

HOUSE BILL 1448

D4

8lr0227

By: **Chair, Judiciary Committee (By Request – Departmental – State Police)**

Introduced and read first time: February 13, 2008

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Final Protective Orders – Surrender of Firearms**

3 FOR the purpose of altering a provision of law to require, instead of authorizing, a
4 final protective order to order the respondent to surrender to law enforcement
5 authorities any firearm in the respondent's possession for the duration of the
6 protective order; and 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.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

9 (iii) that the final protective order shall be effective for the
10 period stated in the order, not to exceed 12 months, unless the judge extends the term
11 of the order, under § 4–507(a)(2) of this subtitle; and

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

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

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

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

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

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

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

30 1. both parties acted primarily as aggressors; and

31 2. neither party acted primarily in self–defense.

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

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

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

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

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

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

18 (6) order the respondent to remain away from a child care provider of
19 a person eligible for relief while a child of the person is in the care of the child care
20 provider;

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

23 (8) establish temporary visitation with a minor child of the respondent
24 and a person eligible for relief on a basis which gives primary consideration to the
25 welfare of the minor child and the safety of any other person eligible for relief. If the
26 court finds that the safety of a person eligible for relief will be jeopardized by
27 unsupervised or unrestricted visitation, the court shall condition or restrict visitation
28 as to time, place, duration, or supervision, or deny visitation entirely, as needed to
29 guard the safety of any person eligible for relief;

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

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

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

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

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

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

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

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

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

(3) title to the home;

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

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

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

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

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

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

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

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

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