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SENATE BILL NO. 485

Offered January 9, 2002

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A BILL to amend and reenact §§ 18.2-60.4, 19.2-152.8, 19.2-152.9 and 19.2-152.10 of the Code of Virginia, relating to stalking protective orders; penalty.

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-60.4, 19.2-152.8, 19.2-152.9 and 19.2-152.10 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-60.4. Violation of stalking protective orders; penalty; subsequent offense; prior conviction.

A. Any person who violates any provision of a protective order issued pursuant to §§ 19.2-152.8, 19.2-152.9 or 19.2-152.10 is guilty of a Class 1 misdemeanor. Conviction hereunder shall bar a finding of contempt for the same act. *Upon conviction, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.*

B. *Any person convicted of a second offense under §§ 19.2-152.8, 19.2-152.9 or 19.2-152.10 shall be subject to confinement in jail for not less than a mandatory, minimum period of five days not subject to suspension by the court.*

C. *Any person convicted of a third offense under §§ 19.2-152.8, 19.2-152.9 or 19.2-152.10 shall be guilty of a Class 6 felony, and the sentence shall include a mandatory, minimum sentence of confinement for ten days not subject to suspension by the court.*

§ 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.

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

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

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

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

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 court which issued the order 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 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 stalked person.

E. As soon as practicable after receipt of the order by a local law-enforcement agency for service, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia criminal information network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where feasible and practical, the court or magistrate may transfer information electronically to the Virginia criminal information network system. A copy of an emergency protective order issued pursuant to this

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59 section shall be served upon the respondent as soon as possible, and upon service, the agency making
60 service shall enter the date and time of service into the Virginia criminal information network system.
61 One copy of the order shall be given to the allegedly stalked person. The original copy shall be verified
62 by the judge or magistrate who issued the order and then filed with the clerk of the appropriate district
63 court within five business days of the issuance of the order. If the order is later dissolved or modified, a
64 copy of the dissolution or modification order shall also be attested, forwarded and entered in the system
65 as described above. Upon request, the clerk shall provide the allegedly stalked person with information
66 regarding the date and time of service.

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

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

76 H. *Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's*
77 *office, nor any employee of them, may disclose, except among themselves, the residential address,*
78 *telephone number, or place of employment of the person protected by the order or that of the family of*
79 *such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme*
80 *Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.*

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

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

83 § 19.2-152.9. Preliminary protective orders in cases of stalking.

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

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

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

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

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

99 B. As soon as practicable after receipt of the order by a local law-enforcement agency for service,
100 the agency shall enter the name of the person subject to the order and other appropriate information
101 required by the Department of State Police into the Virginia criminal information network system
102 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where
103 feasible and practical, the court may transfer information electronically to the Virginia criminal
104 information network system. A copy of a preliminary protective order shall be served as soon as
105 possible on the alleged stalker in person as provided in § 16.1-264, and upon service, the agency making
106 service shall enter the date and time of service into the Virginia criminal information network system.
107 The preliminary order shall specify a date for the full hearing. The hearing shall be held within fifteen
108 days of the issuance of the preliminary order. However, upon motion of the respondent and for good
109 cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the
110 hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the
111 order and information regarding the date and time of service. The order shall further specify that either
112 party may at any time file a motion with the court requesting a hearing to dissolve or modify the order.
113 The hearing on the motion shall be given precedence on the docket of the court.

114 Upon receipt of the return of service or other proof of service pursuant to subsection C of
115 § 16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the
116 local police department or sheriff's office which shall, on the date of receipt, enter into the Virginia
117 criminal information network system any other information required by the State Police which was not
118 previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification
119 order shall also be attested, forwarded and entered into the Virginia criminal information network system
120 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. *Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.*

G. 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 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.

182 G. *Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's*
183 *office, nor any employee of them, may disclose, except among themselves, the residential address,*
184 *telephone number, or place of employment of the person protected by the order or that of the family of*
185 *such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme*
186 *Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.*

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

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

189 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
190 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
191 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
192 **periods of commitment to the custody of the Department of Juvenile Justice.**