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**HOUSE BILL NO. 2328**

Offered January 10, 2001

Prefiled January 10, 2001

*A BILL to amend and reenact §§ 16.1-253.2, 18.2-57.2, 18.2-60.4 and 19.2-268.2 of the Code of Virginia, relating to violations of protective orders, assault and battery of a family or household member; penalty.*

Patrons—Baskerville, Brink, Byron, Diamonstein, Jones, J.C., Scott, Suit and Van Landingham; Senator: Ticer

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-253.2, 18.2-57.2, 18.2-60.4 and 19.2-268.2 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.

*Any person charged with a violation of this section shall be tried within forty-five days of being arraigned for such charge, or as soon thereafter as practicable so as to provide the earliest possible disposition. For good cause shown, the court may grant a continuance necessary to prevent a manifest injustice. The requirement of this paragraph is not jurisdictional, and shall not operate as a bar to prosecution.*

§ 18.2-57.2. Assault and battery against a family or household member.

A. Any person who commits an assault and battery against a family or household member shall be guilty of a Class 1 misdemeanor.

B. On a third or subsequent conviction for assault and battery against a family or household member, where it is alleged in the warrant, information, or indictment on which a person is convicted, that (i) such person has been previously convicted twice of assault and battery against a family or household member, or of a similar offense under the law of any other jurisdiction, within ten years of the third or subsequent offense, and (ii) each such assault and battery occurred on different dates, such person shall be guilty of a Class 6 felony.

C. Whenever a warrant for a violation of this section is issued, the magistrate shall issue an emergency protective order as authorized by § 16.1-253.4, except if the defendant is a minor, an emergency protective order shall not be required.

D. The definition of "family or household member" in § 16.1-228 applies to this section.

E. Upon conviction for a violation of this section, where it is alleged in the warrant, information, or indictment on which the person is convicted, that (i) such person has been previously convicted of a violation of this section or a violation of a protective order and (ii) within seventy-two hours of that person's release from incarceration serving sentence for such previous conviction, committed a violation of this section or a violation of § 16.1-253.2, such person shall be guilty of a Class 6 felony.

F. The sentence of any person convicted of a violation of this section, who committed the violation while in the presence of a minor child, age eleven or younger, shall include a mandatory, minimum term of confinement of at least thirty days which shall not be suspended, in whole or in part.

G. Any person charged with a violation of this section shall be tried within forty-five days of being arraigned for such charge, or as soon thereafter as practicable so as to provide the earliest possible disposition. For good cause shown, the court may grant a continuance necessary to prevent a manifest injustice. The requirement of this paragraph is not jurisdictional, and shall not operate as a bar to prosecution.

§ 18.2-60.4. Violation of stalking protective orders; penalty.

Any person who violates any provision of a protective order issued pursuant to §§ 19.2-152.8, 19.2-152.9 or § 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act.

*Any person charged with a violation of this section shall be tried within forty-five days of being*

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58 *arraigned for such charge, or as soon thereafter as practicable so as to provide the earliest possible*  
59 *disposition. For good cause shown, the court may grant a continuance necessary to prevent a manifest*  
60 *injustice. The requirement of this subsection is not jurisdictional, and shall not operate as a bar to*  
61 *prosecution.*

62 § 19.2-268.2. Recent complaint hearsay exception.

63 Notwithstanding any other provision of law, in any prosecution for *violation of a protective order*  
64 *under § 16.1-253.2*, criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2,  
65 a violation of §§ 18.2-57.2, 18.2-361, 18.2-366, 18.2-370 or § 18.2-370.1, the fact that the person injured  
66 made complaint of the offense recently after commission of the offense is admissible, not as independent  
67 evidence of the offense, but for the purpose of corroborating the testimony of the complaining witness.

68 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**  
69 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**  
70 **is \$0.**