

SENATE BILL 392

D4

8lr2142
CF HB 183

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

Introduced and read first time: January 30, 2008

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Domestic Violence – Enforcement of Protective Order**

3 FOR the purpose of authorizing a judge to order a law enforcement officer to use all
4 reasonable and necessary force to enforce a temporary custody provision of a
5 final protective order; and generally relating to domestic violence.

6 BY repealing and reenacting, without amendments,
7 Article – Family Law
8 Section 4–506(d)
9 Annotated Code of Maryland
10 (2006 Replacement Volume and 2007 Supplement)

11 BY adding to
12 Article – Family Law
13 Section 4–506(e)
14 Annotated Code of Maryland
15 (2006 Replacement Volume and 2007 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Family Law
18 Section 4–506(e), (f), and (g) and 4–507(a)
19 Annotated Code of Maryland
20 (2006 Replacement Volume and 2007 Supplement)

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

23 **Article – Family Law**

24 4–506.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

21 (6) order the respondent to remain away from a child care provider of
22 a person eligible for relief while a child of the person is in the care of the child care
23 provider;

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

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

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

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

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

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

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

11 **(E) IF THE JUDGE AWARDS TEMPORARY CUSTODY OF A MINOR CHILD**
12 **UNDER SUBSECTION (D)(7) OF THIS SECTION, THE JUDGE MAY ORDER A LAW**
13 **ENFORCEMENT OFFICER TO USE ALL REASONABLE AND NECESSARY FORCE TO**
14 **RETURN THE MINOR CHILD TO THE CUSTODIAL PARENT AT THE TIME OF**
15 **SERVICE OR AS SOON AS POSSIBLE AFTER ENTRY OF THE FINAL PROTECTIVE**
16 **ORDER.**

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

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

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

23 (3) title to the home;

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

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

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

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

31 [(f)] (G) (1) A copy of the final protective order shall be served on the
32 petitioner, the respondent, any affected person eligible for relief, the appropriate law
33 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)] (H) (1) Except as provided in paragraph (2) of this subsection, all
8 relief granted in a final protective order shall be effective for the period stated in the
9 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 4-507.

14 (a) (1) A protective order may be modified or rescinded during the term of
15 the protective order after:

16 (i) giving notice to all affected persons eligible for relief and the
17 respondent; and

18 (ii) a hearing.

19 (2) For good cause shown, a judge may extend the term of the
20 protective order for 6 months beyond the period specified in [§ 4-506(g)] § ~~4-506(H)~~ of
21 this subtitle, after:

22 (i) giving notice to all affected persons eligible for relief and the
23 respondent; and

24 (ii) a hearing.

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