

IN THE  
COURT OF APPEALS OF MARYLAND

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SEPTEMBER TERM, 2010

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NO. 127

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Ms. K,  
PLAINTIFF-APPELLANT,

V.

Mr. P,  
DEFENDANT-APPELLEE.

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ON WRIT OF CERTIORARI TO THE  
COURT OF SPECIAL APPEALS OF MARYLAND

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BRIEF OF *AMICI CURIAE* THE DOMESTIC VIOLENCE LEGAL  
EMPOWERMENT AND APPEALS PROJECT ET AL.  
IN SUPPORT OF APPELLANT

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## INTERESTS OF AMICI CURIAE

The Domestic Violence Legal Empowerment and Appeals Project (“DV LEAP”), a partnership between the George Washington University Law School and a network of participating law firms providing pro bono representation, was founded in 2003 by one of the nation’s leading domestic violence lawyers and scholars to address an urgent need for expert appellate litigation protecting the legal rights of women and children victimized by family violence. DV LEAP focuses on overturning unjust trial court outcomes, advancing legal protections for victims and their children through expert appellate advocacy, and training lawyers, psychologists, and judges on best practices. DV LEAP is committed to assisting federal and state courts in understanding the realities of domestic violence and the law when deciding cases with significant implications for domestic violence litigants. DV LEAP has co-authored *amicus curiae* and party briefs in numerous state courts and in six United States Supreme Court cases.

The Legal Resource Center on Violence Against Women (“Legal Resource Center”) is a Takoma Park, Maryland based national non-profit public interest organization that works to improve legal representation for domestic violence survivors in interstate custody cases so that victims are not forced to choose between their children and their safety. The Legal Resource Center focuses on legal and policy issues related to relocation of domestic violence survivors to escape abuse; the organization does not provide direct legal representation to survivors. Since its inception in June of 2003, the Legal Resource Center has engaged in a wide range of activities, including: providing technical assistance to more than 2,000 attorneys, victim advocates, and survivors in interstate custody and relocation cases; researching and making available the relevant laws;

conducting national, regional, and state-wide training institutes for victim advocates, attorneys, and judges; and developing practitioners' tools and educational programs for law students.

The Battered Women's Justice Project – Domestic Abuse Intervention Programs, Inc., Duluth, MN (“BWJP”) is a national technical assistance center that provides training and resources for advocates, battered women, legal system personnel, policymakers, and others engaged in the justice system response to domestic violence. The BWJP promotes systemic change within community organizations and governmental agencies engaged in the civil and criminal legal response to domestic violence, in order to hold these institutions accountable for the safety and security of battered women and their children. The BWJP is an affiliated member of the Domestic Violence Resource Network, a group of national resource centers funded by the Department of Health and Human Services and other support since 1993. The BWJP also serves as a designated technical assistance provider for the Office on Violence Against Women of the U.S. Department of Justice.

In an effort to promote more safe and just results for women and their children, the BWJP works at local, state, national and international levels to engage court systems to respond effectively to the needs of battered women and to fashion safe outcomes that hold batterers accountable.

*Amici* are interested in this case because civil protection orders provide battered women and their children with vital tools to assist in their safety – tools which our legislatures and communities have deemed more important than the very short-term inconvenience posed to respondents in a case such as this. Allowing batterers to



circumvent the protection order process by filing improper motions only serves to undermine the protective role of the courts in these cases. *Amici* respectfully ask this Court to overturn the decisions below.

### **STATEMENT OF THE CASE**

*Amici* refer the Court to the Statement of the Case set forth in Appellant’s brief.

### **QUESTION PRESENTED**

Whether Maryland’s Domestic Violence Act prohibits a respondent from moving to quash a domestic violence temporary protective order before the expiration of the statutorily determined seven-day period of protection.

### **STATEMENT OF THE FACTS**

*Amici* refer the Court to the Statement of the Facts set forth in Appellant’s brief.

### **ARGUMENT**

Nothing in the Domestic Violence Act (“DVA” or “Act”) permitted the circuit court below to entertain and grant a motion to quash a temporary protective order (“TPO”) before the expiration of the order’s seven-day term. To the contrary, allowing an alleged abuser prematurely to quash a TPO is inconsistent with the text, structure, and history of the Act. It also would defeat the entire purpose of a TPO: providing victims a short, uninterrupted period to gain control of their lives, seek safety for themselves and their children, and prepare for a full and potentially contested hearing on a final protective order (“FPO”).

**I. THE DVA DOES NOT PERMIT A RESPONDENT TO QUASH A TEMPORARY PROTECTIVE ORDER BEFORE THE EXPIRATION OF THE ORDER'S STATUTORILY DEFINED PROTECTION PERIOD**

**A. The DVA Provides A Comprehensive Scheme That Affords Protections To Victims While Preserving The Rights Of Respondents**

Each year in Maryland, thousands of domestic violence victims turn to the State's civil protection order system to obtain needed legal protection for themselves and their children. In FY 2009 alone, circuit courts and the District Court granted more than 18,500 TPOs and 10,800 FPOs. *See Maryland Judiciary, Statistical Digest 2008-2009 Tables DC-9, CC-5.2, available at <http://www.courts.state.md.us>.*<sup>1</sup> Such orders are designed to prevent domestic violence, protect abuse victims, and promote autonomy. *See Nat'l Council of Juvenile & Family Court Judges, Family Violence Dep't, A Guide for Effective Issuance & Enforcement of Protection Orders 2 (2005), available at <http://www.ncjfcj.org>.* They also provide an authoritative legal and social statement of the injustice that has occurred — holding an abuser accountable for his violence. *See David M. Zlotnik, Empowering the Battered Woman: The Use of Criminal Contempt Sanctions to Enforce Civil Protection Orders, 56 Ohio St. L.J. 1153, 1197 (1995).* This

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<sup>1</sup> In 2009, there were 18,556 domestic violence crimes reported in Maryland. Of these reports, 17,343 were assaults, a quarter of which were aggravated, and over 2,000 included the assailant's use of a weapon. Twenty were homicides. *See Maryland Dep't of State Police, Cent. Records Div., Crime in Maryland: Uniform Crime Report 2009*, at 53-54 [hereinafter UCR 2009], *available at <http://www.mdsp.org>.* Because victims frequently do not report family abuse, these figures underrepresent the extent of domestic violence in Maryland. In addition, in 2009, over 15,000 cases of child abuse were reported in Maryland, including nearly 4,000 cases of physical abuse and 1,893 cases of sexual abuse. *See Admin. for Child & Fam. Servs., U.S. Dep't Health & Human Servs., Child Maltreatment 2009*, Tables 3-5, 3-13, 3-15, 4-2, *available at <http://www.acf.hhs.gov>.* Nearly 600 children had a domestic violence caregiver risk factor, and seventeen children died from abuse or neglect. *Id.* These reports, too, understate the extent of child abuse in Maryland.

authoritative message powerfully impacts both perpetrators and victims. One groundbreaking study found “[t]he most common reason that women believed the restraining order was a good idea is because, as one woman put it, ‘it shows him the law’s on my side.’” See James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Responses* 164 (1999).

Contrary to common media accounts, empirical research consistently has proven that protection orders stop, reduce, or prevent violence. Eighty-six percent of abused women in one study said that their protection orders either stopped or reduced the abuse. See *id.* Over three-quarters of participants in another study reported that their protection orders were effective in improving their lives, making them feel better about themselves, and, most importantly, making them feel safer. Susan L. Keilitz et al., Nat’l Ctr. for State Cts., *Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence* 37 (1997). This study found that over seventy percent of participants experienced no further incidents of abusive conduct after obtaining a protection order. *Id.* Another study found that abuse victims with protection orders in place were eighty percent less likely to be abused the year following the issuance of the orders. Victoria L. Holt et al., *Civil Protection Orders and Risk of Subsequent Police-Reported Violence*, Vol. 288, No. 5, J. Am. Med. Ass’n 589, 593 (Aug. 7, 2002), available at <http://jama.ama-assn.org>. Protection orders thus provide crucial and effective safeguards to domestic violence victims.

In Maryland, the law governing domestic violence civil protection orders is contained in the DVA, codified in Title 4, Subtitle 5, Part II, of the Family Law Article of the Maryland Code §§ 4-504 through 4-512.1.<sup>2</sup> The DVA defines three types of orders:

- **Interim protective orders (“IPO”)** – Section 4-504.1 sets forth the procedures and requirements for these orders by District Court commissioners that provide emergency *ex parte* relief to victims when the courts are closed. Md. Code Ann., Fam. Law § 4-504.1. IPOs expire once a court holds a TPO hearing or at “the end of the second business day” after the court opens, whichever is earlier. *Id.* § 4-504.1(h)(1)-(2).
- **Temporary protective orders (“TPO”)** – Section 4-505 sets forth the procedures and requirements for these orders by circuit courts or the District Court that provide *ex parte* emergency relief to victims. *Id.* § 4-505. Because it is *ex parte*, a TPO is “effective for not more than 7 days after service of the order.” *Id.* § 4-505(c)(1).
- **Final protective orders (“FPO”)** – Section 4-506 sets forth the procedures and requirements for these orders by circuit courts or the District Court that provide more permanent relief. *Id.* § 4-506. Unlike the *ex parte* IPO/TPO proceedings, a respondent must be served with notice of the FPO hearing, and “shall have an opportunity to be heard on the question of whether the judge should issue a final protective order.” *Id.* § 4-506(a). FPOs can be effective for up to one year, or in cases of subsequent abuse, for up to two years. *Id.* § 4-506(j)(1)-(2).

This Court repeatedly has recognized that the “sole and essential purpose” of the DVA is “the protection of persons who have been subjected to abuse.” *Katsenelenbogen v. Katsenelenbogen*, 365 Md. 122, 136 (2001).<sup>3</sup> The General Assembly on repeated

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<sup>2</sup> Part III of this Subtitle sets forth the scheme for providing assistance to victims of domestic violence and their children through establishing shelter, counseling, information, referral, and rehabilitation programs. *See* Md. Code Ann., Fam. Law §§ 4-513 through 4-517. This Part’s “legislative policy” includes the General Assembly’s findings that “victims of domestic violence are forced to leave their homes to ensure their life, safety, and welfare,” are often “economically dependent on the abuser and have no place to live outside the household,” and have largely “been ignored” through a lack of services and programs. *Id.* § 4-514.

<sup>3</sup> *See also* *Triggs v. State*, 382 Md. 27, 50 (2004) (“[T]he Maryland domestic violence statute reveals a strong legislative intent to protect victims”); *Coburn v. Coburn*, 342 Md.

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occasions has amended the DVA to enhance the effectiveness of orders of protection. The “overarching purpose” of such amendments was to add and strengthen protections for domestic violence victims. *See, e.g., Triggs*, 382 Md. at 45-46 (discussing 1992 amendments).<sup>4</sup>

At the same time, in crafting the DVA, the General Assembly was mindful that civil protection orders impose restraints on those accused of abuse. *See Katsenelenbogen*, 365 Md. at 135-36. In designing the statutory scheme, therefore, the Assembly counterbalanced the protections afforded to victims of abuse with numerous provisions aimed at preserving respondents’ rights. *Id.* For instance, the General Assembly provided that TPOs should last no longer than seven days after service, one of the shortest TPO periods for domestic violence victims in the country. Md. Code Ann., Fam. Law § 4-505(c)(1); App. A (survey of state TPO durations).<sup>5</sup> Further, abuse

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244, 252 (1996) (“The purpose of the domestic abuse statute is to protect and ‘aid victims of domestic abuse by providing an immediate and effective’ remedy.” (citation omitted)); *Barbee v. Barbee*, 311 Md. 620, 623 (1988) (“That the Act was designed to aid victims of domestic abuse by providing an immediate and effective nonmonetary remedy is readily apparent.”).

<sup>4</sup> *See also Suter v. Stuckey*, 402 Md. 211, 226-27 (2007) (discussing 1992 amendments that, among other things, expanded those eligible for relief; broadened the definitions of abuse; increased the types of relief available; and increased the duration of TPOs from five to seven days). More recently, the General Assembly likewise has amended the DVA to increase the protections for victims. *See* 2009 Md. Laws, Ch. 488, 489; Ch. 611, 612 (amending to allow courts to extend the duration of TPOs and FPOs under certain circumstances and to order abusers to relinquish and refrain from possessing firearms for the duration of a FPO); 2010 Md. Laws, Ch. 687 (codifying the Domestic Violence Central Repository begun in 2008); 2010 Md. Laws, Ch. 429 (establishing a pilot program for GPS tracking of protective order violators); 2010 Md. Laws, Ch. 620, 621 (lengthening the period for which a FPO could be extended where subsequent incidents of abuse occur); 2010 Md. Laws, Ch. 361, 362 (providing for a shielding of parties’ records where protective orders were denied or dismissed).

<sup>5</sup> In determining the maximum duration of TPOs, the General Assembly carefully weighed several policy concerns, including the disruption to families, the need for immediate protection, and the difficulties faced by trial courts in scheduling FPO hearings. *See Zerhusen v. Zerhusen*, 73 Md. App. 386, 389 (Md. Ct. Spec. App. 1988);

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allegations must be made under oath and a victim must establish “reasonable grounds to believe” that abuse has occurred before a court may issue a TPO. Md. Code Ann., Fam. Law § 4-505(a)(1). Most significantly, the General Assembly established a uniquely high hurdle before courts may issue FPOs: petitioners must prove abuse by “clear and convincing evidence.” *Id.* § 4-506(c)(1)(ii). *Maryland is the only state in the union requiring more than a preponderance of the evidence standard for establishing abuse. See App. B (survey of state FPO burdens).*<sup>6</sup>

The General Assembly has thus struck a deliberate and careful balance between ensuring that needed protection is available to victims, while at the same time making sure respondents’ rights are amply protected in the process. As explained below, in striking this balance, the General Assembly incorporated no statutory mechanism to quash TPOs. Judicial insertion of a procedure for respondents to quash an already extremely short-lived TPO would disrupt this carefully constructed legislative scheme in a manner that undermines the statute’s protective intent. *See, e.g., Coburn*, 342 Md. at 261 (requirement that victim “list every allegation of past abuse” was contrary to purpose of the statute because it “would place a burden too onerous on a petitioner filing *pro se*”).

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*see also Kaufman v. Motley*, 119 Md. App. 623, 627-28 (Md. Ct. Spec. App. 1998) (contrasting differing considerations underlying TPO and FPO durations).

<sup>6</sup> *See also, e.g., Fiscal and Policy Note*, H.B. 700 (concerning bill advocating lower burden for FPOs and noting that Maryland’s burden is more demanding than other Mid-Atlantic states; bill ultimately was reported unfavorably by the House Judiciary Committee), *available at* [http://mlis.state.md.us/2010rs/fnotes/bil\\_0000/hb0700.pdf](http://mlis.state.md.us/2010rs/fnotes/bil_0000/hb0700.pdf).

**B. The Text Of The DVA Provides No Mechanism To Quash TPOs**

Although Appellant sets forth several grounds of error, *see* Cert. Pet. at 13-23, *Amici* suggest that this Court can reverse the ruling below based on a straightforward application of the statute, which precludes alleged abusers from quashing a TPO before it expires and before a FPO hearing can be held. “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature.” *Mayor of Oakland v. Mayor of Mountain Lake Park*, 392 Md. 301, 316 (2006). To determine legislative intent, this Court looks to the traditional tools of statutory construction, including the statute’s text, structure, history, and purpose. *E.g.*, *Carroll v. Konits*, 400 Md. 167, 191-93 (2007); *Walzer v. Osborne*, 395 Md. 563, 571-72 (2006). Remedial statutes like the DVA are to be liberally construed to “suppress the evil and advance the remedy.” *Coburn*, 342 Md. at 256 (citation and internal quotations omitted). Here, all indicia point in the same direction: the General Assembly did not intend to permit an alleged abuser constrained by a TPO to seek an order quashing the TPO before the expiration of its short term.

As a threshold matter, the plain text of Section 4-505, which governs TPOs, provides no mechanism to seek an order quashing a TPO prior to its expiration and a full, contested FPO hearing. Given the well-known procedures for other types of temporary orders, the absence of such a provision cannot be treated as a mere oversight. Maryland Rule 15-504(f), for instance, explicitly provides that “[a] party or person affected by [a non-domestic-violence temporary restraining order] may apply for modification or dissolution of the order.” Upon such an application, “[t]he party who obtained the [TRO] has the burden of showing that it should be continued.” Md. Rule 15-504(f). If the

General Assembly meant for similar procedures to apply to the DVA, it would have said so explicitly.

Further, the entire scheme, as it relates to TPOs, is aimed at providing a brief safe harbor for victims – it presumes no participation of an alleged abuser. “Normally, the temporary protective order hearing is conducted *ex parte*, with only the petitioner appearing before the court.” Admin. Office of the Cts., Dep’t of Family Admin., *Maryland Judge’s Domestic Violence Resource Manual* 12 (2010) [hereinafter *DV Resource Manual*], available at <http://www.courts.state.md.us>; see also Md. Code Ann., Fam. Law § 4-505(a)(1). For FPOs, by contrast, the DVA provides that a respondent “shall have an opportunity to be heard.” Md. Code Ann., Fam. Law § 4-506(a). In fact, if a respondent appears at a TPO hearing it normally is transformed into a FPO hearing, but only if the parties consent. See *id.* § 4-505(d).

Under certain circumstances, a TPO may be extended, and the FPO hearing date postponed beyond the statutorily-prescribed period of no more than seven days. *Id.* § 4-505(c)(2). But while the statute provides for *extending* a TPO “to effectuate service of the order where necessary to provide protection or for other good cause,” *id.* § 4-505(c)(2), there is no comparable provision for shortening the duration of a TPO. Indeed, no other provisions for altering a TPO appear within the DVA. See *Comptroller of the Treasury v. Blanton*, 390 Md. 528, 537 (2006) (“Maryland has long accepted the doctrine of *expressio (or inclusio) unius est exclusio alterius*, or the expression of one thing is the exclusion of another.”); *Waters v. State*, 220 Md. 337, 352 (1959) (applying principle to avoid implying remedies not expressly described in statute).



Consistent with the language of the statute, *Amici* have found no decision where a Maryland court has interpreted the DVA to allow a respondent to quash a properly issued TPO before its expiration.<sup>7</sup> Indeed, in *Katsenelenbogen*, this Court listed the statutory protections provided to respondents under the DVA, but nowhere included motions to quash TPOs. 365 Md. at 135-36 (listing maximum seven-day duration of TPO in most cases; requirement of FPO within seven days of TPO in most cases; requirement that petitioner establish reasonable grounds to believe abuse occurred at TPO hearing; clear definition of “abuse”; requirement that petitions be made under oath and disclose pending actions between the parties; requirement that petitioners prove abuse by clear and convincing evidence at FPO hearing; requirement that certain enumerated factors be considered before respondent must vacate the home). Likewise, domestic violence resource manuals make no mention of motions to quash TPOs. *See DV Resource Manual, supra*; Maryland Judiciary, *Peace and Protective Orders: How to File for a Peace or Protective Order* (Rev 10/2010), available at <http://www.courts.state.md.us>. Nor does a treatise on Maryland family law practice. John F. Fader, II & Richard J. Gilbert, *Maryland Family Law* ch. 7 (4th ed. 2006).

### **C. The DVA Permits Early Termination Of FPOs But Not TPOs**

That the General Assembly did not intend to permit motions to quash TPOs is further confirmed by the fact that for decades the Act has permitted rescission of FPOs,

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<sup>7</sup> Before the DVA was overhauled in 1992, the court in *Zerhusen*, 73 Md. App. at 390, vacated a temporary *ex parte* order that on its face had been improperly issued for a period exceeding the maximum duration permitted by the statute. *Zerhusen* thus stands only for the proposition that “[a]ny order by a court that endeavors to extend [the maximum time period of a TPO] permitted by § 4-505 is a nullity.” *Id.* In any event, the court did not address the procedural propriety of a motion to quash.

with no similar mechanism for TPOs or IPOs. Section 4-507(a)(1) of the Act provides that “[a] protective order may be modified or rescinded during the term of the protective order after: (i) giving notice to all affected persons eligible for relief and the respondent; and (ii) a hearing.” It is clear from the language and history of the section that the term “protective order” in 4-507(a) applies only to FPOs.<sup>8</sup>

*First*, Section 4-507(a)(1) requires notice to both parties and a hearing before a “protective order” – requirements antithetical to the *ex parte* TPO process – indicating that it does not apply to TPOs. Md. Code Ann., Fam. Law § 4-505(a)(1); *DV Resource Manual, supra*, at 44 (“The court may *not* grant a modification or rescission as emergency or *ex parte* relief.”).

*Second*, this section was enacted in 1992 – at that time the term “protective order” in the DVA referred only to what is now called a “final protective order.” *See, e.g.*, 1992 Md. Laws Ch. 65 (showing scheme of “temporary *ex parte* orders” and “protective orders”). In 2002, the General Assembly created IPOs and renamed “temporary *ex parte* orders” to “temporary protective orders,” but continued to use the generic term “protective orders” in 4-507. 2002 Md. Laws Ch. 235.<sup>9</sup> Had the General Assembly

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<sup>8</sup> In fact, Appellee did not appear to seek relief under any provision of the DVA. In his brief below, Appellee suggested that a motion to quash a TPO might properly be brought under either Maryland Rule 2-534 or 2-535. Appellee Ct. Spec. App. Br. at 18, 24. Both rules are inapplicable; they apply only to “judgments.” A judgment is “any order of court final in its nature entered pursuant to these rules.” Md. Rule 1-202(o). Appellee conceded below that, by definition, a “temporary” protective order is not “final.” Appellee Ct. Spec. App. Br. at 24.

<sup>9</sup> The General Assembly added IPOs to the DVA in 2002 after a constitutional amendment authorizing District Court commissioners to issue protective orders, reflecting the Assembly’s intent to expand the DVA to provide immediate assistance, on a 24 hour basis. *See, e.g.*, Fiscal Note accompanying House Bill 663, which was later enrolled within Chapter 235 of 2002’s session laws, *available at* <http://mlis.state.md.us>.

intended to expand the settled meaning of Section 4-507(a) for the first time to apply to TPOs it would have done so explicitly. *See Lewis v. State*, 348 Md. 648, 659 (1998).

*Third*, all the other requirements of Section 4-507 applicable to a “protective order” apply only to FPOs.<sup>10</sup> For instance, subsection (a)(2) states that “[f]or good cause shown, a judge may extend the term of the protective order for *6 months beyond the period specified in § 4-506(j) of this subtitle.*” (emphasis added). Section 4-506(j) deals only with the duration of a FPO, and there is no reference to Section 4-505, which governs TPOs.<sup>11</sup>

Moreover, subsection (a)(3) states that “[i]f, during the term of a protective order, a judge finds by *clear and convincing evidence* that the respondent named in the protective order has committed a subsequent act of abuse against a person eligible for relief named in the protective order, the judge may extend the term of the protective order for a period not to exceed 2 years . . . .” (emphasis added). The clear and convincing standard that must be met for the extension of a “protective order” under Section 4-507(a)(3) is the standard that applies only to FPOs, not TPOs. *See id.* § 4-506(c)(1)(ii). To obtain a TPO, the petitioner must establish “reasonable grounds to believe” the respondent has abused the petitioner. *Id.* § 4-505(a)(1).

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<sup>10</sup> Only Section 4-507(a) contains provisions governing a “protective order.” Section 4-507(b) allows a party to appeal *de novo* to a circuit court when the District Court grants or denies “relief under a *petition filed* under this subtitle.” Md. Code Ann., Fam. Law § 4-507(b) (emphasis added).

<sup>11</sup> The reverse also is true: Section 4-506(b)(ii)(3), governing the duration of FPOs, cross-references 4-507(a)(2). No references to Section 4-507 appear in Section 4-505, the provision governing TPOs.

*Fourth*, *Amici*'s research has revealed no Maryland cases interpreting Section 4-507(a)(1) as applying to TPOs. The only decisions directly addressing any provision of Section 4-507 concern their application to FPOs. *See Suter v. Stuckey*, 402 Md. 211, 236 (2007) (holding that a FPO entered by consent may not be appealed *de novo* pursuant to Section 4-507(b)); *Torboli v. Torboli*, 365 Md. 52, 62 (2001) (addressing whether parties may by their actions modify a FPO pursuant to Section 4-507(a)(1)).

*Amici* recognize that individuals subject to TPOs might have reasons to want to quash the orders. But the General Assembly already has weighed that interest against the interest in ensuring that emergency protection is available to victims on an *ex parte* basis. The statutory scheme includes a built-in and deliberately adopted protection for respondents: a TPO period that is one of the shortest in the country. *See* App. A. Indeed, numerous states have recognized that the brevity of an *ex parte* TPO provides a core protection to alleged abusers. *See, e.g., Pendleton v. Minichino*, No. 506673, 1992 WL 75920, at \*9 (Conn. Super. Apr. 3, 1992) (“When balanced against the applicant’s interest and government interests to be considered next, a hearing fourteen days after the deprivation here cannot be said to be unreasonable.”); *Marquette v. Marquette*, 686 P.2d 990, 995-96 (Okla. Civ. App. 1984) (“We do not take the interference with parental visitation lightly, but we note that such interference can only occur for a total of ten days prior to the deprived parent receiving a full hearing. This infringement must be balanced against the government’s interest in issuing the order and the risk of erroneous deprivation under existing procedures.”); *Baker v. Baker*, 494 N.W.2d 282, 288 (Minn. 1992), *superseded in part by statute* (seven-day duration of TPO among key factors

considered in determining adequacy of procedures governing *ex parte* issuance of temporary restraining orders).

*Finally*, even if Section 4-507(a)(1) applied to TPOs, at the very least, notice to the petitioner would be mandated: “A protective order may be modified or rescinded after: (i) giving notice to all affected persons eligible for relief and the respondent; and (ii) a hearing.” Md. Code. Ann., Fam. Law § 4-507(a)(1). The policy statement accompanying Section 4-507 in the *DV Resource Manual* even warns courts against granting dismissals of protection orders *when requested by the petitioner*:

Victims remain especially vulnerable even after a protective order has been granted. Abusers may attempt to regain control of the victim by reconciling or renewing the intimate relationship. While some victims may genuinely believe reconciliation to be in their best interest, others may have been intimidated into requesting a rescission or dismissal, and many remain at risk. Judges should require the petitioner to appear in open court before a request to rescind or dismiss can be granted – to ensure victim safety and to make sure the victim is not being intimidated, coerced, or threatened into dismissing the petition or rescinding the order.

*DV Resource Manual, supra*, at 44. How much more cautious, then, must courts be when the dismissal is requested – not by the petitioner – but by the respondent? If, as Appellant has argued, no such notice and opportunity to be heard were provided by the duty judge who quashed the TPO, the decision below cannot stand under any interpretation of the Act.

## **II. ALLOWING MOTIONS TO QUASH TPOs WOULD HAVE DEVASTATING CONSEQUENCES FOR DOMESTIC ABUSE VICTIMS**

Allowing abusers to quash TPOs would eliminate immediate protections for victims. It also would vacate the very orders that schedule FPO hearings, thereby ending any prospects for more permanent relief. Simply allowing such motions would force victims to devote time during the seven-day protection period to defend their own TPOs. That would severely undercut victims' ability adequately to prepare for FPO hearings. Permitting such satellite proceedings, moreover, would invite abusers to use the courts to continue harassing their victims. All of this ultimately would chill the use of such orders by domestic violence victims. This cannot be what the General Assembly intended under the DVA.

A motion to quash threatens to eliminate the only immediate protections victims of domestic violence can obtain from courts under the DVA. Such immediate protections provide a crucial safe harbor for women who frequently have nowhere else to turn. They provide a much-needed, albeit short, respite from violence. *See, e.g.,* Jane C. Murphy, *Engaging the State: The Growing Reliance on Lawyers & Judges to Protect Battered Women*, 11 J. Gender, Soc'l Pol'y & L. 499, 513 (2003).<sup>12</sup> This brief period of protection also allows emotionally vulnerable victims time to find new places to live, reflect on the "methods and ways to deal with [the] abuse," and put together a safety plan, which advocates frequently advise for victims of abuse. Murphy, *supra*, at 513; Keilitz et al.,

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<sup>12</sup> *Accord* Adele Harrell & Barbara E. Smith, *Effects of Restraining Orders on Domestic Violence Victims*, in *Do Arrests & Restraining Orders Work?* (Eve S. Buzawa & Carl G. Buzawa eds., 1996), at 214, 219 (even 64 percent of victims with TPOs who did not return for a FPO reported abusive conduct stopped after the TPO).

*supra*, at 58.<sup>13</sup> In a study of Maryland abuse victims, participants said that TPOs prevented further abuse in many cases and forced abusers to acknowledge victims were serious about stopping the violence. Murphy, *supra*, at 513; *see also* Harrell & Smith, *supra*, at 218-220.<sup>14</sup> The General Assembly did not intend for this invaluable protective device to be interrupted or cut short.

Beyond eliminating the immediate protection for victims, premature motions to quash TPOs would intrude upon victims' efforts to prepare for FPO hearings, undermining their ability effectively to present their claims for more fulsome and longer term relief. Under the terms of a TPO, abuse victims, most of whom proceed *pro se*, have only seven days to prepare a case in which they must prove abuse by "clear and convincing evidence," a standard more demanding than that of *every other state*. App. B. As Appellant's TPO advised her: "This is difficult to do if you do not have law training. Each party should see a lawyer. If you are the petitioner and cannot get a private lawyer, there are support agencies that may be able to help you." Cert. Pet. Att. 9. To satisfy this standard, victims need adequate time to gather and prepare evidence, such as police reports, medical records, eyewitness accounts from current or prior incidents, telephone records, and records from school guidance counselors or nurses. This crucial period of evidence gathering and preparation for the FPO should not be hindered by proceedings

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<sup>13</sup> See House of Ruth Maryland, *Danger Assessment*, available at <http://www.hruth.org/danger-assessment.asp> ("Regardless of how dangerous the situation appears, a safety plan is an important piece of information that can help you think about how to keep yourself safe."); Sheriff's Office, Montgomery County, *Domestic Violence Safety Plan*, available at <http://www.mcsheriff.com/services/dvsafety.asp> ("It is very important that you set up and follow a safety plan.").

<sup>14</sup> Some women, however, did not go back for a FPO because the abuser violated the order and the violence did not cease. Harrell & Smith, *supra*, at 220.

brought by a respondent.<sup>15</sup> Further, a motion to quash a TPO could – as it did here – prematurely terminate fact-finding investigations ordered by the TPO itself, such as investigations into alleged child abuse. *See* Md. Code Ann., Fam. Law § 4-505(e)(1), (2)(i)-(ii) (requiring court upon finding reasonable grounds to believe child abuse occurred to forward petition and TPO to local department of human resources for investigation and requiring investigative report submitted to the court by the date of the FPO hearing).

Not only does a motion to quash unfairly cut short the time victims have to prepare, it defies their reasonable expectations. The DVA provides that the TPO “shall state the date and time of the final protective order hearing.” *Id.* § 4-506(b)(1)(i). The statute does not state that the TPO shall inform a petitioner that this date is subject to change if a respondent brings a motion to quash prior to the hearing. Appellant’s TPO, for instance, nowhere suggested that the respondent could unilaterally seek to cancel the scheduled FPO hearing. Cert. Pet. Att. at 6-10. Predictability and reliability are essential for the DVA to achieve its legislative purpose of protecting victims. Allowing motions to quash undermines both. *See* Nat’l Council of Juvenile & Fam. Ct. Judges, Fam. Violence Dep’t, *Civil Protection Orders: A Guide for Improving Practice*, at Common Ground 14 (2010), available at <http://www.ncjfcj.org> (“Victims put their trust in the civil protection order system, and when the system fails to provide reliable issuance and enforcement of protection orders, it exposes victims to risk and uncertainty.”).

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<sup>15</sup> Because “relief under the statute is designed to be available for *pro se* applicants” this Court has rejected procedures that “would place a burden too onerous on a petitioner filing *pro se*.” *Coburn*, 342 Md. at 254, 261.



Permitting such disruptive proceedings, moreover, is an invitation to abusers to use the courts to continue harassing their victims. Abusers – especially those who share children with their victims – are widely known for using the legal system to continue the abuse. *See, e.g.,* Peter G. Jaffe et al., *Child Custody & Domestic Violence* 32 (2003). Abusers often do whatever they can to reassert control over their victims and such efforts intensify after a TPO is issued. As the Montgomery County Sheriff’s Office advises, “[a]fter an Ex Parte or Protective Order has been served on you[r] partner it becomes the most volatile time for you and your family.” *Domestic Violence Safety Plan, supra*. If abusers are afforded a means to try to eliminate an order against them or prevent the victim from adequately preparing for the FPO hearing, they will take it.

Finally, permitting early termination of TPOs by respondents would have broader systemic consequences: fewer women will seek help. Victims of abuse already face numerous hurdles to accessing legal protection, including trauma, fear of the unknown, a confusing and overwhelming legal process, the enormous stress of going to court, and the significant difficulties for work and personal schedules that court hearings and delays create. *See, e.g.,* Ptacek, *supra*, at 145-50. A system requiring victims first to obtain a TPO, then defend that TPO while preparing their case for a FPO, then attend the FPO hearing, would only present additional disincentives to pursuing protection through the courts. That is particularly the case given that multiple proceedings require additional time off work and concomitant child care expenses. That is especially problematic for Maryland petitioners: studies show that most Maryland victims seeking TPOs have low income and at least one child. *See, e.g.,* Murphy, *supra*, at 518-19, app. D, E. Thus, it is

imperative for victims to be able to trust the courts to leave properly issued TPOs in place and follow through with scheduled FPO hearings.

In short, affirming the lower courts' interpretation of the DVA here would completely undermine issuance and application of TPOs, encourage aggressive and intimidating use of the system by abusers, and chill the use of such orders by domestic violence victims. Neither the statutory text nor the legislative intent support this result.

### CONCLUSION

For the foregoing reasons, *Amici* respectfully urge this Court to reverse the decisions below.

Dated: March 2, 2011

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2011 a copy of the foregoing Brief of *Amici Curiae* the Domestic Violence Legal Empowerment and Appeals Project et al. was served by first class U.S. Mail, postage prepaid to each to the parties listed below:

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## VERBATIM TEXT OF RELEVANT STATUTES



West's Annotated Code of Maryland [Currentness](#)

Family Law ([Refs & Annos](#))

Title 4. Spouses ([Refs & Annos](#))

 [Subtitle 5](#). Domestic Violence ([Refs & Annos](#))

→ [Part II](#). Household Violence ([Refs & Annos](#))

→ **§ 4-504. Petition for relief from abuse**

<Section effective through December 31, 2011. See, also, section effective January 1, 2012.>

### Who may file

(a) A petitioner may seek relief from abuse by filing with a court, or with a commissioner under the circumstances specified in [§ 4-504.1\(a\)](#) of this subtitle, a petition that alleges abuse of any person eligible for relief by the respondent.

### Contents of petition

(b)(1) The petition shall:

(i) be under oath; and

(ii) include any information known to the petitioner of:

1. the nature and extent of the abuse for which the relief is being sought, including information known to the petitioner concerning previous injury resulting from abuse by the respondent;
2. each previous action between the parties in any court;
3. each pending action between the parties in any court;
4. the whereabouts of the respondent, if known;
5. if financial relief is requested, information known to the petitioner regarding the financial resources of the respondent; and
6. in a case of alleged child abuse or alleged abuse of a vulnerable adult, the whereabouts of the child or vulnerable adult and any other information relating to the abuse of the child or vulnerable adult.

(2) If the petition states that disclosure of the address of a person eligible for relief would risk further abuse of a person eligible for relief, or reveal the confidential address of a shelter for domestic violence victims, that address may be omitted from all documents filed with a commissioner or filed with, or transferred to, a court. If disclosure

is necessary to determine jurisdiction or consider any venue issue, it shall be made orally and in camera and may not be disclosed to the respondent.

#### Cost

(c) The petitioner may not be required to pay a filing fee or costs for the issuance or service of:

- (1) an interim protective order;
- (2) a temporary protective order;
- (3) a final protective order; or
- (4) a witness subpoena.

#### Notification of service

(d)(1) If a petitioner has requested notification of the service of a protective order, the Department of Public Safety and Correctional Services shall:

- (i) notify the petitioner of the service on the respondent of an interim or a temporary protective order within one hour after a law enforcement officer electronically notifies the Department of Public Safety and Correctional Services of the service; and
- (ii) notify the petitioner of the service on the respondent of a final protective order within one hour after knowledge of service of the order on the respondent.

(2) The Department of Public Safety and Correctional Services shall develop a notification request form and procedures for notification under this subsection.

(3) The court clerk or Commissioner shall provide the notification request form to a petitioner.

#### **§ 4-504. Petition for relief from abuse**

<Section effective January 1, 2012. See, also, section effective through December 31, 2011.>

#### Who may file

(a) A petitioner may seek relief from abuse by filing with a court, or with a commissioner under the circumstances specified in [§ 4-504.1\(a\)](#) of this subtitle, a petition that alleges abuse of any person eligible for relief by the respondent.

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- (ii) include any information known to the petitioner of:

1. the nature and extent of the abuse for which the relief is being sought, including information known to the

petitioner concerning previous injury resulting from abuse by the respondent;

2. each previous action between the parties in any court;

3. each pending action between the parties in any court;

4. the whereabouts of the respondent, if known;

5. if financial relief is requested, information known to the petitioner regarding the financial resources of the respondent; and

6. in a case of alleged child abuse or alleged abuse of a vulnerable adult, the whereabouts of the child or vulnerable adult and any other information relating to the abuse of the child or vulnerable adult.

(2) If the petition states that disclosure of the address of a person eligible for relief would risk further abuse of a person eligible for relief, or reveal the confidential address of a shelter for domestic violence victims, that address may be omitted from all documents filed with a commissioner or filed with, or transferred to, a court. If disclosure is necessary to determine jurisdiction or consider any venue issue, it shall be made orally and in camera and may not be disclosed to the respondent.

#### Cost

(c) The petitioner may not be required to pay a filing fee or costs for the issuance or service of:

(1) an interim protective order;

(2) a temporary protective order;

(3) a final protective order; or

(4) a witness subpoena.

#### [§ 4-504.1. Interim protective orders](#)

<Section effective through December 31, 2011. See, also, section effective January 1, 2012.>

#### When petition filed with commissioner

(a) A petition under this subtitle may be filed with a commissioner when neither the office of the clerk of the circuit court nor the Office of the District Court Clerk is open for business.

#### Issuance of interim protective order

(b) If a petition is filed with a commissioner and the commissioner finds that there are reasonable grounds to believe that the respondent has abused a person eligible for relief, the commissioner may issue an interim protective order to protect a person eligible for relief.

#### Scope of interim protective order

(c) An interim protective order may:

- (1) order the respondent to refrain from further abuse or threats of abuse of a person eligible for relief;
- (2) order the respondent to refrain from contacting, attempting to contact, or harassing a person eligible for relief;
- (3) order the respondent to refrain from entering the residence of a person eligible for relief;
- (4) if a person eligible for relief and the respondent are residing together at the time of the alleged abuse:
  - (i) order the respondent to vacate the home immediately;
  - (ii) award to a person eligible for relief custody of any child of the person eligible for relief and respondent then residing in the home; and
  - (iii) subject to the limits as to a nonspouse specified in [§ 4-505\(a\)\(2\)\(iv\)](#) of this subtitle, award temporary use and possession of the home to the person eligible for relief;
- (5) in a case alleging abuse of a child, award temporary custody of a minor child of the respondent and a person eligible for relief;
- (6) in a case alleging abuse of a vulnerable adult, subject to the limits as to a nonspouse specified in [§ 4-505\(a\)\(2\)\(iv\)](#) of this subtitle, award temporary use and possession of the home to an adult living in the home;
- (7) order the respondent to remain away from the place of employment, school, or temporary residence of a person eligible for relief; or
- (8) order the respondent to remain away from the residence of any family member of a person eligible for relief.

#### Temporary custody awards

(d) If the commissioner awards temporary custody of a minor child under subsection (c)(4)(ii) or (5) of this section, the commissioner may order a law enforcement officer to use all reasonable and necessary force to return the minor child to the custodial parent after service of the interim protective order.

#### Contents of interim protective order

(e)(1)(i) An interim protective order shall state the date, time, and location for the temporary protective order hearing and a tentative date, time, and location for a final protective order hearing.

(ii) A temporary protective order hearing shall be held on the first or second day on which a District Court judge is sitting after issuance of the interim protective order, unless the judge continues the hearing for good cause.

(2) An interim protective order shall include in at least 10-point bold type:

(i) notice to the respondent that:

1. the respondent must give the court written notice of each change of address;
2. if the respondent fails to appear at the temporary protective order hearing or any later hearing, the respondent may be served with any orders or notices in the case by first-class mail at the respondent's last known address;
3. the date, time, and location of the final protective order hearing is tentative only, and subject to change; and

4. if the respondent does not attend the temporary protective order hearing, the respondent may call the Office of the Clerk of the District Court at the number provided in the order to find out the actual date, time, and location of any final protective order hearing;

(ii) a statement of all possible forms and duration of relief that a temporary protective order or final protective order may contain;

(iii) notice to the petitioner and respondent that, at the hearing, a judge may issue a temporary protective order that grants any or all of the relief requested in the petition or may deny the petition, whether or not the respondent is in court;

(iv) a warning to the respondent that violation of an interim protective order is a crime and that a law enforcement officer shall arrest the respondent, with or without a warrant, and take the respondent into custody if the officer has probable cause to believe that the respondent has violated any provision of the interim protective order; and

(v) the phone number of the Office of the District Court Clerk.

#### Duties of commissioner

(f) Whenever a commissioner issues an interim protective order, the commissioner shall:

(1) immediately forward a copy of the petition and interim protective order to the appropriate law enforcement agency for service on the respondent; and

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

#### Duties of law enforcement officer

(g) A law enforcement officer shall:

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

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

(3) within two hours after service of the order on the respondent, electronically notify the Department of Public Safety and Correctional Services of the service.

#### How long interim protective order effective

(h) An interim protective order shall be effective until the earlier of:

(1) the temporary protective order hearing under [§ 4-505](#) of this subtitle; or

(2) the end of the second business day the Office of the Clerk of the District Court is open following the issuance of an interim protective order.

#### Decision of commissioner not binding on judge



(i) A decision of a commissioner to grant or deny relief under this section is not binding on, and does not affect any power granted to or duty imposed on, a judge of a circuit court or the District Court under any law, including any power to grant or deny a petition for a temporary protective order or final protective order.

#### § 4-504.1. Interim protective orders

<Section effective January 1, 2012. See, also, section effective through December 31, 2011.>

##### When petition filed with commissioner

(a) A petition under this subtitle may be filed with a commissioner when neither the office of the clerk of the circuit court nor the Office of the District Court Clerk is open for business.

##### Issuance of interim protective order

(b) If a petition is filed with a commissioner and the commissioner finds that there are reasonable grounds to believe that the respondent has abused a person eligible for relief, the commissioner may issue an interim protective order to protect a person eligible for relief.

##### Scope of interim protective order

(c) An interim protective order may:

(1) order the respondent to refrain from further abuse or threats of abuse of a person eligible for relief;

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

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

(4) if a person eligible for relief and the respondent are residing together at the time of the alleged abuse:

(i) order the respondent to vacate the home immediately;

(ii) award to a person eligible for relief custody of any child of the person eligible for relief and respondent then residing in the home; and

(iii) subject to the limits as to a nonspouse specified in [§ 4-505\(a\)\(2\)\(iv\)](#) of this subtitle, award temporary use and possession of the home to the person eligible for relief;

(5) in a case alleging abuse of a child, award temporary custody of a minor child of the respondent and a person eligible for relief;

(6) in a case alleging abuse of a vulnerable adult, subject to the limits as to a nonspouse specified in [§ 4-505\(a\)\(2\)\(iv\)](#) of this subtitle, award temporary use and possession of the home to an adult living in the home;

(7) order the respondent to remain away from the place of employment, school, or temporary residence of a person eligible for relief; or

(8) order the respondent to remain away from the residence of any family member of a person eligible for relief.

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(d) If the commissioner awards temporary custody of a minor child under subsection (c)(4)(ii) or (5) of this section, the commissioner may order a law enforcement officer to use all reasonable and necessary force to return the minor child to the custodial parent after service of the interim protective order.

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(2) An interim protective order shall include in at least 10-point bold type:

(i) notice to the respondent that:

1. the respondent must give the court written notice of each change of address;
2. if the respondent fails to appear at the temporary protective order hearing or any later hearing, the respondent may be served with any orders or notices in the case by first-class mail at the respondent's last known address;
3. the date, time, and location of the final protective order hearing is tentative only, and subject to change; and
4. if the respondent does not attend the temporary protective order hearing, the respondent may call the Office of the Clerk of the District Court at the number provided in the order to find out the actual date, time, and location of any final protective order hearing;

(ii) a statement of all possible forms and duration of relief that a temporary protective order or final protective order may contain;

(iii) notice to the petitioner and respondent that, at the hearing, a judge may issue a temporary protective order that grants any or all of the relief requested in the petition or may deny the petition, whether or not the respondent is in court;

(iv) a warning to the respondent that violation of an interim protective order is a crime and that a law enforcement officer shall arrest the respondent, with or without a warrant, and take the respondent into custody if the officer has probable cause to believe that the respondent has violated any provision of the interim protective order; and

(v) the phone number of the Office of the District Court Clerk.

### Duties of commissioner

(f) Whenever a commissioner issues an interim protective order, the commissioner shall:

(1) immediately forward a copy of the petition and interim protective order to the appropriate law enforcement agency for service on the respondent; and

(2) before the hearing scheduled in the interim protective order, transfer the case file and the return of service, if

any, to the Office of the District Court Clerk.

#### Duties of law enforcement officer

(g) A law enforcement officer shall:

- (1) immediately on receipt of a petition and interim protective order, serve them on the respondent named in the order; and
- (2) immediately after service, make a return of service to the commissioner's office or, if the Office of the District Court Clerk is open for business, to the Clerk.

#### How long interim protective order effective

(h) An interim protective order shall be effective until the earlier of:

- (1) the temporary protective order hearing under [§ 4-505](#) of this subtitle; or
- (2) the end of the second business day the Office of the Clerk of the District Court is open following the issuance of an interim protective order.

#### Decision of commissioner not binding on judge

(i) A decision of a commissioner to grant or deny relief under this section is not binding on, and does not affect any power granted to or duty imposed on, a judge of a circuit court or the District Court under any law, including any power to grant or deny a petition for a temporary protective order or final protective order.

### **§ 4-505. Temporary protective orders**

<Section effective through December 31, 2011. See, also, section effective January 1, 2012.>

#### In general

(a)(1) If, after a hearing on a petition, whether ex parte or otherwise, a judge finds that there are reasonable grounds to believe that a person eligible for relief has been abused, the judge may enter a temporary protective order to protect any person eligible for relief from abuse.

(2) The temporary protective order may order any or all of the following relief:

- (i) order the respondent to refrain from further abuse or threats of abuse of a person eligible for relief;
- (ii) order the respondent to refrain from contacting, attempting to contact, or harassing any person eligible for relief;
- (iii) order the respondent to refrain from entering the residence of a person eligible for relief;
- (iv) where the person eligible for relief and the respondent are residing together at the time of the alleged abuse, order the respondent to vacate the home immediately and award temporary use and possession of the home to the person eligible for relief or in the case of alleged abuse of a child or alleged abuse of a vulnerable adult, award temporary use and possession of the home to an adult living in the home, provided that the court may not grant an order to vacate and award temporary use and possession of the home to a nonspouse person eligible for relief unless the name of the person eligible for relief appears on the lease or deed to the home or the person

eligible for relief has resided in the home with the respondent for a period of at least 90 days within 1 year before the filing of the petition;

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

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

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

(viii) order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession, and to refrain from possession of any firearm, for the duration of the temporary protective order if the abuse consisted of:

1. the use of a firearm by the respondent against a person eligible for relief;
2. a threat by the respondent to use a firearm against a person eligible for relief;
3. serious bodily harm to a person eligible for relief caused by the respondent; or
4. a threat by the respondent to cause serious bodily harm to a person eligible for relief.

(3) If the judge awards temporary custody of a minor child under paragraph (2)(vii) of this subsection, the judge may order a law enforcement officer to use all reasonable and necessary force to return the minor child to the custodial parent after service of the temporary protective order.

#### Service

(b)(1) Except as provided in paragraph (2) of this subsection, a law enforcement officer shall:

- (i) immediately serve the temporary protective order on the alleged abuser under this section; and
- (ii) within two hours after service of the order on the respondent, electronically notify the Department of Public Safety and Correctional Services of the service.

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

(3) There shall be no cost to the petitioner for service of the temporary protective order.

#### Duration of temporary protective order

(c)(1) The temporary protective order shall be effective for not more than 7 days after service of the order.

(2) The judge may extend the temporary protective order as needed, but not to exceed 6 months, to effectuate service of the order where necessary to provide protection or for other good cause.

#### Issuance of final protective order

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

if:

- (1)(i) the respondent appears at the hearing;
  - (ii) the respondent has been served with an interim protective order; or
  - (iii) the court otherwise has personal jurisdiction over the respondent; and
- (2) the petitioner and the respondent expressly consent to waive the temporary protective order hearing.

#### Investigation of abuse of a child or vulnerable adult

(e)(1) Whenever a judge finds reasonable grounds to believe that abuse of a child, as defined in Title 5, Subtitle 7 of this article, or abuse of a vulnerable adult, as defined in Title 14, Subtitle 1 of this article, has occurred, the court shall forward to the local department a copy of the petition and temporary protective order.

(2) Whenever a local department receives a petition and temporary protective order from a court, the local department shall:

- (i) investigate the alleged abuse as provided in:
  1. Title 5, Subtitle 7 of this article; or
  2. Title 14, Subtitle 3 of this article; and
- (ii) by the date of the final protective order hearing, send to the court a copy of the report of the investigation.

#### § 4-505. Temporary protective orders

<Section effective January 1, 2012. See, also, section effective through December 31, 2011.>

#### In general

(a)(1) If, after a hearing on a petition, whether ex parte or otherwise, a judge finds that there are reasonable grounds to believe that a person eligible for relief has been abused, the judge may enter a temporary protective order to protect any person eligible for relief from abuse.

(2) The temporary protective order may order any or all of the following relief:

- (i) order the respondent to refrain from further abuse or threats of abuse of a person eligible for relief;
- (ii) order the respondent to refrain from contacting, attempting to contact, or harassing any person eligible for relief;
- (iii) order the respondent to refrain from entering the residence of a person eligible for relief;
- (iv) where the person eligible for relief and the respondent are residing together at the time of the alleged abuse, order the respondent to vacate the home immediately and award temporary use and possession of the home to the person eligible for relief or in the case of alleged abuse of a child or alleged abuse of a vulnerable adult, award temporary use and possession of the home to an adult living in the home, provided that the court may not grant an order to vacate and award temporary use and possession of the home to a nonspouse person eligible for relief unless the name of the person eligible for relief appears on the lease or deed to the home or the person

eligible for relief has resided in the home with the respondent for a period of at least 90 days within 1 year before the filing of the petition;

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

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

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

(viii) order the respondent to surrender to law enforcement authorities any firearm in the respondent's possession, and to refrain from possession of any firearm, for the duration of the temporary protective order if the abuse consisted of:

1. the use of a firearm by the respondent against a person eligible for relief;
2. a threat by the respondent to use a firearm against a person eligible for relief;
3. serious bodily harm to a person eligible for relief caused by the respondent; or
4. a threat by the respondent to cause serious bodily harm to a person eligible for relief.

(3) If the judge awards temporary custody of a minor child under paragraph (2)(vii) of this subsection, the judge may order a law enforcement officer to use all reasonable and necessary force to return the minor child to the custodial parent after service of the temporary protective order.

#### Service

(b)(1) Except as provided in paragraph (2) of this subsection, a law enforcement officer immediately shall serve the temporary protective order on the alleged abuser under this section.

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

(3) There shall be no cost to the petitioner for service of the temporary protective order.

#### Duration of temporary protective order

(c)(1) The temporary protective order shall be effective for not more than 7 days after service of the order.

(2) The judge may extend the temporary protective order as needed, but not to exceed 6 months, to effectuate service of the order where necessary to provide protection or for other good cause.

#### Issuance of final protective order

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

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

- (ii) the respondent has been served with an interim protective order; or
  - (iii) the court otherwise has personal jurisdiction over the respondent; and
- (2) the petitioner and the respondent expressly consent to waive the temporary protective order hearing.

#### Investigation of abuse of a child or vulnerable adult

(e)(1) Whenever a judge finds reasonable grounds to believe that abuse of a child, as defined in Title 5, Subtitle 7 of this article, or abuse of a vulnerable adult, as defined in Title 14, Subtitle 1 of this article, has occurred, the court shall forward to the local department a copy of the petition and temporary protective order.

(2) Whenever a local department receives a petition and temporary protective order from a court, the local department shall:

(i) investigate the alleged abuse as provided in:

1. Title 5, Subtitle 7 of this article; or
2. Title 14, Subtitle 3 of this article; and

(ii) by the date of the final protective order hearing, send to the court a copy of the report of the investigation.

#### **§ 4-506. Final protective orders**

#### Hearing

(a) A respondent under [§ 4-505](#) of this subtitle shall have an opportunity to be heard on the question of whether the judge should issue a final protective order.

#### Contents of temporary protective order

(b)(1)(i) The temporary protective order shall state the date and time of the final protective order hearing.

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

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

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

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

(iii) that the final protective order shall be effective for the period stated in the order, not to exceed 1 year or, under the circumstances described in subsection (i)(2) of this section, 2 years, unless the judge extends the term of the order under [§ 4-507\(a\)\(2\)](#) of this subtitle or the court issues a permanent order under subsection (j) of this section; and

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

#### Issuance of final protective order

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

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

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

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

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

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

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

#### Scope of final protective order

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

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

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

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

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

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

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

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

(8) establish temporary visitation with a minor child of the respondent and a person eligible for relief on a basis



which gives primary consideration to the welfare of the minor child and the safety of any other person eligible for relief. If the court finds that the safety of a person eligible for relief will be jeopardized by unsupervised or unrestricted visitation, the court shall condition or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of any person eligible for relief;

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

(10) award temporary use and possession of a vehicle jointly owned by the respondent and a person eligible for relief to the person eligible for relief if necessary for the employment of the person eligible for relief or for the care of a minor 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 pay filing fees and costs of a proceeding under this subtitle.

#### Review of open and shielded records

(e)(1) Before granting, denying, or modifying a final protective order under this section, the court shall review all open and shielded court records involving the person eligible for relief and the respondent, including records of proceedings under:

(i) the Criminal Law Article;

(ii) Title 3, Subtitle 15 of the Courts Article; and

(iii) this article.

(2) The court's failure to review records under this subsection does not affect the validity of an order issued under this section.

#### Surrender of firearms by respondent

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

#### Return of minor child to custodial parent

(g) If the judge awards temporary custody of a minor child under subsection (d)(7) of this section, the judge may order a law enforcement officer to use all reasonable and necessary force to return the minor child to the custodial parent after service of the final protective order.

#### Vacation of home by respondent

(h) 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.

#### Service

- (i)(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.

#### Duration of relief granted

- (j)(1) Except as provided in paragraphs (2) and (3) of this subsection, all relief granted in a final protective order shall be effective for the period stated in the order, not to exceed 1 year.
- (2) All relief granted in a final protective order shall be effective for the period stated in the order, not to exceed 2 years if:
  - (i) the court issues a final protective order under this section against a respondent on behalf of a person eligible for relief for an act of abuse committed within 1 year after the date that a prior final protective order issued against the same respondent on behalf of the same person eligible for relief expires; and
  - (ii) the prior final protective order was issued for a period of at least 6 months.
- (3) A subsequent circuit court order pertaining to any of the provisions included in the final protective order shall supersede those provisions in the final protective order.

#### Final protective orders

- (k)(1) Notwithstanding any other provision of this section, the court shall issue a new final protective order against an individual if:
  - (i) the individual was previously a respondent under this subtitle against whom a final protective order was issued;
  - (ii) the individual was convicted and served a term of imprisonment of at least 5 years under [§ 2-205](#), [§ 2-206](#), [§ 3-202](#), [§ 3-303](#), [§ 3-304](#), [§ 3-305](#), [§ 3-306](#), [§ 3-309](#), [§ 3-310](#), [§ 3-311](#), or [§ 3-312 of the Criminal Law Article](#) for the act of abuse that led to the issuance of the final protective order; and

(iii) the victim of the abuse who was the person eligible for relief in the original final protective order requests the issuance of a new final protective order.

(2) In a final protective order issued under this subsection, the court may grant only the relief that was granted in the original protective order under subsection (d)(1) or (2) of this section.

(3) Unless terminated at the request of the victim, a final protective order issued under this subsection shall be permanent.

#### **§ 4-506.1. Surrender of firearm**

##### Duties of law enforcement officer

(a) If a respondent surrenders a firearm under [§ 4-505](#) or [§ 4-506](#) of this subtitle, a law enforcement officer shall:

(1) provide to the respondent information on the process for retaking possession of the firearm; and

(2) transport and store the firearm in a protective case, if one is available, and in a manner intended to prevent damage to the firearm during the time the protective order is in effect.

##### Expiration of temporary protective order

(b)(1) The respondent may retake possession of the firearm at the expiration of a temporary protective order unless:

(i) the respondent is ordered to surrender the firearm in a protective order issued under [§ 4-506](#) of this subtitle; or

(ii) the respondent is not otherwise legally entitled to own or possess the firearm.

(2) The respondent may retake possession of the firearm at the expiration of a final protective order unless:

(i) the protective order is extended under [§ 4-507\(a\)\(2\)](#) of this subtitle; or

(ii) the respondent is not otherwise legally entitled to own or possess the firearm.

##### Transport of firearm

(c) Notwithstanding any other law, a respondent may transport a firearm if the respondent is carrying a protective order requiring the surrender of the firearm and:

(1) the firearm is unloaded;

(2) the respondent has notified the law enforcement unit, barracks, or station that the firearm is being transported in accordance with the protective order; and

(3) the respondent transports the firearm directly to the law enforcement unit, barracks, or station.

#### **§ 4-507. Modification or rescission of protective orders; appeal**

##### Modification or rescission of protective orders

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

- (i) giving notice to all affected persons eligible for relief and the respondent; and
- (ii) a hearing.

(2) For good cause shown, a judge may extend the term of the protective order for 6 months beyond the period specified in [§ 4-506\(j\)](#) of this subtitle, after:

- (i) giving notice to all affected persons eligible for relief and the respondent; and
- (ii) a hearing.

(3)(i) If, during the term of a protective order, a judge finds by clear and convincing evidence that the respondent named in the protective order has committed a subsequent act of abuse against a person eligible for relief named in the protective order, the judge may extend the term of the protective order for a period not to exceed 2 years from the date the extension is granted, after:

1. giving notice to all affected persons eligible for relief and the respondent; and
2. a hearing.

(ii) In determining the period of extension of a protective order under subparagraph (i) of this paragraph, the judge shall consider the following factors:

1. the nature and severity of the subsequent act of abuse;
2. the history and severity of abuse in the relationship between the respondent and any person eligible for relief named in the protective order;
3. the pendency and type of criminal charges against the respondent; and
4. the nature and extent of the injury or risk of injury caused by the respondent.

#### Appeal

(b)(1) If a District Court judge grants or denies relief under a petition filed under this subtitle, a respondent, any person eligible for relief, or a petitioner may appeal to the circuit court for the county where the District Court is located.

(2) An appeal taken under this subsection to the circuit court shall be heard de novo in the circuit court.

(3) If an appeal is filed under this subsection, the District Court judgment shall remain in effect until superseded by a judgment of the circuit court. Unless the circuit court orders otherwise, modification or enforcement of the District Court order shall be by the District Court.

#### **§ 4-508. Penalties for violations of orders**

##### Penalty for violation of order

(a) An interim protective order, temporary protective order, and final protective order issued under this subtitle shall state that a violation of the order may result in:

- (1) criminal prosecution; and
- (2) imprisonment or fine or both.

Finding of contempt for violation of order

(b) A temporary protective order and final protective order issued under this subtitle shall state that a violation of the order may result in a finding of contempt.

**§ 4-508.1. Protective orders issued by foreign courts**

“Order for protection” defined

(a)(1) In this section, “order for protection” means a temporary or final order or injunction that:

- (i) is issued for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person;
- (ii) is issued by a civil court in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection or by a criminal court; and
- (iii) is obtained by filing an independent action or as a pendente lite order in another proceeding.

(2) “Order for protection” does not include a support or child custody order.

Enforcement of protective orders issued by foreign courts

(b) An order for protection issued by a court of another state or a Native American tribe shall be accorded full faith and credit by a court of this State and shall be enforced:

- (1) in the case of an ex parte order for protection, only to the extent that the order affords relief that is permitted under [§ 4-505](#) of this subtitle; and
- (2) in the case of an order for protection, other than an ex parte order for protection, only to the extent that the order affords relief that is permitted under [§ 4-506\(d\)](#) of this subtitle.

Violator of order shall be arrested

(c) A law enforcement officer shall arrest with or without a warrant and take into custody a person whom the officer has probable cause to believe is in violation of an order for protection that was issued by a court of another state or a Native American tribe and is in effect at the time of the violation if the person seeking the assistance of the law enforcement officer:

- (1) has filed with the District Court or circuit court for the jurisdiction in which the person seeks assistance a copy of the order; or
- (2) displays or presents to the law enforcement officer a copy of the order that appears valid on its face.

Immunity from liability

(d) A law enforcement officer acting in accordance with this section shall be immune from civil liability if the law enforcement officer acts in good faith and in a reasonable manner.

#### **§ 4-509. Penalties**

##### In general

(a) A person who fails to comply with the relief granted in an interim protective order under [§ 4-504.1\(c\)\(1\)](#), (2), (3), (4)(i), (7), or (8) of this subtitle, a temporary protective order under [§ 4-505\(a\)\(2\)\(i\)](#), (ii), (iii), (iv), (v), or (viii) of this subtitle, or a final protective order under [§ 4-506\(d\)\(1\)](#), (2), (3), (4), or (5), or [\(e\)](#) of this subtitle is guilty of a misdemeanor and on conviction is subject, for each offense, to:

- (1) for a first offense, a fine not exceeding \$1,000 or imprisonment not exceeding 90 days or both; and
- (2) for a second or subsequent offense, a fine not exceeding \$2,500 or imprisonment not exceeding 1 year or both.

##### Violator of order will be arrested

(b) An officer shall arrest with or without a warrant and take into custody a person who the officer has probable cause to believe is in violation of an interim, temporary, or final protective order in effect at the time of the violation.

#### **§ 4-510. Non-exclusive remedy**

##### In general

(a) Except as provided in subsection (b) of this section, by proceeding under this subtitle, a petitioner, including a petitioner who acts on behalf of a child or vulnerable adult, is not limited to or precluded from pursuing any other legal remedy.

##### Not eligible for peace order relief

(b) A person eligible for relief, as defined in [§ 4-501](#) of this subtitle, is not eligible for peace order relief under Title 3, Subtitle 8A or Subtitle 15 of the Courts Article.

#### **§ 4-511. Removal of firearm**

##### Removal of firearm from scene of domestic violence

(a) When responding to the scene of an alleged act of domestic violence, as described in this subtitle, a law enforcement officer may remove a firearm from the scene if:

- (1) the law enforcement officer has probable cause to believe that an act of domestic violence has occurred; and
- (2) the law enforcement officer has observed the firearm on the scene during the response.

##### Duties of law enforcement officer

(b) If a firearm is removed from the scene under subsection (a) of this section, the law enforcement officer shall:

- (1) provide to the owner of the firearm information on the process for retaking possession of the firearm; and
- (2) provide for the safe storage of the firearm during the pendency of any proceeding related to the alleged act of domestic violence.

#### Repossession of firearm

- (c) At the conclusion of a proceeding on the alleged act of domestic violence, the owner of the firearm may retake possession of the firearm unless ordered to surrender the firearm under [§ 4-506](#) of this subtitle.

### **§ 4-512. Requests to shield court records**

#### Definitions

- (a)(1) In this section the following words have the meanings indicated.
- (2)(i) “Court record” means an official record of a court about a proceeding that the clerk of a court or other court personnel keeps.
  - (ii) “Court record” includes:
    1. an index, a docket entry, a petition, a memorandum, a transcription of proceedings, an electronic recording, an order, and a judgment; and
    2. any electronic information about a proceeding on the website maintained by the Maryland Judiciary.
- (3) “Shield” means to remove information from public inspection in accordance with this section.
- (4) “Shielding” means:
  - (i) with respect to a record kept in a courthouse, removing to a separate secure area to which persons who do not have a legitimate reason for access are denied access; and
  - (ii) with respect to electronic information about a proceeding on the website maintained by the Maryland Judiciary, removing the information from the public website.
- (5) “Victim services provider” means a nonprofit organization that has been authorized by the Governor's Office of Crime Control and Prevention or the Department of Human Services to have access to records of shielded protective orders in order to assist victims of abuse.

#### Written requests to shield court records

- (b) If a petition filed under this subtitle is denied or dismissed at the interim, temporary, or final protective order stage of a proceeding under this subtitle, the respondent may file a written request to shield all court records relating to the proceeding.

#### Time to request shielding

- (c) A request for shielding under this section may not be filed within 3 years after the denial or dismissal of the petition, unless the respondent files with the request a general waiver and release of all the respondent's tort claims related to the proceeding under this subtitle.

### Notice and hearing

- (d)(1) On the filing of a request for shielding under this section, the court shall schedule a hearing on the request.
- (2) The court shall give notice of the hearing to the petitioner or the petitioner's counsel of record.
- (3) Except as provided in paragraphs (4) and (5) of this subsection, after the hearing, the court shall order the shielding of all court records relating to the proceeding if the court finds:
- (i) that the petition was denied or dismissed at the interim, temporary, or final protective order stage of the proceeding;
  - (ii) that a final protective order or peace order has not been previously issued in a proceeding between the petitioner and the respondent; and
  - (iii) that none of the following are pending at the time of the hearing:
    - 1. an interim or temporary protective order or peace order issued in a proceeding between the petitioner and the respondent; or
    - 2. a criminal charge against the respondent arising from alleged abuse against the petitioner.
- (4)(i) If the petitioner appears at the shielding hearing and objects to the shielding, the court may, for good cause, deny the shielding.
- (ii) In determining whether there is good cause to grant the request to shield court records, the court shall balance the privacy of the respondent and potential danger of adverse consequences to the respondent against the potential risk of future harm and danger to the petitioner and the community.
- (5) Information about the proceeding may not be removed from the Domestic Violence Central Repository.

### Persons entitled to access shielded records

- (e)(1) This section does not preclude the following persons from accessing a shielded record for a legitimate reason:
- (i) a law enforcement officer;
  - (ii) an attorney who represents or has represented the petitioner or the respondent in a proceeding;
  - (iii) a State's Attorney;
  - (iv) an employee of a local department; or
  - (v) a victim services provider.
- (2)(i) A person not listed in paragraph (1) of this subsection may subpoena, or file a motion for access to, a record shielded under this section.
- (ii) If the court finds that the person has a legitimate reason for access, the court may grant the person access to the shielded record under the terms and conditions that the court determines.



(iii) In ruling on a motion under this paragraph, the court shall balance the person's need for access to the record with the respondent's right to privacy and the potential harm of unwarranted adverse consequences to the respondent that the disclosure may create.

Written advisement by custodian of court records

(f) Within 60 days after entry of an order under subsection (d)(3) of this section, each custodian of court records that are subject to the order of shielding shall advise in writing the court and the respondent of compliance with the order.

#### **§ 4-512.1. Domestic Violence Central Repository**

Central Repository defined

(a) In this section, "Central Repository" means the Domestic Violence Central Repository.

Maintenance by Administrative Office of the Courts

(b) The Administrative Office of the Courts shall maintain a Domestic Violence Central Repository.

Domestic violence orders stored

(c)(1) The Central Repository shall store the following domestic violence orders issued in the State:

(i) interim protective orders;

(ii) temporary protective orders;

(iii) final protective orders;

(iv) peace orders issued under Title 3, Subtitle 15 of the Courts Article; and

(v) except as provided in paragraph (2) of this subsection, peace orders issued under Title 3, Subtitle 8A of the Courts Article.

(2) A peace order issued under Title 3, Subtitle 8A of the Courts Article shall be stored only during the term of the peace order.

Purposes of Central Repository

(d) The purposes of the Central Repository are to:

(1) provide immediate access to domestic violence orders by judges, court personnel, and law enforcement agencies;

(2) improve the courts' ability to respond effectively, promptly, and in a coordinated manner to domestic violence cases;

(3) eliminate conflicting or simultaneous domestic violence orders by improving communication between the District Court and the circuit courts;

(4) enhance the enforceability of domestic violence orders by law enforcement agencies; and

(5) facilitate service of domestic violence orders.

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## APPENDIX A

### Survey of State Temporary Protective Order Durations

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State	Statute
<b><i>3 Days</i></b>	
Wyoming	Wyo. Stat. § 35-21-104(a)(iii)
<b><i>5 Days</i></b>	
New Hampshire	N.H. Rev. Stat. § 173-B:4(I)
<b><i>7 Days</i></b>	
Maryland	Md. Code Ann., Fam. Law § 4-505(c)(1)
<b><i>10 Days</i></b>	
Alabama	Ala. Code §§ 30-5-6(a)-(b), 30-5-7(a)(1)
Delaware	Del. Code tit. 10, § 1043(d)
Massachusetts	Mass. Gen. Laws ch. 209A, § 4
Minnesota	Minn. Stat. § 518B.01(4)(d) <sup>1</sup>
Mississippi	Miss. Code § 93-21-13(1)(c)
New Jersey	N.J. Stat. § 2C:25-29(a)
New Mexico	N.M. Stat. 1978, §§ 40-13-4(A)(1), (3)
North Carolina	N.C. Gen. Stat. § 50B-2(c)
Ohio	Ohio Rev. Code § 3113.31(D)(2)(a) <sup>2</sup>

<sup>1</sup> The period is seven days where the TPO covers custody or visitation of a child. See Minn. Stat. §§ 518B.01(4)(c), 7(a).

<b>State</b>	<b>Statute</b>
Pennsylvania	23 Pa. Cons. Stat. §§ 6107(a), (b)(2)
Vermont	Vt. Stat. tit. 15, § 1104(b)
West Virginia	W. Va. Code § 48-27-403(d)
<b><i>14 Days</i></b>	
Colorado	Colo. Rev. Stat. § 13-14-102(7)
Connecticut	Conn. Gen. Stat. § 46b-15(b)
District of Columbia	D.C. Code § 16-1004(b)(2)
Idaho	Idaho Code § 39-6308(5)
Kentucky	Ky. Rev. Stat. § 403.740(4)
Michigan	Mich. Comp. Laws § 600.2950(13)
North Dakota	N.D. Cent. Code § 14-07.1-03
Washington	Wash. Rev. Code § 26.50.070(4) <sup>3</sup>
Wisconsin	Wisc. Stat. § 813.12(3)(b)-(c)
<b><i>15 Days</i></b>	
Florida	Fla. Stat. § 741.30(5)(c)
Hawaii	Haw. Rev. Stat. §§ 586-4, 586-5(b)
Iowa	Iowa Code §§ 236.4, 236.6 <sup>4</sup>

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<sup>2</sup> Where the order concerns the respondent vacating the home, the TPO period is seven days. Ohio Rev. Code §§ 3113.31(D)(2)(a), (E)(1)(b)-(c).

<sup>3</sup> The TPO may last for twenty-four days if the court has permitted service by publication under Wash. Rev. Code § 26.50.085 or by mail under Wash. Rev. Code § 26.50.123.

<sup>4</sup> “Not less than five and not more than fifteen days after commencing a proceeding and upon notice to the other party, a hearing shall be held at which the plaintiff must

Footnote continued on next page

<b>State</b>	<b>Statute</b>
Missouri	Mo. Stat. §§ 455.035, 455.040, 455.045
Tennessee	Tenn. Code § 36-3-605
Virginia	Va. Code §16.1-253.1(B) <sup>5</sup>
<b>20 Days</b>	
Alaska	Alaska Stat. § 18.66.110(a)
California	Cal. Fam. Code §§ 240, 242, 6320, 6321
Montana	Mont. Code § 40-15-201(4)
Oklahoma	Okla. Stat. tit. 20, §§ 60.3, 60.4(B)(1) <sup>6</sup>
<b>21 Days</b>	
Illinois	750 Ill. Comp. Stat. 60/217(1)
Kansas	Kan. Stat. § 60-3106
Louisiana	La. Rev. Stat. § 46:2135(B)
Maine	Me. Rev. Stat. tit. 19-A, § 4006(2)
Rhode Island	R.I. Gen. Laws §§ 8-8.1-4(a)(2), 15-15-4(a)(2)
Texas	Tex. Fam. Code § 83.002(a)
Utah	Utah Code § 78B-7-107(1)(a)

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prove the allegation of domestic abuse by a preponderance of the evidence.” Iowa Stat. § 236.4 (1).

<sup>5</sup> Where child custody or safety is at stake, the hearing after an *ex parte* order is within five days. Va. Code § 16.1-253.4.

<sup>6</sup> A 1994 amendment increased the duration from 10 to 15 days; a 2003 amendment increased it to 20 days. Okla. Stat. Ann. tit. 22, § 60.4, Historical and Statutory Notes (West 2003).

<b>30 Days</b>	
Arkansas	Ark. Code §§ 9-15-204(a)(1), 9-15-206
Georgia	Ga. Code § 19-13-3(b)-(c)
Indiana	Ind. Code § 34-26-5-10
Nebraska	Neb. Rev. Stat. § 42-925(1)
Nevada	Nev. Rev. Stat. §§ 33.020, 33.080(1) <sup>7</sup>
Oregon	Or. Rev. Stat. § 107.718(10)(a)
South Dakota	S.D. Codified Laws § 25-10-7
<b>Other</b>	
Arizona	<p>Ariz. Rev. Stat. § 13-3602. Arizona does not issue TPOs. Instead, it provides two forms of protection – an emergency order and a permanent order. An <i>ex parte</i> emergency order expires at the close of the next business day unless the court continues it. Arizona courts may issue <i>ex parte</i> permanent orders if the pleadings “are sufficient.” Those must be heard within ten days or, if use of the home is implicated, five days.</p> <p>Ariz. Rev. Stat. §§ 13-3624, 13-3602(I)</p>
New York	<p>N.Y. Fam. Ct. Act. §§ 550, 828, 842, 844.</p> <p>In New York, the <i>ex parte</i> order lasts until the next court hearing.</p>

<sup>7</sup> “If an application for an extended order is filed within the period of a temporary order or at the same time that an application for a temporary order is filed, the temporary order remains in effect until the hearing on the extended order is held.” Nev. Rev. Stat. § 33.080(1).

South Carolina	S.C. Code §§ 20-4-20(f), 20-4-50(a), 20-4-60. South Carolina does not issue TPOs <i>ex parte</i> . By definition, an “order of protection” requires notice and a hearing to the respondent. An emergency hearing is on 24 hours’ notice. The respondent may not delay that hearing because doing so would defeat the legislative purpose of protecting domestic violence victims. <i>Moore v. Moore</i> , 376 S.C. 467, 472 (2008).
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## APPENDIX B

### Survey of State Burdens of Proof for FPOs\*

State	Standard	Authority
<b>Alabama</b>	Preponderance of the Evidence	Ala. Code § 30-5-6(a)
<b>Alaska</b>	Preponderance of the Evidence	Alaska Stat. § 18.66.100(b)
<b>Arizona</b>	Reasonable Cause	Ariz. Rev. Stat. § 13-3602(E)
<b>Arkansas</b>	Preponderance of the Evidence	Ark. Code § 9-15-205(a); <i>Simmons v. Dixon</i> , 240 S.W.2d 608, 612-14 (Ark. App. 2006)
<b>California</b>	Preponderance of the Evidence	Cal. Fam. Code § 6300; <i>Gdowski v. Gdowski</i> , 95 Cal. Rptr. 3d 799, 805 (Cal. App. 4th Dist. 2009) (standard for civil protection orders is preponderance of the evidence)
<b>Colorado</b>	Discretion of the Court	Colo. Rev. Stat. § 13-14-102(9)(a)
<b>Connecticut</b>	Discretion of the Court	Conn. Gen. Stat. § 46b-15(b)
<b>Delaware</b>	Preponderance of the Evidence	Del. Code tit. 10, § 1044(b)
<b>District of Columbia</b>	Good Cause; Preponderance of the Evidence when awarding temporary custody of minors and visitation rights	D.C. Code § 16-1005(c), (c-1)

\* Adopted from American Bar Ass'n, *Standards of Proof for Domestic Violence Civil Protection Orders (CPOs) By State*, [http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/Standards\\_of\\_Proof\\_by\\_State.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/Standards_of_Proof_by_State.authcheckdam.pdf) (June 2009).

<b>State</b>	<b>Standard</b>	<b>Authority</b>
<b>Florida</b>	Reasonable Cause	Fla. Stat. § 741.30(6)(a)
<b>Georgia</b>	Preponderance of the Evidence	Ga. Code § 19-13-3(c)
<b>Hawaii</b>	Preponderance of the evidence	Haw. Rev. Stat. Ann. §§ 586-5, 586-5.5; <sup>8</sup> <i>Kie v. McMahel</i> , 984 P.2d 1264, 91 (Haw. 1999)
<b>Idaho</b>	Good cause, which is preponderance of the evidence	Idaho Code §39-6306; <i>Ellibee v. Ellibee</i> , 826 P.2d 462, 468 (Idaho 1992)
<b>Illinois</b>	Preponderance of the Evidence	725 Ill. Comp. Stat. 5/112A-6(a)
<b>Indiana</b>	Preponderance of the Evidence	Ind. Code § 34-26-5-9(f)
<b>Iowa</b>	Preponderance of the Evidence	Iowa Code §§ 236.3(2), 236.4(1)
<b>Kansas</b>	Preponderance of the Evidence	Kan. Stat. § 60-3106(a)
<b>Kentucky</b>	Preponderance of the Evidence	Ky. Rev. Stat. § 403.750(1)
<b>Louisiana</b>	Preponderance of the Evidence	La. Rev. Stat. § 46:2135(B)
<b>Maine</b>	Preponderance of the Evidence	Me. Rev. Stat. tit. 19A, § 4006(1)
<b>Maryland</b>	Clear and Convincing	Md. Code Ann., Fam. Law § 4-506(c)(1)(ii)

<sup>8</sup> Respondent must “show cause” why TPO should not become FPO. Haw. Rev. Stat. §§ 586-5, 586-5.5.

State	Standard	Authority
<b>Massachusetts</b>	Unspecified, but case law suggests preponderance of the evidence	Mass. Gen. Laws Ch. 209A, § 3; “Although it is not expressly stated in G.L. c. 209A, it follows from custom and practice in civil cases that a G.L. c. 209A plaintiff must make a case for relief by a preponderance of the evidence. The circumstances of a G.L. c. 209A hearing do not require that a higher burden of proof be met.” <i>Frizado v. Frizado</i> , 651 N.E.2d 1206, 1210 (Mass. 1995), <i>abrogated on other grounds by Zullo v. Goguen</i> , 423 Mass. 679 (Mass. 1996)
<b>Michigan</b>	Reasonable Cause	Mich. Comp. Laws § 600.2950(4)
<b>Minnesota</b>	Unspecified, but case law suggests preponderance of the evidence	Minn. Stat. § 518B.01; <i>Karasek v. Karasek</i> , No. A08-0643, 2009 WL 749571, at *2 (Minn. App. Mar. 24, 2009)
<b>Mississippi</b>	Preponderance of the Evidence	Miss. Code § 93-21-11(1)
<b>Missouri</b>	Preponderance of the Evidence	Mo. Rev. Stat. § 455.040(1)
<b>Montana</b>	Good Cause	Mont. Code § 40-15-202(1)

<b>State</b>	<b>Standard</b>	<b>Authority</b>
<b>Nebraska</b>	Unspecified, but respondent required to show cause	Neb. Rev. Stat. §§ 42-924, 42-925(2); “If an order under subsection (1) of section 42-924 is not issued ex parte, the court shall immediately schedule an evidentiary hearing to be held within fourteen days after the filing of the petition, and the court shall cause notice of the hearing to be given to the petitioner and the respondent. If the respondent does not appear at the hearing and show cause why such order should not be issued, the court shall issue such order.” Neb. Rev. Stat. § 42-925(2)
<b>Nevada</b>	Discretion of the Court	Nev. Rev. Stat. § 33.020(1)
<b>New Hampshire</b>	Preponderance of the Evidence	N.H. Rev. Stat. § 173-B:5(I)
<b>New Jersey</b>	Preponderance of the Evidence	N.J. Stat. § 2C:25-29(a)
<b>New Mexico</b>	Good Cause or Probable Cause	N.M. Stat. §§ 40-13-3.2(A), 40-13-4(A), 40-13-6
<b>New York</b>	Unspecified, but case law suggests preponderance of the evidence	N.Y. Fam. Ct. Act § 842; “[T]he allegations must be supported by a fair preponderance of the evidence in order to warrant the issuance of a protective order.” Machukas v. Wagner, 246 A.D.2d 840, 842 (N.Y. App. Div. 1998)

State	Standard	Authority
<b>North Carolina</b>	Discretion of the Court, but case law suggests competent or sufficient evidence	N.C. Gen. Stat. § 50B-3(a); “There was no competent evidence presented that defendant caused or attempted to cause bodily injury or committed any sex offense against a minor child in plaintiff’s custody, or that defendant placed a member of plaintiff’s family in fear of (1) imminent serious bodily injury or (2) continued harassment that rose to such a level as to inflict substantial emotional distress. Therefore, the trial court’s conclusions of law that defendant committed acts of domestic violence against plaintiff’s minor children were not supported by sufficient findings of fact, and the trial court erred in issuing the DVPO.” <i>Burress v. Burress</i> , 672 S.E.2d 732, 735 (N.C. Ct. App. 2009)
<b>North Dakota</b>	Discretion of the Court, but case law suggests preponderance of the evidence	N.D. Cent. Code § 14-07.1-02(4); “[The] party seeking [domestic violence] protective order must prove actual or imminent domestic violence by a preponderance of the evidence.” <i>Ficklin v. Ficklin</i> , 710 N.W.2d 387, 390 (N.D. 2006)

<b>State</b>	<b>Standard</b>	<b>Authority</b>
<b>Ohio</b>	Preponderance of the Evidence	<p>“If a person who files a petition pursuant to this section does not request an <i>ex parte</i> order, or if a person requests an <i>ex parte</i> order but the court does not issue an <i>ex parte</i> order after an <i>ex parte</i> hearing, the court shall proceed as in a normal civil action and grant a full hearing on the matter.” Ohio Rev. Code § 3113.31(D)(3);</p> <p><i>Walters v. Walters</i>, 780 N.E.2d 1032 (Ohio Ct. App. 2002) (petitioner had to show preponderance of the evidence)</p>
<b>Oklahoma</b>	Sufficient Grounds	Okla. Stat. tit. 22, § 60.4
<b>Oregon</b>	Preponderance of the Evidence	Or. Rev. Stat. § 107.710(2)
<b>Pennsylvania</b>	Preponderance of the Evidence	23 Pa. Cons. Stat. § 6107(a)
<b>Rhode Island</b>	Discretion of the Court	R.I. Gen. Laws § 8-8.1-3
<b>South Carolina</b>	Preponderance of the Evidence	S.C. Code § 20-4-50(a)
<b>South Dakota</b>	Preponderance of the Evidence	S.D. Codified Laws § 25-10-5
<b>Tennessee</b>	Preponderance of the Evidence	Tenn. Code § 36-3-605(b)

State	Standard	Authority
<b>Texas</b>	Discretion of the Court	Tex. Fam. Code § 85.001(a); “At the close of a hearing on an application for a protective order, the court shall find whether: (1) family violence has occurred; and (2) family violence is likely to occur in the future.”
<b>Utah</b>	Unspecified, but case law suggests preponderance of the evidence	Utah Stat. 78B-7-106; “The trial court, after conducting several hearings concerning Bailey’s petition, concluded by a preponderance of the evidence that Bayles had ‘been stalking [Bailey] by intentionally or knowingly engaging in a course of conduct directed at [Bailey] that would cause a reasonable person to suffer emotional distress herself.’” <i>Bailey v. Bayles</i> , 18 P.3d 1129, 1130-31 (Utah Ct. App. 2001), <i>aff’d</i> , 52 P.3d 1158 (Utah 2002)
<b>Vermont</b>	Preponderance of the Evidence	15 Vt. Stat. § 1103(b)
<b>Virginia</b>	Unspecified, but case law suggests discretion of the court	Va. Code § 16.1-279.1(A); Order may be issued if the court finds the petitioner in “reasonable fear of immediate, serious bodily harm.” <i>Martin v. Martin</i> , No. 2740 01-2, 2002 WL 1312692, at *3 (Va. Ct. App. June 18, 2002)

State	Standard	Authority
<b>Washington</b>	Unspecified, but respondent must prove will not resume acts of violence by preponderance of the evidence to defeat petition for renewal	Wash. Rev. Code § 26.50.060(2)-(3)
<b>West Virginia</b>	Preponderance of the Evidence	W. Va. Code § 48-27-501(a)
<b>Wisconsin</b>	“Reasonable Grounds,” which means preponderance of the evidence	Wis. Stat. § 813.12(1)(cg) (“‘Reasonable grounds’ means more likely than not that a specific event has occurred or will occur.”); <i>id.</i> § 813.12(4)(a)(3)
<b>Wyoming</b>	Discretion of the court, which appears to be preponderance of the evidence	<p>“Upon finding that an act of domestic abuse has occurred, the court shall enter an order of protection ordering the respondent household member to refrain from abusing the petitioner or any other household member.” Wyo. Stat. § 35-21-105(a);</p> <p>“If, after a hearing, it finds by a preponderance of evidence that an act of domestic abuse has occurred or that there exists a danger of further domestic abuse, [the court may] require the respondent to participate in counseling or other appropriate treatment for a specified period of time not to exceed the term of the order of protection and any extension of the order of protection granted under [Wyo. Stat.] 35-21-106(b).”</p> <p>Wyo. Stat. § 35-21-105(a)(vii)</p>