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HOUSE BILL NO. 420

Offered January 9, 2002

Prefiled January 8, 2002

A BILL to amend and reenact §§ 16.1-253.4 and 19.2-152.8 of the Code of Virginia, relating to emergency protective orders.

Patrons—Johnson and Almand

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.4 and 19.2-152.8 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-253.4. Emergency protective orders authorized in certain cases; penalty.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate finds that (i) a warrant for a violation of § 18.2-57.2 has been issued and there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate shall issue an ex parte emergency protective order, except if the respondent is a minor, an emergency protective order shall not be required, imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of family abuse;

2. Prohibiting such contacts by the respondent with family or household members of the respondent as the judge or magistrate deems necessary to protect the safety of such persons; and

3. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property.

C. An emergency protective order issued pursuant to this section shall expire seventy-two hours after issuance. If the expiration of the seventy-two-hour period occurs at a time that the court is not in session, the emergency protective order shall be extended until 5 p.m. of the next business day that the juvenile and domestic relations district court is in session. The respondent 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.

D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 16.1-253.1 or § 16.1-279.1, may request the extension of an emergency protective order for an additional period of time not to exceed seventy-two hours after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the allegedly abused person.

E. 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 or magistrate may transfer information electronically to the Virginia criminal information network system. A copy of an emergency protective order issued pursuant to this section shall be served upon the respondent as soon as possible, and upon service, the agency making service shall enter the date and time of service into the Virginia criminal information network system. One copy of the order shall be given to the allegedly abused person when it is issued, and one copy shall be filed with the written report required by § 19.2-81.3 C. *The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order*

INTRODUCED

HB420

59 *to determine whether the officer who reduced it to writing accurately transcribed the contents of the*
60 *oral order.* The original copy shall be ~~verified by the judge or magistrate who issued the order and then~~
61 filed with the clerk of the juvenile and domestic relations district court within five business days of the
62 issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or
63 modification order shall ~~also be attested,~~ forwarded and entered in the system as described above. Upon
64 request, the clerk shall provide the allegedly abused person with information regarding the date and time
65 of service.

66 F. The availability of an emergency protective order shall not be affected by the fact that the family
67 or household member left the premises to avoid the danger of family abuse by the respondent.

68 G. The issuance of an emergency protective order shall not be considered evidence of any
69 wrongdoing by the respondent.

70 H. As used in this section, a "law-enforcement officer" means any (i) full-time or part-time employee
71 of a police department or sheriff's office which is part of or administered by the Commonwealth or any
72 political subdivision thereof and who is responsible for the prevention and detection of crime and the
73 enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary
74 police force established pursuant to subsection B of § 15.2-1731. Part-time employees are compensated
75 officers who are not full-time employees as defined by the employing police department or sheriff's
76 office.

77 I. As used in this section, "copy" includes a facsimile copy.

78 § 19.2-152.8. Emergency protective orders authorized in cases of stalking.

79 A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or
80 magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in
81 order to protect the health or safety of any person.

82 B. When a law-enforcement officer or an allegedly stalked person asserts under oath to a judge or
83 magistrate that such person is being or has been subjected to stalking and on that assertion or other
84 evidence the judge or magistrate finds that (i) there is probable danger of a further such offense being
85 committed by the respondent against the allegedly stalked person and (ii) a warrant for the arrest of the
86 respondent has been issued, the judge or magistrate shall issue an ex parte emergency protective order
87 imposing one or more of the following conditions on the respondent:

88 1. Prohibiting acts of stalking in violation of § 18.2-60.3;

89 2. Prohibiting such contacts by the respondent with the allegedly stalked person or such person's
90 family or household members as the judge or magistrate deems necessary to protect the safety of such
91 persons; and

92 3. Such other conditions as the judge or magistrate deems necessary to prevent further acts of
93 stalking, communication or other contact of any kind by the respondent.

94 C. An emergency protective order issued pursuant to this section shall expire seventy-two hours after
95 issuance. If the expiration of the seventy-two-hour period occurs at a time that the court is not in
96 session, the emergency protective order shall be extended until 5 p.m. of the next business day that the
97 court which issued the order is in session. The respondent may at any time file a motion with the court
98 requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given
99 precedence on the docket of the court.

100 D. A law-enforcement officer may request an emergency protective order pursuant to this section
101 orally, in person or by electronic means, and the judge of a circuit court, general district court, or
102 juvenile and domestic relations district court or a magistrate may issue an oral emergency protective
103 order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by
104 the law-enforcement officer requesting the order or the magistrate, on a preprinted form approved and
105 provided by the Supreme Court of Virginia. The completed form shall include a statement of the
106 grounds for the order asserted by the officer or the allegedly stalked person.

107 E. As soon as practicable after receipt of the order by a local law-enforcement agency for service,
108 the agency shall enter the name of the person subject to the order and other appropriate information
109 required by the Department of State Police into the Virginia criminal information network system
110 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where
111 feasible and practical, the court or magistrate may transfer information electronically to the Virginia
112 criminal information network system. A copy of an emergency protective order issued pursuant to this
113 section shall be served upon the respondent as soon as possible, and upon service, the agency making
114 service shall enter the date and time of service into the Virginia criminal information network system.
115 One copy of the order shall be given to the allegedly stalked person. *The judge or magistrate who issues*
116 *an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written*
117 *order to determine whether the officer who reduced it to writing accurately transcribed the contents of*
118 *the oral order.* The original copy shall be ~~verified by the judge or magistrate who issued the order and~~
119 ~~then~~ filed with the clerk of the appropriate district court within five business days of the issuance of the
120 order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall

also be attested, forwarded and entered in the system as described above. Upon request, the clerk shall provide the allegedly stalked person with information regarding the date and time of service.

F. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

G. As used in this section, a "law-enforcement officer" means any (i) person who is a full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary police force established pursuant to subsection B of § 15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

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

I. No fee shall be charged for filing or serving any petition pursuant to this section.

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HB420