the respondent fails to
7 appear at the final protective order hearing, the respondent may be served by
8 first–class mail at the respondent’s last known address with the final protective order
9 and all other notices concerning the final protective order;

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

12 (iii) that the final protective order shall be effective for the
13 period stated in the order, not to exceed 12 months, unless the judge extends the term
14 of the order, under § 4–507(a)(2) of this subtitle **OR THE RESPONDENT IS**
15 **CONVICTED AND SENTENCED TO IMPRISONMENT AS DESCRIBED IN SUBSECTION**
16 **(G)(3) OF THIS SECTION;** and

17 (iv) in at least 10–point bold type, that the respondent must
18 notify the court in writing of any change of address.

19 (c) (1) If the respondent appears before the court at a protective order
20 hearing or has been served with an interim or temporary protective order, or the court
21 otherwise has personal jurisdiction over the respondent, the judge:

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

23 (ii) if the judge finds by clear and convincing evidence that the
24 alleged abuse has occurred, or if the respondent consents to the entry of a protective
25 order, the judge may grant a final protective order to protect any person eligible for
26 relief from abuse.

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

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

33 (ii) The judge may issue mutual final protective orders only if
34 the judge makes a detailed finding of fact that:

35 1. both parties acted primarily as aggressors; and

1 the respondent in the amount of the ordered emergency family maintenance in
2 accordance with the procedures specified in Title 10, Subtitle 1, Part III of this article;

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

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

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

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

13 (e) In determining whether to order the respondent to vacate the home
14 under § 4-505(a)(2)(iv) of this subtitle or subsection (d)(4) of this section, the judge
15 shall consider the following factors:

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

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

19 (3) title to the home;

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

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

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

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

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

32 (2) A copy of the final protective order served on the respondent in
33 accordance with paragraph (1) of this subsection constitutes actual notice to the

1 respondent of the contents of the final protective order. Service is complete upon
2 mailing.

3 (g) (1) Except as provided in [paragraph (2)] **PARAGRAPHS (2) AND (3)**
4 of this subsection, all relief granted in a final protective order shall be effective for the
5 period stated in the order, not to exceed 12 months.

6 (2) A subsequent circuit court order pertaining to any of the provisions
7 included in the final protective order shall supersede those provisions in the final
8 protective order.

9 **(3) IF A RESPONDENT IS CONVICTED AND SENTENCED TO**
10 **IMPRISONMENT UNDER § 2-205, § 2-206, § 3-202, OR § 3-203 OF THE CRIMINAL**
11 **LAW ARTICLE FOR THE UNDERLYING ACT OF ABUSE, ALL RELIEF GRANTED IN**
12 **THE FINAL PROTECTIVE ORDER SHALL BE PERMANENT.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2008.