

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

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 15, 2008

CHAPTER _____

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~~ requiring
6 the court to issue a new final protective order against an individual under
7 certain circumstances; limiting the relief that a court is authorized to grant in a
8 final protective order issued under this Act; establishing that a final protective
9 order issued under this Act is permanent unless terminated at the request of
10 the victim; and generally relating to protective orders.

11 BY repealing and reenacting, with amendments,
12 Article – Family Law
13 Section 4–506
14 Annotated Code of Maryland
15 (2006 Replacement Volume and 2007 Supplement)

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

18 **Article – Family Law**

19 4–506.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

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

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

8 (2) The temporary protective order shall include notice to the
9 respondent:

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

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

16 (iii) that the final protective order shall be effective for the
17 period stated in the order, not to exceed 12 months, unless the judge extends the term
18 of the order, under § 4–507(a)(2) of this subtitle **OR THE RESPONDENT IS**
19 **~~CONVICTED AND SENTENCED TO IMPRISONMENT AS DESCRIBED IN SUBSECTION~~**
20 **~~(G)(3) COURT ISSUES A PERMANENT ORDER UNDER SUBSECTION (H) OF THIS~~**
21 **SECTION; and**

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

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

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

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

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

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

5 (ii) The judge may issue mutual final protective orders only if
6 the judge 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 final protective order may include any or all of the following relief:

10 (1) order the respondent to refrain from abusing or threatening to
11 abuse 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
27 employment, school, or temporary residence of a person eligible for relief or home of
28 other family members;

29 (6) order the respondent to remain away from a child care provider of
30 a 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

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

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

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

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

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

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

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

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

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

26 (3) title to the home;

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

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

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

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

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

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

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

13 (2) A subsequent circuit court order pertaining to any of the provisions
14 included in the final protective order shall supersede those provisions in the final
15 protective order.

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

20 (H) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
21 THE COURT SHALL ISSUE A NEW FINAL PROTECTIVE ORDER AGAINST AN
22 INDIVIDUAL IF:

23 (I) THE INDIVIDUAL WAS PREVIOUSLY A RESPONDENT
24 UNDER THIS SUBTITLE AGAINST WHOM A FINAL PROTECTIVE ORDER WAS
25 ISSUED;

26 (II) THE INDIVIDUAL WAS CONVICTED AND SERVED A TERM
27 OF IMPRISONMENT OF AT LEAST 5 YEARS UNDER § 2-205, § 2-206, § 3-202, §
28 3-303, § 3-304, § 3-305, § 3-306, § 3-309, § 3-310, § 3-311, OR § 3-312 OF THE
29 CRIMINAL LAW ARTICLE FOR THE ACT OF ABUSE THAT LED TO THE ISSUANCE
30 OF THE FINAL PROTECTIVE ORDER; AND

31 (III) THE VICTIM OF THE ABUSE WHO WAS THE PERSON
32 ELIGIBLE FOR RELIEF IN THE ORIGINAL FINAL PROTECTIVE ORDER REQUESTS
33 THE ISSUANCE OF A NEW FINAL PROTECTIVE ORDER WITHIN A REASONABLE
34 TIME AFTER THE RELEASE OF THE INDIVIDUAL FROM THE TERM OF
35 IMPRISONMENT.

36 (2) IN A FINAL PROTECTIVE ORDER ISSUED UNDER THIS
37 SUBSECTION, THE COURT MAY GRANT ONLY THE RELIEF THAT WAS GRANTED IN

1 THE ORIGINAL PROTECTIVE ORDER UNDER SUBSECTION (D)(1) OR (2) OF THIS
2 SECTION.

3 (3) UNLESS TERMINATED AT THE REQUEST OF THE VICTIM, A
4 FINAL PROTECTIVE ORDER ISSUED UNDER THIS SUBSECTION SHALL BE
5 PERMANENT.

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.