

# SENATE BILL 393

D4

8lr2139  
CF HB 182

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By: **Senators Forehand, Conway, Garagiola, Jones, Kelley, King, Madaleno, Pinsky, Pugh, and Raskin**

Introduced and read first time: January 30, 2008

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 21, 2008

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## 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.

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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.

34 (3) (i) Subject to the provisions of subparagraph (ii) of this  
35 paragraph, in cases where both parties file a petition under § 4–504 of this subtitle,

1 the judge may issue mutual protective orders if the judge finds by clear and convincing  
2 evidence that mutual abuse has occurred.

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

- 5 1. both parties acted primarily as aggressors; and
- 6 2. neither party acted primarily in self-defense.

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

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

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

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

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

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

27 (6) order the respondent to remain away from a child care provider of  
28 a person eligible for relief while a child of the person is in the care of the child care  
29 provider;

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

32 (8) establish temporary visitation with a minor child of the respondent  
33 and a person eligible for relief on a basis which gives primary consideration to the  
34 welfare of the minor child and the safety of any other person eligible for relief. If the  
35 court finds that the safety of a person eligible for relief will be jeopardized by  
36 unsupervised or unrestricted visitation, the court shall condition or restrict visitation

1 as to time, place, duration, or supervision, or deny visitation entirely, as needed to  
2 guard the safety of any person eligible for relief;

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

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

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

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

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

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

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

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

24 (3) title to the home;

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

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

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

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

32 (f) (1) A copy of the final protective order shall be served on the  
33 petitioner, the respondent, any affected person eligible for relief, the appropriate law  
34 enforcement agency, and any other person the judge determines is appropriate, in

1 open court or, if the person is not present at the final protective order hearing, by  
2 first-class mail to the person's last known address.

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

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

10 (2) A subsequent circuit court order pertaining to any of the provisions  
11 included in the final protective order shall supersede those provisions in the final  
12 protective order.

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

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

20 (I) THE INDIVIDUAL WAS PREVIOUSLY A RESPONDENT  
21 UNDER THIS SUBTITLE AGAINST WHOM A FINAL PROTECTIVE ORDER WAS  
22 ISSUED;

23 (II) THE INDIVIDUAL WAS CONVICTED AND SERVED A TERM  
24 OF IMPRISONMENT OF AT LEAST 5 YEARS UNDER § 2-205, § 2-206, § 3-202,  
25 § 3-303, § 3-304, § 3-305, § 3-306, § 3-309, § 3-310, § 3-311, OR § 3-312 OF THE  
26 CRIMINAL LAW ARTICLE FOR THE ACT OF ABUSE THAT LED TO THE ISSUANCE  
27 OF THE FINAL PROTECTIVE ORDER; AND

28 (III) THE VICTIM OF THE ABUSE WHO WAS THE PERSON  
29 ELIGIBLE FOR RELIEF IN THE ORIGINAL FINAL PROTECTIVE ORDER REQUESTS  
30 THE ISSUANCE OF A NEW FINAL PROTECTIVE ORDER.

31 (2) IN A FINAL PROTECTIVE ORDER ISSUED UNDER THIS  
32 SUBSECTION, THE COURT MAY GRANT ONLY THE RELIEF THAT WAS GRANTED IN  
33 THE ORIGINAL PROTECTIVE ORDER UNDER SUBSECTION (D)(1) OR (2) OF THIS  
34 SECTION.

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.