

# HOUSE BILL 48

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(PRE-FILED)

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By: **Delegate Smigiel**

Requested: November 4, 2009

Introduced and read first time: January 13, 2010

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Domestic Violence – Requirement to Advise Respondent of Consequences of**  
3 **Final Protective Order**

4 FOR the purpose of requiring a judge, in a proceeding for relief from domestic violence,  
5 to advise the respondent of certain consequences resulting from the issuance of  
6 a final protective order before the respondent may consent to waive a temporary  
7 protective order hearing or consent to the entry of a final protective order;  
8 authorizing a respondent to withdraw consent to the entry of a final protective  
9 order at any time before a final protective order is entered and requiring the  
10 court to proceed with a final protective order hearing; and generally relating to  
11 domestic violence.

12 BY repealing and reenacting, with amendments,  
13 Article – Family Law  
14 Section 4–505(d) and 4–506(c)  
15 Annotated Code of Maryland  
16 (2006 Replacement Volume and 2009 Supplement)

17 BY repealing and reenacting, without amendments,  
18 Article – Family Law  
19 Section 4–506(a), (b), (d), and (e)  
20 Annotated Code of Maryland  
21 (2006 Replacement Volume and 2009 Supplement)

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

24 **Article – Family Law**

25 4–505.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (d) (1) The judge may proceed with a final protective order hearing  
2 instead of a temporary protective order hearing, if:

3 [(1)] (i) 1. the respondent appears at the hearing;

4 [(ii)] 2. the respondent has been served with an interim  
5 protective order; or

6 [(iii)] 3. the court otherwise has personal jurisdiction over the  
7 respondent; and

8 [(2)] (II) the petitioner and the respondent expressly consent to waive  
9 the temporary protective order hearing.

10 (2) BEFORE THE RESPONDENT MAY CONSENT TO WAIVE THE  
11 TEMPORARY PROTECTIVE ORDER HEARING, THE JUDGE SHALL ADVISE THE  
12 RESPONDENT OF ALL OF THE CONSEQUENCES RESULTING FROM THE ISSUANCE  
13 OF A FINAL PROTECTIVE ORDER SPECIFIED IN § 4-506(C)(1)(II) OF THIS  
14 SUBTITLE.

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.

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

25 (i) in at least 10-point bold type, that if the respondent fails to  
26 appear at the final protective order hearing, the respondent may be served by  
27 first-class mail at the respondent's last known address with the final protective order  
28 and all other notices concerning the final protective order;

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

31 (iii) that the final protective order shall be effective for the  
32 period stated in the order, not to exceed 1 year or, under the circumstances described  
33 in subsection (i)(2) of this section, 2 years, unless the judge extends the term of the

1 order under § 4-507(a)(2) of this subtitle or the court issues a permanent order under  
2 subsection (j) of this section; and

3 (iv) in at least 10-point bold type, that the respondent must  
4 notify the court in writing of any change of address.

5 (c) (1) **(I)** If the respondent appears before the court at a protective  
6 order hearing or has been served with an interim or temporary protective order, or the  
7 court otherwise has personal jurisdiction over the respondent, the judge:

8 **[(i)] 1.** may proceed with the final protective order hearing;  
9 and

10 **[(ii)] 2.** if the judge finds by clear and convincing evidence  
11 that the alleged abuse has occurred, or if the respondent consents to the entry of a  
12 protective order, the judge may grant a final protective order to protect any person  
13 eligible for relief from abuse.

14 **(II) BEFORE THE RESPONDENT MAY CONSENT TO THE**  
15 **ENTRY OF A FINAL PROTECTIVE ORDER, THE JUDGE SHALL ADVISE THE**  
16 **RESPONDENT IN OPEN COURT AND ON THE RECORD:**

17 **1. OF ALL OF THE POSSIBLE FORMS OF RELIEF**  
18 **UNDER SUBSECTION (D) OF THIS SECTION THAT A FINAL PROTECTIVE ORDER**  
19 **MAY CONTAIN AND THE MAXIMUM DURATION OF A FINAL PROTECTIVE ORDER;**

20 **2. THAT A FINAL PROTECTIVE ORDER SHALL ORDER**  
21 **THE RESPONDENT TO SURRENDER TO LAW ENFORCEMENT AUTHORITIES ANY**  
22 **FIREARM IN THE RESPONDENT'S POSSESSION, AND TO REFRAIN FROM**  
23 **POSSESSION OF ANY FIREARM, FOR THE DURATION OF THE PROTECTIVE**  
24 **ORDER;**

25 **3. THAT A VIOLATION OF A FINAL PROTECTIVE**  
26 **ORDER MAY RESULT IN CRIMINAL PROSECUTION AND IMPRISONMENT OR A FINE**  
27 **OR BOTH;**

28 **4. THAT A VIOLATION OF A FINAL PROTECTIVE**  
29 **ORDER MAY RESULT IN A FINDING OF CONTEMPT;**

30 **5. THAT A FINAL PROTECTIVE ORDER MAY BE**  
31 **ADMISSIBLE AS EVIDENCE IN A CRIMINAL PROSECUTION;**

32 **6. THAT A FINAL PROTECTIVE ORDER MAY BE**  
33 **ADMISSIBLE IN AN ACTION INVOLVING DIVORCE, CHILD SUPPORT, OR CHILD**  
34 **CUSTODY OR VISITATION;**

1                   7.    THAT A FINAL PROTECTIVE ORDER IS A  
2 PERMANENT PUBLIC RECORD OF THE CIRCUIT COURT AND CANNOT BE  
3 EXPUNGED;

4                   8.    THAT THE COURT MAY CONSIDER ANY PRIOR  
5 PROTECTIVE ORDER ISSUED AGAINST THE RESPONDENT IN ANY SUBSEQUENT  
6 PROTECTIVE ORDER PROCEEDING INVOLVING THE SAME PETITIONER AND  
7 RESPONDENT;

8                   9.    THAT THE RESPONDENT MAY BE REQUESTED TO  
9 DIVULGE WHETHER A FINAL PROTECTIVE ORDER HAS BEEN ISSUED AGAINST  
10 THE RESPONDENT WHEN APPLYING FOR EMPLOYMENT, A PROFESSIONAL  
11 LICENSE, A GOVERNMENT POSITION, OR ADMISSION TO AN ACADEMIC  
12 INSTITUTION;

13                  10.   THAT THE CURRENT EMPLOYER OF THE  
14 RESPONDENT HAS ACCESS TO THE PUBLIC RECORD OF A FINAL PROTECTIVE  
15 ORDER ISSUED AGAINST THE RESPONDENT;

16                  11.   THAT THERE IS NO RIGHT TO APPEAL A FINAL  
17 PROTECTIVE ORDER ENTERED INTO BY CONSENT;

18                  12.   THAT IF THE RESPONDENT IS NOT A CITIZEN OF  
19 THE UNITED STATES, THE RESPONDENT MAY BE DEPORTED, DETAINED, OR  
20 DETERMINED TO BE INELIGIBLE FOR CITIZENSHIP AS A RESULT OF A FINAL  
21 PROTECTIVE ORDER ISSUED AGAINST THE RESPONDENT; AND

22                  13.   OF ANY OTHER CONSEQUENCES RESULTING FROM  
23 THE ISSUANCE OF A FINAL PROTECTIVE ORDER THAT THE COURT CONSIDERS  
24 APPROPRIATE.

25                         (III) AT ANY TIME BEFORE A FINAL PROTECTIVE ORDER IS  
26 ENTERED, THE RESPONDENT MAY WITHDRAW CONSENT TO THE ENTRY OF A  
27 FINAL PROTECTIVE ORDER AND THE COURT SHALL PROCEED WITH A FINAL  
28 PROTECTIVE ORDER HEARING.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15           (e)     The final protective order shall order the respondent to surrender to law  
16 enforcement authorities any firearm in the respondent's possession, and to refrain  
17 from possession of any firearm, for the duration of the protective order.

18           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2010.