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HOUSE BILL NO. 488

Offered January 9, 2002

Prefiled January 8, 2002

A BILL to amend and reenact §§ 8.01-229, 9.1-102, 16.1-228, 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 18.2-57.2, 18.2-60.3, 18.2-61, 18.2-67.5:1, 18.2-164, 18.2-460, 19.2-11.01, 19.2-11.2, 19.2-81.3, 19.2-152.8, 19.2-152.9, 19.2-152.10, 19.2-305.1, 20-124.2 and 52-35 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-223.1, 18.2-57.2:1, and 19.2-387.1 and by adding in Title 52 a chapter numbered 10, consisting of a section numbered 52-45, relating to domestic violence; penalty.

Patrons—Suit, Albo, Armstrong, Baskerville, Bell, Byron, Carrico, Cosgrove, Councill, Cox, Devolites, Drake, Hargrove, Howell, Janis, Johnson, Keister, Kilgore, Landes, Lingamfelter, Louderback, Marrs, McQuigg, Nixon, O'Bannon, Parrish, Phillips, Rapp, Reese, Rollison, Saxman, Sears, Stump, Weatherholtz and Welch

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-229, 9.1-102, 16.1-228, 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 18.2-57.2, 18.2-60.3, 18.2-61, 18.2-67.5:1, 18.2-164, 18.2-460, 19.2-11.01, 19.2-11.2, 19.2-81.3, 19.2-152.8, 19.2-152.9, 19.2-152.10, 19.2-305.1, 20-124.2 and 52-35 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 2.2-223.1, 18.2-57.2:1, and 19.2-387.1 and by adding in Title 52 a chapter numbered 10, consisting of a section numbered 52-45 as follows:

§ 2.2-223.1. Statewide Coordinator for Victims of Domestic Violence.

The Secretary shall establish a Statewide Coordinator for Victims of Domestic Violence within the Office of the Secretary of Public Safety to oversee the evaluation and coordination of all programs to combat domestic violence in the Commonwealth of Virginia. The Statewide Coordinator shall have the responsibility to: (i) assist and monitor agencies in implementing domestic violence services, (ii) ensure quality and consistency of programs, (iii) promote interagency coordination and cooperation in the identification and treatment of victims of domestic violence, (iv) implement an evaluation process and conduct periodic program evaluations, and (v) make recommendations to the Governor and General Assembly regarding proposed expenditures for domestic violence services. The Coordinator shall report on the status and effectiveness of all programs to the House Committees on Courts of Justice and Appropriations, and the Senate Committees on Courts of Justice and Finance, and the Virginia State Crime Commission by January 1 of each year.

§ 8.01-229. Suspension or tolling of statute of limitations; effect of disabilities; death; injunction; prevention of service by defendant; dismissal, nonsuit or abatement; devise for payment of debts; new promises; debts proved in creditors' suits.

A. Disabilities which toll the statute of limitations. - Except as otherwise specifically provided in §§ 8.01-237, 8.01-241, 8.01-242, 8.01-243, 8.01-243.1 and other provisions of this Code,

1. If a person entitled to bring any action is at the time the cause of action accrues an infant, except if such infant has been emancipated pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1, or incapacitated, such person may bring it within the prescribed limitation period after such disability is removed; or

2. After a cause of action accrues,

a. If an infant becomes entitled to bring such action, the time during which he is within the age of minority shall not be counted as any part of the period within which the action must be brought except as to any such period during which the infant has been judicially declared emancipated; or

b. If a person entitled to bring such action becomes incapacitated, the time during which he is incapacitated shall not be computed as any part of the period within which the action must be brought, except where a conservator, guardian or committee is appointed for such person in which case an action may be commenced by such conservator, committee or guardian before the expiration of the applicable period of limitation or within one year after his qualification as such, whichever occurs later.

For the purposes of subdivisions 1 and 2 of this subsection, a person shall be deemed incapacitated if he is so adjudged by a court of competent jurisdiction, or if it shall otherwise appear to the court or jury determining the issue that such person is or was incapacitated within the prescribed limitation period.

3. If a convict is or becomes entitled to bring an action against his committee, the time during which he is incarcerated shall not be counted as any part of the period within which the action must be

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56 brought.

57 B. Effect of death of a party. - The death of a person entitled to bring an action or of a person
58 against whom an action may be brought shall toll the statute of limitations as follows:

59 1. Death of person entitled to bring a personal action. - If a person entitled to bring a personal action
60 dies with no such action pending before the expiration of the limitation period for commencement
61 thereof, then an action may be commenced by the decedent's personal representative before the
62 expiration of the limitation period including the limitation period as provided by subdivision E 3 or
63 within one year after his qualification as personal representative, whichever occurs later.

64 2. Death of person against whom personal action may be brought. - a. If a person against whom a
65 personal action may be brought dies before the commencement of such action and before the expiration
66 of the limitation period for commencement thereof then a claim may be filed against the decedent's
67 estate or an action may be commenced against the decedent's personal representative before the
68 expiration of the applicable limitation period or within one year after the qualification of such personal
69 representative, whichever occurs later.

70 b. If a person against whom a personal action may be brought dies before suit papers naming such
71 person as defendant have been filed with the court, then such suit papers may be amended to substitute
72 the decedent's personal representative as party defendant before the expiration of the applicable
73 limitation period or within two years after the date such suit papers were filed with the court, whichever
74 occurs later, and such suit papers shall be taken as properly filed.

75 3. Effect of death on actions for recovery of realty, or a proceeding for enforcement of certain liens
76 relating to realty. - Upon the death of any person in whose favor or against whom an action for
77 recovery of realty, or a proceeding for enforcement of certain liens relating to realty, may be brought,
78 such right of action shall accrue to or against his successors in interest as provided in Article 2
79 (§ 8.01-236 et seq.) of this chapter.

80 4. Accrual of a personal cause of action against the estate of any person subsequent to such person's
81 death. - If a personal cause of action against a decedent accrues subsequent to his death, an action may
82 be brought against the decedent's personal representative or a claim thereon may be filed against the
83 estate of such decedent before the expiration of the applicable limitation period or within two years after
84 the qualification of the decedent's personal representative, whichever occurs later.

85 5. Accrual of a personal cause of action in favor of decedent. - If a person dies before a personal
86 cause of action which survives would have accrued to him, if he had continued to live, then an action
87 may be commenced by such decedent's personal representative before the expiration of the applicable
88 limitation period or within one year after the qualification of such personal representative, whichever
89 occurs later.

90 6. Delayed qualification of personal representative. - If there is an interval of more than two years
91 between the death of any person in whose favor or against whom a cause of action has accrued or shall
92 subsequently accrue and the qualification of such person's personal representative, such personal
93 representative shall, for the purposes of this chapter, be deemed to have qualified on the last day of such
94 two-year period.

95 C. Suspension during injunctions. - When the commencement of any action is stayed by injunction,
96 the time of the continuance of the injunction shall not be computed as any part of the period within
97 which the action must be brought.

98 D. Obstruction of filing by defendant. - When the filing of an action is obstructed by a defendant's
99 (i) filing a petition in bankruptcy or filing a petition for an extension or arrangement under the United
100 States Bankruptcy Act or (ii) using any other direct or indirect means to obstruct the filing of an action,
101 then the time that such obstruction has continued shall not be counted as any part of the period within
102 which the action must be brought.

103 E. Dismissal, abatement, or nonsuit.

104 1. Except as provided in subdivision 3 of this subsection, if any action is commenced within the
105 prescribed limitation period and for any cause abates or is dismissed without determining the merits, the
106 time such action is pending shall not be computed as part of the period within which such action may
107 be brought, and another action may be brought within the remaining period.

108 2. If a judgment or decree is rendered for the plaintiff in any action commenced within the
109 prescribed limitation period and such judgment or decree is arrested or reversed upon a ground which
110 does not preclude a new action for the same cause, or if there is occasion to bring a new action by
111 reason of the loss or destruction of any of the papers or records in a former action which was
112 commenced within the prescribed limitation period, then a new action may be brought within one year
113 after such arrest or reversal or such loss or destruction, but not after.

114 3. If a plaintiff suffers a voluntary nonsuit as prescribed in § 8.01-380, the statute of limitations with
115 respect to such action shall be tolled by the commencement of the nonsuited action, and the plaintiff
116 may recommence his action within six months from the date of the order entered by the court, or within
117 the original period of limitation, or within the limitation period as provided by subdivision B 1,

whichever period is longer. This tolling provision shall apply irrespective of whether the action is originally filed in a federal or a state court and recommenced in any other court, and shall apply to all actions irrespective of whether they arise under common law or statute.

F. Effect of devise for payment of debts. - No provision in the will of any testator devising his real estate, or any part thereof, subject to the payment of his debts or charging the same therewith, or containing any other provision for the payment of debts, shall prevent this chapter from operating against such debts, unless it plainly appears to be the testator's intent that it shall not so operate.

G. Effect of new promise in writing.

1. If any person against whom a right of action has accrued on any contract, other than a judgment or recognizance, promises, by writing signed by him or his agent, payment of money on such contract, the person to whom the right has accrued may maintain an action for the money so promised, within such number of years after such promise as it might be maintained if such promise were the original cause of action. An acknowledgment in writing, from which a promise of payment may be implied, shall be deemed to be such promise within the meaning of this subsection.

2. The plaintiff may sue on the new promise described in subdivision 1 of this subsection or on the original cause of action, except that when the new promise is of such a nature as to merge the original cause of action then the action shall be only on the new promise.

H. Suspension of limitations in creditors' suits. - When an action is commenced as a general creditors' action, or as a general lien creditors' action, or as an action to enforce a mechanics' lien, the running of the statute of limitations shall be suspended as to debts provable in such action from the commencement of the action, provided they are brought in before the commissioner in chancery under the first reference for an account of debts; but as to claims not so brought in the statute shall continue to run, without interruption by reason either of the commencement of the action or of the order for an account, until a later order for an account, under which they do come in, or they are asserted by petition or independent action.

In actions not instituted originally either as general creditors' actions, or as general lien creditors' actions, but which become such by subsequent proceedings, the statute of limitations shall be suspended by an order of reference for an account of debts or of liens only as to those creditors who come in and prove their claims under the order. As to creditors who come in afterwards by petition or under an order of recommittal, or a later order of reference for an account, the statute shall continue to run without interruption by reason of previous orders until filing of the petition, or until the date of the reference under which they prove their claims, as the case may be.

I. When an action is commenced within a period of thirty days prior to the expiration of the limitation period for commencement thereof and the defending party or parties desire to institute an action as third-party plaintiff against one or more persons not party to the original action, the running of the period of limitation against such action shall be suspended as to such new party for a period of sixty days from the expiration of the applicable limitation period.

J. If any award of compensation by the Workers' Compensation Commission pursuant to Chapter 5 (§ 65.2-500 et seq.) of Title 65.2 is subsequently found void ab initio, other than an award voided for fraudulent procurement of the award by the claimant, the statute of limitations applicable to any civil action upon the same claim or cause of action in a court of this Commonwealth shall be tolled for that period of time during which compensation payments were made.

K. Suspension of limitations during criminal proceedings. In any personal action for damages, if a criminal prosecution arising out of the same facts is commenced, the time such prosecution is pending shall not be computed as part of the period within which such a civil action may be brought. For purposes of this subsection, the time during which a prosecution is pending shall be calculated from the date of the issuance of a warrant, summons or capias, the return or filing of an indictment or information, or the defendant's first appearance in any court as an accused in such a prosecution, whichever date occurs first, until the date of the final judgment or order in the trial court, the date of the final disposition of any direct appeal in state court, or the date on which the time for noting an appeal has expired, whichever date occurs last. Thereafter, the civil action may be brought within the remaining period of the statute or within one year, whichever is longer.

If a criminal prosecution is commenced and a grand jury indictment is returned or a grand jury indictment is waived after the period within which a civil action arising out of the same set of facts may be brought, a civil action may be brought within one year of the date of the final judgment or order in the trial court, the date of the final disposition of any direct appeal in state court, or the date on which the time for noting an appeal has expired, whichever date occurs last, but no more than ten years after the date of the crime or two years after the cause of action shall have accrued under § 8.01-249, whichever date occurs last.

L. *Suspension of limitations for torts arising during the course of marriage. If a married person is entitled to bring any personal action against his spouse for damages incurred during the marriage as a*

179 *result of any intentional physical tort, the time during which the married couple cohabits shall not be*
180 *counted as any part of the period within which the action must be brought.*

181 § 9.1-102. Powers and duties of the Board and the Department.

182 The Department, under the direction of the Board, which shall be the policy-making body for
183 carrying out the duties and powers hereunder, shall have the power and duty to:

184 1. Adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the
185 administration of (i) this chapter including the authority to require the submission of reports and
186 information by law-enforcement officers within the Commonwealth or (ii) §§ 18.2-268.6, 18.2-268.9,
187 19.2-188.1, 19.2-310.5 and for any provisions of the Code as they relate to the responsibilities of the
188 Division of Forensic Science. Any proposed regulations concerning the privacy, confidentiality, and
189 security of criminal justice information shall be submitted for review and comment to any board,
190 commission, or committee or other body which may be established by the General Assembly to regulate
191 the privacy, confidentiality, and security of information collected and maintained by the Commonwealth
192 or any political subdivision thereof;

193 2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement
194 officer in (i) permanent positions, and (ii) temporary or probationary status, and establish the time
195 required for completion of such training;

196 3. Establish minimum training standards and qualifications for certification and recertification for
197 law-enforcement officers serving as field training officers;

198 4. Establish compulsory minimum curriculum requirements for in-service and advanced courses and
199 programs for schools, whether located in or outside the Commonwealth, which are operated for the
200 specific purpose of training law-enforcement officers;

201 5. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize
202 radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in
203 § 46.2-882 and establish the time required for completion of the training and (ii) compulsory minimum
204 qualifications for certification and recertification of instructors who provide such training;

205 6. Establish compulsory training courses for law-enforcement officers in laws and procedures relating
206 to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be
207 completed by law-enforcement officers who have not completed the compulsory training standards set
208 out in subdivision 2, prior to assignment of any such officers to undercover investigation work. Failure
209 to complete the training shall not, for that reason, constitute grounds to exclude otherwise properly
210 admissible testimony or other evidence from such officer resulting from any undercover investigation;

211 7. Establish compulsory minimum entry level, in-service and advanced training standards for those
212 persons designated to provide courthouse and courtroom security pursuant to the provisions of
213 § 53.1-120, and to establish the time required for completion of such training;

214 8. Establish compulsory minimum entry level, in-service and advanced training standards for deputy
215 sheriffs designated to serve process pursuant to the provisions of § 8.01-293, and establish the time
216 required for the completion of such training;

217 9. Establish compulsory minimum entry-level, in-service, and advanced training standards for persons
218 employed as deputy sheriffs and jail officers by local criminal justice agencies and for correctional
219 officers employed by the Department of Corrections under the provisions of Title 53.1, and establish the
220 time required for completion of such training;

221 10. Establish compulsory minimum training standards for all dispatchers employed by or in any local
222 or state government agency, whose duties include the dispatching of law-enforcement personnel. Such
223 training standards shall apply only to dispatchers hired on or after July 1, 1988;

224 11. Consult and cooperate with counties, municipalities, agencies of the Commonwealth, other state
225 and federal governmental agencies, and with universities, colleges, community colleges, and other
226 institutions, whether located in or outside the Commonwealth, concerning the development of police
227 training schools and programs or courses of instruction;

228 12. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth,
229 for school operation for the specific purpose of training law-enforcement officers; but this shall not
230 prevent the holding of any such school whether approved or not;

231 13. Establish and maintain police training programs through such agencies and institutions as the
232 Board deems appropriate;

233 14. Establish compulsory minimum qualifications of certification and recertification for instructors in
234 criminal justice training schools approved by the Department;

235 15. Conduct and stimulate research by public and private agencies which shall be designed to
236 improve police administration and law enforcement;

237 16. Make recommendations concerning any matter within its purview pursuant to this chapter;

238 17. Coordinate its activities with those of any interstate system for the exchange of criminal history
239 record information, nominate one or more of its members to serve upon the council or committee of any
240 such system, and participate when and as deemed appropriate in any such system's activities and

programs;

18. Conduct inquiries and investigations it deems appropriate to carry out its functions under this chapter and, in conducting such inquiries and investigations, may require any criminal justice agency to submit information, reports, and statistical data with respect to its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit such information, reports, and data as are reasonably required;

19. Conduct audits as required by § 9.1-131;

20. Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information;

21. Advise criminal justice agencies and initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information;

22. Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof;

23. Adopt regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;

24. Operate a statewide criminal justice research center, which shall maintain an integrated criminal justice information system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;

25. Develop a comprehensive, statewide, long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;

26. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs, projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;

27. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of general local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;

28. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;

29. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning district commissions, relating to the preparation, adoption, administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

30. Do all things necessary on behalf of the Commonwealth and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

31. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

32. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

33. Make and enter into all contracts and agreements necessary or incidental to the performance of

its duties and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

34. Adopt and administer reasonable regulations for the planning and implementation of programs and activities and for the allocation, expenditure and subgranting of funds available to the Commonwealth and to units of general local government, and for carrying out the purposes of this chapter and the powers and duties set forth herein;

35. Certify and decertify law-enforcement officers in accordance with §§ 15.2-1706 and 15.2-1707;

36. Provide forensic laboratory services as detailed in Article 2 (§ 9.1-117 et seq.) of this chapter;

37. Establish training standards and publish a model policy for law-enforcement personnel in the handling of family abuse and domestic violence cases;

38. Establish training standards and publish a model policy for law-enforcement personnel in communicating with and facilitating the safe return of individuals diagnosed with Alzheimer's disease;

39. Establish compulsory training standards for basic training and the recertification of law-enforcement officers to ensure sensitivity to and awareness of cultural diversity;

40. Review and evaluate community policing programs in the Commonwealth, and recommend where necessary statewide operating procedures, guidelines, and standards which strengthen and improve such programs;

41. (Effective until July 1, 2005) Assist, as necessary, in the administration of the Live In Our Community Police Housing Program and Fund established pursuant to Chapter 8.1 (§ 36-140.1 et seq.) of Title 36;

42. Establish a Virginia Law-Enforcement Accreditation Center. The Center shall, in cooperation with Virginia law-enforcement agencies, provide technical assistance and administrative support, including staffing, for the establishment of voluntary state law-enforcement accreditation standards. The Center may provide accreditation assistance and training, resource material, and research into methods and procedures that will assist the Virginia law-enforcement community efforts to obtain Virginia accreditation status;

43. Promote community policing philosophy and practice throughout the Commonwealth by providing community policing training and technical assistance statewide to all law-enforcement agencies, community groups, public and private organizations and citizens; developing and distributing innovative policing curricula and training tools on general community policing philosophy and practice and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia organizations with specific community policing needs; facilitating continued development and implementation of community policing programs statewide through discussion forums for community policing leaders, development of law-enforcement instructors; promoting a statewide community policing initiative; and serving as a statewide information source on the subject of community policing including, but not limited to periodic newsletters, a website and an accessible lending library; and

44. Perform such other acts as may be necessary or convenient for the effective performance of its duties.

§ 16.1-228. Definitions.

When used in this chapter, unless the context otherwise requires:

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law; or

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis.

"Adoptive home" means the place of residence of any natural person in which a child resides as a member of the household and in which he has been placed for the purposes of adoption or in which he has been legally adopted by another member of the household.

"Adult" means a person eighteen years of age or older.

"Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a

delinquent act which would be a felony if committed by an adult.

"Boot camp" means a short term secure or nonsecure juvenile residential facility with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline, and no less than six months of intensive aftercare.

"Child," "juvenile" or "minor" means a person less than eighteen years of age.

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.1-195.

"Child in need of services" means a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

However, to find that a child falls within these provisions, (i) the conduct complained of must present a clear and substantial danger to the child's life or health or (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school system has provided documentation that it has complied with the provisions of § 22.1-258; or

2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or placement authority, remains away from or deserts or abandons his family or lawful custodian on more than one occasion or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"The court" or the "juvenile court" or the "juvenile and domestic relations court" means the juvenile and domestic relations district court of each county or city.

"Delinquent act" means (i) an act designated a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under federal law, (ii) a violation of § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city or town.

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his eighteenth birthday, except where the jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6.

"Department" means the Department of Juvenile Justice and "Director" means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties imposed upon him under this law.

~~"Family abuse" means any act involving violence, force, or threat including any forceful detention, which results in physical injury or places one in reasonable apprehension of serious bodily injury and which is committed by a person against such person's family or household member the attempt to cause or causing bodily injury or physical harm; acts that place a person in fear of imminent serious bodily injury or physical harm; the use of force, threat of force or duress to cause another to engage involuntarily in sexual conduct; unlawful or forcible entry of the residence of the eligible person; interference with personal liberty; willful harassment; and the threat of any of the above.~~

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and

425 sisters-in-law who reside in the same home with the person, (v) any individual who has a child in
426 common with the person, whether or not the person and that individual have been married or have
427 resided together at any time, or (vi) any individual who cohabits or who, within the previous twelve
428 months, cohabited with the person, and any children of either of them then residing in the same home
429 with the person.

430 "Foster care services" means the provision of a full range of casework, treatment and community
431 services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2 or
432 in need of services as defined in this section and his family when the child (i) has been identified as
433 needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through
434 an agreement between the local board of social services or a public agency designated by the
435 community policy and management team and the parents or guardians where legal custody remains with
436 the parents or guardians, (iii) has been committed or entrusted to a local board of social services or
437 child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board
438 pursuant to § 16.1-293.

439 "Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this
440 chapter.

441 "Jail" or "other facility designed for the detention of adults" means a local or regional correctional
442 facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding
443 cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the
444 transfer of a child to a juvenile facility.

445 "The judge" means the judge or the substitute judge of the juvenile and domestic relations district
446 court of each county or city.

447 "This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in
448 this chapter.

449 "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to
450 have physical custody of the child, to determine and redetermine where and with whom he shall live,
451 the right and duty to protect, train and discipline him and to provide him with food, shelter, education
452 and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal
453 status created by court order of joint custody as defined in § 20-107.2.

454 "Permanent foster care placement" means the place of residence in which a child resides and in
455 which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation
456 and agreement between the placing agency and the place of permanent foster care that the child shall
457 remain in the placement until he reaches the age of majority unless modified by court order or unless
458 removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of
459 residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term
460 basis.

461 "Secure facility" or "detention home" means a local, regional or state public or private locked
462 residential facility which has construction fixtures designed to prevent escape and to restrict the
463 movement and activities of children held in lawful custody.

464 "Shelter care" means the temporary care of children in physically unrestricting facilities.

465 "State Board" means the State Board of Juvenile Justice.

466 "Status offender" means a child who commits an act prohibited by law which would not be criminal
467 if committed by an adult.

468 "Status offense" means an act prohibited by law which would not be an offense if committed by an
469 adult.

470 "Residual parental rights and responsibilities" means all rights and responsibilities remaining with the
471 parent after the transfer of legal custody or guardianship of the person, including but not limited to the
472 right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility
473 for support.

474 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of
475 § 16.1-269.1 when committed by a juvenile fourteen years of age or older.

476 § 16.1-253. Preliminary protective order.

477 A. Upon the motion of any person or upon the court's own motion, the court may issue a preliminary
478 protective order, after a hearing, if necessary to protect a child's life, health, safety or normal
479 development pending the final determination of any matter before the court. The order may require a
480 child's parents, guardian, legal custodian, other person standing in loco parentis or other family or
481 household member of the child to observe reasonable conditions of behavior for a specified length of
482 time. These conditions shall include any one or more of the following:

483 1. To abstain from offensive conduct against the child, a family or household member of the child or
484 any person to whom custody of the child is awarded;

485 2. To cooperate in the provision of reasonable services or programs designed to protect the child's
486 life, health or normal development;

3. To allow persons named by the court to come into the child's home at reasonable times designated by the court to visit the child or inspect the fitness of the home and to determine the physical or emotional health of the child;

4. To allow visitation with the child by persons entitled thereto, as determined by the court;

5. To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development; or

6. To refrain from such contact with the child or family or household members of the child, as the court may deem appropriate, including removal of such person from the residence of the child. However, prior to the issuance by the court of an order removing such person from the residence of the child, the petitioner must prove by a preponderance of the evidence that such person's probable future conduct would constitute a danger to the life or health of such child, and that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition.

B. A preliminary protective order may be issued ex parte upon motion of any person or the court's own motion in any matter before the court, or upon petition. The motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irreparable injury to the child's life or health. If an ex parte order is issued without an affidavit being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Following the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the shortest practicable time not to exceed five business days after the issuance of the order.

C. Prior to the hearing required by this section, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian, or other person standing in loco parentis of the child, to any other family or household member of the child to whom the protective order may be directed and to the child if he or she is twelve years of age or older. The notice provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the factual circumstances which allegedly necessitate the issuance of a preliminary protective order.

D. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

E. At the hearing the child, his or her parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

F. If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this section the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within thirty days of the date of the initial preliminary protective order hearing. The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence. Parties who are present at the hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in § 16.1-263. The adjudicatory hearing shall be held and an order may be entered, although a party to the hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort.

Any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

G. If at the preliminary protective order hearing held pursuant to this section the court makes a finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § 16.1-278.2. *Upon 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 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. 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*

548 *enter the date and time of service into the Virginia Criminal Information Network. The preliminary*
549 *order shall specify a date for the full hearing.* The dispositional hearing shall be scheduled at the time
550 of the hearing pursuant to this section, and shall be held within seventy-five days of this hearing. If an
551 adjudicatory hearing is requested pursuant to subsection F, the dispositional hearing shall nonetheless be
552 scheduled at the hearing pursuant to this section. All parties present at the hearing shall be given notice
553 of the date and time scheduled for the dispositional hearing; parties who are not present shall be
554 summoned to appear as provided in § 16.1-263.

555 H. Nothing in this section enables the court to remove a child from the custody of his or her parents,
556 guardian, legal custodian or other person standing in loco parentis, except as provided in § 16.1-278.2,
557 and no order hereunder shall be entered against a person over whom the court does not have
558 jurisdiction.

559 I. Violation of any order issued pursuant to this section shall constitute contempt of court.

560 § 16.1-253.1. Preliminary protective orders in cases of family abuse; confidentiality.

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

568 A preliminary protective order may include any one or more of the following conditions to be
569 imposed on the allegedly abusing person:

570 1. Prohibiting acts of family abuse.

571 2. Prohibiting such other contacts between the parties as the court deems appropriate.

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

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

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

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

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

598 Upon receipt of the return of service or other proof of service pursuant to subsection C of
599 § 16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the
600 local police department or sheriff's office which shall, on the date of receipt, enter into the Virginia
601 criminal information network system any other information required by the State Police which was not
602 previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification
603 order shall also be attested, forwarded and entered in the Virginia criminal information network system
604 as described above.

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

607 D. At a full hearing on the petition, the court may issue a protective order pursuant to § 16.1-279.1 if
608 the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the
609 evidence.

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

§ 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~~ Upon 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 original copy shall be verified by the judge or magistrate who issued the order and then filed with the clerk of the juvenile and domestic relations district court within five business days of the issuance of the 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 abused person with information regarding the date and time of service.

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

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

H. As used in this section, a "law-enforcement officer" means any (i) 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

671 office.

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

673 § 16.1-279.1. Protective order in cases of family abuse.

674 A. In cases of family abuse, the court may issue a protective order to protect the health and safety of
675 the petitioner and family or household members of the petitioner. A protective order issued under this
676 section may include any one or more of the following conditions to be imposed on the respondent:

677 1. Prohibiting acts of family abuse;

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

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

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

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

687 6. Ordering the respondent to participate in treatment, counseling or other programs as the court
688 deems appropriate; and

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

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

702 C. Except as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this
703 section shall constitute contempt of court.

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

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

723 Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy
724 available of any foreign order filed with that court. A law-enforcement officer may, in the performance
725 of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been
726 provided to him by any source and may also rely upon the statement of any person protected by the
727 order that the order remains in effect.

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

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

732 § 18.2-57.2. Assault and battery against a family or household member; penalty.

A. Any person who commits an assault and battery against a family or household member shall be guilty of a Class 1 misdemeanor, *and fined not less than \$250, provided, however, that if such person simultaneously with intent to intimidate possesses any firearm, he shall be guilty of a Class 6 felony, subject to incarceration and fined not less than \$500.*

B. On a ~~third~~ second 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~~ first or subsequent offense, and (ii) each such assault and battery occurred on different dates, such person shall be guilty of a Class 6 felony, *and upon conviction, such conviction shall include a mandatory minimum term of incarceration of thirty days, which shall not be suspended in whole or in part.*

C. *If any person who commits an assault and battery against a family or household member and such action is in violation of an outstanding, valid protective order, such person shall be guilty of a Class 6 felony.*

CD. 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.

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

§ 18.2-57.2:1. *Assault and battery against a family or household member in the presence of a child; penalty.*

Any person who commits an assault and battery against a family or household member knowing that a child is physically present is guilty of a Class 1 misdemeanor and, upon conviction shall be fined not less than \$250 and shall be sentenced to a mandatory minimum term of incarceration of fifteen days, which shall not be suspended in whole or in part.

§ 18.2-60.3. Stalking; penalty.

A. Any person who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor *and shall be fined not less than \$250, provided, however, that if such person simultaneously with intent to intimidate possesses any firearm, he is guilty of a Class 6 felony and shall be fined not less than \$500.*

B. A ~~third~~ second or subsequent conviction occurring within five years of a conviction for an offense under this section or for a similar offense under the law of any other jurisdiction shall be a Class 6 felony.

C. A person may be convicted under this section irrespective of the jurisdiction or jurisdictions within the Commonwealth wherein the conduct described in subsection A occurred, if the person engaged in that conduct on at least one occasion in the jurisdiction where the person is tried. Evidence of any such conduct that occurred outside the Commonwealth may be admissible, if relevant, in any prosecution under this section provided that the prosecution is based upon conduct occurring within the Commonwealth.

D. Upon finding a person guilty under this section, the court shall, in addition to the sentence imposed, issue an order prohibiting contact between the defendant and the victim or the victim's family or household member.

E. The Department of Corrections, sheriff or regional jail director shall give notice prior to the release from a state correctional facility or a local or regional jail of any person incarcerated upon conviction of a violation of this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. The notice shall be given at least fifteen days prior to release of a person sentenced to a term of incarceration of more than thirty days or, if the person was sentenced to a term of incarceration of at least forty-eight hours but no more than thirty days, twenty-four hours prior to release. If the person escapes, notice shall be given as soon as practicable following the escape. The victim shall keep the Department of Corrections, sheriff or regional jail director informed of the current mailing address and telephone number of the person named in the writing submitted to receive notice.

All information relating to any person who receives or may receive notice under this subsection shall remain confidential and shall not be made available to the person convicted of violating this section.

For purposes of this subsection, "release" includes a release of the offender from a state correctional facility or a local or regional jail (i) upon completion of his term of incarceration or (ii) on probation or parole.

No civil liability shall attach to the Department of Corrections nor to any sheriff or regional jail director or their deputies or employees for a failure to comply with the requirements of this subsection.

F. For purposes of this section:

"Family or household member" has the same meaning as provided in § 16.1-228.

§ 18.2-61. Rape.

A. If any person has sexual intercourse with a complaining witness who is not his or her spouse or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person, or (ii) through the use of the complaining witness's mental incapacity or physical helplessness, or (iii) with a child under age thirteen as the victim, he or she shall be guilty of rape.

B. If any person has sexual intercourse with his or her spouse and such act is accomplished against the spouse's will by force, threat or intimidation of or against the spouse or another, he or she shall be guilty of rape.

However, no person shall be found guilty under this subsection unless, at the time of the alleged offense, (i) the spouses were living separate and apart, or (ii) the defendant caused bodily injury to the spouse by the use of force or violence.

C. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years. There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation of subsection B may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

D. Upon a finding of guilt under subsection B in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 18.2-67.5:1. Punishment upon conviction of third misdemeanor offense.

When a person is convicted of sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of subsection C of § 18.2-67.5, a violation of § 18.2-371 involving consensual intercourse with a child, or indecent exposure of himself or procuring another to expose himself in violation of § 18.2-387 and it is alleged in the warrant, information or indictment on which the person is convicted and found by the court or jury trying the case, that the person has previously been convicted within the ten-year period immediately preceding the offense charged of ~~two~~ one or more of the offenses specified in this section, each such offense occurring on a different date, he shall be guilty of a Class 6 felony, *and upon conviction, such conviction shall include a mandatory, minimum term of incarceration of thirty days, which shall not be suspended in whole or in part.*

§ 18.2-164. Unlawful use of, or injury to, telephone and telegraph lines; copying or obstructing messages.

Any person who shall:

(1) Maliciously injure, molest, cut down or destroy any telephone or telegraph line, wire, cable or pole, or the material or property belonging thereto; or

(2) Maliciously cut, break, tap or make any connection with any telephone or telegraph line, wire, cable or instrument of any telegraph or telephone company which has legally acquired the right-of-way by purchase, condemnation, or otherwise; or

(3) Maliciously copy in any unauthorized manner any message, either social, business, or otherwise, passing over any telephone or telegraph line, wire or cable in this Commonwealth; or

(4) Willfully or maliciously prevent, obstruct or delay by any means or contrivance whatsoever the sending, conveyance or delivery in this Commonwealth of any authorized communication by or through any telephone or telegraph line, wire or cable under the control of any telephone or telegraph company doing business in this Commonwealth; or

(5) Maliciously aid, agree with, employ or conspire with any unauthorized person or persons unlawfully to do or cause to be done any of the acts hereinbefore mentioned,

shall be guilty of a Class 31 misdemeanor.

§ 18.2-460. Obstructing justice.

A. If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney for the Commonwealth, witness or any law-enforcement officer in the performance of his duties as such or fails or refuses without just cause to cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the Commonwealth, witness, or law-enforcement officer, he shall be guilty of a Class 21 misdemeanor.

B. If any person, by threats or force, knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, or any law-enforcement officer, lawfully engaged in his duties as such, or to obstruct or impede the administration of justice in any court, he shall be deemed to be guilty of a Class 4 ~~misdemeanor~~6 felony.

C. If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, witness, or any law-enforcement officer, lawfully engaged in the discharge of his duty, or to obstruct or impede the administration of justice in any court relating to a violation of or conspiracy to violate § 18.2-248 or § 18.2-248.1 (a) (3), (b) or (c), or relating to the violation of or conspiracy to violate any violent felony offense listed in subsection C of § 17.1-805, he shall be guilty of a Class 5 felony.

§ 19.2-11.01. Crime victim and witness rights.

A. In recognition of the Commonwealth's concern for the victims and witnesses of crime, it is the purpose of this chapter to ensure that the full impact of crime is brought to the attention of the courts of the Commonwealth; that crime victims and witnesses are treated with dignity, respect and sensitivity; and that their privacy is protected to the extent permissible under law. It is the further purpose of this chapter to ensure that victims and witnesses are informed of the rights provided to them under the laws of the Commonwealth; that they receive authorized services as appropriate; and that they have the opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections agencies and the judiciary at all critical stages of the criminal justice process to the extent permissible under law. Unless otherwise stated and subject to the provisions of § 19.2-11.1, it shall be the responsibility of a locality's crime victim and witness assistance program to provide the information and assistance required by this chapter.

Following a crime, law-enforcement personnel shall provide the victim with a standardized form listing the specific rights afforded to crime victims. The form shall include a telephone number by which the victim can receive further information and assistance in securing the rights afforded crime victims.

1. Victim and witness protection.

a. In order that victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, or prosecution efforts, they shall be provided with information as to the level of protection which may be available pursuant to § 52-35 or to any other federal, state or local program providing protection, and shall be assisted in obtaining this protection from the appropriate authorities.

b. Victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation.

2. Financial assistance.

a. Victims shall be informed of financial assistance and social services available to them as victims of a crime, including information on their possible right to file a claim for compensation from the Crime Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of this title and on other available assistance and services.

b. Victims shall be assisted in having any property held by law-enforcement agencies for evidentiary purposes returned promptly in accordance with §§ 19.2-270.1 and 19.2-270.2.

c. Victims shall be advised that restitution is available for damages or loss resulting from an offense and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, Chapter 21.1 (§ 19.2-368.1 et seq.) of this title, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other applicable laws of the Commonwealth.

3. Notices.

a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii) advised that pursuant to § 18.2-465.1 it is unlawful for an employer to penalize an employee for appearing in court pursuant to a summons or subpoena.

b. Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current addresses and telephone numbers. *The Attorney for the Commonwealth shall, if practicable, verify that the victim received the standardized form from subsection A listing the specific rights afforded to crime*

917 *victims.*

918 c. Victims shall receive notification, if requested, subject to such reasonable procedures as the
919 Attorney General may require pursuant to § 2.2-511, from the Attorney General of the filing and
920 disposition of any appeal or habeas corpus proceeding involving their case.

921 d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent in
922 whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to
923 the provisions of §§ 53.1-133.02 and 53.1-160 if they have provided their names, current addresses and
924 telephone numbers in writing.

925 e. Victims shall be advised that, in order to protect their right to receive notices and offer input, all
926 agencies and persons having such duties must have current victim addresses and telephone numbers
927 given by the victims. *Victims shall also be advised that any such information given shall be confidential*
928 *as provided by § 19.2-11.2.*

929 4. Victim input.

930 a. Victims shall be given the opportunity, pursuant to § 19.2-299.1, to prepare a written victim
931 impact statement prior to sentencing of a defendant and may provide information to any individual or
932 agency charged with investigating the social history of a person or preparing a victim impact statement
933 under the provisions of §§ 16.1-273 and 53.1-155 or any other applicable law.

934 b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding
935 pursuant to the provisions of § 19.2-265.01.

936 c. On motion of the attorney for the Commonwealth, victims shall be given the opportunity, pursuant
937 to §§ 19.2-264.4 and 19.2-295.3, to testify prior to sentencing of a defendant regarding the impact of the
938 offense.

939 d. In a felony case, the attorney for the Commonwealth, upon the victim's written request, shall
940 consult with the victim either verbally or in writing (i) to inform the victim of the contents of a
941 proposed plea agreement and (ii) to obtain the victim's views concerning plea negotiations. However,
942 nothing in this section shall limit the ability of the attorney for the Commonwealth to exercise his
943 discretion on behalf of the citizens of the Commonwealth in the disposition of any criminal case. The
944 court shall not accept the plea agreement unless it finds that, except for good cause shown, the
945 Commonwealth has complied with clauses (i) and (ii). Good cause shown shall include, but not be
946 limited to, the unavailability of the victim due to incarceration, hospitalization, failure to appear at trial
947 when subpoenaed, or change of address without notice.

948 Upon the victim's written request, the victim shall be notified in accordance with subdivision A 3 b
949 of any proceeding in which the plea agreement will be tendered to the court.

950 The responsibility to consult with the victim under this subdivision shall not confer upon the
951 defendant any substantive or procedural rights and shall not affect the validity of any plea entered by the
952 defendant.

953 5. Courtroom assistance.

954 a. Victims and witnesses shall be informed that their addresses and telephone numbers may not be
955 disclosed, pursuant to the provisions of §§ 19.2-11.2 and 19.2-269.2, except when necessary for the
956 conduct of the criminal proceeding.

957 b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in
958 accordance with §§ 19.2-164 and 19.2-164.1.

959 c. Victims and witnesses of certain sexual offenses shall be advised that there may be a closed
960 preliminary hearing in accordance with § 18.2-67.8 and, if a victim was fourteen years of age or
961 younger on the date of the offense and is sixteen or under at the time of the trial, or a witness to the
962 offense is fourteen years of age or younger at the time of the trial, that two-way closed-circuit television
963 may be used in the taking of testimony in accordance with § 18.2-67.9.

964 B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological
965 or economic harm as a direct result of the commission of a felony or of assault and battery in violation
966 of §§ 18.2-57, 18.2-57.1 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation
967 of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, maiming or driving while intoxicated
968 in violation of § 18.2-51.4 or § 18.2-266, (ii) a spouse or child of such a person, (iii) a parent or legal
969 guardian of such a person who is a minor, or (iv) a spouse, parent, sibling or legal guardian of such a
970 person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim"
971 does not mean a parent, child, spouse, sibling or legal guardian who commits a felony or other
972 enumerated criminal offense against a victim as defined in clause (i).

973 C. Officials and employees of the judiciary, including court services units, law-enforcement agencies,
974 the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided
975 with copies of this chapter by the Department of Criminal Justice Services or a crime victim and witness
976 assistance program. Each agency, officer or employee who has a responsibility or responsibilities to
977 victims under this chapter or other applicable law shall make reasonable efforts to become informed
978 about these responsibilities and to ensure that victims and witnesses receive such information and

services to which they may be entitled under applicable law, provided that no liability or cause of action shall arise from the failure to make such efforts or from the failure of such victims or witnesses to receive any such information or services.

§ 19.2-11.2. Crime victim's right to nondisclosure of certain information; exceptions; testimonial privilege.

~~Upon request of any crime victim, neither a~~No law-enforcement agency, ~~the~~ attorney for the Commonwealth, a court ~~nor~~, the Department of Corrections, ~~nor~~ any employee of any of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the victim or a member of the victim's family, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law or Rules of the Supreme Court, (iii) necessary for law-enforcement purposes, or (iv) permitted by the court for good cause.

Except with the written consent of the victim, a law-enforcement agency may not disclose to the public information which directly or indirectly identifies the victim of a crime involving any sexual assault or abuse, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law, (iii) necessary for law-enforcement purposes, or (iv) permitted by the court for good cause.

Nothing herein shall limit the right to examine witnesses in a court of law or otherwise affect the conduct of any criminal proceeding.

§ 19.2-81.3. Arrest without a warrant authorized in cases of assault and battery against a family or household member and stalking and for violations of protective orders; procedure, etc.

A. Any law-enforcement officer, as defined in § 19.2-81, may arrest without a warrant for an alleged violation of §§ 18.2-57.2, 18.2-60.4 or § 16.1-253.2 regardless of whether such violation was committed in his presence, if such arrest is based on probable cause or upon personal observations or the reasonable complaint of a person who observed the alleged offense or upon personal investigation.

B. A law-enforcement officer having probable cause to believe that a violation of § 18.2-57.2 or § 16.1-253.2 has occurred shall arrest and take into custody the person he has probable cause to believe, based on the totality of the circumstances, was the primary physical aggressor unless there are special circumstances which would dictate a course of action other than an arrest.

C. Regardless of whether an arrest is made, the officer shall file a written report with his department ~~of stating the number of arrests made, if any, and specifically include any incident in which he has~~ probable cause to believe family abuse has occurred, ~~including, and, where required, a complete~~ statement in writing that there are special circumstances ~~which that~~ would dictate a course of action other than an arrest. *The officer shall provide the allegedly abused person, both orally and in writing, information regarding the legal and community resources available to the allegedly abused person.* Upon request of the allegedly abused person, the department shall make a summary of the report available to the allegedly abused person. ~~The officer shall also provide the allegedly abused person, both orally and in writing, information regarding the legal and community resources available to the allegedly abused person.~~

D. In every case in which a law-enforcement officer makes an arrest under this section, he shall petition for an emergency protective order as authorized in § 16.1-253.4 when the person arrested and taken into custody is brought before the magistrate, except if the person arrested is a minor, a petition for an emergency protective order shall not be required. Regardless of whether an arrest is made, if the officer has probable cause to believe that a danger of acts of family abuse exists, the law-enforcement officer shall seek an emergency protective order under § 16.1-253.4, except if the suspected abuser is a minor, a petition for an emergency protective order shall not be required.

E. A law-enforcement officer investigating any complaint of family abuse, including but not limited to assault and battery against a family or household member ~~may~~shall, upon request, transport, or arrange for the transportation of an abused person to a hospital, safe shelter, or magistrate. Any local law-enforcement agency may adopt a policy requiring an officer to transport or arrange for transportation of an abused person as provided in this subsection.

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

G. As used in this section, a "law-enforcement officer" means (i) any 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 this Commonwealth and (ii) any 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.

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

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.

1040 B. When a law-enforcement officer or an allegedly stalked person asserts under oath to a judge or
1041 magistrate that such person is being or has been subjected to stalking and on that assertion or other
1042 evidence the judge or magistrate finds that (i) there is probable danger of a further such offense being
1043 committed by the respondent against the allegedly stalked person and (ii) a warrant for the arrest of the
1044 respondent has been issued, the judge or magistrate shall issue an ex parte emergency protective order
1045 imposing one or more of the following conditions on the respondent:

1046 1. Prohibiting acts of stalking in violation of § 18.2-60.3;

1047 2. Prohibiting such contacts by the respondent with the allegedly stalked person or such person's
1048 family or household members as the judge or magistrate deems necessary to protect the safety of such
1049 persons; and

1050 3. Such other conditions as the judge or magistrate deems necessary to prevent further acts of
1051 stalking, communication or other contact of any kind by the respondent.

1052 C. An emergency protective order issued pursuant to this section shall expire seventy-two hours after
1053 issuance. If the expiration of the seventy-two-hour period occurs at a time that the court is not in
1054 session, the emergency protective order shall be extended until 5 p.m. of the next business day that the
1055 court which issued the order is in session. The respondent may at any time file a motion with the court
1056 requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given
1057 precedence on the docket of the court.

1058 D. A law-enforcement officer may request an emergency protective order pursuant to this section
1059 orally, in person or by electronic means, and the judge of a circuit court, general district court, or
1060 juvenile and domestic relations district court or a magistrate may issue an oral emergency protective
1061 order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by
1062 the law-enforcement officer requesting the order or the magistrate, on a preprinted form approved and
1063 provided by the Supreme Court of Virginia. The completed form shall include a statement of the
1064 grounds for the order asserted by the officer or the allegedly stalked person.

1065 E. ~~As soon as practicable after~~ Upon receipt of the order by a local law-enforcement agency for
1066 service, the agency shall enter the name of the person subject to the order and other appropriate
1067 information required by the Department of State Police into the Virginia criminal information network
1068 system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title
1069 52. Where feasible and practical, the court or magistrate may transfer information electronically to the
1070 Virginia criminal information network system. A copy of an emergency protective order issued pursuant
1071 to this section shall be served upon the respondent as soon as possible, and upon service, the agency
1072 making service shall enter the date and time of service into the Virginia criminal information network
1073 system. One copy of the order shall be given to the allegedly stalked person. The original copy shall be
1074 verified by the judge or magistrate who issued the order and then filed with the clerk of the appropriate
1075 district court within five business days of the issuance of the order. If the order is later dissolved or
1076 modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered in
1077 the system as described above. Upon request, the clerk shall provide the allegedly stalked person with
1078 information regarding the date and time of service.

1079 F. The issuance of an emergency protective order shall not be considered evidence of any
1080 wrongdoing by the respondent.

1081 G. As used in this section, a "law-enforcement officer" means any (i) person who is a full-time or
1082 part-time employee of a police department or sheriff's office which is part of or administered by the
1083 Commonwealth or any political subdivision thereof and who is responsible for the prevention and
1084 detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and
1085 (ii) member of an auxiliary police force established pursuant to subsection B of § 15.2-1731. Part-time
1086 employees are compensated officers who are not full-time employees as defined by the employing police
1087 department or sheriff's office.

1088 H. As used in this section, "copy" includes a facsimile copy.

1089 I. No fee shall be charged for filing or serving any petition pursuant to this section.

1090 § 19.2-152.9. Preliminary protective orders in cases of stalking.

1091 A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable
1092 period of time, subjected to stalking and (ii) a warrant has been issued for the arrest of the alleged
1093 stalker, the court may issue a preliminary protective order against the alleged stalker in order to protect
1094 the health and safety of the petitioner or any family or household member of the petitioner. The order
1095 may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an
1096 affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of stalking
1097 or evidence sufficient to establish probable cause that stalking has recently occurred shall constitute
1098 good cause.

1099 A preliminary protective order may include any one or more of the following conditions to be
1100 imposed on the respondent:

1101 1. Prohibiting acts of stalking in violation of § 18.2-60.3;

2. Prohibiting such other contacts by the respondent with the petitioner or the petitioner's family or household members as the court deems necessary for the health and safety of such persons; and

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

B. ~~As soon as practicable after~~ Upon 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 alleged stalker 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. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. 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 previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered into the Virginia criminal information network system as described above.

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

D. At a full hearing on the petition, the court may issue a protective order pursuant to § 19.2-152.10 if the court finds that the petitioner has proven the allegation of stalking by a preponderance of the evidence.

E. No fees shall be charged for filing or serving petitions pursuant to this section.

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

§ 19.2-152.10. Protective order in cases of stalking.

A. The court may issue a protective order pursuant to this chapter to protect the health and safety of the petitioner and family or household members of a petitioner upon (i) the issuance of a warrant for a violation of § 18.2-60.3, (ii) a hearing held pursuant to subsection D of § 19.2-152.9, or (iii) a conviction for a violation of § 18.2-60.3. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:

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

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

3. Any other relief necessary to prevent further acts of stalking, communication or other contact of any kind by the respondent.

B. The protective order may be issued for a specified period; however, unless otherwise authorized by law, a protective order may not be issued under this section for a period longer than two years. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. ~~The~~ Upon receipt, the clerk shall forward forthwith an attested copy of the order to the local police department or sheriff's office which shall, on the date of receipt, 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. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered into the system as described above.

C. Except as otherwise provided, a violation of a protective order issued under this section shall constitute contempt of court.

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

E. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths,

the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any appropriate district court by filing with the court, an attested or exemplified copy of the order. Upon such a filing, the clerk shall forward forthwith an attested copy of the order to the local police department or sheriff's office which shall, on the date of receipt, 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.

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

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

G. No fees shall be charged for filing or serving petitions pursuant to this section.

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

§ 19.2-305.1. Restitution for property damage or loss; community services.

A. Notwithstanding any other provision of law, no person convicted of a crime in violation of any provision in Title 18.2, except the provisions of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2, on or after July 1, 1977, which resulted in property damage or loss, shall be placed on probation or have his sentence suspended unless such person shall make at least partial restitution for such property damage or loss, or shall be compelled to perform community services, or both, or shall submit a plan for doing that which appears to the court to be feasible under the circumstances.

A1. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits, and is convicted of, a crime in violation of any provision in Title 18.2 except the provisions of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2 shall make at least partial restitution for any property damage or loss caused by the crime or for actual medical expenses incurred by the victim as a result of the crime, may be compelled to perform community services and, if the court so orders, shall submit a plan for doing that which appears to be feasible to the court under the circumstances.

B. At or before the time of sentencing, the court shall receive and consider any plan for making restitution submitted by the defendant. The plan shall include the defendant's home address, place of employment and address, social security number and bank information. If the court finds such plan to be reasonable and practical under the circumstances, it may consider probation or suspension of whatever portion of the sentence that it deems appropriate. By order of the court incorporating the defendant's plan or a reasonable and practical plan devised by the court, the defendant shall make restitution while he is free on probation or work release or following his release from confinement. Additionally, the court may order that the defendant make restitution during his confinement, if feasible, based upon both his earning capacity and net worth as determined by the court at sentencing.

C. At the time of sentencing, the court, ~~in its discretion,~~ shall determine the amount to be repaid by the defendant and the terms and conditions thereof. If community service work is ordered, the court shall determine the terms and conditions upon which such work shall be performed. The court shall include such findings in the judgment order. The order ~~may~~ shall specify that sums paid under such order shall be paid to the clerk, who shall disburse such sums as the court may, by order, direct. Any court desiring to participate in the Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or providing restitution shall, at the time of sentencing, obtain the social security number of each defendant.

D. Unreasonable failure to execute the plan by the defendant shall result in revocation of the probation or imposition of the suspended sentence. A hearing shall be held in accordance with the provisions of this Code relating to revocation of probation or imposition of a suspended sentence before either such action is taken.

E. If restitution is ordered to be paid by the defendant to the victim of a crime and the victim can no longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal Injuries Compensation Fund for the benefit of crime victims. The administrator shall reserve a sum sufficient in the Fund from which he shall make prompt payment to the victim for any proper claims. Before making the deposit he shall record the name, last known address and amount of restitution due

each victim appearing from the clerk's report to be entitled to restitution.

§ 19.2-387.1. *Protective Order Registry; maintenance; access.*

A. *The Department of State Police shall keep and maintain a Protective Order Registry. The purpose of the Registry shall be to assist the efforts of law-enforcement agencies to protect their communities and their citizens. The Department of State Police shall make Registry information available, upon request, to criminal justice agencies, including local law-enforcement agencies, through the Virginia Criminal Information Network (VCIN). Registry information provided under this section shall be used for the purposes of the administration of criminal justice and for the protection of the public in general.*

B. *No liability shall be imposed upon any law-enforcement official who disseminates information or fails to disseminate information in good faith compliance with the requirements of this section, but this provision shall not be construed to grant immunity for gross negligence or willful misconduct.*

§ 20-124.2. *Court-ordered custody and visitation arrangements.*

A. In any case in which custody or visitation of minor children is at issue, whether in a circuit or district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of custody and visitation arrangements, including support and maintenance for the children, prior to other considerations arising in the matter. The court may enter an order pending the suit as provided in § 20-103. The procedures for determining custody and visitation arrangements shall insofar as practical, and consistent with the ends of justice, preserve the dignity and resources of family members. Mediation shall be used as an alternative to litigation where appropriate. When mediation is used in custody and visitation matters, the goals may include development of a proposal addressing the child's residential schedule and care arrangements, and how disputes between the parents will be handled in the future.

B. In determining custody, the court shall give primary consideration to the best interests of the child. The court shall assure minor children of frequent and continuing contact with both parents, when appropriate, and encourage parents to share in the responsibilities of rearing their children. As between the parents, there shall be no presumption or inference of law in favor of either. *There shall be a rebuttable presumption that it is not in the best interests of a child for a parent to be awarded custody who has previously been convicted of a violation of § 18.2-371 or § 18.2-371.1 with regard to that child.* The court shall give due regard to the primacy of the parent-child relationship but may upon a showing by clear and convincing evidence that the best interest of the child would be served thereby award custody or visitation to any other person with a legitimate interest. The court may award joint custody or sole custody.

C. The court may order that support be paid for any child of the parties. The court shall also order that support will continue to be paid for any child over the age of eighteen who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the party seeking or receiving child support until such child reaches the age of nineteen or graduates from high school, whichever first occurs. The court may also order the continuation of support for any child over the age of eighteen who is (i) severely and permanently mentally or physically disabled, (ii) unable to live independently and support himself, and (iii) resides in the home of the parent seeking or receiving child support. In addition, the court may confirm a stipulation or agreement of the parties which extends a support obligation beyond when it would otherwise terminate as provided by law. The court shall have no authority to decree support of children payable by the estate of a deceased party. The court may make such further decree as it shall deem expedient concerning support of the minor children, including an order that any party provide health care coverage.

The court shall have the continuing authority and jurisdiction to make any additional orders necessary to effectuate and enforce any order entered pursuant to this section or § 20-103 including the authority to punish as contempt of court any willful failure of a party to comply with the provisions of the order.

§ 52-35. *Witness protection program established.*

The Superintendent of State Police may establish and maintain within the Department of State Police a witness protection program to temporarily relocate or otherwise protect witnesses and their families who may be in danger because of their cooperation with the investigation and prosecution of serious violent crimes or, felony violations of § 18.2-248, and violations of §§ 18.2-57.2, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3. The Superintendent may make the services of the program available to law-enforcement and criminal justice agencies of all counties, cities, and towns, and of the Commonwealth, pursuant to regulations promulgated by the Superintendent under the Administrative Process Act. (§ 2.2-4000 et seq.).

(This chapter is effective until January 1, 2003).

CHAPTER 10

§ 52-45. *Protective Order Registry established.*

The Superintendent shall establish, organize and maintain within the Department of State Police a Protective Order Registry as a central repository of information regarding outstanding, valid protective

1286 *orders. Such information shall be collected, processed, maintained and disseminated by the registry as*
1287 *accurately and completely as possible to assist in the expedited entry and dissemination of protective*
1288 *order information.*

1289 **2. That the Supreme Court shall establish reasonable judicial training regarding domestic violence**
1290 **and the resources available for victims in the Commonwealth of Virginia.**

1291 **3. That the Commonwealth Attorney's Services Council shall provide training to Commonwealth's**
1292 **attorneys regarding the prosecution of domestic violence cases.**

1293 **4. That the provisions of this act may result in a net increase in periods of imprisonment or**
1294 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at**
1295 **least \$76,851,150 for periods of imprisonment in state adult correctional facilities and cannot be**
1296 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**