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HOUSE BILL NO. 1281

Offered January 24, 2000

A BILL to amend and reenact §§ 16.1-253.2, 18.2-308.1:4 and 20-103 of the Code of Virginia, relating to temporary custody, visitation and support.

Patrons—Albo, Black, Bolvin, Cantor, Devolites, Drake, Harris, McDonnell, McQuigg and Reid;
Senators: Hawkins, Quayle and Trumbo

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.2, 18.2-308.1:4 and 20-103 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-253.2. Violation of provisions of protective orders; penalty.

In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1 or subsection B of § 20-103, which prohibits such person from going or remaining upon land, buildings or premises or from further acts of family abuse, or which prohibits contacts between the respondent and the respondent's family or household member as the court deems appropriate shall be guilty of a Class 1 misdemeanor. Upon conviction, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.

§ 18.2-308.1:4. Purchase or transportation of firearm by persons subject to protective orders; penalty.

A. It shall be unlawful for any person who is subject to (i) a protective order entered pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, or § 19.2-152.10; (ii) an order issued pursuant to subsection B of § 20-103; or (iii) an order entered pursuant to subsection E of § 18.2-60.3 to purchase or transport any firearm while the order is in effect. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any firearm purchased or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

§ 20-103. Court may make orders pending suit for divorce, custody or visitation, etc.

A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under subdivision A 3 or subsection L of § 16.1-241, the court having jurisdiction of the matter may, at any time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the petitioning spouse, including an order that the other spouse provide health care coverage for the petitioning spouse, unless it is shown that such coverage cannot be obtained, (ii) to enable such spouse to carry on the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of the other spouse, (iv) to provide for the custody and maintenance of the minor children of the parties, including an order that either party provide health care coverage for the children, (v) to provide support, calculated in accordance with § 20-108.2, for any child of the parties to whom a duty of support is owed and to continue to support any child over the age of eighteen who meets the requirements set forth in subsection C of § 20-124.2, (vi) for the exclusive use and possession of the family residence during the pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to meet any decree which may be made in the suit, or (viii) to compel either spouse to give security to abide such decree.

B. In addition to the authority hereinabove, the court may order parties with a minor child or children to attend educational seminars and other like programs conducted by a qualified person or organization approved by the court, on the effects of the separation or divorce on minor children, parenting responsibilities, options for conflict resolution, and financial responsibilities, provided that no fee in excess of fifty dollars may be charged for participation in any such program. No statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding.

BC. In addition to the terms provided in subsection A, upon a showing by a party of reasonable apprehension of physical harm to that party by such party's family or household member as that term is defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter an order excluding that party's family or household member from the jointly owned or jointly rented family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte hearing, the order shall not exclude a family or household member from the family dwelling for a period in excess of fifteen days from the date the order is served, in person, upon the person so

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60 excluded. The order may provide for an extension of time beyond the fifteen days, to become effective
61 automatically. The person served may at any time file a written motion in the clerk's office requesting a
62 hearing to dissolve or modify the order. Nothing in this section shall be construed to prohibit the court
63 from extending an order entered under this subsection for such longer period of time as is deemed
64 appropriate, after a hearing on notice to the parties.

65 *CD.* In cases other than those for divorce in which a custody or visitation arrangement for a minor
66 child is sought, the court may enter an order providing for custody, visitation or maintenance pending
67 the suit as provided in subsection A. The order shall be directed to either parent or any person with a
68 legitimate interest who is a party to the suit.

69 *DE.* Orders entered pursuant to this section which provide for custody or visitation arrangements
70 pending the suit shall be made in accordance with the standards set out in Chapter 6.1 (§ 20-124.1 et
71 seq.) of Title 20. *If requested by a parent, the court shall provide both parents equal access to the*
72 *minor children at a hearing on a temporary order, unless the court finds that such shared parenting*
73 *would be detrimental to the children. The parent objecting to shared parenting shall have the burden of*
74 *proving the detriment to the children.*

75 *E.* Orders entered pursuant to subsection *BC* shall be certified by the clerk and forwarded as soon as
76 possible to the local police department or sheriff's office which shall, on the date of receipt, enter the
77 name of the person subject to the order and other appropriate information required by the Department of
78 State Police into the Virginia crime information network system established and maintained by the
79 Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the order is later
80 dissolved or modified, a copy of the dissolution or modification shall also be certified, forwarded and
81 entered in the system as described above.

82 *EF.* An order entered pursuant to this section shall have no presumptive effect and shall not be
83 determinative when adjudicating the underlying cause.