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SENATE BILL NO. 893

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 30, 2003)

(Patron Prior to Substitute—Senator Watkins)

*A BILL to amend and reenact §§ 19.2-152.8, 19.2-152.9 and 19.2-152.10 of the Code of Virginia, relating to protective orders authorized in cases of certain criminal acts.***Be it enacted by the General Assembly of Virginia:****1. That §§ 19.2-152.8, 19.2-152.9 and 19.2-152.10 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-152.8. Emergency protective orders authorized in cases of certain alleged criminal acts.

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, *a victim of an assault or an act of violence resulting in an injury to person or property or a victim of an act in violation of § 18.2-152.7:1 or § 18.2-427* asserts under oath to a judge or magistrate that such person is being or has been subjected to stalking, *assault, an act of violence resulting in an injury to person or property or an act in violation of § 18.2-152.7:1 or § 18.2-427* 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~~ *alleged victim* 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 *assaults*, acts of ~~stalking~~ *violence or acts* in violation of §§ 18.2-60.3, *18.2-152.7:1 or § 18.2-427*;2. Prohibiting such contacts by the respondent with the ~~allegedly stalked person~~ *alleged victim of such crime* or such person's family or household members as the judge or magistrate deems necessary to protect the safety of such persons; and3. Such other conditions as the judge or magistrate deems necessary to prevent further acts of stalking, *assault, injury to person or property or* communication or other contact of any kind by the respondent.C. An emergency protective order issued pursuant to this section shall expire ~~seventy-two~~ 72 hours after issuance. If the expiration of the ~~seventy-two~~ 72-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~~ *alleged victim of such crime*.E. 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 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 stalked person~~ *alleged victim of such crime*. The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of the appropriate 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 be forwarded and entered in the system as described above. Upon

60 request, the clerk shall provide the ~~allegedly stalked person~~ *alleged victim of such crime* with
61 information regarding the date and time of service.

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

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

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

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

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

78 § 19.2-152.9. Preliminary protective orders in cases of certain alleged criminal acts.

79 A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable
80 period of time, subjected to stalking, *assault or an act of violence resulting in an injury to person or*
81 *property or an act in violation of § 18.2-152.7:1 or § 18.2-427* and (ii) a warrant has been issued for the
82 arrest of the alleged ~~stalker perpetrator of such act or acts~~, the court may issue a preliminary protective
83 order against the alleged ~~stalker perpetrator~~ in order to protect the health and safety of the petitioner or
84 any family or household member of the petitioner. The order may be issued in an ex parte proceeding
85 upon good cause shown when the petition is supported by an affidavit or sworn testimony before the
86 judge or intake officer. Immediate and present danger of ~~stalking the act alleged in the petition~~ or
87 evidence sufficient to establish probable cause that ~~stalking the act alleged in the petition~~ has recently
88 occurred shall constitute good cause.

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

91 1. Prohibiting *assaults, acts of violence, or acts of stalking* in violation of §§ 18.2-60.3, *18.2-152.7:1*
92 *or § 18.2-427*;

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

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

97 B. Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter
98 the name of the person subject to the order and other appropriate information required by the
99 Department of State Police into the Virginia Criminal Information Network system established and
100 maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the
101 court may transfer information electronically to the Virginia Criminal Information Network system. A
102 copy of a preliminary protective order shall be served as soon as possible on the alleged stalker in
103 person as provided in § 16.1-264, and upon service, the agency making service shall enter the date and
104 time of service into the Virginia criminal information network system. The preliminary order shall
105 specify a date for the full hearing. The hearing shall be held within ~~fifteen~~ 15 days of the issuance of
106 the preliminary order. However, upon motion of the respondent and for good cause shown, the court
107 may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request
108 after the order is issued, the clerk shall provide the petitioner with a copy of the order and information
109 regarding the date and time of service. The order shall further specify that either party may at any time
110 file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the
111 motion shall be given precedence on the docket of the court.

112 Upon receipt of the return of service or other proof of service pursuant to subsection C of
113 § 16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the
114 local police department or sheriff's office which shall, upon receipt, enter into the Virginia Criminal
115 Information Network system any other information required by the State Police which was not
116 previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification
117 order shall also be attested, forwarded and entered into the Virginia Criminal Information Network
118 system as described above.

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

121 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, assault, act of violence resulting in an injury to person or property, or act in violation of § 18.2-152.7:1 or § 18.2-427 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 and acts of violence.

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 an act of violence resulting in an injury to person or property, a violation of §§ 18.2-60.3, 18.2-152.7:1 or § 18.2-427, (ii) a hearing held pursuant to subsection D of § 19.2-152.9, or (iii) a conviction for an assault, an act of violence resulting in an injury to a person or property, or a violation of §§ 18.2-60.3, 18.2-152.7:1 or § 18.2-427. 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 assaults, acts of violence, or acts of stalking in violation of §§ 18.2-60.3, 18.2-152.7:1 or § 18.2-427, ;

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 assaults, acts of violence, or 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 upon receipt forward forthwith an attested copy of the order to the local police department or sheriff's office which shall, upon 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 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, upon 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

183 the docket of the court.

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

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

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