

SENATE BILL 533

D3, D4, E2

9lr1636

By: **Senator Zirkin**

Introduced and read first time: February 5, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Peace Orders and Protective Orders – Private Service of Process**

3 FOR the purpose of requiring that, whenever a District Court commissioner issues an
4 interim peace order, the commissioner, at the option of the petitioner,
5 immediately forward a copy of a certain petition and the order to a private
6 process server for service on the respondent; requiring a private process server,
7 immediately on receipt of a certain petition and peace order, to take certain
8 steps; requiring a private process server to serve immediately a temporary
9 peace order on the respondent, under certain circumstances; providing that a
10 certain petitioner is required to pay costs for the service by private process of
11 certain papers relating to protective orders; requiring that whenever a
12 commissioner issues an interim protective order, the commissioner, at the
13 option of the petitioner, immediately forward a copy of a certain petition and the
14 order to a private process server for service on the respondent; requiring a
15 private process server, immediately on receipt of a certain petition and
16 protective order, to take certain steps; requiring a private process server to
17 serve immediately a temporary protective order on the respondent under
18 certain circumstances; providing that a certain petitioner is required to pay
19 costs for the service by private process of temporary protective orders; and
20 generally relating to peace orders and protective orders.

21 BY repealing and reenacting, with amendments,
22 Article – Courts and Judicial Proceedings
23 Section 3–1503.1(e) and (f) and 3–1504(b)
24 Annotated Code of Maryland
25 (2006 Replacement Volume and 2008 Supplement)

26 BY repealing and reenacting, without amendments,
27 Article – Courts and Judicial Proceedings
28 Section 3–1504(d) and 3–1505(c) and (e)
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2006 Replacement Volume and 2008 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article – Family Law
4 Section 4–504(c), 4–504.1(e) and (f), and 4–505(b)
5 Annotated Code of Maryland
6 (2006 Replacement Volume and 2008 Supplement)

7 BY repealing and reenacting, without amendments,
8 Article – Family Law
9 Section 4–505(d) and 4–506(c) and (g)
10 Annotated Code of Maryland
11 (2006 Replacement Volume and 2008 Supplement)

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

14 **Article – Courts and Judicial Proceedings**

15 3–1503.1.

16 (e) Whenever a commissioner issues an interim peace order, the
17 commissioner shall:

18 (1) Immediately forward a copy of the petition and interim peace order
19 to the appropriate law enforcement agency **OR, AT THE OPTION OF THE**
20 **PETITIONER, A PRIVATE PROCESS SERVER** for service on the respondent; and

21 (2) Before the hearing scheduled in the interim peace order, transfer
22 the case file and the return of service, if any, to the Office of the District Court Clerk.

23 (f) A law enforcement officer **OR PRIVATE PROCESS SERVER** shall:

24 (1) Immediately on receipt of a petition and interim peace order, serve
25 them on the respondent named in the order; and

26 (2) Immediately after service, make a return of service to the
27 commissioner’s office or, if the Office of the District Court Clerk is open for business, to
28 the clerk.

29 3–1504.

30 (b) (1) Except as provided in paragraph (2) of this subsection, a law
31 enforcement officer **OR, AT THE OPTION OF THE PETITIONER, A PRIVATE PROCESS**
32 **SERVER** immediately shall serve the temporary peace order on the respondent.

1 (2) A respondent who has been served with an interim peace order
2 under § 3–1503.1 of this subtitle shall be served with the temporary peace order in
3 open court or, if the respondent is not present at the temporary peace order hearing,
4 by first–class mail at the respondent’s last known address.

5 (d) The judge may proceed with a final peace order hearing instead of a
6 temporary peace order hearing if:

7 (1) (i) The respondent appears at the hearing;

8 (ii) The respondent has been served with an interim peace
9 order; or

10 (iii) The court otherwise has personal jurisdiction over the
11 respondent; and

12 (2) The petitioner and the respondent expressly consent to waive the
13 temporary peace order hearing.

14 3–1505.

15 (c) (1) If the respondent appears for the final peace order hearing, has
16 been served with an interim peace order or a temporary peace order, or the court
17 otherwise has personal jurisdiction over the respondent, the judge:

18 (i) May proceed with the final peace order hearing; and

19 (ii) If the judge finds by clear and convincing evidence that the
20 respondent has committed, and is likely to commit in the future, an act specified in §
21 3–1503(a) of this subtitle against the petitioner, or if the respondent consents to the
22 entry of a peace order, the court may issue a final peace order to protect the petitioner.

23 (2) A final peace order may be issued only to an individual who has
24 filed a petition under § 3–1503 of this subtitle.

25 (3) In cases where both parties file a petition under § 3–1503 of this
26 subtitle, the judge may issue mutual peace orders if the judge finds by clear and
27 convincing evidence that each party has committed, and is likely to commit in the
28 future, an act specified in § 3–1503(a) of this subtitle against the other party.

29 (e) (1) A copy of the final peace order shall be served on the petitioner, the
30 respondent, the appropriate law enforcement agency, and any other person the court
31 determines is appropriate, in open court or, if the person is not present at the final
32 peace order hearing, by first–class mail to the person’s last known address.

33 (2) (i) A copy of the final peace order served on the respondent in
34 accordance with paragraph (1) of this subsection constitutes actual notice to the
35 respondent of the contents of the final peace order.

1 (ii) Service is complete upon mailing.

2 **Article – Family Law**

3 4–504.

4 (c) The petitioner may not be required to pay a filing fee or costs for the
5 issuance or, **UNLESS UNDERTAKEN BY PRIVATE PROCESS SERVER**, service of:

6 (1) an interim protective order;

7 (2) a temporary protective order;

8 (3) a final protective order; or

9 (4) a witness subpoena.

10 4–504.1.

11 (e) Whenever a commissioner issues an interim protective order, the
12 commissioner shall:

13 (1) immediately forward a copy of the petition and interim protective
14 order to the appropriate law enforcement agency **OR, AT THE OPTION OF THE**
15 **PETITIONER, A PRIVATE PROCESS SERVER** for service on the respondent; and

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

19 (f) A law enforcement officer **OR PRIVATE PROCESS SERVER** shall:

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

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

25 4–505.

26 (b) (1) Except as provided in paragraph (2) of this subsection, a law
27 enforcement officer **OR PRIVATE PROCESS SERVER** immediately shall serve the
28 temporary protective order on the alleged abuser under this section.

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

5 (3) There shall be no cost to the petitioner for service of the temporary
6 protective order, **UNLESS SERVICE IS BY A PRIVATE PROCESS SERVER.**

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

- 9 (1) (i) the respondent appears at the hearing;
- 10 (ii) the respondent has been served with an interim protective
11 order; or
- 12 (iii) the court otherwise has personal jurisdiction over the
13 respondent; and

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

16 4–506.

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

- 20 (i) may proceed with the final protective order hearing; and
- 21 (ii) if the judge finds by clear and convincing evidence that the
22 alleged abuse has occurred, or if the respondent consents to the entry of a protective
23 order, the judge may grant a final protective order to protect any person eligible for
24 relief from abuse.

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

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

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

- 33 1. both parties acted primarily as aggressors; and

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

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

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

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2009.