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HOUSE BILL NO. 1221

Offered January 24, 2000

A *BILL to amend and reenact §§ 16.1-253.1 and 16.1-279.1 of the Code of Virginia, relating to protective orders in family abuse.*

Patrons—McClure, Black and Devolites; Senator: Hanger

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.1 and 16.1-279.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-253.1. Preliminary protective orders in cases of family abuse; confidentiality.

A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause.

A preliminary protective order may include any one or more of the following conditions to be imposed on the allegedly abusing person, *but shall be limited to only that amount of protection necessary to ensure the safety of the parties:*

1. Prohibiting acts of family abuse.

2. Prohibiting such other contacts ~~between the parties as the court deems appropriate by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the bodily health or safety of such persons.~~

3. Prohibiting such other contacts with the allegedly abused family or household member as the court deems necessary to protect the safety of such persons.

4. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.

5. Granting the petitioner temporary possession or use of a motor vehicle jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.

6. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member, where appropriate.

7. *Requesting the Department of Social Services to conduct intake interviews with both parties for the purpose of recommending to the court of the level of protection appropriate in the case. Any such recommendations shall be filed with the court prior to a hearing pursuant to subsection F of § 16.1-279.1.*

B. As soon as practicable after receipt of the order by a local law-enforcement agency for service, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia criminal information network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where feasible and practical, the court may transfer information electronically to the Virginia criminal information network system. A copy of a preliminary protective order shall be served as soon as possible on the allegedly abusing person in person as provided in § 16.1-264, and upon service, the agency making service shall enter the date and time of service into the Virginia criminal information network system. The preliminary order shall specify a date for the full hearing. The hearing shall be held within fifteen days of the issuance of the preliminary order. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the local police department or sheriff's office which shall, on the date of receipt, enter into the Virginia criminal information network system any other information required by the State Police which was not

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60 previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification
61 order shall also be attested, forwarded and entered in the Virginia criminal information network system
62 as described above.

63 C. The preliminary order is effective upon personal service on the allegedly abusing person. Except
64 as otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court.

65 D. At a full hearing on the petition, the court may issue a protective order pursuant to § 16.1-279.1 if
66 the court finds that the petitioner has proven the allegation of family abuse by a ~~preponderance of the~~
67 *clear and convincing* evidence.

68 E. As used in this section, "copy" includes a facsimile copy.

69 § 16.1-279.1. Protective order in cases of family abuse.

70 A. In cases of family abuse, the court may issue a protective order to protect the health and safety of
71 the petitioner and family or household members of the petitioner. A protective order issued under this
72 section may include any one or more of the following conditions to be imposed on the respondent, *but*
73 *shall be limited to only that amount of protection necessary to ensure the safety of the parties:*

74 1. Prohibiting acts of family abuse;

75 2. Prohibiting such contacts by the respondent with the petitioner or family or household members of
76 the petitioner as the court deems necessary for the *bodily* health or safety of such persons;

77 3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the
78 respondent; however, no such grant of possession shall affect title to any real or personal property;

79 4. Granting the petitioner temporary possession or use of a motor vehicle jointly owned by the
80 parties to the exclusion of the respondent; however, no such grant of possession or use shall affect title
81 to the vehicle;

82 5. Requiring that the respondent provide suitable alternative housing for the petitioner and, if
83 appropriate, any other family or household member;

84 6. Ordering ~~the respondent to either or both parties to~~ participate in treatment, counseling or other
85 programs as the court deems appropriate; and

86 7. Any other relief necessary for the protection of the petitioner and family or household members of
87 the petitioner, including a provision for temporary custody or visitation of a minor child.

88 B. The protective order may be issued for a specified period; however, unless otherwise authorized
89 by law, a protective order may not be issued under this section for a period longer than two years. A
90 copy of the protective order shall be served on the respondent and provided to the petitioner as soon as
91 possible. The clerk shall forward forthwith an attested copy of the order to the local police department
92 or sheriff's office which shall, on the date of receipt, enter the name of the person subject to the order
93 and other appropriate information required by the Department of State Police into the Virginia criminal
94 information network system established and maintained by the Department pursuant to Chapter 2
95 (§ 52-12 et seq.) of Title 52. Where feasible and practical, the court may transfer information
96 electronically to the Virginia criminal information network system. If the order is later dissolved or
97 modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered in
98 the system as described above.

99 C. Except as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this
100 section shall constitute contempt of court; *however, the courts shall give due regard to the acts of the*
101 *petitioner and shall in no way hamper reconciliation of married persons.*

102 D. The court may assess costs and attorneys' fees against either party regardless of whether an order
103 of protection has been issued as a result of a full hearing.

104 E. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate
105 jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths,
106 the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing
107 violent or threatening acts or harassment against or contact or communication with or physical proximity
108 to another person, including any of the conditions specified in subsection A, shall be accorded full faith
109 and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided
110 reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person
111 against whom the order is sought to be enforced sufficient to protect such person's due process rights
112 and consistent with federal law. A person entitled to protection under such a foreign order may file the
113 order in any juvenile and domestic relations district court or family court by filing with the court an
114 attested or exemplified copy of the order. Upon such a filing, the clerk shall forward forthwith an
115 attested copy of the order to the local police department or sheriff's office which shall, on the date of
116 receipt, enter the name of the person subject to the order and other appropriate information required by
117 the Department of State Police into the Virginia criminal information network system established and
118 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where feasible and
119 practical, the court may transfer information electronically to the Virginia criminal information network
120 system.

121 Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy

122 available of any foreign order filed with that court. A law-enforcement officer may, in the performance
123 of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been
124 provided to him by any source and may also rely upon the statement of any person protected by the
125 order that the order remains in effect.

126 F. Either party may at any time file a written motion with the court requesting a hearing to dissolve
127 or modify the order. Proceedings to dissolve or modify a protective order shall be given precedence on
128 the docket of the court.

129 G. As used in this section, "copy" includes a facsimile copy.